Changing the world of work for good

Levelling up the UK: the role of state aid

Executive Summary

The TUC supports an active industrial strategy that promotes high quality jobs, employment standards and inclusive growth in communities in every part of the UK. We support dynamic state intervention that:

- Supports decent jobs through intelligent social value procurement.
- Uses strategic funds in support of regional development, decent work and employment standards with a key role and voice for devolved authorities and social partners, including trade unions.
- Targets support for industries and companies and their long-term development, with conditions attached in support of decent jobs, contributions to the UK economy and tax base – including taking equity shares on a something-for-something basis.

Negotiating a good deal with our largest trading partner, the European Union, is essential to securing jobs, protecting employment rights and securing lasting peace in Ireland. This requires a level of compatibility with EU level playing field provisions (as opposed to WTO or other light touch regulation).

At present, it is unclear what the government in the UK intends state aid to look like beyond the transition period. But as this report makes clear, there is an urgent need for government to intervene in the economy now to save jobs and businesses, as well as to meet the Government's stated aim of 'levelling up' the UK in terms of access to good quality work.

Experience of state intervention and industrial strategy in the UK and across the EU suggests that progressive state intervention in support of jobs, businesses and inclusive growth is compatible with both the current state aid rules, and a trade relationship based on a level playing field. Government cannot hide behind the current EU regime as an excuse not to act.

Workers and businesses across the UK need the government to secure a good trade deal with the EU that supports UK jobs and businesses, based on a level playing field that ensures employment rights for UK workers remain in line with those in the EU. This report sets out how a new state aid regime can be compatible with that aim and can help achieve our goal of decent work across the UK.

Introduction

The UK will have to choose which state aid and public procurement strategy it will follow once it is no longer bound by EU rules. At present it is not clear what the government's preference is, but this paper makes the case for a system that supports industrial policy, local jobs and businesses and the promotion of world class employment standards, particularly for communities that are set to suffer the most from the UK exit from the EU.

While the UK has yet to set out what state aid strategy might look like, it is expected that interventions could be targeted in support of three aims – all expressed at various points by Government:

- Levelling up local economic capacity and growth across all parts of the UK.
- Supporting transitional change across the economy – with a particular focus on growing domestic businesses in key sectors such as AI, tech and digital services.
- Enhancing the UK's trade relationships across the globe – with increased UK capacity in tradeable goods and services.

This paper sets out to look at what state aid might look like beyond 2020, how it might differ from current practice and what we think a progressive and effective state aid strategy should look like.

This report

- looks at current state interventions across the UK;
- assesses possible options under consideration by the current government;
- sets out the principles that the TUC believes should govern a new approach to state aid in the UK.

Current state interventions in the UK and EU

State intervention in support of specific sectors, regions or individual businesses can take many forms. Both WTO and EU state aid rules are designed to prohibit the allocation of state resources that provide advantage to domestic enterprises in a way that distorts competition in the global or EU internal market. However, within these rules, governments can deploy their resources to provide strategic support to their economies.

The OECD states that some of the forms of state aid that nations can employ include "government procurements, exemptions from antitrust laws, regulatory barriers to competition, access to credit, arranged mergers and acquisitions, control of acquisitions of national companies by foreign investors, easy access to commodity resources and the products of monopolist companies. National champions may be created or protected in a number of ways, such as by the granting of state aid, the encouragement of domestic mergers, or the opposition to a takeover of a domestic company by a foreign company."[1]

In this section we look at the following three areas:

- Public procurement designed to (i) support growth of local jobs and businesses to support economic growth and address disadvantage and (ii) promote environmental, social and labour standards.
- Industrial strategy in support of key sectors, business clusters and economic rebalancing.
- Deployment of strategic funds in support of business and regional development.

Public procurement

The TUC believes public procurement must play a crucial role in supporting sustainable development, key sectors and quality public services. To be successful, positive procurement approaches need robust enforcement, evaluation and sanctions regimes - all of which are lacking currently.

Increasingly public bodies in the UK at both a national and local level have been using intelligent procurement in support of these broader policy goals. Permissive legislation, including the Public Services (Social Value) Act 2012, the Public Contracts Regulations 2015 (derived from the 2014 EU Public Procurement Directive), the Equality Act 2010 and public procurement legislation in Wales and Scotland provides the scope for this – enabling public bodies to move away from price-based competition and incorporate broader social, environmental and employment considerations where this is relevant to the nature of the contract. This can include support for labour market initiatives for excluded and disadvantaged groups, diversification of supply chains in support of SMEs, co-operatives and social enterprises, support for skills, training and apprenticeships and support for decent employment standards. And while this potential has yet to be fully exploited, we are seeing things moving in the right direction.

In 2017, the Crown Commercial Service published new guidance on placing social value at the heart of public procurement, requiring "buyers of public sector services to consider whether there are related social, economic or environmental benefits that can be delivered through the contract". HM Treasury published its new outsourcing playbook in 2019, stating that "social value is one way of driving innovation through procurement by encouraging employment opportunities, developing skills and improving environmental sustainability" and requiring public sector bodies to "maximise social value effectively and comprehensively through its procurement and account for social value in the evaluation criteria". And in September 2020, the Cabinet Office issued new procurement guidance that "social value should be explicitly evaluated in all central government procurement, where the requirements are related and proportionate to the subject-matter of the contract, rather than just 'considered' as currently required under the Public Services (Social Value) Act

[1] Civitas (March 2013) *Gamekeeper or poacher? Britain and the application of state aid and procurement policy in the EU* p.10 https://www.civitas.org.uk/content/files/EUStateAidProcurement2.pdf

2012" with a minimum 10 per cent weighting given to social value considerations on all central government contracts.

