

Balance of Competences Review Scottish Government Response

Competition and Consumer Policy

1. What evidence is there that EU action in the area of Competition, including State Aid, and Consumer policy advantages the UK?

EU competence in competition law gives Member States a clear framework within which they can support their economies without, for example, being tempted into expensive 'subsidy wars' to retain or attract firms. In Scotland, Regional Selective Assistance is a State aid registered scheme that has assisted 97 SMEs and 21 large firms to create or safeguard a total of 4,766 jobs, of which 1,790 were in SMEs in 2012/13. Action at EU level is also necessary when Member States find it difficult to tackle abuses of dominance by their national champions.

2. What evidence is there that EU action in these areas disadvantages the UK?

We support the stated aims of the Commission's State Aid Modernisation initiative, especially its ambition to make faster decisions. But its new regulations reflect a more cautious approach, with very little additional aid exempted from notification and an increase in Member States' monitoring requirements. Since the notification process is time consuming, especially for novel measures, even projects that clearly contribute to the EU's 2020 targets or other areas of common EU interest can be inhibited.

3. To what extent is EU action in these areas necessary for the operation of the single market?

The EU accounts for around half of all Scottish exports, and considerably more in sectors such as oil refining. EU competition policy helps and encourages Scottish firms to expand through trade in this market and ensures they are competing on equal terms with firms in other Member States. Without EU action, the removal of trade barriers would depend on bilateral agreements between individual nations, and thus be unlikely to create a level playing field.

Fraudsters are increasingly geographically flexible, technologically sophisticated, and adroit in exploiting gaps in enforcement between individual jurisdictions. Even activities that are legal but nonetheless harmful such as nuisance calls also often have an international dimension that is more effectively regulated at the EU level. The Scottish Government therefore agrees that action to protect consumers from serious fraud is required at supra-national level.

4. How does the EU's competence in these areas impact upon the UK's global competitiveness?

Policymakers and funding bodies that help Scottish firms to grow their business outside the EU sometimes express frustration with EU competition rules. There is clear evidence that firms engaged in international trade are more productive but also that they need public support to initiate this activity. An independent evaluation of Scottish Development International (SDI) demonstrated that firms that enter international markets experience a boost in productivity of around 16-18%, and firms assisted by SDI were nearly 19% more productive than comparable cases without assistance¹. The Scottish Government's economic strategy therefore includes a strong focus on business growth driven by an increase in export activity, especially to developing and emerging economies.

Scottish food on the table

Scotland has an international reputation for the high quality of the food from her land and seas. EU rules prohibit the promotion of such products in association with a given region unless they have an approved protected geographical designation. Within the EU, these rules work well to protect both producers and consumers from unfair competition.

But they put Scottish exporters at a disadvantage with competitors in third countries that are not bound by these rules, such as their Norwegian equivalents competing for a share of the Japanese market for mackerel and their New Zealand counterparts in the international market for lamb.

Competition and consumer protection rules support the functioning of the Single Market but should not inadvertently disadvantage the EU's global competitiveness. This is especially important for markets in which there is little competition within the EU for intrinsic reasons such as geographical differences and for which there is strong competition with third countries.

5. How have the EU's mechanisms for delivering a single market worked in these areas of competences?

The Scottish Government considers the current balance of competence on consumer policy is appropriate, in that Member States can design and direct activities such as education, information and advice. We also think it is right that the EU does not have exclusive competence over the delivery structure for consumer protection. The Scottish Government's preference is for a single body covering all the enforcement and advocacy of consumer legislation and competition rules, thus giving the consumer more clarity on where to turn for help and creating a body with more influence to deal with wrongdoers.

And Member States should continue to have competence over consumer policy and regulation, so that they can develop measures to tackle issues that disproportionately affect them due to geographic, cultural or other characteristics. For example, research by Citizens Advice Scotland² found that 72% of online retailers apply additional delivery charges to consumers in the highlands and islands of Scotland.

¹ SDI Policy Evaluation, SQW Consulting, 2010 <http://www.sdi.co.uk/~media/SDI/Files/documents/about-us/independent-evaluation-report-2010.pdf>

² The Postcode Penalty, Dec 2012, http://www.cas.org.uk/system/files/publications/Postcode%20Penalty%20with%20covers_0.pdf

6. To what extent has the EU created more or less consumer protection provisions for UK consumers compared to the UK's domestic agenda? What are the effects of this?

The Scottish Government is more concerned with the effect rather than the volume of provisions. With regard to the EU's actions, we consider that they have been to Scottish consumers' benefit. For example, we welcomed the EU's interventions in establishing common standards for goods sold in the EU and reductions in roaming charges for mobile telecoms. We would support measures, at UK or EU level, that reduce the cost to consumers of seeking redress and that align consumer protection with competition regulation.

7. To what extent is the UK more or less rigorous in enforcing its consumer and/or competition, including State Aid, rules compared to other Member States? What are the effects of this?

The UK is more rigorous in enforcing these rules compared to other Member States. But this differential doesn't adversely affect Scottish businesses and citizens because the EU applies its rules consistently across all Member States and takes action to remedy breaches. For example, since 2000, the Commission has ordered the recovery of illegal State aid in 202 cases across all Member States. Of those, only 4 were UK measures. This compares with, for example, 9 in Belgium, 20 in France, 50 in Germany, 41 in Italy, 9 in the Netherlands, and 27 in Spain.

8. How could action in these areas be undertaken differently e.g. Are there ways of improving EU legislation in these areas, e.g. revision of existing legislation, better ways of developing future proposals, or greater adherence to the principle of subsidiarity and proportionality?

The stated aims of State Aid Modernisation are to foster economic growth, streamline rules, make faster decisions, and focus on cases with the biggest impact. The Scottish Government welcomes this initiative but notes with concern that the draft new rules coming into force from 2014 onwards propose a heavier administrative burden on Member States to monitor and report all aid. This runs counter to the principle of proportionality.

Scotland's public funders already have robust procedures in place to administer and monitor State aid, which the Scottish Government collates and reports annually to the Commission. Member States with no track record of regularly granting illegal and/or incompatible State aid³ should not be subject to a tightening of their State aid monitoring regime.

On many issues, Scottish consumers' interests are similar to elsewhere in the UK. The Scottish Government has therefore supported the UK Government's position on EU legislation, especially in the case of maximum harmonisation Directives that Member States must implement as directed without the freedom to provide greater

³ From a total of 353 negative State aid decisions by the Commission since 2000, there has been only one Scottish case.

protection. For example, on the Consumer Rights Directive (2011), the Scottish Government welcomed the UK's successful negotiation to retain the right to reject faulty goods and its decision to exclude financial services, thus giving more consumer protection through existing legislation.