



National Audit Office

---

## **Report**

by the Comptroller  
and Auditor General

---

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

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

---

Our vision is to help the nation spend wisely.

Our public audit perspective helps Parliament hold government to account and improve public services.

The National Audit Office scrutinises public spending for Parliament and is independent of government. The Comptroller and Auditor General (C&AG), Sir Amyas Morse KCB, is an Officer of the House of Commons and leads the NAO. The C&AG certifies the accounts of all government departments and many other public sector bodies. He has statutory authority to examine and report to Parliament on whether departments and the bodies they fund, nationally and locally, have used their resources efficiently, effectively, and with economy. The C&AG does this through a range of outputs including value-for-money reports on matters of public interest; investigations to establish the underlying facts in circumstances where concerns have been raised by others or observed through our wider work; landscape reviews to aid transparency; and good-practice guides. Our work ensures that those responsible for the use of public money are held to account and helps government to improve public services, leading to audited savings of £741 million in 2017.

---



National Audit Office

---

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

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

Report by the Comptroller and Auditor General

Ordered by the House of Commons  
to be printed on 4 July 2018

This report has been prepared under Section 6 of the  
National Audit Act 1983 for presentation to the House of  
Commons in accordance with Section 9 of the Act

Sir Amyas Morse KCB  
Comptroller and Auditor General  
National Audit Office

3 July 2018

This report provides our independent opinion on the progress made by the Department for Business, Energy & Industrial Strategy (BEIS), the Competition and Markets Authority (CMA) and National Trading Standards (NTS) in preparing the UK's consumer protection, competition and state aid regimes for exiting the European Union (EU)

---

© National Audit Office 2018

The material featured in this document is subject to National Audit Office (NAO) copyright. The material may be copied or reproduced for non-commercial purposes only, namely reproduction for research, private study or for limited internal circulation within an organisation for the purpose of review.

Copying for non-commercial purposes is subject to the material being accompanied by a sufficient acknowledgement, reproduced accurately, and not being used in a misleading context. To reproduce NAO copyright material for any other use, you must contact [copyright@nao.gsi.gov.uk](mailto:copyright@nao.gsi.gov.uk). Please tell us who you are, the organisation you represent (if any) and how and why you wish to use our material. Please include your full contact details: name, address, telephone number and email.

Please note that the material featured in this document may not be reproduced for commercial gain without the NAO's express and direct permission and that the NAO reserves its right to pursue copyright infringement proceedings against individuals or companies who reproduce material for commercial gain without our permission.

Links to external websites were valid at the time of publication of this report. The National Audit Office is not responsible for the future validity of the links.

005052 07/18 NAO

---

---

# Contents

**Key facts** 4

**Summary** 5

**Part One**

Introduction 12

**Part Two**

Consumer protection 14

**Part Three**

Competition 23

**Part Four**

State aid 29

**Appendix One**

Our audit approach 32

**Appendix Two**

Our evidence base 34

The National Audit Office study team consisted of:  
Meg Callanan, Peter Langham and Rich Sullivan-Jones, with assistance from Ivan O'Brien, under the direction of Charles Nancarrow.

This report can be found on the National Audit Office website at [www.nao.org.uk](http://www.nao.org.uk)

For further information about the National Audit Office please contact:

National Audit Office  
Press Office  
157–197 Buckingham Palace Road  
Victoria  
London  
SW1W 9SP

Tel: 020 7798 7400

Enquiries: [www.nao.org.uk/contact-us](http://www.nao.org.uk/contact-us)

Website: [www.nao.org.uk](http://www.nao.org.uk)

Twitter: @NAOorguk

---

## Key facts

---

**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

---

**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

---

**46**

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

---

**£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.

# Part One

## Introduction

**1.1** 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.

**1.2** 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.

**1.3** 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.

**1.4** 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**

**1.5** 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.

**1.6** 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.

**1.7** 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.<sup>1</sup>

<sup>1</sup> Comptroller and Auditor General, *Implementing the UK's Exit from the European Union: The Department for Business, Energy & Industrial Strategy*, Session 2017–2019, HC 608, National Audit Office, November 2017.

# Part Two

## Consumer protection

**2.1** This part examines how the Department for Business, Energy & Industrial Strategy (BEIS), National Trading Standards and the Competition and Markets Authority (CMA) are preparing the UK consumer protection regime for European Union (EU) Exit. It sets out the current consumer protection regime in the UK and EU, examines progress in ensuring an operable legal framework and sufficient institutional capacity, and gives a commentary on areas of residual risk relating to the future UK–EU relationship.

**2.2** We focus on the areas of consumer protection that are the responsibility of BEIS, such as fair trading and product safety.<sup>2</sup> This part does not cover areas of consumer protection that are the responsibility of other departments (for example food compositional standards, which are the responsibility of the Department for Environment, Food & Rural Affairs), except where this is relevant for contextual reasons.

### The consumer protection regime

**2.3** Consumer detriment is the harm caused as a result of unfair treatment by a trader. It can take many forms and can result in financial losses, psychological impacts or injury. In our 2016 report on protecting consumers from scams, unfair trading and unsafe goods, we estimated that consumer detriment costs UK consumers £10.6 billion a year.<sup>3</sup>

**2.4** The consumer protection regime is the system of laws, regulations and institutions established to protect consumers from detriment. The system is designed to achieve two broad aims:

- to protect consumers from detriment; and
- to promote competition and economic growth through empowered and confident consumers.

**2.5** As a member state of the EU, the UK's legal framework for consumer protection is based on EU regulations and directives designed to protect EU consumers and facilitate the single market. This includes EU regulations that are directly applicable in the UK, as well as regulations and directives that have been enshrined in domestic consumer protection legislation (**Figure 1**).

<sup>2</sup> We refer to product safety as part of the overall consumer protection regime, but in the context of EU Exit consumer protection and product safety can be considered separate as they are distinct EU frameworks.

<sup>3</sup> Comptroller and Auditor General, *Protecting consumers from scams, unfair trading and unsafe goods*, Session 2016-17, HC 851, National Audit Office, December 2016.



