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OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT COMPETITION (AMENDMENT ETC.)
(EU EXIT) REGULATIONS 2020

Wednesday 4 November 2020

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The Committee consisted of the following Members:

Chair: JAMES GRAY

Blake, Olivia (<i>Sheffield, Hallam</i>) (Lab)	† Scully, Paul (<i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i>)
† Browne, Anthony (<i>South Cambridgeshire</i>) (Con)	† Sunderland, James (<i>Bracknell</i>) (Con)
† Buchan, Felicity (<i>Kensington</i>) (Con)	† Tami, Mark (<i>Alyn and Deeside</i>) (Lab)
† Drummond, Mrs Flick (<i>Meon Valley</i>) (Con)	Tarry, Sam (<i>Ilford South</i>) (Lab)
† Foy, Mary Kelly (<i>City of Durham</i>) (Lab)	Thompson, Owen (<i>Midlothian</i>) (SNP)
† Gardiner, Barry (<i>Brent North</i>) (Lab)	† Tomlinson, Michael (<i>Lord Commissioner of Her Majesty's Treasury</i>)
† Gideon, Jo (<i>Stoke-on-Trent Central</i>) (Con)	† Watling, Giles (<i>Clacton</i>) (Con)
† Hunt, Jane (<i>Loughborough</i>) (Con)	Nicholas Taylor, <i>Committee Clerk</i>
† Mohindra, Mr Gagan (<i>South West Hertfordshire</i>) (Con)	† attended the Committee
† Onwurah, Chi (<i>Newcastle upon Tyne Central</i>) (Lab)	

Sixth Delegated Legislation Committee

Wednesday 4 November 2020

[JAMES GRAY *in the Chair*]

Draft Competition (Amendment etc.) (EU Exit) Regulations 2020

9.25 am

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Paul Scully): I beg to move,

That the Committee has considered the draft Competition (Amendment etc.) (EU Exit) Regulations 2020.

It is a pleasure to serve under your chairmanship, Mr Gray. The purpose of the regulations is to implement competition law provisions in the withdrawal agreement and ensure that the UK's competition regime functions as Parliament intended at the end of the transition period.

While the UK was a member of the European Union, its competition regime was integrated with the EU's competition system. That remains the case during the transition period. As part of the UK's preparations to withdraw from the EU, Parliament approved regulations in 2019 that created a separate and sovereign UK competition regime. They will come into force at the end of the transition period and require amendment to reflect the position set out in the withdrawal agreement.

Part three of the withdrawal agreement contains provisions on competition law. The regulations that the Committee is considering today amend the Competition Act 1998, the Enterprise Act 2002 and other domestic law containing competition provisions in order to implement fully the provisions in part three of the withdrawal agreement. The Government have consulted stakeholders, including the Competition and Markets Authority, competition lawyers and the Competition Appeal Tribunal in developing the regulations. An impact assessment was not undertaken because the impact of the regulations on businesses and the Exchequer is expected to be minimal.

I will briefly explain which of the withdrawal agreement's provisions on competition law require further implementation and how the regulations achieve that. The effect on anti-competitive behaviour in mergers as they impact on the UK market after 1 January 2021 will be considered by the UK competition authorities under UK law. However, there will be a limited set of EU competition and merger cases that relate to the UK, which were opened, but not completed before the end of the transition period. Article 92 of the withdrawal agreement deals with those cases. I shall refer to them as live EU cases in the rest of my speech. The withdrawal agreement brings live EU cases to an orderly conclusion by giving the European Commission competence to complete them. Live EU cases will be completed under the law that applied when they opened. That approach provides certainty and legal clarity to the UK's businesses, regulatory authorities and courts.