Furthermore, governments in Wales and Scotland have used a combination of legislation and voluntary codes to push social value procurement. The Welsh Government's Code of Practice for Ethical Employment launched in March 2017, developed in partnership with unions and public service employers, places an expectation on all public sector organisations, businesses and third sector organisations in receipt of public sector funding to sign up to a code of practice that promotes decent jobs, a living wage and protects against blacklisting and other forms of exploitation. The Procurement Reform (Scotland) Act 2014 goes much further than the Public Contracts Regulations enforced in England and Wales, requiring all public bodies to have a procurement strategy in place that supports community benefits, the living wage and the economic, social and environmental well-being of the local area.

Examples exist of councils taking the initiative on this. The London Boroughs of Southwark and Islington have both incorporated elements of Unison's Ethical Care Charter into their commissioning and procurement of adult social care services, requiring contractors to pay a living wage and offer guaranteed hours contracts to their staff. Newcastle City Council has incorporated good work metrics into its social value framework, including measures around workforce representation, zero hours contracts, equality and diversity and flexible working. And the Greater Manchester Combined Authority is looking at how it can incorporate elements of its own Employment Charter into its procurement strategy.

In addition to promoting good employment standards, social value procurement has been used by some councils as part of a strategy to develop local economies. Community wealth building initiatives by councils such as Salford, Newham and Preston have sought to maximise procurement spend across public bodies in their local area to help develop local supply chains, diversify provision through supporting local cooperatives, community organisations and SMEs – as well as promoting in-house provision of services.

The London Borough of Newham is looking to increase its local spend from its current level of 28 per cent, working with other 'anchor institutions' including the police, NHS, local colleges and business groups to harness procurement in support of local supply chains across the borough. The council will be encouraging existing and new contract providers to use local companies within their supply chains through social value measures, setting out specific requirements for engaging with SMEs in the area and embodying community wealth building objectives within the tendering process across all council service areas.

Other countries use public procurement to pursue social objectives. Germany for instance uses pay clauses for workers under public contracts, which are a way to set a wage floor in the absence of a statutory national minimum wage. Thus, public transport companies operating under public contracts must accept the full provisions of locally prevailing collective agreements, even if these agreements are not generally applicable (like UK agreements).

Sweden uses public procurement as a strategic tool to achieve social sustainability and local administrations in France and Spain have similar schemes: in Nantes[2], a Responsible Purchasing Promotion Scheme was adopted to support SMEs in the area and recruitment of more disadvantaged people in several sectors of the labour market. This scheme has been so successful that French national banks have been persuaded to take social and environmental criteria into account when they negotiate loans for entrepreneurs. In Barcelona[3], tendering companies are required to offer higher wages than those set by the sector agreement as well as stable employment contracts.

There are further examples where the government's public procurement policy could help local communities in the UK. Most recently the PM has promised[4] that the government would ensure enough contracts were available to keep Harland and Wolff's newly acquired Appledore yard (near Barnstaple in north Devon) viable for decades. The shipyard is due to reopen in January 2021, directly employing 350 people and supporting about 1,000 more subcontractors and supply chain jobs, helping to rebuild the local economy and offering opportunities through a new apprenticeship scheme. Coastal towns that have seen industrial decline in the past could level up if the government were willing to invest again in these areas. 29,000 people are employed in UK shipbuilding, with a further 40,000 jobs in the supply chain. The shipbuilding industry is said to be worth between £1.5bn and £4.3bn a year, depending on the size of Royal Navy contracts[5].

The PM suggested that building new patrol boats for search and rescue in the Channel might be a new line of government contracts; or fishing trawlers should the fishing industry see a revival through a new UK fishing policy. Yet questions remain as to how the government will award contracts for the shipping industry and whether price alone will remain the central consideration of the new procurement rules.

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[2] Institute for Government (September 2020) *Beyond state aid: The future of subsidy control in the UK* https://www.instituteforgovernment.org.uk/sites/default/files/publications/beyond-state-aid.pdf

[3] TUC (10th October 2017) *Four ways city mayors around the world have improved the lives of working people*
https://www.tuc.org.uk/blogs/four-ways-city-mayors-around-world-have-improved-lives-working-people

[4] BBC (25th August 2020) *Appledore Shipyard to reopen after £7m InfraStrata deal*
https://www.bbc.com/news/uk-england-devon-53903667

[5] Maritime UK in partnership with the Centre for Economics and Business Research (September 2019) *State of the maritime nation report 2019*
https://www.maritimeuk.org/media-centre/publications/state-maritime-nation-report-2019/

Defence procurement

Most defence procurement is already exempt from compulsory competitive tendering under Article 346 of the Treaties of the EU. Despite this exemption, the Government chose to put £2 billion worth of shipbuilding contracts out to international tender at a time when jobs were under threat in UK yards.

The Government recently u-turned and classified the £1.5 billion Fleet Solid Support vessels as 'warships' in response to union campaigning. However, a misleading briefing6 in early October falsely claimed that prioritising UK yards would require 2009 EU regulations (transposed into UK law) to be repealed. This claim has already been debunked by the TUC7.

In addition, the EU allows for 'innovation aid' to be made to shipbuilders to help them bring prototypes to market8. The UK does not make use of this facility, in contrast to several EU shipbuilding nations.