**Figure 1**

## Examples of key consumer protection legislation

UK legislation	Purpose	Related EU regulations/directives
The Consumer Rights Act 2015	Establishes consumer rights covering contracts for goods, services and digital content. It also sets out consumer rights in relation to services and unfair terms on contracts.	Unfair Contract Terms Directive 1993 (93/13/EEC). Directive on sale of goods (1999/44/EC).
Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013	Provides protections to consumers when they purchase good and services, including pre-contract information rights and cancellation rights for distance and off-premises contracts.	Consumer Rights Directive 2011 (2011/83/EU).
Consumer Protection from Unfair Trading Regulations 2008	Provides consumers with protections from unfair commercial practices that distort their decision making.	Unfair Commercial Practices Directive 2005 (2005/29/EC).
Enterprise Act 2002	Provides the legal power for enforcement of consumer protection laws through civil legal action.	Injunctions Directive (2009/22/EC). Consumer Protection Cooperation (CPC) Regulation (2006/2004).
Alternative Dispute Resolution for Disputes (Competent Authorities and Information) Regulations 2015 The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015	Provides for bodies to provide Alternative Dispute Resolution (ADR) services for domestic and cross-border consumer disputes. The regulations set out certification standards for ADR schemes, and establish a requirement on traders to inform consumers of ADR organisations who can help them.	Directive on Consumer ADR (2013/11/EU). Regulation on Consumer Online Dispute Resolution 2013 (No. 524/2013).

Source: National Audit Office review of published information

**2.6** BEIS has overall policy responsibility for consumer issues, except in Northern Ireland where it is fully devolved, and in Scotland where consumer advice and advocacy are devolved. While laws and regulations are mostly set at EU level, enforcement is principally done domestically. BEIS discharges its responsibility for consumer protection through a number of delivery bodies at national and local level, which collectively make up the UK's consumer protection system (**Figure 2** overleaf).

**2.7** In some areas, membership of the EU means that UK consumers benefit from Europe-wide consumer rights when travelling in or purchasing from companies in the EU, and responsibility for oversight of these benefits sits across a wide range of government departments (**Figure 3** overleaf sets out some of these areas). Continuation of many of these rights is dependent on the nature of the future relationship between the EU and the UK, and therefore subject to the negotiations.

**Figure 2**  
Consumer protection activities and relevant bodies

**Consumer information and education** – to help consumers protect themselves



**Citizens Advice** and **Citizens Advice Scotland** are national coordinators for providing consumer advice, education and information in Great Britain. Citizens Advice is responsible for receiving consumer complaints, which are referred to **Trading Standards** to decide whether or not to intervene and take action.

**The Competition and Markets Authority** may produce consumer advice when, having carried out a project on a particular sector, it is best placed to do so.

**Business guidance and education** – to help businesses comply with the law



**The Chartered Trading Standards Institute** is responsible for producing business advice. It runs the 'Business Companion' website that provides information to businesses in regard to consumer protection legislation. It is also responsible for running the **UK European Consumer Centre**.

**The Competition and Markets Authority** produces guidance material in relation to unfair contract terms and business advice to support its wider compliance measures.

Local authority **Trading Standards** services offer businesses advice on consumer law.

**Inspections, investigations and law enforcement** – to punish businesses that break the law and deter non-compliance



Local authority **Trading Standards** services investigate consumer complaints and prosecute traders who break the law. They cover areas such as: consumer safety, counterfeit goods, product labelling, weights and measures, under-age sales and animal welfare.

**National Trading Standards** and **Trading Standards Scotland** deliver national and cross-boundary investigations and enforcements.

**The Competition and Markets Authority** investigates consumer issues that have a market impact and enforces consumer protection legislation, particularly to tackle practices and market conditions that make it difficult for consumers to exercise choice. It aims to achieve wider market impact and often intervenes early to prevent unfair practices from becoming established.

Sector regulators and the **Office for Product Safety and Standards** also have broad consumer law enforcement powers.

Private enforcement allows consumers to take traders to court to seek compensation and redress when detriment has been experienced.

Source: Comptroller & Auditor General, *Protecting consumers from scams, unfair trading and unsafe goods*, Session 2016-17, HC 851, National Audit Office, December 2016

**Figure 3**  
Examples of Europe-wide consumer rights



EU directive 2015/2302 protects consumers against insolvency of package organisers, ensuring that travellers are refunded or, where applicable, repatriated should the organiser go bust.



In 2017, the EU's Telecommunications Single Market Regulation abolished mobile phone roaming charges in European Economic Area countries.

Source: National Audit Office review of published information

## Progress in preparing for EU Exit

### Ensuring a functioning statute book

**2.8** Following EU Exit, EU regulations will no longer be directly applicable in the UK, and domestic legislation that refers to EU regulations, functions and agencies will cease to be operable. To ensure continuity of the consumer protection regime immediately following EU Exit, the European Union (Withdrawal) Bill (the Withdrawal Bill) legislates for the transposition of all EU consumer protection regulations into UK law and secondary legislation will be used to amend domestic legislation to ensure that it is operable.

**2.9** BEIS has developed a consumer legislative framework delivery plan, and is in the process of drafting statutory instruments to amend existing regulations on a range of consumer protection issues. BEIS 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. A significant proportion of BEIS's secondary legislation for EU Exit covers product safety in particular. Other examples of its statutory instruments include amendments to consumer contract and textile labelling regulations, as well as cross-border consumer protection cooperation mechanisms. It has begun consulting with regulators and the CMA on the drafting of the legislation to ensure that it is fit for purpose and operable.

**2.10** BEIS has established clear milestones for its legislative programme for both negotiated and no-deal scenarios. Our review of BEIS dashboards found that some of these internal milestones had 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. As at May 2018, BEIS had risk rated the deliverability of its consumer protection legislative programme as 'amber', meaning that it believes the delays to milestones are recoverable and that its consumer protection legislative programme remains on track for 30 March 2019.

**2.11** BEIS is reliant on factors outside its direct control to lay its legislation in Parliament in time for a no-deal scenario in March 2019. It plans to lay the required secondary legislation in Parliament by January 2019 at the latest. However, the volume of legislation that is needed across government to ensure a functioning statute book on EU Exit is substantial, and there is pressure on parliamentary time. Delays to UK and EU negotiations on the future relationship pose a risk to BEIS's ability to ensure a functioning consumer protection framework on 30 March 2019. To mitigate these risks, 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.