The regulations address three broad topics: live EU anti-trust cases; live EU merger cases; and EU commitments and remedies. First, with respect to the European Commission's investigations of live EU anti-trust cases, the regulations amend transitional arrangements made in 2019 to reflect the European Commission's jurisdiction over those cases. The amendments ensure that the CMA can assist the European Commission in those investigations in the way that currently happens under the Competition Act 1998. To implement fully the legal effect of the withdrawal agreement, the regulations restrict the CMA from investigating the UK aspects of a live EU anti-trust case until it has concluded. That reproduces an effect similar to that which currently arises under EU law. The CMA will of course be free to investigate the UK aspects of any anti-competitive behaviour that occurs after the end of the transition period.

Decisions of the European Commission and the Court of Justice of the European Union on live EU anti-trust cases will be binding in the UK for the purposes of private claims seeking follow-on damages for a breach of competition law. The regulations ensure that UK authorities must take into account any relevant penalty issued by an EU body in a live EU anti-trust case when deciding the amount of the penalty to be issued under UK law.

Secondly, the European Commission will continue to have exclusive competence over live EU merger cases, including in relation to any UK elements of the case. The regulations give the CMA the power to investigate a merger that is being re-examined by the European Commission following a successful appeal, if the Commission is not considering UK aspects of the merger in its re-examination. That will prevent any enforcement gap from emerging in the UK. The regulations amend the Enterprise Act 2002 and transitional arrangements made in 2019 to reflect the European Commission's jurisdiction over live EU merger cases.

Thirdly, the withdrawal agreement states that the European Commission will remain responsible for monitoring and enforcing the UK aspects of commitments accepted and remedies imposed in connection with EU competition cases. Those commitments and remedies often relate to multiple EU member states, and the European Commission would normally be best placed to secure their continued compliance. However, the withdrawal agreement allows, by mutual agreement, the monitoring and enforcement of the UK aspects of such commitments and remedies to be transferred to the UK's competition authorities. The regulations therefore give the CMA monitoring and enforcement powers to secure compliance with commitments and directions if it is agreed that the responsibility to monitor and enforce them will be transferred to the UK.

Those powers are modelled on the CMA's existing powers to monitor and enforce domestic commitments and remedies. They will also apply to certain sector regulators that enforce competition law concurrently with the CMA.

In addition to those three categories of amendment, the 2019 regulations are amended to make appropriate reference to the end of the transition period. Consistent with the approach that the 2019 regulations took, the draft regulations will revoke a recent EU regulation on investment screening, which will have no practical effect on the UK beyond the end of the transition period.

The provisions on competition law in the withdrawal agreement mean that the UK will move smoothly to a separate and sovereign competition regime. The regulations will provide legal certainty for UK businesses, the CMA and UK courts. They make only those changes that are necessary to effect the withdrawal agreement provisions and to ensure that the UK's competition regime functions as intended by the regulations that Parliament approved in 2019. I therefore commend them to the Committee.

9.31 am

Chi Onwurah (Newcastle upon Tyne Central) (Lab): It is a great pleasure to serve under your chairmanship, Mr Gray.

I thank the Minister for his opening remarks and emphasise that the Opposition believe that open and competitive markets promote consumer welfare, that healthy competition is a fundamental part of a prosperous economy, and that effective competition law is an absolute prerequisite of achieving that. Well-balanced legislation in this area can bring down prices, encourage product innovation and lead to better quality service delivery.

As a member of the European Union, the UK has benefited from harmonised competition standards across the single market for decades. Those rules have protected UK businesses and consumers from the negative effects of so-called abusive practices from large corporations based elsewhere. They have been developed at EU level by UK representatives in our own national interest. I am sure that the Minister agrees that European competition law was primarily instigated and driven by UK competitive ideas, practices and regulators. To a certain extent, we have left the EU with our competition law framework. Unfortunately, we are not so clear how the sovereign competition framework that the Minister mentioned will look and where it is going. Perhaps he can provide greater clarity on that.

