

# Office for the Internal Market

Summary of responses to the  
draft Transparency Statement consultation

29 June 2022

Office for the Internal Market

Part of the Competition and Markets Authority

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# 1. Introduction

- 1.1 The Competition and Markets Authority ('CMA') is the UK's primary competition and consumer authority. The CMA works to promote competition for the benefit of consumers, both within and outside the UK, to make markets work well for consumers, businesses and the economy. The Office for the Internal Market ('OIM') is a new CMA function that was created by the United Kingdom Internal Market Act 2020 ('the Act') to carry out independent advice, monitoring and reporting in support of the effective operation of the UK internal market following the return of powers from the EU to the UK Government and Devolved Administrations.
- 1.2 On 20 April 2022, we published a draft OIM Transparency Statement ('Statement') which explains our policy and approach to transparency and information disclosure in the course of carrying out our reporting, monitoring and advisory functions under Part 4 of the Act. The Statement also notes the OIM's obligations under freedom of information and data protection legislation.
- 1.3 Our consultation on the Statement closed on 18 May 2022. The Summary of Responses sets out the key issues raised by the responses, our views on these issues, and changes we have made to the Statement as a result.
- 1.4 Having considered the consultation responses and made appropriate amendments to the Statement, we have finalised and adopted the Statement. This document is published on the OIM's website. For an overview of the responses, see Chapter 2 below.

## 2. Overview of the consultation responses

### Responses received

- 2.1 We received eight responses including a set of detailed comments (from the Department for Business, Energy & Industrial Strategy (BEIS)). All of the comments that the OIM received in relation to the draft Transparency Statement (as set out above and in Appendix A) were generally positive. A table that summarises BEIS's key points and how the OIM handled these comments can be found in Appendix A.
- 2.2 The two sets of less detailed comments are briefly summarised in paragraphs 2.3 and 2.4, below.
- 2.3 In a response from Welsh Government officials, they noted the 'OIM's approach to ensuring information is handled appropriately and to the outlined processes for handling requests' from relevant national authorities ('RNAs') and 'keeping non-requesting RNAs and stakeholders informed'. The email also describes how the Welsh Government had 'raised minor concerns previously about the resource implications for the Welsh Government in responding to and engaging in the process detailed in the Transparency Statement' and went on to state that it 'will endeavour to engage as appropriate and we encourage the OIM to continue to use official channels to communicate with the Welsh Government and provide sufficient time to allow effective dialogue.'
- 2.4 The Society of Motor Manufacturers and Traders Limited responded that it was 'pleased to see a detailed and pragmatic transparency approach set out in the draft statement and noted that most requests for information will be sought on a voluntary basis.'

### Other engagement

- 2.5 As indicated in paragraph 1.1 of the Statement, the OIM had previously shared the Process Letter with the RNAs. The rationale for our doing so was that the Process Letter covers a number of transparency matters related to the OIM's handling of information received from the RNAs. As described in the Statement, the Process Letter forms an integral part of the Statement and is contained in Annex A of that document. We have also continued to work closely with officials from the RNAs and the Process Letter reflects inputs from these contacts.

## **Response**

- 2.6 We have carefully reviewed the relevant sections of the Statement in light of the consultation responses received and made appropriate amends.
- 2.7 We note that the OIM will continue to use official channels to communicate with RNAs and provide sufficient time to allow for effective dialogue.
- 2.8 We also note that the OIM is a new function and we will review the Statement in light of experience after an appropriate period of operation.
- 2.9 We would like to thank all those who responded to the consultation.

## Appendix A: Table of BEIS's key comments<sup>1</sup> and OIM's responses

| Original text   | Comment received  | How we addressed comment  | New ref.                     |
|---|---|---|------------------------------|
| <b>Highlighting links between Transparency Statement and Annex A (Process Letter)</b> |   |   |                              |
| Introduction section  | <p>BEIS commented that it thought it would be helpful for the OIM to give a brief explanation in the Introduction section of the relationship between the Transparency Statement and Annex A (Process Letter).</p> <p>BEIS also suggested that, in order to set a wider context to the Statement, it would be helpful in the Introduction to refer to the information gathering powers that the OIM has under Part 4 of the UKIM Act.</p> | <p>Para 1.1 was amended to state:<br/>           'This Office for the Internal Market ('OIM') statement ('Statement') sets out the OIM's policy and approach to transparency and information disclosure. <u>The Process Letter, which covers a number of transparency matters related to the OIM's handling of information received from RNAs, was prepared and shared with the RNAs following the OIM's formal launch on 21 September 2021. It forms an integral part of this Statement and is contained in Annex A. [ftn 1]</u></p> <p>A new footnote 1 states: 'For more details on the relationship between the Statement and the Process Letter, see the Introduction to Annex A at page 33.'<br/>           At the end of Chapter 1, a new para 1.14 states: 'For an explanation on how the OIM will approach the enforcement of its information-gathering powers, see Statement of Policy on the Enforcement of the OIM's Information Gathering Powers.'</p> | New ftn 1 (bottom of page 2) |
| Re chapter heading: '3. Transparency during the course of a project'                  | BEIS suggested adding a 'line or two' to refer to the Process Letter in Annex A, which it notes provides further detail on how the OIM will handle RNAs' requests for advice and reporting.   | <p>Para 3.1. has been amended to state:<br/>           'Chapter 3 sets out guidance on how the OIM approaches transparency in relation to its statutory work under Part 4 of the Act. <u>For further details on how the OIM will handle RNAs' requests for advice</u></p>   | n/a                          |