Currently the UK is part of the World Trade Organisation's Government Procurement Agreement (GPA) through the EU's membership. The UK government plans to accede to the GPA as an independent country once the transition period ends at the end of December 2020. The GPA aims to liberalise and increase access to member states' public procurement markets.

The TUC has concerns that the GPA contains a much lighter touch approach to social value considerations. While there are social value criteria in UK procurement rules currently – largely due to the transposition of the EU Procurement Directive 2014 - we are concerned that the government could roll back these criteria, just as the Prime Minister and members of the Cabinet have talked in the past about repealing EU derived rights such as the Working Time Directive and the Agency workers directive[9].

Most of the current procurement law will be automatically retained beyond the end of the transition period, through the terms of the European Union (Withdrawal Agreement) Act 2020. However, it is worth noting that after 31st December 2020, the government has powers to make secondary legislation, including temporary powers to amend retained EU law that would otherwise no longer operate appropriately once the UK has left the EU. It is

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[6] Telegraph (10 October 2020) *Government to favour UK shipbuilding firms for contracts under defence review plans* https://www.telegraph.co.uk/politics/2020/10/10/government-favour-uk-shipbuilding-firms-contracts-defence-review/

7 TUC blog (21 May 2018) *No, EU rules won't stop us building UK ships in UK shipyards* https://www.tuc.org.uk/blogs/no-eu-rules-won%E2%80%99t-stop-us-building-uk-ships-uk-shipyards

8 Official Journal of the European Union 2011/C 364/06 *Framework on State aid to shipbuilding*

9 Boris Johnson in The Times (17 December 2017) *Brexit mustn't leave us a 'vassal state'* https://www.thetimes.co.uk/edition/news/boris-johnson-brexit-mustnt-leave-us-a-vassal-state-p9zrf9n6s; The Independent (30 October 2017) *New Brexit minister wanted to scrap EU workers' safeguards for agency employees and pregnant women* https://www.independent.co.uk/news/uk/politics/martin-callanan-new-brexit-minister-eu-workers-agency-employees-pregnant-women-safeguards-a8027321.html

hoped that the recent moves from the Cabinet Office and HM Treasury signals an intention to continue to promote social value procurement in support of employment, skills and decent work.

Industrial strategy in support of sectors and business clusters

EU member states including Finland, France, Germany, the Netherlands and Sweden have taken a proactive approach to supporting domestic industries through a combination of

- increasing state investment in R&D
- developing the infrastructure for knowledge transfer between business, government and academia
- providing ministerial level support for specific cluster development projects and using strategic government procurement
- using export credits to enable domestic businesses to compete on a level playing field in global markets
- regulating foreign takeovers of key businesses and supporting domestic mergers and other strategies to defend against this.

Traditionally UK governments have been less dynamic in this area but in recent years, industrial strategy has been back in favour. The Boris Johnson-led Conservative government inherited an industrial strategy from its predecessor, launched in 2017, that saw a revamped Department for Business, Energy and Industrial Strategy oversee a range of measures, including:

- Five foundational workstreams focussed on 'ideas', 'people', 'infrastructure', 'business environment' and 'place' - including ambitious targets for increased R&D spend, more incentives for research spending through tax credits and the Industrial Strategy Challenge Fund, supporting new business growth through a British Business Bank, greater investment in infrastructure, support for place-based local industrial strategies and a national retraining programme.
- Sector deals providing targeted support around several key sectors, including aerospace, automotive, creative industries, life sciences and nuclear.
- Strategies designed to address five thematic 'Grand Challenges' looking at 'AI and the data revolution', 'mobility', 'an ageing society' and 'clean growth'.

Subsequent announcements in the March 2020 budget have increased commitments to infrastructure spend and doubling government-funded R&D spend by 2024/25. And the Prime Minister, in his speech to party conference in October, committed to ensure the UK leads the green industrial revolution, and low-cost clean power generation in particular, though investing £160m in ports and factories across the country, to manufacture the next generation of turbines[10].

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10 Boris Johnson keynote speech to the Conservative party conference on 6 October 2020 https://www.conservatives.com/news/boris-johnson-read-the-prime-ministers-keynote-speech-in-full

However, progress was slow even prior to the onset of the Covid pandemic. In February of this year, Andy Haldane the Chair of the Independent Industrial Strategy Council set up to oversee progress commented that the "policies are not yet operating with the consistency and co-ordination, nor with the scale, necessary to meet these challenges".

With the focus now as much on protecting jobs and at-risk sectors through the recovery, it remains to be seen how much of the ambition of the industrial strategy will remain intact. While the Treasury was quick to act with the Job Retention Scheme and Job Support Scheme and other remedial measures, the Chancellor has been reluctant to provide sector-specific support packages. With HM Treasury playing a greater role in determining economic and industrial policy than BEIS, there is significant scepticism about the future of vertical and sectoral interventions.

This is particularly the case when businesses and sectors are perceived to be lacking the support they need in the current period. Cases such as Arm Technologies highlighted below, at risk of a US takeover that could put the future of the Cambridge-based company in doubt, Alexander Dennis Buses in Falkirk facing increasing job cuts as a result of government failure to provide funding for new eco-friendly bus contracts and the lack of opportunities provided to UK steel producers from HS2 orders is leading many to fear that, when it comes to the crunch, typically laissez-faire government inaction is leaving companies stranded.

