

STATE AID DISCIPLINES TO CONTINUE TO APPLY IN THE UK POST-BREXIT

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Legal Briefings

The UK Government, in a [letter](#) to the House of Lords EU committee published last week, has provided important clarifications in relation to the future UK State aid regime post-Brexit. The Government confirmed that it is planning to establish a full UK-wide subsidy control framework based on transposing the existing EU State aid rules, with a single independent UK body for enforcement and supervision, at the point that this is required (having regard to the negotiations). The Government has decided that the existing UK competition authority, the Competition and Markets Authority (CMA), would be best placed to take on this role.

This development is in line with earlier remarks made in various Government speeches. Indeed the letter references the Secretary of State for Exiting the EU's statement in his recent speech in Vienna on 20 February 2018 that: *"it cannot be right that a company situated in the European Union would be able to be heavily subsidised by the state but still have unfettered access to the United Kingdom market. And vice versa. The UK has long been a vocal proponent of restricting unfair subsidies to ensure competitive markets. It is good for taxpayers. It is good for consumers. And it ensures an efficient allocation of resources. These principles are true across the globe and will continue to be true in the United Kingdom - European Union relationship."* This however is the first time that the Government has clearly spelled out its intentions, and the detail in relation to the UK independent supervisory body and the CMA is new.

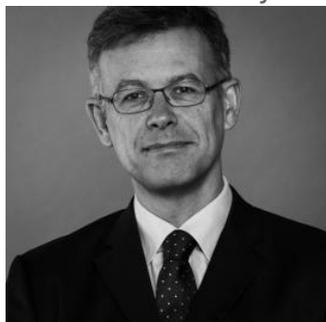
The development is also in line with the EU's position, and in particular the Commission's paper on maintaining a "level playing field" between the EU and UK as part of any future trade agreement, which bemoaned the relative limitations of the default WTO anti-subsidy regime and indicated that there should be "substantive rules equivalent to the EU State aid rules" with enforcement by an "independent State aid authority".

The CMA has responded positively to the announcement, confirming that it would take on the Commission's monitoring and enforcement functions in respect of State aid, and recently announcing relevant senior level appointments, including appointing the Senior Director of mergers, Sheldon Mills, to the role of interim Senior Director of State aid.

The implementation of a UK-domestic State aid regime will not be without complications, as such a regime will need to be designed in line with the specific UK context, having regard to Parliamentary sovereignty, judicial review principles as well as political realities. However, in light of the above, it would seem that the main substance of State aid control is unlikely to change significantly post-Brexit and therefore businesses considering future projects that involve Government support should continue to factor State aid considerations in their plans.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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