

SUBMISSION FROM ANTHONY SALAMONE – MANAGING DIRECTOR, EUROPEAN MERCHANTS

This note responds to the UK Government's UK Internal Market white paper of July 2020. It supplements my earlier written evidence to the Committee ([FCC/05/UKIM/11](#)).

The UK Internal Market white paper heavily reflects pro-Brexit populist ideology. It seemingly purports that leaving the EU and exiting the transition period will create minimal or no negative economic consequences, and only bring opportunities. In reality, the preponderance of evidence indicates that any form of Brexit will cause significant economic damage to Scotland and the UK. An ideological approach is regrettable, as it is blind to real challenges which exist. It is concerning that the construction of the UK's post-Brexit, post-transition economic governance should be based on unfounded nonchalant optimism.

In general, the UK internal market is the economic space of the United Kingdom and its existence is inherent to the UK state. In the Brexit era, the UK Government intends to codify this internal market through the imposition of legal principles on the devolved political institutions. These principles appear to be heavily borrowed from EU and international contexts. Its proposed Market Access Commitment will establish in UK legislation obligations of mutual recognition and non-discrimination on governments with respect to economic activity and related policies. In practice, these obligations would directly and indirectly constrain the decision-making and functioning of Scotland's political institutions – potentially to a significant extent.

The white paper's approach to the internal market is founded on viewpoints which are highly contested. It gives clear preference to economic efficiency and business convenience over public policy considerations and devolved institutional choices. The paper repeatedly cites business desire for consistent and uniform regulation. It employs this desire as a principal justification for its centralised policy response. Yet it is obvious that many businesses would prefer regulatory homogeneity over differentiation. The question is instead how political institutions in the UK – which exist at different levels and have particular responsibilities – balance economic rules and social objectives. The entire purpose of devolution is to enable many of those decisions to be taken by Scottish institutions rather than the UK state.

Central to the white paper's rationale is a fear of potential regulatory divergence between different parts of the UK in the post-Brexit context. It sets out numerous hypothetical scenarios of differentiation, but provides no actual evidence that such situations are likely to arise in the manners described. Yet these hypotheticals are given as reasons of a need for transformational change to devolution. Alternative means of governing the UK internal market could be pursued. A system founded on coordination and strong intergovernmental institutions could deliver a suitably coherent internal market. However, such a system would presumably require the UK Government to forfeit the right to always have the final say – a prospect which it would seemingly not accept.

The UK Government's intention is that the new principle of mutual recognition will require, in general, goods and services which satisfy the requirements of one part of the UK to be accepted in the rest of the UK. It contends that this approach is

necessary to avoid 'the creation of new barriers' to trade (Para 3). However, a fundamental difference exists between retaining existing EU law and standards, and producing new standards. The Scottish Government's stated preference is to maintain current EU standards and to match their evolution, to the extent possible. It has never remotely proposed that Scottish institutions would intentionally create new standards with the express purpose of distorting trade with the rest of the UK. In reality, were the UK Government to depart from EU standards, it would be the party responsible for creating divergence within the UK internal market.

The new principle of non-discrimination is intended to prevent discrimination within the economy for goods, services and operators on the basis of residence or origin within the UK. Yet it is spurious to suggest that Scottish institutions would actively engage in economic protectionism against other parts of the UK. The white paper's own analysis concludes that presently barriers to trade within the UK are extremely low and indicative of an open trading space. The paper references other (federal) states which introduced mutual recognition and non-discrimination provisions for their economies. However, those states did so specifically in response to identified existing market fragmentation and distortions of competition. By taking such an approach in the absence of need, the UK Government demonstrates a lack of trust in the devolved institutions and the UK's shared intergovernmental structures.

The logical and intentional consequence of devolution is policy differentiation. The people of Scotland elect the members of the Scottish Parliament, and by extension the Scottish Government, to act on their behalf. Their institutions have democratic authority to pursue public policy objectives which reflect preferences in Scotland. The exercise of those functions should not be circumscribed by the political views of the central state. The white paper gives strong weight to 'economic freedoms' (Para 86). However, the policies undertaken by Scottish institutions should not be made dependent upon assessment by UK institutions of their supposed economic costs or benefits. Market coherence does not require uniformity, and democracy should not be subordinate to market preferences.

The white paper demonstrates that the UK Government intends to deliver its pro-Brexit vision, regardless of the consequences for devolution. As with the Brexit project, it is based on contradictions. It asserts that a centralised approach to the UK internal market is necessary to provide business with stability, while ignoring the UK Government's decision not to extend the transition period, which will bring monumental disruption for business in the midst of the coronavirus pandemic. It is Brexit which will increase the costs of trade and decrease competitiveness, not devolution. The white paper makes mention of EU powers transferring to Scottish institutions. However, the volume of powers is not as consequential, if current and future powers are limited in their depth by UK legislation. While it will remain to be seen how the new governance of the UK internal market would be implemented in practice, the direction of travel points to limiting the autonomy of Scotland's political institutions. As a result, intergovernmental relations may deteriorate even further from their current low. Should it arise that devolution appears in danger of being substantially eroded and altered from its original design, as endorsed by the people of Scotland in the 1997 referendum, then the argument could be made that another referendum must be first held, and require the people's approval, for such change to take place.