Newport's Orb Steelworks

The Orb site in Newport had been in operation since 1898, forming a long-standing establishment of the south Wales economy. The works had been the only producer for electrical steels across Britain, however in 2019 the site was put up for sale by Tata without any success and ceased operations in 2020.

The UK government failed to support investment to keep the plant going and failed to see the wider potential for electrical steels at the Orb which are vital to the decarbonisation of the economy. The electrical steels produced at the Orb could have been an integral part of a new supply chain for electric vehicles. Although the electric steel that Orb could make for electric motors represents a small part of the powertrain industry, as part of a wider green industrial strategy, it had the capacity to incentivise others to invest in essential parts of the process such as stamping and laminating, and thus led to the industry building powertrains for electric vehicles in the UK.

The failure of the UK government to grasp such an opportunity is set to cost the economy more than £1bn over the next decade according to research for Community the Union.

Use of strategic funds in support of regions, businesses and economic development

From 2014 to 2020 the UK has had access to £10.6bn of EU structural and investment funds to support levelling up, skills and employment initiatives and regional development as well as funds supporting maritime, fisheries and agriculture. This would have been match-funded by a further 40% through the Big Lottery Fund, DWP and other UK government sources to bring the total to over £19bn. The funding was allocated across the UK, with priority funding given to areas with greatest need.

In addition, existing central government funding, largely through transport and housing capital budgets, has been pooled through the Local Growth Fund providing £9bn support from 2014 to 2021 to LEPs in England to support infrastructure, local transport, town centre development and some business development and employment support. A further £120m LGF funding was provided to Wales and over £390m to Scotland. While the scale of this funding is significant, it represents a decline in comparison to the £19bn invested by previous governments through the Regional Development Agencies from 2000 to 2010 and largely consists of the repackaging of existing capital funding in support of LEPs strategic economic plans.

The government has committed to replacing previous EU structural and investment funding through the UK Shared Prosperity Fund. It is unclear how this will be administered and allocated but the 2019 Conservative manifesto committed to maintaining the same level as the previous EU funding going forward, and UK's continued participation in EU programmes seems to be one of the few areas of convergence in negotiations with the EU about the future trade partnership.

Potential options for the UK government beyond 2020

In the EU-UK negotiations for a trade agreement post Brexit, the issue of what state aid rules will apply to the UK in the future has come to the fore. The EU sees it as a test of the UK's commitment to remain closely aligned to EU rules, with UK companies competing with EU ones on a level playing field. However, the government has stated that it wants to significantly diverge from EU rules, though it is not yet clear what kind of state subsidy regime the UK will follow.

In the general election campaign in 2019 Boris Johnson said: "If returned with a majority, a Boris Johnson government will take immediate steps to ensure that a new state aid regime is designed and ready to be in place by 1 January 2021. This will be a whole new approach, based on the World Trade Organisation commitments on restricting harmful subsidies. As the UK will be leaving the EU's single market, the state aid system that we introduce will be different to the EU's system."[11]

Although the definition of a 'subsidy' under the WTO regime is broadly similar to 'state aid' in EU law, the EU rules are a lot more stringent than WTO on subsidies and are based on a system of pre-authorisation by the European Commission and with the European Court of Justice as the ultimate arbiter; whereas the WTO system only intervenes after a subsidy has been granted, giving the trade partners the possibility to retaliate against unfair advantages by applying countervailing measures[12]. While the EU system is pre-emptive, it does not interfere with the freedom to organise public services and their delivery and would not

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[11] Conservative Party manifesto (29 November 2019) *Take back control and back Britain* https://www.conservatives.com/news/take-back-control-and-back-britain

[12] House of Commons Library (September 2020) *EU State Aid rules and WTO Subsidies Agreement* p.26

prevent the state running these services directly if it so chose – as it is the case in many EU countries.

Whatever the preferred system, any government plans for a new policy framework post Brexit will have to respect the requirement under the Protocol on Ireland/ Northern Ireland contained in the Withdrawal Agreement to continue to apply EU state aid rules to Northern Ireland, subject to cross-party consent in Stormont every four years.

However, there are apparently tensions in the government between competing visions, with three broad trends emerging.

First, there are those that would like a rigid and codified system that regulates any state intervention on the market through the Competition Market Authority which, akin to the EU system, would have to authorise any subsidy before it is paid out. This could limit the potential to follow French or German style industrial policy that has supported 'national champions' such as Danone and Siemens. For example, former Chancellor Philip Hammond has said that ministers could not buy "competitiveness" by subsidising failed businesses on a case-by-case basis[13]. Similarly, in Britannia Unchained, Dominic Raab and Priti Patel extol the virtues of the American entrepreneurial culture and its ability to embrace companies' failure[14]. This group believes that the success of fintech in London for instance is not due to the state investing in these industries, but rather high volumes of venture capital, a critical mass of skills and firms to try out new ideas and its proximity to top universities.

Second, there are those in who advocate for a more interventionist approach in support of key businesses and jobs, particularly in newly won 'red wall' constituencies. The context of the pandemic has raised awareness of the need to stem the tide of job losses, and thus look more favourably at interventions that benefit major employers in certain communities. These MPs are very supportive of the government's levelling up agenda to reduce regional inequalities and believe the government should be able to choose which industries ought to receive support. Data shows three in four jobs in the struggling automotive industry are in areas that the Conservatives vowed to protect, such as the North, Midlands, Yorkshire and Wales[15].

