1. The Scottish Government welcomes the inquiry of the House of Lords’ EU Internal Market Sub-Committee into the impact of Brexit on UK competition policy, and is grateful to have this opportunity to respond to it.

2. The focus of this response is for the most part on that of competition; however, it is perhaps worth noting at the outset that the Scottish Government’s treatment of competition policy is often inextricably linked to that of its consumer protection policy.

Background

3. Following passage of the Scotland Act 2016, the Scottish Parliament now holds –
   - powers over consumer advocacy in energy, post and water, and the general economy, which ensures we can influence how the consumer voice is represented to regulators, policy makers and industry;
   - powers over the provision of consumer advice, education and information, which allows us to provide publicly funded assistance to help individual consumers understand and exercise their rights;
   - power to act with the Secretary of State to request that the Competition and Markets Authority (CMA) carry out a second stage market investigation; and
   - power to make decisions over the delivery of the Competition Appeals Tribunal.

4. These do not represent the full suite of consumer powers available\(^1\) and the Scottish Government remains of the view that full devolution is the best way forward, and, that greater accountability in the competition regime facilitated by further devolution of powers would also be highly desirable. It is the Scottish Government’s view that the current system has consistently failed to take account of Scotland’s distinct characteristics, for example, the proportion of consumers living in rural, remote and island communities, which give rise to distinct groups of consumers and distinct or exacerbated competition issues (e.g. parcel delivery, broadband, fuel poverty).

5. The Scottish Government would also like to take this opportunity to highlight to the Sub-Committee that it is already increasingly developing distinct approaches to both consumer and competition policy that will focus and promote consumer and competition activity in Scotland on inclusive growth, collaboration, empowerment, protection, as well as greater and fair competition for goods and services.

6. Notwithstanding the aforementioned limitations of the current devolution settlement, those powers as currently devolved do still provide an opportunity for the Scottish Government to develop a new approach to consumer and competition policy in Scotland, one that can tangibly improve people’s lives, supports businesses to reach their full potential and ensures that consumers are an integral part of our economic strategy. The Scottish Government’s rationale for this is simple: when markets work properly, consumers drive competition and encouraging businesses to offer more affordable, better quality services. That, in turn, can make businesses more innovative, which makes them more profitable while improving outcomes for everyone.

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\(^1\) the power to regulate the sale and supply of goods remains reserved – effectively the power to set and enforce consumer law.
The publication of *The Strategic Assessment of Markets in Scotland* (June 2016)\(^2\) was the Scottish Government’s first formal look at competition in markets in Scotland. Our assessment was made in response to the devolution of further competition-related powers in 2016, *but* prior to the outcome of the UK European Union membership referendum. It set out the areas where we think Scottish markets could be improved or could produce better outcomes for Scottish consumers. One of the key issues identified was how to ensure that on-going competition and regulatory investigations take sufficient account of Scottish issues. The Scottish Government sees this assessment as an important first step in gaining an understanding of potential competition issues in Scotland and we will fully engage with the CMA as part of the process to address the areas of concern identified through a two year programme of activity.

**Wider Context: Brexit**

8. The Scottish Government recognises that, although the full impact of Brexit on competition is as of yet uncertain (and will remain so until outcome of UKG’s exit negotiations) the implications are undoubtedly profound.

9. The general terms of the Scottish Government’s position in respect of competition (and consumer protection policy) in the context of Brexit is outlined in –
   a) *Delivering better outcomes for consumers and businesses in Scotland* (Dec 2016)\(^3\) outlining a number of current and planned initiatives along with set of over-arching principles that will guide its future work, including in respect of Brexit;
   b) *Scotland’s Place in Europe* (Dec 2016)\(^4\) and the Scottish Government’s *Programme for Government 2017-18*\(^5\) both of which highlight consumer protection and competition as being key areas in which further devolution of powers to the Scottish Parliament need to be considered as a means of protecting Scotland’s interests.

10. In summary, the position of the Scottish Government can perhaps best be summarised as being that it will not accept a position where consumers or businesses in Scotland end up with inferior consumer and competition rights and protections to those in other EU countries.

**State Aid**

11. This final section offers the Scottish Government’s response to each of the Sub-Committee’s six questions posed specifically in relation to State aid.

*Are state aid provisions likely to form an essential component of any future trade agreement between the UK and EU? Do any existing trade agreements between the EU and third countries provide a useful precedent for future UK-EU state aid arrangements?*

- The Scottish Government believes it is more than likely that State aid will be part of any future trade agreement and is mindful of the recent EU/Canada trade agreement contains state aid provisions.

*Will the UK require a domestic state aid authority after Brexit?*

\(\text{\textsuperscript{2}} \text{http://www.gov.scot/Publications/2016/06/5280}\)
\(\text{\textsuperscript{3}} \text{http://www.gov.scot/Publications/2016/12/5688}\)
\(\text{\textsuperscript{4}} \text{http://www.gov.scot/Publications/2016/12/9234}\)
\(\text{\textsuperscript{5}} \text{A Nation With Ambition: The Government’s Programme for Scotland 2017-18, Sept. 2017} \)
• Possibly, but there may be alternative approaches which could work depending on the terms of a trade agreement made.

What would be the opportunities and challenges for state aid or subsidy controls in the UK if no trade agreement were to be reached with the EU? Would WTO anti-subsidy rules restrict the UK’s ability to support industries, or individual companies, through favourable tax arrangements?

• No comment at this stage.

How will the Government’s industrial strategy shape its approach to state aid after Brexit? To what extent has the European Commission’s state aid policy limited interventions that the UK Government may have otherwise pursued?

• No comment at this stage.

What, if any role, might the devolved institutions play in UK state aid control post-Brexit? Are there any potential implications for the UK internal market?

• The Scottish Government is clear that it will be vital that the devolved administrations are fully involved in determining the shape of the State aid regime post-Brexit to ensure that it meets the needs of all parts of the UK. The effective functioning of the internal UK market will require close co-operation on State aid between all the UK administrations.

Will it be necessary for the UK and EU to agree a transitional arrangement for state aid matters after the UK’s withdrawal from the EU? If so, what transitional issues would such an arrangement need to address?

• It is the Scottish Government’s belief that this would be crucial as there is a significant risk of a cliff-edge scenario on the day of the UK leaving the EU. There are bound to be cases outstanding with DG Comp at that time, including Notifications, Complaints and Investigations, which require time to resolve.

10 October 2017