**2.12** Some aspects of the consumer protection and product safety regime also rely on other government departments. For example, the Department for Environment, Food & Rural Affairs is responsible for the legislative framework for consumer protections relating to the environment and some aspects of food, while the Ministry of Justice is responsible for cross-border judicial cooperation which facilitates enforcement of consumer rights across borders. BEIS's plans for the consumer protection legislative programme showed that its milestones included interdependencies where actions were required by other departments.

### Capacity and capability

**2.13** Consumer protection in the UK is enforced at both local and national levels. Local authority Trading Standards services are the primary enforcers of consumer law and are mainly funded locally. In 2012, BEIS established National Trading Standards (NTS) to address regional and national issues. NTS funds work relating to national issues but relies on officers drawn from the existing pool of Trading Standards services. Its specialist teams are also hosted by local authorities.

**2.14** NTS has assessed at a high level the potential impacts of EU Exit on the consumer protection regime, and has identified online crime, product safety of imported goods and distance sales as the key issues affected. However, in relation to product safety, it considers the uncertainties too high for it to provide a specific overall cost for future scenarios, although it is undertaking further analysis of demand at ports. It has reallocated a small amount of resource to Kent Trading Standards, in recognition of the planning it is currently doing to prepare for the possible impacts of EU Exit on the port of Dover and other parts of Kent. However, the overall NTS 'safety at ports' budget currently remains unchanged in 2018-19 at £1.19 million.<sup>4</sup> 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.

**2.15** We reported in 2016 on a number of challenges that have limited the effectiveness of the current consumer protection regime:<sup>5</sup>

- **Cuts in funding**

Local authority Trading Standards services carry out the majority of consumer protection law enforcement. These services are funded by local authorities from the revenue support grant and locally raised income (such as council tax and business rates). As local authority budgets have reduced in recent years, the resources for Trading Standards services have diminished considerably, creating enforcement gaps. We found that local Trading Standards services had lost 56% of full-time equivalent staff between 2009 and 2016.

<sup>4</sup> Local authorities also contribute to funding market surveillance at the border through local Trading Standards services.

<sup>5</sup> See footnote 3.

- **Limited effective system prioritisation**

As 75% of consumer protection funding is administered by local authorities, BEIS has little control over the majority of resources, making effective system prioritisation of national issues difficult. Our report found that local authority Trading Standards services are incentivised to prioritise local issues (for example, doorstep crime) over national issues where consumer detriment may be the greatest, such as e-crime or unfair trading.

**2.16** BEIS is currently consulting on whether to strengthen the overall consumer protection regime. In April 2018, it published a consumer green paper to consult on the future of the regime, including establishing a national body with statutory powers to strengthen enforcement at a national level in relation to scams, unfair trading and e-crime.<sup>6</sup> In January 2018, it also established the Office for Product Safety and Standards (the Office) to build national capacity for product safety. The Office currently sits within BEIS, but in the longer term the government will examine the options for making it an arm's-length independent body, and will conduct a public consultation.

### Contingency plans for cross-border cooperation

**2.17** EU regulations and networks currently facilitate close cooperation between member states to support the identification of risks to consumers (for example, unsafe or counterfeit goods and unfair trading practices) and ensure that consumer rights can be enforced across borders. Increasingly, effective consumer protection requires cooperation across borders, as the growth of digital markets and distance selling increases the likelihood of consumer detriment occurring across borders.

**2.18** The extent to which exiting the EU will place new demands on the UK consumer protection regime will depend on the future relationship between the EU and the UK, and future trading relationships with the rest of the world. It is likely that there will be particularly increased demand on the regime if:

- changes in the relationship between the UK and the EU require additional product safety checks on products imported from the EU;
- there is a reduction in the levels of cooperation between the UK and EU on cross-border market surveillance, requiring more resources to identify risks to UK consumers; or
- there is a reduction in the levels of cooperation between the UK and EU on cross-border enforcement, requiring additional resources to tackle cross-border consumer detriment.

<sup>6</sup> Department for Business, Energy & Industrial Strategy, *Modernising consumer markets: consumer green paper*, Cm 9595, April 2018.

### **Identifying risks to consumers**

**2.19** Identifying risks to consumers through market surveillance is central to effective consumer protection. Under the Consumer Protection Cooperation (CPC) Regulation (no. 2006/2004), EU member states participate in the Consumer Protection Cooperation Network. This network facilitates cross-border sharing of intelligence on a wide range of consumer protection issues from e-crime to unfair trading. On EU Exit, this regulation and the networks it facilitates will no longer apply to the UK, unless future participation is negotiated as part of a future UK–EU agreement. BEIS plans to ensure that Trading Standards services retain their market surveillance enforcement powers (currently provided for within the Regulation on Accreditation and Market Surveillance).

**2.20** The European Commission (EC) hosts two information systems to support EU-wide market surveillance for product safety:

- The Rapid Alert System for Dangerous Non-food Products (RAPEX) – a rapid alert system that enables member states to quickly and efficiently share information on non-compliant or unsafe products. In 2016, there were 1,691 notifications by member states of products posing a serious risk to consumers' health and/or safety.
- The Information and Communication System on Market Surveillance (ICSMS) – a web-based product safety database that facilitates information exchange between all market surveillance bodies across the EU, including access to product safety test results.

**2.21** BEIS sought a ministerial direction in March 2018 to spend £2.4 million on developing a replacement for RAPEX and ICSMS in advance of royal assent of the Withdrawal Bill. It is in the early stages of developing the replacement system, and reported being behind schedule prior to receiving the ministerial direction. It reported to DExEU in May 2018 that it was currently on track to deliver a minimum operating capability by March 2019, with scope to develop the project further beyond that date. BEIS chose its preferred supplier in May 2018 and has commenced the first phase of development.

### **Cross-border enforcement**

**2.22** Under the CPC regulation, EU member states can request help from enforcement agencies in other member states to collect evidence on their behalf and carry out enforcement action. This mechanism, alongside harmonised consumer protection laws, is important for cross-border consumer protection enforcement. The regulation also facilitates 'joint actions' under which enforcement authorities from across the EU cooperate to tackle consumer protection issues that cross borders (**Case study 1**).