There is also a third group that is close to the latter in terms of seeing the necessity of government's intervention, but would rather it focused on areas they believe are of strategic importance for the economy of the future such as high-tech, AI for both military and civilian applications, pharmaceutical research rather than traditional industries. All sectors where the goods exchanged is mostly data, rather than a physical object – a commodity that is less impacted by the law of geographical proximity in trade (also known as 'gravity'), but where regulation can have a significant influence on the ability to trade – for example through the EU GDPR regime.

For example, Dominic Cummings, the prime minister's chief adviser, has been said to support this approach through favouring a light-touch regime with maximum flexibility: it

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[13] Financial Times (31 August 2020) *Hammond warns of return to '70s misery' if post-Brexit state aid not controlled* https://www.ft.com/content/86b7eb99-2cf7-433b-ab1f-ca1059979464

[14] K. Kwarteng, P. Patel, D. Raab, C. Skidmore, E. Truss (2012) *Britannia Unchained* chapter 5 p.78

[15] TUC (30th June 2020) *This is a far cry from Roosevelt's New Deal* https://www.tuc.org.uk/news/tuc-far-cry-roosevelts-new-deal

would consist of some broad non-statutory principles and would be monitored by a watchdog without teeth[16]. This system would not be able to stop Ministers' decisions and would allow the government to select precisely those new industries, to support them through either direct hand-out, lucrative government contracts (see earlier section) or tax rebates. The recently published Internal Market Bill seems to corroborate this idea: the draft legislation centralises power on state aid away from devolved administrations but does not set out in any further detail how that power is to be exercised and the Competition and Market Authority (CMA) would only be given the power to issue non-binding advice (part 4 of the bill[17]). In other words, not even a legislation that is supposed to regulate the UK internal market should cut across ministerial discretion on where the government money should be directed to.

Government's aims are compatible with maintaining a level playing field

However, while the government continues to debate competing visions of a future state aid regime, it is clear that the measures it needs to take in support of a levelling up agenda, and to support new industries are compatible with a level playing field. Indeed, there are some examples of the UK government pursuing interventions of this kind – albeit to a much lesser extent than other European countries.

In 2012 Unite and TUC pressure about the threatened GM plant closure in Ellesmere Port led the then BIS Secretary Vince Cable to effectively inject state aid under the budget heading of 'skills' through a new apprenticeship scheme.

In 2016 Theresa May imposed some conditionality on a foreign takeover of UK producer of microprocessors Arm, requiring that the Japanese buyer doubled the workforce (from the existing 2500) and kept Arm's headquarters in Cambridge for five years – a pledge that expires in July 2021.

The most recent Project Birch, a scheme for firms struggling during the coronavirus crisis, which consists of direct financing by taxpayers of strategically important UK businesses. Among the companies that have requested help are Tata Steel (for £500m) and JLR (for £1bn), employing 8000 and over 30.000 respectively, though talks fell through over unpalatable conditions such as commitments to decarbonise[18]. The support consists of direct loans from the state, with a stipulation that the government will take a stake in the company if the loans are not paid back. So far only a handful of businesses have reached the final round of talks, one of these is Celsa UK, first taxpayer-funded bailout under the project. As part of the loan, which is expected to be repaid in full, the company - which has sites in Cardiff - must meet a series of legally binding conditions. These include

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[16] Financial Times (27 July 2020) *Cummings leads push for light-touch UK state-aid regime after Brexit* https://www.ft.com/content/e29430c7-9dae-440e-8093-74f705ce62c3

[17] Secretary of State for Business, Energy and Industrial Strategy *UK Policy paper: UK internal market* (9 September 2020) https://www.gov.uk/government/publications/uk-internal-market/uk-internal-market#part-4-subsidy-control-1

[18] Financial Times (14th August 2020) *UK bailout talks end for Jaguar Land Rover and Tata Steel* https://www.ft.com/content/ea0f0775-d97e-4aba-9ec9-7da1945f2a1a

commitments to protect jobs, to meet climate change net zero targets, and restraints on executive pay and bonuses[19].

However, too often the UK has used the state aid rules as an excuse not to act. In 2018 Britain spent 0.34% of GDP on state aid, compared to 1.45% for Germany and 0.79% for France[20]. Even in the pandemic crisis, the Chancellor is proving reluctant to rescue businesses under pressure[21]. While, earlier in the year the government did step in to support Flybe, recognising its value to the regional economy of the UK, it dropped it in March at the onset of the pandemic and under threat of legal action from competing airlines. The U-turn entailed a direct loss of 2400 jobs, with further job losses at airports and the supply chain. In essence the government thought it was not viable to keep the airline operating and in the words of transport minister Kelly Tolhurst "Unfortunately, in a competitive market, companies do fail, and it is not the role of government to prop them up."[22]

The UK has also repeatedly used EU rules as an excuse not to step in for the ailing steel sector[23]. And in the context of the current threatened takeover of ARM, a logical step, and consistently with Project Birch, would be for the government to acquire a golden share in this company to prevent it from being sold off to American competitors. Doing otherwise would mean surrendering a large part of UK technology sovereignty to the US.[24]

Contrast this with the EU's announcement in mid-September to foster EU digital sovereignty by supporting the European tech industry and opening digital clusters: 20% of the next EU budget is set to be earmarked for digital development[25] and this is compatible with existing EU state aid rules, which have shown the flexibility required to ride out unforeseen circumstances such as the pandemic.

As the examples above from both Europe and the UK make clear, the current set of rules do not stop government's intervening to support strategic industries, or to protect decent jobs.

