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Competitions and Markets Authority

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22<sup>nd</sup> July 2022.

Dear colleagues



**Draft Guidance on the Operation of the CMA's UK Internal Market Functions**

Thank you for the opportunity to comment on the draft Guidance. I am writing on behalf of the Wales & Europe Working Party of Cytûn, formed by our member churches following the 2016 referendum to work on their behalf on the implications of leaving the European Union, and of life outside the EU. Cytûn represents 17 of the major Christian denominations in Wales and a number of other Christian organisations who work in Wales. Between them, these denominations have about 160,000 adult members and contact with many more children, young people and adults in every community in Wales. A full list of members can be found here:

[https://www.cytun.co.uk/hafan/?page\\_id=44&lang=en](https://www.cytun.co.uk/hafan/?page_id=44&lang=en) This response has been written by members of the Working Party and endorsed by the Working Party following an electronic consultation.

Our comments follow the sections of the document:

**1. Chapter 1 – Introduction and background**

- a. The UK Internal Market Act (UKIMA) was amended in the Lords to reflect the need for some devolved representation on the panel of the Office of the Internal Market (OIM), albeit rather obliquely by requiring a ‘balance of knowledge from different parts of the UK’. We are pleased to see that there is devolved representation on the selection panel, however we believe that the draft guidance does not fully reflect this dimension of the Act. It will be a significant task for the OIM to build trust with the devolved executives and stakeholders from the devolved nations.
- b. The UKIMA was passed in the most politically fraught of circumstances and we believe that there is a role for the OIM to move beyond this, particularly around the extent of what should be excluded from the market access principles. Intergovernmental fora are typically used in other systems to discuss changes to the exclusions of internal market regimes, and we would like to see a commitment in the guidance to learning from international comparators.
- c. The draft guidance is not clear how excluding common frameworks from the scope of the Act will play out in practice at the intergovernmental level. We believe that the OIM could play an important role in clarifying, informing and studying the interactions between the common frameworks and UKIMA processes, and feed this into the intergovernmental discussions, particularly around ensuring that the scope of exclusions is tailored to market and regulatory reality. This would also enable consideration of regulatory divergences from the devolved angle rather than from a purely economic standpoint (see below).

**2. Chapter 2 – Legal Framework**

- a. In the account given of what the OIM is required to do, promoting the “effective operation” of the internal market is heavily emphasised (2.3 and passim). However, it is not clear from the Guidance what will be considered to be “effective operation”. We know from both the activities of the EU Commission and other non-unitary states like Australia that awareness raising is crucial because mutual recognition tends to operate invisibly and only sees attention drawn to it when it doesn’t work and when complaints are raised. We would like to see greater acknowledgement of the importance of awareness raising as a part of this promotion duty, as it will take time for stakeholders

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to understand the institution and its place in the post-Brexit landscape (which to be fair has numerous new bodies).

- b. We welcome the emphasis in the Guidance on the independent nature of the services of the OIM, and the statement in 2.3 (reflected elsewhere): "...The OIM must have regard to the need to act even-handedly in relation to the UK Government and all the devolved administrations" (emphasis added). We very much welcome this principle and the elaboration upon it. We would like to see more in the Guidance on how the OIM sees this as relating to the common frameworks and to the changes proposed in the Review of Intergovernmental Relations (Dunlop Review).
- c. We note the emphasis in paras 2.14ff on the preparation of reports on specific regulatory provisions at the request of one of the governments. Given the background to this legislation and the lack of trust between the governments, we wonder how consistently governments will notify the OIM of changes and request reports. We wonder if the OIM might consider investigation of regulatory changes on a more proactive basis. The governments will be familiar with such an arrangement from the EU.

### 3. Chapter 3 – Analytical Framework

- a. The preparatory work on understanding how the market access principles (MAPs) operate outside the framework of EU law was, in our opinion, completely inadequate in the run up to and the passage of the Act. We hope that the OIM can play a role in filling this gap to inform its operation, including on questions around future exclusions from the MAPs for example. This was well illustrated by the confusion surrounding the use of building regulations as an example in the pre-legislative White Paper, despite statements on other occasions that building regulations are not within the scope of the UKIMA.
- b. The overarching principles seem to us to be slanted towards seeing regulatory divergence as a negative (especially paras 3.3-3.7). This is tempered by 'recognising the balance to be struck between frictionless trade and devolved policy autonomy' (3.2) – however the rest of the analytical framework section focuses exclusively on the costs of barriers to trade and gives no indication of how this balance will be assessed. It may be desirable for the four nations to have different standards as regards the quality of goods, services or professional qualifications, on occasions. We are concerned, for example, to see how the OIM strikes this balance in assessing the Welsh Government's proposed single use plastics ban should the UK Government decide to ban fewer such plastics.
- c. It is positive to see the acknowledgement of the need to engage with stakeholders to inform the OIM's evidence gathering and the provision of an online interface (3.11, 6.13) is to be welcomed. However, we are concerned that the Guidance should require the OIM to factor in the imbalance between devolved and England based stakeholders, given the relative sizes of the respective constituencies. We would urge a commitment proactively to seek the views of stakeholders from Wales to act as a counterbalance.

Yours sincerely