---

## Case study 1

### Consumer protection cooperation across the European Union (EU): Car-rental

After a review of the car-rental sector in 2014, the Competition and Markets Authority (CMA) identified a number of consumer protection concerns in relation to hidden charges and a lack of transparency over contract terms and conditions. The CMA carried out a joint action with the EU's Consumer Protection Cooperation Network to engage with five major pan-European car rental companies. This joint action resulted in the five companies putting forward voluntary proposals to improve their practices, and led to an estimated £127 million of benefit to UK consumers.

*Source: Competition and Markets Authority, evidence to Select Committee on the European Union Justice Sub-Committee Brexit: Consumer Protection Rights inquiry, September 2017*

---

**2.23** In the absence of a future UK–EU agreement on continued consumer protection cooperation, Trading Standards services and the CMA are seeking to work bilaterally with EU member states, as they currently do with countries outside the EU. This could take the form of bilateral memorandums of understanding between enforcement agencies, or use mutual legal assistance protocols in the case of criminal investigations. However, outside EU structures that facilitate and streamline these processes, the authorities expect cross-border enforcement to take longer and be more expensive, and the UK authorities cannot mandate another country to cooperate. Given the level of uncertainty, NTS has not yet calculated the overall impact or cost on its work. The CMA is recruiting 13 additional consumer protection staff (a 25% increase in capacity) in anticipation of more complex cross-border consumer protection work.

**2.24** NTS 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. If goods from the EU were treated as 'third country' imports after EU Exit, they would be in scope for product safety checks, which would require a significant expansion in Trading Standards capacity. The borders in Kent are potentially some of the most affected by EU Exit because the vast majority of goods imported through Dover are from the EU and currently not subject to product safety checks. Kent Trading Standards has estimated the impact on its workforce of different EU Exit scenarios including no deal, and has begun discussion with relevant bodies over increased funding should this be needed. 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 following EU Exit.

### **Cross-border redress**

**2.25** The European Consumer Centre Network is a network of 30 advice centres across the EU, Iceland and Norway. The Network was established to provide information on consumer rights and assist in resolving cross-border disputes between consumers and traders from member countries. The UK European Consumer Centre (UK-ECC) is currently run by the Chartered Trading Standards Institute. In 2016, it responded to 6,190 requests for information from UK consumers and handled 3,888 advice and assistance cases for UK consumers who had lodged complaints against traders based in other European countries. It is funded by BEIS and the EC. In 2016, the EC contributed 50% of funding at a cost of €268,000. In the absence of continued membership of the ECC network following EU Exit, BEIS is exploring contingency options, although cooperation with EU partners may be reduced outside the network. As at May 2018, BEIS reported to DExEU that it was on track to deliver its contingencies by March 2019 if required.

**2.26** Consumers also need to understand their rights to know how and when to seek redress, should these change as a result of EU Exit. BEIS has policy responsibility in Whitehall for consumer advice and advocacy. It is considering how and when it may be appropriate to inform consumers of any changes to their rights.



# Part Three

## Competition

**3.1** This part examines progress made by the Department for Business, Energy & Industrial Strategy (BEIS) and the Competition and Markets Authority (CMA) in ensuring that the UK competition regime is prepared for European Union (EU) Exit. It sets out the current competition regime in the UK and across the EU, and progress in ensuring that the legal framework is operable and there is sufficient institutional capacity following EU Exit. It also gives a commentary on contingencies for issues that depend on UK–EU negotiations.

### **The current competition regime**

**3.2** Effective competition between businesses can bring benefits to consumers including greater choice, improved product quality, innovation and lower prices. Where markets fail to operate competitively, consumers, businesses and taxpayers can suffer. For example, fuel surcharges on a typical Virgin Atlantic or British Airways long-haul return flight rose from £5 to £60 per ticket over the 2-year period in which the two airlines illegally coordinated their surcharge pricing.

**3.3** Competition law prohibits anti-competitive practices – namely, anti-competitive agreements and the abuse of a dominant position (**Case study 2** overleaf). Merger control is another important area of the competition regime, under which the CMA assesses proposed mergers between firms, decides whether they could be harmful to competition and remedies the harm.

**3.4** The UK's legislative framework for prohibiting anti-competitive agreements (including cartels) and abuses of dominance is modelled on the EU's main competition provisions. The legal framework for competition in the UK is set out in the Competition Act 1998 and the Enterprise Act 2002.

**3.5** In the UK, BEIS has policy responsibility for the competition regime, while the CMA has overall responsibility for enforcing it. Some sector regulators also have powers, held concurrently with the CMA, to enforce competition rules in their particular sectors.

---

## Case study 2

### Competition and Markets Authority (CMA) enforcement action against pharmaceutical firms

In February 2016, the CMA announced that it had fined a number of pharmaceutical firms a total of £45 million for anti-competitive conduct and agreements in relation to the supply of paroxetine (an anti-depressant medicine). The CMA found these 'pay-for-delay' agreements deferred the competition that the threat of independent generic entry into the UK market for paroxetine could offer, and potentially deprived the National Health Service of the significant price falls that generally result from generic competition.

Source: *Competition and Markets Authority, fines pharma companies £45 million, CMA press release, 12 February 2016*

---

**3.6** Currently, the European Commission (EC) will generally investigate suspected competition law infringements that affect three or more member states within the EU, including those with an effect on the UK market. For cases regarding anti-competitive agreements or abuse of dominance, the EC opening a case precludes national competition authorities from taking action in relation to the same conduct. The EC typically investigates cases with EU-wide significance, the most economically important as well as those where an EC decision is needed to develop EU competition policy. In merger control, the EC has exclusive jurisdiction within the EU over mergers that exceed certain turnover thresholds (designed to capture the larger cases that have a relevance across the single market). The allocation of cases between the EC and the UK competition authorities (and those of other member states), including the CMA, is subject to criteria set out in law.