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[19] Department for Business, Energy & Industrial Strategy (2nd July 2020) *Government agrees support package to UK steel company* https://www.gov.uk/government/news/government-agrees-support-package-to-uk-steel-company

[20] European Commission (May 2020) *State aid Scoreboard 2019* pp. 69, 70, 87 https://ec.europa.eu/competition/state_aid/scoreboard/state_aid_scoreboard_2019.pdf

[21] William Hague in Financial Times (7th September 2020) *A Brexit deal beckons if No 10 stops being so stubborn about state aid* https://www.telegraph.co.uk/news/2020/09/07/brexit-deal-beckons-no-10-stops-stubborn-state-aid/

[22] UK Parliament (5 March 2020) *Kelly Tolhurst updates MPs on Flybe's collapse* https://www.parliament.uk/business/news/2020/march/kelly-tolhurst-updates-mps-on-flybes-collapse/

[23] TUC (10th September 2018) *The TUC has backed the single market for 30 years - here's why* https://www.tuc.org.uk/blogs/tuc-has-backed-single-market-30-years-heres-why ;
Labour List (4th August 2017) *TUC: It is government choices, not the single market, that are limiting British control over our own industries* https://labourlist.org/2017/08/tuc-it-is-government-choices-not-eu-rules-that-are-limiting-state-intervention/

[24] Guardian (30th August 2020) *The Guardian view on a Brexit industrial strategy: theatre but no policy* https://www.theguardian.com/commentisfree/2020/aug/30/the-guardian-view-on-a-brexit-industrial-strategy-theatre-but-no-policy

[25] European Commission (16th September 2020) *State of the Union Address* by President von der Leyen at the European Parliament https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655

Under current EU rules, small research and development subsidies don't need to go through the EU pre-authorisation regime, and bigger projects can still be cleared by the European Commission after a process of verification. The current system would also allow for targeted regional aid.

British Steel

The UK government stepped into underwrite British Steel, including blast furnace operations at Scunthorpe, between May 2019 and March 2020, preventing the loss of 3,200 jobs. This intervention followed the failure of Greybull, which collapsed into liquidation three years after it first purchased the steelworks. This intervention remained in place until the company was purchased by the Jingye Group (3,200 workers were offered new contracts and 400 jobs were lost.)

This example is a clear case of government intervention making a difference, but for British Steel and other operations to be sustainable and weather the current global crisis, it cannot be a one off. The government must commit to similar interventions, for example if needed to secure the future of Port Talbot works owned by Tata Steel.

In the longer term, government procurement must be used to ensure steel has a sustainable future. In the case of British Steel, the Scunthorpe site is reliant on orders from Network Rail (which procures 97% of it's rail steel from British Steel.) Jingye has now been blocked from purchasing Scunthorpe's French sister site in Hayange, which produces for the French railway. This means Scunthorpe is increasingly reliant on the one major contract.

The HS2 project requires 1.3 million tonnes of steel for bridges, tracks, viaducts and station26; however, major steel contracts are not being awarded to either British Steel or Liberty Speciality Steel.

The sector wants a state aid regime which allows for swift intervention when needed, but which is not restricted to 'market failure' alone. This should include the government and workers' ability to scrutinise takeovers - such as that of Greybull.

Such regime must also allow for the setting of a percentage of UK content for major state-backed projects - this would be one of several potential conditions for such contracts, including union recognition. Thus, support would go to steel specifically produced for domestic use, but not for export. The stated EU concern is for subsidised steel to be exported into the EU and distort the internal market. The sector's aim is not to support 'dumping' into the EU market, but to increase steel used domestically to maximise the social benefit.

[26] Financial Times (1 October 2020) *UK steel companies fear missing out on HS2 contracts* https://www.ft.com/content/607e2b7c-64f5-4935-9cb5-6b4e4399e18d

Alternative state aid regimes

We could argue that there is room for improvement in the current EU system in term of speeding up the decision process and dealing with the consequences for companies whose funding has been withdrawn following a reversal of the decision. But there is no need to throw the whole system out: a codified regime would also be necessary for the UK to trade internationally as no partner would be willing to give us a blank check. The government's idea that the UK could simply retain maximum freedom outside agreed rules for the international trading system is not realistic – autarchy is simply not an option for a country that is seeking to secure as many trade deals as possible.

One option is that the UK simply follows WTO rules after the end of the year, especially in the absence of an alternative trade agreement with the EU that settles this issue, as announced in early September[27]. WTO members are bound by the obligations in the WTO Agreement on Subsidies and Countervailing Measures. These rules also allow WTO members to challenge other members if they can demonstrate that a member's financial support for certain sectors unfairly disadvantages them. This could limit the UK government's ability to support, regulate or renationalise key industries. Indeed, trade unions have long campaigned for WTO rules to be reformed to allow governments more policy space to provide financial support to key industries and agriculture.[28]

Moreover, the UK has already agreed to a significantly tougher set of state aid rules in the trade deal with Japan than are required at WTO level. The UK-Japan agreement prohibits the governments from indefinitely guaranteeing the debts of struggling companies or providing an open-ended bailout without a clear restructuring plan in place. Such commitment goes beyond the basic WTO rule that a party notifies the other of subsidies rather than restricting them.

Moreover, the looser the domestic rules the less the EU would agree to a deal with the UK. It is surprising the UK has agreed to stricter state aid rules in its deal with Japan than it is conceding in its negotiations with the EU. This seems to undermine the UK negotiating position vis a vis the EU.