<sup>1</sup> The comments in this table are limited to key points of substance; other comments related to presentational issues or minor points have been omitted.

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|  |   | and reports, see Annex A: Process Letter, below. Chapter 3 covers guidance in relation to: [...]   |     |
| <b>Being more precise in terms of describing the OIM's functions</b>   |   |  |     |
| Para 1.3 'The OIM's aim is to assist national authorities across the UK, through non-binding technical and economic advice, to manage the potential evolution of different regulatory approaches that they introduce in a way which protects the effective operation of the internal market. [...]                     | BEIS suggested that we insert the following underlined text: 'The OIM's aim is to assist national authorities across the UK, through non-binding technical and economic advice, <u>undertaking monitoring and periodic statutory reporting</u> to manage the potential evolution of different regulatory approaches that they introduce in a way which protects the effective operation of the internal market. [...] | Accepted amendment – added 'undertaking monitoring and periodic statutory reporting'   | n/a |
| <b>Being more precise when describing the OIM's governmental/Parliamentary stakeholders</b>  |   |  |     |
| Para 1.6 'The term 'stakeholders' is used in this document to refer to businesses, customers, professional and trade associations, business and consumer organisations, government bodies, regulators and/or other interested and informed third parties.'   | BEIS suggested adding 'public authorities' (as stated in the UKIM Act) to this list of stakeholders.  | Added 'public authorities' to para 1.6, which now states: 'The term 'stakeholders' is used in this document to refer to businesses, customers, professional and trade associations, business and consumer organisations, government bodies, regulators, <u>public authorities</u> and/or other interested and informed third parties.' | n/a |
| Para 2.6: 'Transparency plays a central role in allowing the public, Parliament and the devolved administrations to hold the OIM to account. The OIM is accountable to the public through Parliamentary scrutiny in Westminster and the devolved administrations, for example through inquiries by select committees.' | BEIS suggested that we insert the following underlined text: 'Transparency plays a central role in allowing the public, <u>the UK Parliament and devolved legislatures</u> , and <u>governments</u> to hold the OIM to account. The OIM is accountable to the public through Parliamentary scrutiny in Westminster and the devolved administrations, for example through  | Amendments accepted  | n/a |



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|   | inquiries by select committees.'   |   |                                  |
| <b>Increasing accountability to stakeholders</b>  |  |   |                                  |
| <p>2.4 'Providing clear information about its work also enhances the visibility of the OIM, thereby increasing its impact and accountability'</p> <p>2.5 'The OIM aims to achieve transparency in its work by:<br/>3<sup>rd</sup> bullet pt:<br/>• 'usually placing announcements on the OIM's website when a section 33(1) review has been launched or a request for a report under sections 34-36 has been accepted.' [ftn 8]<br/>Ftn 8: 'This would not apply to a request for advice under section 34 of the Act. The Act places a statutory obligation on the OIM to publish section 34 reports only (see section 34(10)). But there is no obligation, under the Act, to publish section 34 advice. It follows that, as well as not usually publishing section 34 advice, the OIM will not usually publish the fact that it has received a request for such advice.'</p> | <p>BEIS suggested that we insert the following underlined text: 'Providing clear information about its work also enhances the visibility of the OIM, thereby increasing its impact and accountability, <u>and the confidence of all its stakeholders in the work it undertakes.</u>'</p> <p>BEIS also commented that it believes footnote 8 (the new footnote 10 in the final Statement) means that announcement of a request and/or advice/report to a national authority would not be announced/ published to protect the confidentiality of the policy development process.</p> | <p>Amendment accepted – added 'and the confidence of all its stakeholders in the work it undertakes.'</p> <p>The second comment is noted.</p> | Re new ftn 10 (bottom of page 6) |
| <p>Para 3.31 'As well as being necessary to meet specific obligations placed on it by the Act, publication of reports is a means of enhancing the visibility of the OIM's completed work and of</p>   | <p>BEIS suggested that we insert the following underlined text: 'As well as being necessary to meet specific obligations placed on it by the Act, publication of reports is a means of enhancing the visibility of the OIM's</p>   | <p>Amendment accepted – added 'and building confidence with its stakeholders'</p>   | n/a                              |

