Introduction

1. The Welsh Government has set out its overall approach to Brexit in the White Paper, Securing Wales’ Future, published in January 2017. As the First Minister makes clear in its Preface: “Continued full and unfettered access to the Single Market is fundamental to our future.” The Welsh Government has consistently made this point in pressing the UK Government to adopt a practical approach to leaving the EU in a way which is not economically-damaging to Wales, alongside emphasising the need for transitional arrangements to minimise any negative impact.

2. As the White Paper makes clear, there is a need for a degree of regulatory equivalence to facilitate that: “Continued Single Market participation means, of course, that the UK would have a continuing need to ensure that the domestic regulatory regime for goods and services within the UK are compatible with those of the EU and that suitable dispute resolution arrangements are in place.” Our comments in this paper should be seen in the context of that overall approach of supporting a future UK-EU agreement covering economic regulation to replicate the benefits of the Single Market.

State aid

3. Before turning to the specific questions you raise on the future State aid regime, it is important to state that for more than a year the Welsh Government has advocated the need for a transition period of at least two years to give sufficient time to put in place robust, long-term arrangements for trade and wider relations with the EU-27. We welcome the fact that the UK Government appears now to have accepted this and in our view, during the sort of transition now envisaged, we would need to continue to apply the current state aid rules and submit to the continued authority of the European Commission and the Court of Justice of the European Union to supervise the application of these rules. During this period, there would need to be a continuation of existing cover for State aid schemes previously notified or registered with the Commission, as well as an agreement on the continuation, clearance and recognition of any notifications and registrations which are ongoing at the point of departure.

4. Turning to the specific questions you raise, you asked if State aid provisions are likely to form an essential component of any future trade agreement between the UK and EU. In our view, it is almost certain that the UK will need to harmonise its State aid rules with those of the EU, if we are to secure the sort of full and unfettered access to the Single Market that we wish to see. This submission primarily discusses the issues surrounding industrial State aid. However it is the opinion of the Welsh Government that Agricultural and Fisheries State aid issues should be addressed in a similar manner.

5. Regarding the necessity for a domestic State aid authority after Brexit, one alternative which we believe the UK Government should be considering is

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membership of the EFTA (European Free Trade Association) and through it, the European Economic Area (EEA). In this event, we would not require a separate state aid authority, as the EFTA Surveillance Authority exercises this role for EFTA members. However, assuming that the future trade relationship with the EU is based on a bilateral ‘deep and special partnership’ of the sort envisaged by the current UK Government, it is very likely that some form of domestic State aid authority would need to be created to oversee the UK internal market. Indeed, such an authority may be needed irrespective of the outcome of negotiations with the EU-27 (see answer re WTO anti-subsidy rules below). In our view, it will be essential that this should be a suitably constituted authority, seen to be independent of Government and with a clear statutory remit to uphold the appropriate rules in force. Merely bolting the function on to a pre-existing body without accordingly overhauling the statutory definition of the authority’s specific functions, governance and remit would not be acceptable. We consider the role of the devolved institutions in respect of this authority below.

6. During the formation of a future UK State aid authority there may be a need for Commission/EFTA Surveillance Authority support in upskilling officials to ensure the organisation is fit for purpose. A short period of co-decision may also be required to allow for a seamless transferral of responsibilities.

7. In terms of the opportunities and challenges for state aid and subsidy rules were no trade agreement reached with the EU, the World Trade Organisation’s Agreement on Subsidies and Countervailing Measures, which details criteria defining and categorising which subsidies granted by public bodies are allowed and which are prohibited, sets the parameters of what support is permissible in terms of WTO members. So even if there were no EU-UK agreement about UK access to the EU Single Market with contingent roll-over of EU State aid rules, it would be likely that we would still face some limitation in the support we could provide.

8. You asked how the UK Government’s industrial strategy will shape its approach to State aid after Brexit and to what extent the European Commission’s State aid policy has limited interventions that the UK Government may have otherwise pursued. A key function of the Welsh Government and area of competence of the National Assembly for Wales is economic development. Regrettably, the UK Government’s current thinking on its industrial strategy (as set out in its Green Paper) does not seem to take account of this devolved function. In our view, and drawing on our experience for example of the steel industry, the European Commission’s state aid rules have not been the main inhibitor of economic intervention in key industrial sectors by the UK Government.

9. There are specific policy issues surrounding State aid in a Welsh context, such as Regional Aid, which is required to address the structural disparities between West Wales and the Valleys and the remainder of the UK. Addressing regional disparities, and allowing for greater intensity of state aid in those regions facing regions facing the greatest economic challenges should also be a key element of the UK’s approach to State aid after Brexit if we are to ensure prosperity for all, not just the privileged few. The Welsh Government will use its experience to inform its discussions with the UK Government and other Devolved Administrations in agreeing any future UK
framework in this area, ensuring it will be fit for purpose, pragmatic and proportional.

10. Your call for evidence asked what role, if any, the devolved institutions might play in UK State aid control post-Brexit, as well as if there are any potential implications for the UK internal market. State aid rules currently delineate how Welsh Government exercises its devolved economic development function, so State aid is an area of inter-connected competence in which the Welsh Government has an active policy and practical interest. On that basis, a UK internal State aid framework needs to be drawn up cooperatively and consensually between the UK Government and the Devolved Administrations as equal partners. A set of principles were agreed at Joint Ministerial Committee for European Negotiations on 16 October which are designed to inform negotiations between the four component nations of the UK on any future common frameworks. At the meeting the UK Government recognised that the Welsh Government will need to be involved in the development of future domestic State aid policy in the UK. Accordingly, Welsh Government looks forward to receiving an invitation from the UK Government to be actively involved in shaping the new UK regulatory function, the guidelines which it will enforce, and any consequent framework between the four administrations.

11. In our view, it is essential that any authority that assumes overall responsibility for compliance with the State aid rules within a UK framework should be independent of governments and impartial in order to develop and retain credibility.

12. The Welsh Government would expect to be involved in the appointment of the board or panel members of any future UK-wide State aid authority, as well as agreeing the terms of reference, ongoing remit and priorities.

13. In our view, such an authority should be focused on enforcing the system of state aids, not on managing it. We would resist a State aid authority forced on us by the UK Government which undertook all aspects of State aid work. Devolved Authorities should retain their current responsibility for advising on compliance with the rules at a devolved level. The imposition of any requirement for a future UK-level State aid authority to provide all State aid compliance advice to aid awarding bodies would be resisted by the Welsh Government as cumbersome and unworkable due to the additional administrative burdens it would place upon officials.

Mergers

14. Brexit may offer an opportunity to review merger & acquisition rules to promote more competition and choice for consumers. However, it will be important to ensure that special interests do not have undue influence in any legislative process.

15. It will be necessary for the UK and EU to agree a transitional arrangement for merger control after the UK’s departure from the EU as, in our opinion, the more time we have the more likely it is we will get it right.

21 November 2017