There is also a compromise reached by Switzerland in its draft Framework Agreement[29] with the EU that might be a useful precedent: it respects Swiss sovereignty by committing the country to set up a nationwide framework that will be enforced by a domestic supervisor, while also giving the country discretion over the precise shape of that framework to suit its domestic priorities. At the same time this gives the EU assurance against unfair competition: what the EU seeks is adequate domestic safeguards against subsidised British firms without having to impose protective tariffs on UK exports.

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[27] Department for Business, Energy & Industrial Strategy (9th September 2020) *Government sets out plans for new approach to subsidy control*
https://www.gov.uk/government/news/government-sets-out-plans-for-new-approach-to-subsidy-control
[28] TUC (16th May 2019) *Brexit: The WTO option would devastate jobs and tear up our rights*
https://www.tuc.org.uk/blogs/brexit-wto-option-would-devastate-jobs-and-tear-our-rights
[29] Eu-Switzerland Framework Institutional Agreement
https://www.fdfa.admin.ch/dea/en/home/verhandlungen-offene-themen/verhandlungen/institutionelles-abkommen.html

If the UK were prepared to commit to a rules-based domestic system with an independent supervisor, the contours of an EU-UK deal would be in sight.

The importance of transparency and accountability

The case for a robust state aid regime, based on a set of codified principles – including the legitimate objective of pursuing social development and supporting employment – and enforced by an independent regulator like the CMA seems self-evident. Just like in public procurement, such a system would be kept at arms-length from politicians who may have competing visions and a tendency to fall hostage to political pressure. A new report from the Institute for Government views a state aid regime in the national interest because it would help ensure good value for public money and limit the risk of harmful 'subsidy races' in the UK[30].

For the public to benefit from good value and for workers to get decent opportunities it is vital the system is transparent, and contracts are awarded on the basis of fair terms – as outlined above – in a genuinely open process. A transparent system would also ensure that contracts are not awarded to friends or party donors in a regime of revolving doors as has been too often the case.

Both David Cameron and Nick Clegg have both taken up posts at Silicon Valley firms after leaving office, so it should not be surprising that American big tech are well placed to get contracts or advise the government. Indeed, there's been a series of contracts that have seen tech giants drafted in to deliver medical supplies, develop contact-tracing apps and provide data scientists. Amazon, for example, has been delivering at-home Covid-19 tests using its vast logistics network, and Amazon's top UK executive will supervise work on the Government's official website by taking up a temporary role as an adviser to the Cabinet Office's Government Digital Service team, which is in charge of the gov.uk website.[31]

A transparent system with rules would also guarantee the public that their basic right to privacy was guaranteed, unlike in the case of Palantir – US tech firm that has developed a technology used by intelligence agencies and governments for surveillance and its customers include the CIA, FBI, and the US Army. Palantir has charged the NHS only £1 to access private personal data of millions of citizens[32] as part of setting up a national platform monitoring how the coronavirus is spreading across the country, along with other American companies such as Google, Microsoft and Amazon Web Services.

These companies come from a jurisdiction where data protection is much weaker than under EU rules and data is a highly sought-after commodity usually traded under data-

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[30] Telegraph (17th October 2019) *From Clegg to Cameron: Why Westminster's outcasts have found a second home in Silicon Valley* https://www.telegraph.co.uk/technology/2020/06/21/amazon-boss-advise-government-web/#:~:text=The%20Sunday%20Telegraph%20understands%20that,of%20the%20gov.uk%20website

[31] Crown Commercial Service G-Cloud 11 Call Off Contract p.7 https://cdn-prod.opendemocracy.net/media/documents/Palantir_Agreements.pdf

[32] Independent (1st March 2019) *Government forced to pay Eurotunnel £33m over Grayling's n-deal Brexit ferry farce* https://www.independent.co.uk/news/uk/politics/eurotunnel-claim-brexit-ferry-contracts-grayling-a8802681.html

sharing agreements. It is critical therefore that governments' contract make clear to providers that certain standards such as GDPR must be protected.

Another example of an opaque contract award procedure was that to increase cross-Channel transit capacity in the event of a no-deal Brexit to three ferry firms – including one company that did not have any ships, Seaborne Freight. The contract to the latter was later cancelled when it became clear the company would not have been able to provide any ferry service at all, and the government declared that no money was paid to the company. But it failed to disclose that it had to pay £33m to Eurotunnel to drop the company's claim against the government over 'secretive and anti-competitive' ferry contracts worth £108m[33]. Former Chancellor Philip Hammond said, a UK state-aid regime would not only create a level playing field for business but "protect the taxpayer from ministers who find it politically impossible to say no"[34].

A cross party group of MPs are calling for greater transparency in the award of contracts and are filing a lawsuit to force the government to reveal details of hundreds of personal protective equipment (PPE) contracts, given the number of complaints over the secrecy surrounding the deals worth £5bn[35].

Clear rules on state subsidies and a transparent process for public procurement are vital to help prevent the creation of a regime where contracts are instead awarded because of political patronage and friends in high places.

5 key principles governing a state aid regime beyond 2020

This report has set out the importance of government having the ability to support jobs and workers through procurement, industrial strategy and regional development funds. And it has shown how achieving these aims is compatible with maintaining a level playing field with the EU; state aid should be no barrier to achieving a good Brexit deal.

In negotiations with the EU, the UK has offered to lay out a series of "principles" on controlling domestic subsidies, building on provisions in the recently signed UK-Japan deal, which prevents either side from indefinitely guaranteeing companies' debts or providing open-ended rescue funds without approved restructuring plans. However, the government's principles fail to offer appropriate governance mechanisms that would ensure the principles are upheld and the EU to have recourse should the UK deviate from them.

