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We are writing in response to the Department for Business and Trade's inquiry on the Government's 2023 proposed draft strategic steer to the Competition and Markets Authority. This submission supports and does not supersede individual submissions made by BAB member companies.

BritishAmerican Business (BAB) is the leading transatlantic trade association, incorporating the British-American Chamber of Commerce in the US and the American Chamber of Commerce in the UK. We are committed to strengthening the economic corridor between the US and the UK, and support policies and actions that enhance the environment for transatlantic trade and investment on behalf of our members.

BAB recognises the importance of the UK government's draft "strategic steer" for the Competition and Markets Authority (CMA). While the CMA is a non-ministerial department with no direct political oversight from government and no direct reporting to a government minister, it is accountable to parliament through its annual reports and accounts. The government's steer thus has the task of influencing the CMA in setting its yearly enforcement priorities.

The timing of this strategic steer is welcome as the CMA's remit has recently been expanded in areas around competition regulation, operation of the UK internal market, government subsidies, and digital markets. On competition regulation specifically, the CMA can now investigate cases with implications for global competition. Moreover, as the CMA prepares to assume new powers once the Digital Markets, Competition and Consumer Bill is enacted, it is paramount that the Government sets its priorities for the CMA for the year ahead now.

Most importantly, the steer is an opportunity to emphasise the importance of achieving the government's objectives in attracting growth and investment to the UK. We welcome the Government's expectation for the CMA to focus on achieving outcomes that help individual consumers and businesses to meet cost of living challenges, while also boosting sustainable growth and productivity, and maintaining and enhancing the UK's position as a leading global destination for investment. We welcome and emphasise the overall intention of the steer to ensure a more pro-growth approach from the CMA.

We also welcome the draft strategic steer's recognition that robust and fair regulation is of central importance to the health and attractiveness of the UK economy. Specifically, strong and fair

competition regulation has an important role to play in increasing consumer choice, helping to address the productivity gap, and driving innovation and economic growth.

The UK Government has a strong track record of championing robust and fair competition. The opportunity and challenge in a future strategic approach will be for the CMA to balance being one of the leading global regulators with ensuring the UK is attractive and open to businesses from around the world.

In fact, while we welcome the Government's vision for the CMA to acquire more powers through the Digital Markets, Competition and Consumer Bill ("the DMCC Bill"), and for the CMA's remit to be expanded in the areas of mergers and competition law enforcement, it is important that the CMA's actions do not create an impediment to future investment. As currently drafted, the DMCC Bill will give the CMA significant new broad powers, responsibilities, and discretion, which we expect will take it some time to learn how to use most effectively – this process will necessarily involve the trial and error that is inherent when any organisation does something new. As such, the government's steer could be improved by more clearly setting out how government expects the CMA to conduct its significant new regulatory function.

There has been a growing perception among some American businesses that there is a risk of UK regulatory incentives being increasingly weighted towards over-enforcement. As such, as well as addressing the importance of robust regulation, the UK's internationally respected approach to regulation should also stand on its recognition that over-regulation can be harmful to growth, innovation and investment. The UK may risk losing trade, investment and technological innovation opportunities to what appear to be potentially more flexible jurisdictions, such as the EU. In order to help guide the CMA towards global best practice, one suggestion would be for the government to include in its steer an expectation that the CMA be biased against intervention unless it can demonstrate that its intervention will be net positive (i.e. through impact assessments and cost benefit analysis).

While we welcome the Government's vision for the CMA to intervene in markets where competition is not working well, through the use of merger control and enforcement action, the CMA should focus on making sure it strikes a balance between over-regulation and under-regulation, both of which can be just as harmful to businesses and consumers. Furthermore, over-enforcement of merger control can harm the UK by discouraging and stifling investment, ultimately damaging the UK economy and its trade and investment relationships with strategic partners, including the US. As the CMA strategic steer notes, regulators must have regard to 'their wider responsibility for economic growth'.

A measured approach is therefore crucial, striking the right balance between over- and under-enforcement, and should remain the bedrock of the UK regulatory model to sustain business confidence. One way in which the government could help the CMA achieve this balance would be by setting out more explicitly in its steer an expectation of proportionate decision making, an expectation that the CMA demonstrates that it has factored in an assessment of consumer benefits and/or harm in all its decisions, including when using its new powers under the DMCC Bill, and an expectation that the CMA demonstrates meaningful consideration of the long term and cumulative impacts of all its decisions.

BAB also welcomes that the Government's draft strategic steer includes a specific point on innovation, recommending that the CMA ensures its actions do not get in the way of innovative new products or services. The UK has a remarkable history of innovation, which drives economic growth - this should be preserved and nurtured rather than hindered to ensure businesses can thrive in the future and expand internationally, including in the transatlantic corridor.

The government could further strengthen the steer in relation to innovation by including an expectation that the CMA shows evidence that it has considered potential benefits of innovation, including any potential impact on the incentive or ability to innovate, when deciding when and how to intervene in any market.

We hope this submission is helpful and we remain open to any questions and further engagement.

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