**3.7** The UK is currently a member of the European Competition Network, which is a framework for close cooperation between member states' competition authorities. This network helps to ensure consistency in the application and interpretation of EU law, and to facilitate the efficient allocation of cases where several member states have an interest. Regulation 1/2003, in particular, provides legal gateways for the sharing of confidential information between members and facilitating the exchange, and use in evidence, of confidential information for the enforcement of competition law.<sup>7</sup>

**3.8** An effective competition regime needs an appeals process in place, which currently operates at both UK and EU levels. Decisions by the EC are appealable to the EU courts (the General Court and, ultimately, the European Court of Justice). In the UK, the Competition Appeal Tribunal (the Tribunal) is the body to which appeals can be brought against decisions made by the CMA or sector regulators. There may be a further appeal (with the permission of the Tribunal) to the Court of Appeal and ultimately to the Supreme Court, on a point of law or the amount of a penalty. Under section 60 of the Competition Act 1998, UK courts and tribunals are obliged to maintain consistency with EU competition law when interpreting and applying the UK's Competition Act.

<sup>7</sup> Regulation 1/2003 modernised the enforcement of EC competition law by abandoning the notification system, decentralising enforcement and ensuring the supremacy of EC law. It also set out new rules on cooperation and case allocation between the EC and national competition authorities.

**3.9** BEIS currently has two EU Exit work-streams that relate to the UK competition regime. The first relates to transitional arrangements for live EU-level cases. Following EU Exit, there will be merger and competition enforcement cases that have started but not completed, including cases where the EC is investigating competition impacts in the UK. The second work-stream reflects that a number of cases that would previously have been within the jurisdiction of the EC will fall within the UK's jurisdiction. BEIS considers it important that future arrangements provide clarity and legal certainty about the jurisdiction that applies to different cases, and the arrangements for cooperation and coordination between the UK and EU after exit.

## **Progress in preparing for EU Exit**

### Ensuring a functioning statute book

**3.10** While UK competition law is already modelled on EU law, some amendments are essential to ensure a functioning domestic competition regime on EU Exit in either of the government's scenarios, particularly where the law refers to EU structures. For example, the government is preparing amendments to clarify the status of judgments from the Court of Justice of the EU after the UK leaves the EU. BEIS is drafting statutory instruments to address these issues, preparing text for both no-deal and negotiated scenarios. These statutory instruments cover aspects of the Competition Act 1998, the Enterprise Act 2002 and the Block Exemption Regulations, which are EU law and which are being brought into UK law.

**3.11** BEIS is working collaboratively with the CMA on this legislative programme and has involved the CMA directly in the drafting process (covered by a governance arrangement). The CMA reviewed the statutory instruments in detail in February 2018, and workshops have been held with BEIS, the Department for Exiting the European Union and other regulators to ensure that the statutory instruments are fit for purpose and provide the legal certainty needed for a functioning domestic competition regime on EU Exit, as well as to discuss broader policy questions.

**3.12** BEIS has pushed back some of its internal milestones relating to consultation on, and legal checking of, the statutory instruments by up to 5 months because of re-planning within BEIS on its overall phasing of EU Exit work across the department. This was to reflect the fact that these processes will only be useful once BEIS has a stable legal text that reflects the outcome of negotiations. BEIS considers that its statutory instruments relating to competition legislation are currently on track, with the secondary legislation ready to go to the Parliamentary Business and Legislation Committee of Cabinet.

**3.13** Pressures in the legislative timetable could have an impact on readiness for 30 March 2019. BEIS's original delivery plans were based on the cross-government assumption that the European Union (Withdrawal) Bill would receive royal assent in May 2018. BEIS has risk rated its deliverability in this area as 'amber', which means it believes the delays to milestones are recoverable and the legislative programme remains on track for 30 March 2019.

### Capacity and capability

**3.14** Outside the EU single market, it is expected that the CMA will need to deal with a larger number of cases, and more frequently investigate larger and more complex competition and merger cases like those that are currently investigated by the EC. By way of illustration, in June 2017, the EC found that Google had infringed competition law by abusing its dominant market position in the markets of member states, and fined the firm €2.42 billion after a long-running investigation lasting 8 years (**Case study 3**). Outside the single market, the CMA will be responsible for investigating more cases involving global firms that previously would have been part of an EU-wide investigation (to the extent that such firms' behaviour affects UK markets and consumers). These types of cases are likely to involve greater cost and complexity.

**3.15** To build its capacity and prepare for EU Exit, the CMA submitted a request for additional funds to HM Treasury, based on its detailed understanding of the cost of competition work and the expected increase in the number and complexity of additional cases expected following EU Exit. On 13 March 2018 as part of the Chancellor's Spring Statement, the CMA was allocated an additional £20.3 million for 2018-19, a budget increase of 29%, which it considers sufficient for this year.

---

### Case study 3

#### European Commission (EC) enforcement action against Google for alleged abuse of dominance

In 2017, the EC fined Google €2.42 billion for alleged abuse of its dominance in European Union (EU) markets, which stifled competition in online comparison shopping markets. Every year, Google makes almost \$80 billion from advertisements targeted at users of its search engine. The EC found that Google had abused its market dominance as a search engine provider by using its algorithms to promote its own comparison shopping service in its search results and demoting those of competitors. The EC found that these actions denied other companies the chance to compete in EU markets, and denied European consumers the benefits of competition, genuine choice of products and innovation. The size of the fine imposed by the EC on the company reflected the serious and sustained nature of the violation of EU competition rules. The EC concluded the case after 8 years of investigation.

Source: National Audit Office review of published material

---

**3.16** With the additional funding, the CMA is planning to increase its staffing by 240 full-time equivalent staff, a 39% increase, which it estimates that it will need to upscale its existing consumer and competition capabilities (including back-office functions) to meet the expected increased caseload. Most of this increase, 150 full-time equivalent staff, are in front-line delivery roles in competition enforcement and merger investigations.

