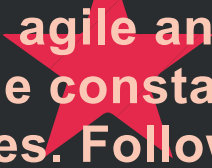




BREXIT



Businesses need to be agile and well-equipped to handle constantly changing circumstances. Following last year's referendum vote on whether the UK should stay in the EU, this is truer than ever.



CEOs today will have to ensure sustainability in the face of changes in the EU as a result of the UK's departure, addressing the needs of all stakeholders: shareholders, customers, regulators and governments.



At Oxera, we understand the issues businesses are facing in these uncertain times. Where you have a question, we use our compelling economics to provide you with an answer.

Our knowledge and relationships across businesses, policymakers, regulators and governments, in very diverse sectors, equip us well to focus on long-term success for our clients. We use economic tools to help you ensure objectivity around pricing, understand consumer interests and behaviour, and, ultimately, establish how to remain competitive in a sustainable and fair way.

We have undertaken substantial research into the potential impact of Brexit across all our varied areas of expertise. The break may not have happened yet, but you may well be asking compelling questions about how best to adapt when it does, and we are here to help.

Our economic tools and extensive experience mean that we can offer you solutions to the many and varied challenges business could be facing in the post-Brexit world.



UK Post-Brexit: technology, telecoms and media

The technology, media and telecoms sector spans a wide variety of firms with different degrees of exposure to Brexit, but there are several areas where the impact could be substantial. Oxera was invited to submit evidence to the House of Lords inquiry on trade in services post-Brexit, specifically on the question of roaming and the impact of Brexit on the UK telecoms market.

Q: How will Brexit affect roaming rates for UK customers?

A: EU roaming regulations will prevent operators from charging consumers any roaming fees within the EU, as well as potentially reducing the wholesale fees that operators can charge each other for providing roaming services to subscribers from other countries. As the UK leaves the EU (or specifically as it leaves the EEA), UK operators' roaming prices will be constrained by regulation no longer.

We have estimated that outside the EEA, UK mobile network operators would have higher revenues, in the order of £750m per year. We estimate around three-quarters of this gain would be due to retail price increases applied to UK consumer services.



UK Post-Brexit: technology, telecoms and media

Q: What other issues does the industry face under a ‘hard’ Brexit scenario?

A: Data transfer is likely to be significantly affected. Within the EU, existing rules place significant legal hurdles on firms wishing to transfer data to countries outside the EU, while making intra-EU transfers relatively straightforward.

In terms of international data transfers, under a World Trade Organization type Brexit scenario, unless an adequacy decision can be secured, we would expect UK firms in sectors across the economy to face challenges in transferring EU citizens’ data to UK offices or data centres. Accordingly, we advised the House of Lords that the UK should attach high priority to securing such an arrangement. However, given current tensions between UK and European law on data protection, it is difficult to forecast future policy divergence.

Compliance, contractual or marketing considerations might prevent some firms from transferring data to the UK, whatever the final arrangements. We would expect UK-based cloud firms will see a drop in their EU revenues, and multinational firms in all sectors will face challenges in transferring EU citizens’ data to UK offices or data centres.

UK Post-Brexit: technology, telecoms and media

Q: How might Brexit affect TV and media services?

A: According to the EU Audiovisual Media Services Directive, TV channels coming from any EU member state can be distributed EU-wide, provided that they are regulated in their home country. This, combined with factors such as the UK's sizeable talent pool in the broadcasting sector, has driven a large number of organisations to make the UK their base for TV channels, even those targeted at other EU countries.

Should the UK remain within the EEA after Brexit, we expect the AVMS Directive to continue to apply, so there should be little impact. However, under a 'hard' Brexit, which would see the UK give up full access to the single market, leaving the EEA, in exchange for full control over its borders, we think it's likely that channels based in the UK would no longer be protected by the 'country of origin' principle—they would need to seek regulation in their target countries, whether or not they choose to relocate their physical operations. Over time, however, the case for their remaining in the UK would be seriously undermined.



UK Post-Brexit: technology, telecoms and media

Q: How can we use these findings to help firms facing these issues?

A: Oxera's modelling and in-depth understanding of the sector can help mobile operators make the best strategic response to the emerging Brexit negotiations on roaming. We have experience in advising mobile telecoms firms across the value chain on competition, regulation, commercial and strategic matters.

Sectors such as TV and media may face broader challenges and opportunities as the UK leaves the EU, although the exact nature of the future arrangements remains to be negotiated.

Oxera has the expertise to help telecoms firms and organisations articulate their value and impact to policymakers in the UK and elsewhere in the EU.. This could contribute to the debate on any future UK–EU deal, as well as the future domestic public policy landscape.



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Post-Brexit: competition policy

Q: Where can economics help us understand what competition will look like post-Brexit?

A: In submission to the Brexit Competition Law Working Group in the UK, Oxera focused on three main issues where economics can provide particular insight:

- the economic consequences of applying non-competition concerns to merger decisions;
- the potential for policy movement towards effects-based analysis in the UK;
- demands on resources of the UK competition authority and the necessary demands on the resources after Brexit.

Consistent with the Working Group's initial paper, we focused on a 'hard' Brexit scenario, representing both the politically most likely outcome and the scenario that gives rise to the most substantial competition policy issues.