The TUC believes that the following set of principles should guide the development of the UK's post Brexit state aid regime:

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[33] Financial Times (1st September 2020) *Hammond warns of return to '70s misery' if post-Brexit state aid not controlled*
https://www.ft.com/content/86b7eb99-2cf7-433b-ab1f-ca1059979464?segmentId=b0d7e653-3467-12ab-c0f0-77e4424cdb4c

[34] The Observer (23 August 2020) *Cross-party MPs to sue UK government for details of Covid PPE contracts*
https://www.theguardian.com/world/2020/aug/23/cross-party-mps-sue-government-for-details-of-covid-ppe-contracts

- ***Support decent jobs through social clauses in public procurement:***

Government should use procurement to support UK jobs by working strategically with commissioners and both current and potential providers (i) to map goods and service requirements and identify procurement opportunities in advance (ii) build capacity to bid and deliver through the supply chain and (iii) use intelligent, social value procurement to secure employment, labour standards, skills and environmental outcomes.

- ***Promote accountability through transparency:***

Given the scale of government outsourcing, not to mention the concerns raised about some of the contracts award highlighted above, it is concerning that neither the Cabinet Office nor the Treasury have reliable or complete data on contracts let in Whitehall, no consolidated data exists for the NHS, local government or the devolved administrations.

The National Audit Office itself points out that the there is too little information in the public domain to conduct an effective analysis of the performance, rewards and governance of major contractors delivering publicly funded services. This presents an accountability deficit - citizens and elected representatives should have easy to access information on who runs which parts of our public services. But it is also a barrier to intelligence on performance and quality that could be shared between public sector organisations, informing better commissioning decisions and driving innovation and joined up government.

We would therefore support the recommendation of Tizard and Walker in their report for the Smith Institute that "the government should compile a Domesday Book listing all significant contracts and create a central clearinghouse for evaluating the performance of companies across multiple contracts" – at least above a defined threshold of contract value.

- ***Use strategic funds in support of regional development, decent work and employment standards with a key role and voice for devolved authorities and social partners, including trade unions***

We welcome the government's commitment to maintain EU structural and investment funding levels through the UK Shared Prosperity Fund. As a minimum, the government should commit to continuing the current total allocation, but also must ensure that any change in formula does not result in a real term reduction in money to any area.

The current EU funding system requires match funding from national governments. We are concerned that this money will be subsumed into the proposed UKSPF, in effect significantly reducing the allocations. Therefore, we emphasise the need for the UKSPF to include the total money equivalent to the current EU funding agreement as well as the total matched funds. The funding owed to Wales, Scotland, England and Northern Ireland, baselined at the current entitlement for the relevant areas, should be allocated to the national governments for each to determine appropriate use and allocation.

Any governance structure or organisation which administers the UKSPF on behalf of a region/sub-region must include effective partnership working with trade unions and trade union representation in governance arrangements. The current model of LEP's and Combined Authorities has resulted in an uneven distribution of resources and capacity across England, with the LEP's management of EU funds being varied. We advocate a social partnership approach to administering and monitoring the Fund, to complement a social partnership approach to developing Local Industrial Strategies. This model is appropriate as it ensures diverse perspectives and a plurality of voices on issues of which local decision makers and businesses may not be fully aware. Trade unions offer experience and expertise in the implementation of projects, for example, through workplace learning programmes. This model also reflects the EU's commitment to involve social partners as part of the funding requirements for ESIF.

Criteria for the allocation of structural funding, through the UKSPF and the Local Growth Deals should have a focus on decent work, with demonstrable workforce impacts around employment standards, pay, wellbeing, skills and worker voice.

- ***Target support for industries and companies and their long-term development, with conditions attached in support of decent jobs, contributions to UK economy and tax base – including taking equity shares on a something-for-something basis.***

In the challenging economic environment ahead, the government will be called upon to offer support to companies or indeed whole sectors faced with reduced demand or unable to operate at all due to requirements of social distancing and other measures. The government has already played a vital role in keeping businesses from going under and saving jobs and the TUC understands the importance of government support for business at this critical time.

It is imperative, however, that this support leads to changes in corporate priorities and practice going forwards. Ongoing government support must be conditional on businesses putting in place fair pay and employment plans through union recognition and collective bargaining.

Bailouts for companies should be delivered in a way that enables the government to influence corporate behaviour going forwards. The government should take equity shares in exchange for its support and should use its influence to ensure that company resources are used responsibly and fairly going forwards.

Workers should also be given a voice at the heart of the government's strategy and the TUC has called for a National Recovery Council to oversee a strategy based on saving and creating good green jobs[36] .

- ***Help us get a good trade deal that benefits jobs and by maintaining a level playing field with the EU***

The UK government should prioritise securing a good trade deal with the EU that supports UK jobs and businesses, based on a level playing field that ensures employment rights for UK workers remain in line with those of in the EU.

Experience of state intervention and industrial strategy in the UK and across the EU suggests that progressive state intervention in support of jobs, businesses and inclusive

[36] TUC (May 2020) *A better recovery - Learning the lessons of the corona crisis to create a stronger, fairer economy* https://www.tuc.org.uk/ABetterRecovery?page=1

growth is compatible with a trade relationship based on a level playing field. This should be the priority of the UK government, particularly given the parlous state of our economy and the risks facing hundreds of thousands of jobs.