**3.17** The CMA is in a competitive environment for specialist staff, and competes with other regulators and the private sector where the CMA's benchmarking shows that salaries are often higher. On the other hand, the CMA's taking on of larger and more complex cases previously reserved for the EC may be attractive to potential recruits, particularly competition and regulatory specialists. Nevertheless, recruiting this number of additional staff will be challenging, and the CMA has explicitly stated that it will not lower its recruitment standards. In the event that there is no implementation period for competition matters, the CMA has contingencies to deal with the likely increased caseload at March 2019 if necessary, including the use of temporary staff and secondments, and through re-prioritisation of work. The CMA is on track against its recruitment plan, but it is at an early stage. As at the end of May 2018, 8% of EU Exit vacancies had already been filled with a further 32% being addressed by active campaigns. The planned programme of campaigns will continue throughout 2018 to recruit the new staff the CMA would need by March 2019 in a no-deal scenario.

**3.18** The CMA has a considerable challenge in managing this upscaling of staff of a sufficiently high calibre to meet its needs in this timescale alongside other organisational changes, including relocating its headquarters to Canary Wharf, opening an expanded office in Edinburgh and looking to expand elsewhere as opportunities arise. The Infrastructure and Projects Authority reviewed the CMA's operational readiness in April 2018. It found that the CMA had coherent plans to grow its staff complement and develop the skills it needs. It concluded that, overall, successful delivery of its EU Exit plans 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.

**3.19** As a result of the CMA needing to deal with more cases after EU Exit, some of which are likely to be larger and more complex, the Competition Appeal Tribunal (the Tribunal) is also likely to experience a significant increase in its workload and will need to expand its capacity. Additional Tribunal panel members have already been appointed. The Tribunal plans to conduct any necessary recruitment of staff when the increase in the demands of the caseload becomes apparent and ascertainable.

## Contingency plans for cross-border cooperation

**3.20** The UK is currently part of the EU-wide European Competition Network. This network is underpinned by legal commitments on member states to exchange intelligence and confidential data subject to appropriate safeguards, and supports cross-border collaboration on competition enforcement. Without these or equivalent commitments in a future UK–EU agreement, the CMA would lose access to this cooperation on evidence gathering and information sharing, including confidential information on suspected anti-competitive practices. It may also no longer be part of collaborative enforcement arrangements, such as whistleblowing rules and processes (known as ‘leniency’). At present there is no ‘one-stop shop’ for leniency applications and national leniency rules differ. However, harmonisation has been encouraged by the adoption of the European Competition Network’s model leniency programme. Although the practical impact of EU Exit on leniency may be limited, the UK will need to decide what aspects of the programme’s current processes to preserve, depending on the extent of post-exit information sharing agreed between the CMA and the EC.

**3.21** The CMA and BEIS have plans to mitigate the potential loss of access to these enforcement and intelligence-sharing arrangements. In the absence of a substantive UK–EU agreement on data sharing, the CMA will seek to set up bilateral arrangements with individual member states. The UK already has legal provisions in the Enterprise Act 2002 that permit the sharing of confidential information with overseas authorities for the purpose of competition enforcement. However, the CMA cannot unilaterally secure reciprocal information sharing across jurisdictions, and some member states’ domestic legislation may limit the level of cooperation that they can agree to with a country outside the EU. The CMA hopes to agree bilateral or multilateral arrangements with the EC and member states to enable at least a minimum viable level of cooperation.

**3.22** As a member state of the EU, the UK also currently benefits from competition cooperation agreements between the EU and non-EU countries. The EU has an agreement with Switzerland and is currently in the process of negotiating deeper cooperation agreements with Canada and Japan. As the CMA takes on an increasing number of larger and more complex competition cases, it expects the number of cases requiring cooperation with competition authorities outside the EU to increase. The CMA and BEIS intend to seek new bilateral competition agreements that would include provisions for sharing confidential information, although previously such provisions have been rare. For example, to date, the EU’s competition cooperation agreement with Switzerland is the only one that allows for sharing of confidential information. Similar arrangements to this could enhance the CMA’s ability to cooperate with other overseas’ competition agencies in future.

# Part Four

## State aid

**4.1** This part examines the progress made by the Department for Business, Energy & Industrial Strategy (BEIS) and the Competition and Markets Authority (CMA) in setting up a UK state aid regime in preparation for European Union (EU) Exit. It sets out current state aid arrangements within the EU, and what BEIS and the CMA are doing to introduce a UK regime.

### The current state aid regime

**4.2** Subsidy control regimes, such as state aid, exist to prevent distortions of trade and competition by governments. At an international level, the World Trade Organisation (WTO) sets rules on subsidies covering goods but not services.

**4.3** The EU's state aid rules, set out in Articles 107-109 of the EU Treaty, cover both goods and services, and prohibit all state aid by member states unless compatible for reasons of general economic development (including regional aid to disadvantaged areas). There are also exemptions, under the General Block Exemption Regulation, for certain categories of aid across a range of sectors, such as aid to support the development of small- and medium-sized enterprises.

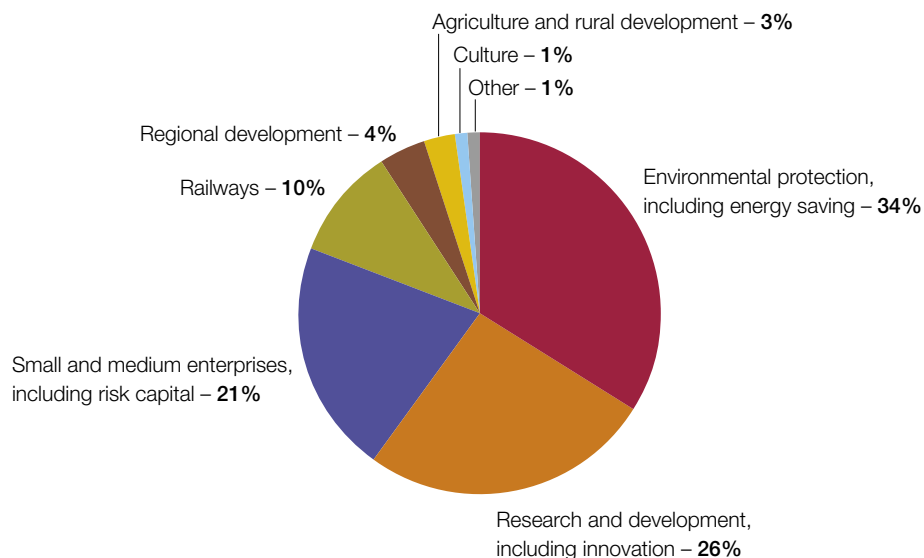
**4.4** To date, state aid rules have been entirely enforced at EU level by the European Commission (EC), with no involvement from national governments or competition authorities. Member states are required to notify their plans for state aid to the EC, and can only implement aid measures after approval by the EC. The EU's state aid regime is widely considered tougher than the WTO's rules on subsidies, reflecting the integrated nature of the EU single market.

