**Written Evidence to the EU Internal Market Sub-Committee:**

**Regional Aid, EU State Aid Rules, and the UK-EU Withdrawal Agreement**

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[1] State aid can be characterised as any support given by public authorities within a state to economic actors. Where such support distorts competition within the market (advantaging businesses over their competitors) it is, until the end of the Withdrawal Agreement’s transition period, subject to controls under EU law. The EU Commission must, in general, be notified of proposed support in advance (TFEU, Article 108(3)), and can initiate enforcement proceedings where aid distorts the single market.

[2] Certain types of support, however, are exempted for these EU law requirements, with one of the most important of these exemptions being the provision of regional aid to support economic development/job creation in designated regions (General Block Exemption Regulation; Regulation 651/2014 of 17 June 2014). EU law thus defines the conditions upon which regional aid schemes are exempt from the general operation of State aid law.

[3] With regard to the EU Withdrawal Agreement, Article 10 and Annex 5 of the Ireland/Northern Ireland Protocol (PINI) apply the full extent of EU State aid rules to the United Kingdom in perpetuity, in any instance in which the support at issue affects trade in goods between Northern Ireland and the EU27. This is part of ensuring a “level playing field” on both sides of the border in Ireland, in order to prevent circumstances in which a company benefiting from support provided by public authorities on one side of the border can trade freely across the border and undercut its rivals in the other jurisdiction.

[4] These provisions are expansive in their scope. For example, a UK-wide tax measure applying to the UK in general, and thereby covering Northern Ireland (such as grants, reduced VAT for domestically produced widgets, or a corporation tax break for widget-makers) which is above the minimum threshold provided by EU law, would therefore be subject to the application of EU State aid rules under the Protocol. Any such support for a widget-making business based in Sheffield but which has aspects of its production, subsidiaries or sales activity in Northern Ireland would thus, prima facie, be subject to these rules.

[5] Under the Protocol, the EU Commission retains the capacity to operate EU State aid rules and exemptions (including the requirement for approval-in-advance of prospective schemes) and to mount enforcement actions where it believes these State aid rules are being breached (PINI, Article 12(4)-(5)). The CJEU retains full jurisdiction over disputes under these elements of the Protocol (PINI, Article 12(4)). Even in circumstances in which the Commission declines to act, any economic actors which consider themselves to be adversely affected by support provided to their commercial rivals by UK public bodies will be able to rely upon these commitments in the Protocol as being directly effective in UK domestic law and can thus commence legal proceedings in UK courts (WA, Article 4; European Union (Withdrawal Agreement) Act 2020 (UK), s.5).

[6] These provisions could be rolled into a more general set of state aid provisions covering the UK as part of any UK-EU Future Relationship Agreement. The EU negotiates controls on state aid as a standard part of trade agreements with third countries and the EU Commission’s negotiating mandate for an Association Agreement with the UK point to an expectation of extensive level playing field obligations (EU Commission, Directives for the Negotiation of a New Partnership with the United Kingdom of Great Britain And Northern Ireland (25 February 2020) para 94). But even if the UK Government resists these proposals, the provisions of the Protocol set out an already-agreed base line which there is no desire for the EU to reopen. For the UK’s part, it must be noted, ministers have insisted that Future Relationship negotiations ‘will be undertaken without prejudice and with full respect to the Northern Ireland protocol’ (Michael Gove, HC Deb, vol. 672 col. 469 (27 Feb 2020)).

[7] Northern Ireland as a whole currently enjoys the status of an Assisted Area under the Regional aid exemptions to general EU State aid rules. This enables support to be granted to new commercial projects within Northern Ireland as a proportion of the overall costs of a business’ planned project in Northern Ireland (the classification of Northern Ireland permits such support to businesses of any size) (see Department for the Economy, *State Aid: A Beginner’s Guide for Public Bodies in Northern Ireland* (2017) p.21-22).

[8] These rules on Regional aid, however, were applied to Northern Ireland as part of an EU Member State, and continue in their current form only until the end of the Brexit transition period. The Withdrawal Agreement’s Protocol therefore makes specific provision for the rules on regional aid to continue to operate with regard to Northern Ireland (PINI, Annex 5, para 1, 3.2 and 5). Regional aid exemptions primarily operate on the basis of regional GDP per capita relative to an overall EU average (TFEU, Article 107(3)a). This automatic designation as an Assisted Area does not apply to Northern Ireland; it is designated as such by the UK because it is a region which has been subject to long-standing difficulties (TFEU, Article 107(3)c).

[9] Article 10 and Annex 5 of the PINI enable the UK to continue to designate Northern Ireland as an Assisted Area on this basis for as long as it meets the requirements for EU law governing a non-predefined Article 107(3)c Area, even though it is no longer part of the EU. This will allow public authorities to continue to provide Regional aid support in Northern Ireland within the terms of EU rules. Northern Ireland will therefore continue to benefit from Regional aid exemptions to State aid rules, regardless of the outcome of State aid elements of the Future Relationship negotiations. These rules, however, apply in full. There is no scope for a more generous scheme than exists under EU law to be put in place, as the Protocol allows for with regard to agriculture (PINI, Article 10(2)).

[10] These Protocol arrangements could be scaled up as part of ongoing negotiations; some agreement over how Regional aid exemptions to State aid rules will continue to operate in the UK as a whole after the end of the Brexit transition period could also become part of the future relationship negotiations.

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