It is certain that the weight of 600 million consumers that the European Union brings to the table has given it great clout on the international stage. The EU's robust competition framework has been used to take on tech giants, curb unhealthy market dominance and push for consumers to be able to migrate their personal data from platform to platform. So even though the UK has technically left the European Union, in reality we continue to benefit from EU rules now.

Today's instrument is being laid partly to amend legislation to reflect the fact that the UK will be covered by EU protections right up until the end of the transition period, as the Minister said. It formalises the European Commission's ability to carry out its agreed functions under Title X of part three of the withdrawal agreement in the UK during the transition. As the Minister set out, that includes the European Commission continuing to have the jurisdiction it needs to make final decisions on merger referrals made to it before the end of the transition period. Of course, the retention of those rules during the transition period makes absolute sense. It limits disruption at an already difficult time and keeps our markets functioning harmoniously with our nearest neighbours.

We will not oppose the instrument, although we have some concerns. The transition period comes to an end at the end of this year, in less than two months. Businesses with a base in the UK will continue to be subject to European Union frameworks insofar as any of their

actions affect competition within the European Union, even after the transition period ends, but the UK will no longer be able to have a say in drawing up the rules. We will effectively be a rule taker rather than a rule maker. In fact, the UK courts will no longer have the facility to refer questions of interpretation of European Union law to the European Court of Justice after Brexit, which could see damaging divergences between UK and European Union competition rules that may leave businesses confused and over-burdened.

Business leaders continue to warn that we could see more red tape, not less, after the transition period because, as I have suggested, businesses operating in both the UK and the European Union—this applies to many businesses operating across Europe—will be required to deal with both the CMA and the European Union competition authorities simultaneously on mergers and competition investigations. Will the Minister confirm that that will be the case and that they will have to have regard to those authorities' regulations? Can he offer any assurances that UK businesses will not be burdened with red tape, and will he outline how the CMA will keep that in mind?

Finally, I hope the Minister will use this opportunity to lay out how he and his Government will make sure that businesses and the public will continue to be safeguarded against unscrupulous competition practices in future. As I have suggested, the European Union has used its competition powers, and looks to do so even more in the future to address the lack of competition in data, digital and platform markets. Although we see the European Union making progress in that area, we have had no indication from the competition Minister as to whether the UK will also address the unhealthy lack of competition in platform, data and digital markets.

9.37 am

Paul Scully: I thank the hon. Member for her considered comments and for agreeing that these regulations are the way forward. As I have said, they are needed to give effect to the provisions that we have already agreed in the withdrawal agreement, so they very much relate to a specific set of cases. I will try to cover the areas that the hon. Lady talked about. We have the Penrose review into the competition regime in the UK. As soon as that comes back, we will consider it and come up with the changes and improvements that we need. We both agree that healthy markets need to function well together to ensure a fair deal for other competitors, and consumers as well. It is really important that consumers are at the heart of what we do.

Chi Onwurah: Will the Minister indicate when the Penrose review will be completed?

Paul Scully: The review is working at pace. I cannot give a timescale at the moment, but as soon as the review comes back we will consider it quickly, because we want to make sure that we have the best competition regime. As the hon. Lady stated at the beginning of her speech, UK competition specialists were at the heart of the EU regime. We are leaving the regime, but we are leaving with our competition experts, so they will be at the heart of what we do. We have made it clear in our published proposal for the comprehensive free trade agreement with the EU that we intend to maintain international co-operation on competition enforcement. The EU has expressed a desire to maintain UK-EU

[Paul Scully]

co-operation on competition law matters in its own proposals as well. We want to make sure that the CMA continues to participate in multilateral networks such as the international competition network and the OECD.

Without the regulations the UK would fail to implement its obligations in competition law under the withdrawal agreement. Inconsistencies between the withdrawal agreement and competition law would cause significant

uncertainty for UK businesses, the CMA and UK courts. The changes that I have described today are required to complete the process of preparing the UK statute book for the transition. I hope the Committee approves the regulations.

Question put and agreed to.

9.40 am

Committee rose.