**4.5** Support for environmental protections, research and development, and support for small- and medium-sized enterprises currently account for the majority of UK state aid, 81% in 2016 (**Figure 4** overleaf). The UK typically spends less on state aid than some other EU member states. Between 2009 and 2015, for example, the UK spent an average of €100 per citizen on state aid, compared with more than €200 in each of France and Germany.

**4.6** Within its portfolio of EU Exit work-streams, BEIS has one that relates to establishing a domestic state aid regime, including establishing a functioning legislative framework and appointing a UK body to oversee and enforce it.

**Figure 4**

Share of UK state aid, by policy objective (2016)



Source: European Commission, 'State Aid Scoreboard 2017'

## Progress in preparing for EU Exit

### Ensuring a functioning statute book

**4.7** The EU has made it clear that controls on state aid will be an integral part of any free trade agreement. The Prime Minister stated in her Mansion House speech in March 2018 that “if we want good access to each other’s markets, it has to be on fair terms. As with any trade agreement, we must accept the need for binding commitments – for example, we may choose to commit some areas of our regulations like state aid and competition to remaining in step with the EU’s.”

**4.8** 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. Its planning was done in recognition that countries that have a high level of access to the EU market have some form of independent state aid regulator as part of the system to ensure a level playing field. It announced in March 2018 that it proposed to use the European Union (Withdrawal) Bill (the Withdrawal Bill) to establish a state aid regime, and the CMA as the independent state aid regulator from the point that this is required.



**4.9** BEIS considers that it has a very tight timescale to incorporate EU state aid rules into UK law by 30 March 2019 in the event of a no-deal scenario, and it has prioritised the critical legal provisions. It therefore monitors progress against the legislative timetable for laying the relevant regulations. It also closely monitored the progress of the Withdrawal Bill for any reduction in the scope of relevant powers for enacting a domestic regime, and considered contingencies to mitigate that risk. BEIS and the CMA have been working to develop the detail of the regime. The CMA considers that any further compression of the legislative timetable will place pressure on their plans.

### Capacity and capability

**4.10** The government formally announced in March 2018 that the CMA would be the UK's independent state aid authority. The CMA is a pre-existing organisation with an established role in promoting competitive markets and internal governance arrangements for handling casework. BEIS considered that this was the strongest option, as opposed to setting up a new state aid authority, and this would allow it to bring the regime into operation more quickly. State aid is an entirely new function for the CMA and will require additional staff and a new IT solution. There was no clear vires for the CMA to spend on certain state aid items (including IT and staff specifically for state aid) until the Withdrawal Bill received royal assent.

**4.11** The CMA was allocated £3.3 million for state aid for 2018-19 in the Chancellor's Spring Statement, including £0.9 million for developing an IT system. It considers this sufficient for this year, based on its initial estimates and understanding of what is needed for a UK state aid regime. To date, it has been unable to discuss state aid with EC officials. Its analysis was therefore based on the prior experience of BEIS officials who had worked in state aid at the EC, and public information on EC caseload and estimates of numbers of staff involved. The business case states that funding may need to be adjusted once there is more certainty on how the regime is operating. If requirements turn out different from the CMA's current estimates, it is prepared to seek additional funding and will use staff flexibly between its competition and state aid functions.

**4.12** From a baseline of zero staff, the CMA estimates that it will require 46 state aid staff for the function by March 2019 if there is no deal. However, the CMA considers that not all the additional staff need to be specialists, because general competition economists and lawyers could be redirected in many cases.

**4.13** BEIS staff are working closely with the CMA to develop the IT system, and they plan to define its scope in summer 2018. Only a minimum level of functionality will be required immediately following EU Exit, because of the initial low volumes of state aid notifications expected. BEIS and the CMA have established a joint steering group to oversee the project.