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| widening its impact, as well as enabling interested persons to hold the OIM to account.'   | completed work <u>and building confidence with its stakeholders,</u> and of widening its impact, as well as enabling interested persons to hold the OIM to account.'  |   |                                |
| <b>Being more precise when describing the OIM's statutory reports</b>  |   |   |                                |
| Para 3.32: 'On completing a piece of work which was announced at launch, the OIM will publish the outcome on the <a href="#">OIM's website</a> and usually issue a press notice with a link to the relevant pages on the <a href="#">OIM's website</a> .'  | BEIS commented on the second link referencing the OIM's website: it noted that, 'as required, reports should be laid in the UK and DA legislatures as indicated in para 3.34'.  | Added new footnote 41 after second link to the OIM's website stating: 'As required, reports should be laid in the UK and devolved legislatures as indicated in paragraph 3.34.'<br><br>(The term 'devolved legislatures' has been used instead of 'DA legislatures' to assure consistency with para 2.6)  | New ftn 41 (bottom of page 16) |
| Para 2.9: The OIM will also publish information in regular reports put out either by the OIM itself or by the CMA. The OIM must, by 31 March 2023 , and following that at least once every year, prepare an annual report on:  | BEIS suggested that we insert the following underlined word: 'The OIM will also publish information in regular <u>statutory</u> reports [ ].'<br><br>BEIS also commented that, for the sake of completeness, it would be helpful for the OIM to add a footnote referring to the Overview of the Internal Market, published in March 2022. | Amendment accepted – added 'statutory'.<br><br>A new footnote 17 has been added that states: 'In March 2022, the OIM also published a discretionary report, <a href="#">Overview of the UK Internal Market</a> . The report sets out an economic overview of the UK internal market, drawing on a review of intra-UK trade data and business survey findings, and identifies some areas in which regulatory differences might be most likely to arise.' | New ftn 17 (bottom of page 8)  |
| <b>Clarifying points in relation to confidentiality</b>  |   |   |                                |
| Para 3.24: 'Depending on the level of formality of the section 33(2) proposal and the nature of the proposal, the OIM will take a view on whether to make a public announcement at the point a proposal is received.' [ftn 33]<br>Ftn 33: 'For instance where the matter has already come into the public domain or become the subject of public | BEIS asked whether the OIM needs 'to say something here about not identifying who made the proposal if the body/ person referring wants to remain anonymous'. In BEIS's view, if this point is not stated, then certain stakeholders may be discouraged from drawing the OIM's attention to issues.                                       | Old Ftn 33 has been amended to state: 'For instance where the matter has already come into the public domain or become the subject of public speculation or concern, or where the OIM considers that it would be appropriate to enable the OIM's work to be progressed more effectively. <u>In this context, the OIM will also consider whether the body or individual who has made the proposal has requested anonymity.</u>                           | New ftn 38 (bottom of page 15) |

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| speculation or concern, or where the OIM considers that it would be appropriate to enable the OIM's work to be progressed more effectively.'   |  |   |  |
| Para 4.15: 'Information may be viewed as confidential information if it is: 2 <sup>nd</sup> bullet pt:<br>• commercial information whose disclosure the OIM thinks might <u>significantly harm</u> the legitimate business interests of the undertaking to which it relates, or [...]' | BEIS queried the underlined text ('significantly harm') and said that if this threshold is being used for consistency/ in compliance with s244 Enterprise Act 2002, the OIM can make this clear, eg via a footnote.<br><br>BEIS also queried whether the threshold of 'significant harm' is the right threshold or whether it should be the (lower) threshold of 'harm'. | Added a new footnote 51 after 'significantly harm' stating:<br>'The threshold of 'significantly harmed' is consistent with section 244(3) of the EA02.'   | New ftn 51 (bottom of page 21)                   |
| <b>Adding further point in relation to disclosure of requested information</b>   |  |   |  |
| Para 4.17: 'The following information will normally be considered to be confidential so that if the OIM is considering whether disclosure is appropriate, it will need to consider the manner of disclosure: [,,]'   | BEIS asked whether we need to include a point in relation to section 41(8) of the Act about information that cannot be requested.  | Added new paragraph 4.18: 'The OIM cannot require a person to produce or provide any document or information which the person could not be compelled to produce, or give in evidence, in civil proceedings before the court; or to go more than 10 miles from the person's place of residence, unless the person's necessary travelling expenses are paid or offered to them.' [ftn 53]<br>New footnote 53: 'See Section 41(8) of the Act.' | New para 4.18 and new ftn 53 (bottom of page 22) |