Post-Brexit: competition policy

Q: Should a broader set of public interest tests be applied to UK mergers post-Brexit?

A: EU Merger Regulation requires mergers above a particular size to be reviewed by the European Commission. Member states can intervene to protect legitimate public interests only if they consider issues of public security, media plurality, or financial stability related to the proposed mergers (subject to the Commission's approval).

After Brexit, the EU Merger Regulation will not automatically apply to UK mergers. As such, the UK government or competition authority, could in principle apply wider considerations of public interest to mergers that would previously have been analysed by the European Commission on the grounds of competition alone (for example, to achieve goals relating to regional development, industrial strategy or the environment).

In our response to the Brexit Competition Law Working Group, we emphasised the positive economic effects of assessing mergers with reference to a competition test alone. In its recommendations, the Working Group also proposed maintaining this status quo. Failing that, we advised that a cautious approach be taken to any broader test of public interest for mergers. In particular, if such a test were to be introduced, it should be encompassed within the existing merger framework as far as possible, and based on objective, transparent criteria. Thus, in order to preserve the UK competition authority's exclusive focus on competition, a wider test would also likely require some elements of the merger assessment to be conducted by an independent agency such as a sector regulator.

Post-Brexit: competition policy

Q: How should the UK competition authority handle increased demands on its resources as a result of Brexit?

A: Following Brexit, the UK Competition and Markets Authority (CMA) will have jurisdiction over all mergers, including large ones that would previously have been reviewed by the European Commission. This is expected to result in greater demands on the CMA. The level and use of its resources is likely to be a central policy concern of the Brexit Competition Law Working Group following Brexit. One of the central recommendations was that the CMA review its current procedures and staffing given the scale of the forthcoming changes.

In our submission to the Working Group, we advised that there is a case for reducing reviews of small mergers. For example, a merger threshold could be introduced below which the CMA is not duty-bound to carry out a review, even when a merger is notified by the merging parties. This would provide the CMA with greater flexibility in its priorities while also ensuring that its duties regarding large mergers remain. By contrast, the Working Group's recommendations focused on developing faster, narrower and simpler Phase I and Phase II procedures. Whichever direction is ultimately taken, difficult trade-offs will need to be made in UK merger review policy following Brexit.



Post-Brexit: competition policy

Q: What have been the most valuable findings to emerge from this work?

A: The work highlighted the positive effects of a coherent and coordinated approach to competition policy. These benefits apply across all EU member states. Indeed, the UK has had a positive (economically oriented) influence on competition policy within the other member states, contributing substantially to existing policy. Whatever developments take place in the UK regime, it would seem equally important for UK policymakers and businesses to remain engaged with the pan-European discussions on competition policy after Brexit.



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Post-Brexit: state aid in the life sciences sector

Q: What was the client's issue?

A: A European life sciences company that currently benefits from direct and indirect government support wanted to understand how the aid and other forms of government support available for life sciences companies in the UK compares to other EU member states.

Conscious of the possible impact of Brexit on the sector, the company wanted to know the areas where the UK ranks well, and where it does not. It used the evidence we prepared to inform discussions with a government think-tank about how policy on industrial strategy should change in the UK, post-Brexit.

Q: How did we help the client?

A: We began by identifying all the ways, direct and indirect, in which governments support the life sciences sector, which include investment funds, tax credits and low corporate taxation. We then developed an analytical framework to produce a basis for comparison and a comprehensive ranking of the incentive packages across all EU member states. This allowed for a compelling cross-country comparison, indicating how the UK fares against other countries.



Post-Brexit: state aid in the life sciences sector

Q: How might Brexit affect state aid in other sectors?

A: Given that Brexit is likely to result in EU funds no longer being available to UK companies, the UK government might be willing to introduce greater incentives post-Brexit. UK industrial policies, in relation to corporate tax and industry support for example, could therefore take a different form after Brexit.

The EU's White Paper on Brexit, published in February 2017, proposed to maintain EU law, it is therefore likely that some form of restraint on the provision of government support to UK companies will remain post-Brexit, especially if the UK seeks to enter into free trade agreements with the EU. UK companies will still need to present detailed economic and financial evidence to the authority in charge of state aid control in order to justify the aid.

Oxera has unparalleled experience advising companies and all relevant stakeholders on how to present cases to government bodies in order to justify the aid. In particular, we have a strong track record in tax and state aid issues. Our experts have testified on state aid issues across several jurisdictions, and we have assisted many clients in obtaining approval for state aid intervention to support their businesses.



Post-Brexit: state aid in the life sciences sector

Q: What was the most valuable expertise gained from this work?

A: To promote research and development in various sectors (including life sciences) successive governments have provided incentives to companies based in the UK when compared with a selection of other EU countries. Although some of these incentives are relatively generous, the UK does not rank very highly overall, particularly when considering that, following its exit from the EU, funds from EU sources that were previously allocated to UK companies are unlikely to be available.

The UK government therefore faces a challenge, but also an opportunity, to shape the future landscape of incentives in many sectors by adjusting the tax framework and developing its industrial strategy in order to incentivise companies to engage in R&D activity in the UK.



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