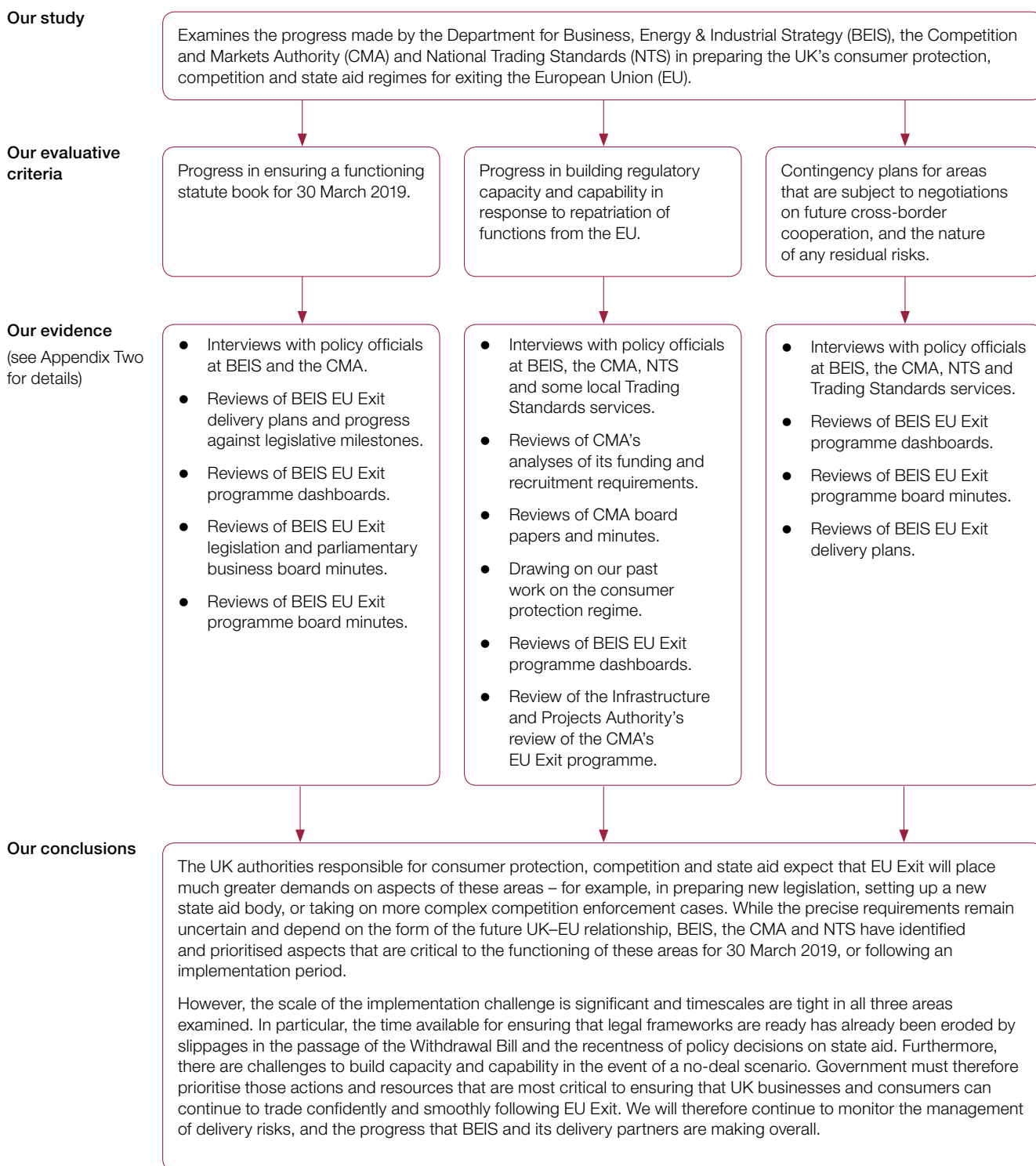
# Appendix One

## Our audit approach

- 1 This report provides our independent opinion on the progress made by the Department for Business, Energy & Industrial Strategy (BEIS), the Competition and Markets Authority (CMA) and National Trading Standards (NTS) in preparing the UK's consumer protection, competition and state aid regimes for exiting the European Union (EU).
- 2 To do this, we examined for each of the three legal and regulatory areas:
  - BEIS's progress in ensuring a functioning statute book for 30 March 2019; and
  - the progress made by BEIS, the CMA and NTS 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: with an implementation period until 31 December 2020, and for 30 March 2019 in a no-deal scenario.
- 3 Reflecting the uncertainty in all three areas, stemming from negotiations on the future relationship between the UK and the EU and ongoing policy development, we also reviewed contingency plans for areas that are subject to negotiations 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.
- 4 Our audit approach is summarised in **Figure 5**. Our evidence base is described in Appendix Two.

**Figure 5**

**Our audit approach**



# Appendix Two

## Our evidence base

**1** Our independent conclusions on whether the Department for Business, Energy & Industrial Strategy (BEIS), the Competition and Markets Authority (CMA) and National Trading Standards (NTS) have made sufficient progress in preparing for European Union (EU) Exit were reached following our analysis of the data we collected and reviewed. Our fieldwork took place between February and May 2018.

**2** We applied an evaluative framework to consider the progress the UK authorities have made in implementing the UK's exit from the EU. Our audit approach is outlined in Appendix One.

**3 We examined BEIS's progress in ensuring a functioning statute book for 30 March 2019.**

- We conducted interviews with policy officials at BEIS and the CMA to explore progress in ensuring a functioning statute book for competition, consumer protection and state aid.
- We reviewed a range of BEIS EU Exit papers to track progress against milestones and contingency planning, including:
  - EU Exit delivery plans from November 2017 to May 2018;
  - EU Exit legislation and parliamentary business board minutes from March to May 2018;
  - EU Exit programme monthly dashboards from March to May 2018; and
  - EU Exit programme board minutes from January and May 2018, including a paper on progress with the legislative programme.

**4 We examined the progress made by BEIS, the CMA and National Trading Standards in building regulatory capacity and capability in response to repatriation of functions from the EU.**

- We conducted interviews with policy officials at BEIS, the CMA, NTS and some local Trading Standards services to explore progress in building regulatory capacity and capability.
- We reviewed the CMA's EU Exit programme documentation including:
  - analyses the CMA had carried out of its funding and recruitment requirements;
  - board papers and minutes detailing progress in building capacity and capability; and
  - the Infrastructure and Project Authority's critical friend review of the CMA's EU Exit programme, including supporting evidence submitted by the CMA.
- We reviewed BEIS EU Exit programme monthly dashboards from March to May 2018.
- We drew on our past work on the consumer protection regime, in particular our December 2016 report.<sup>8</sup>

**5 We reviewed, and provided a commentary on, contingency plans for areas that are subject to negotiations on future cross-border cooperation, and the nature of any residual risks.**

- We conducted interviews with policy officials at BEIS, the CMA, NTS and some local Trading Standards services to explore contingency plans for areas of policy that are subject to UK–EU negotiations.
- We reviewed a range of BEIS EU Exit papers to provide a commentary on contingency plans, including:
  - EU Exit programme dashboards from March to May 2018.
  - BEIS EU Exit programme board minutes from January and May 2018, including a paper on preparations of the Office for Product Safety and Standards.
  - BEIS EU Exit delivery plans from November 2017 to May 2018.

<sup>8</sup> Comptroller and Auditor General, *Protecting consumers from scams, unfair trading and unsafe goods*, Session 2016-17, HC 851, National Audit Office, December 2016.

This report has been printed on Evolution Digital Satin and contains material sourced from responsibly managed and sustainable forests certified in accordance with the FSC (Forest Stewardship Council).

The wood pulp is totally recyclable and acid-free. Our printers also have full ISO 14001 environmental accreditation, which ensures that they have effective procedures in place to manage waste and practices that may affect the environment.



National Audit Office

Design and Production by NAO External Relations  
DP Ref: 005052-001

£10.00

ISBN 978-1-78604-206-4

