18

Competition

VINCENT JG POWER SC

18.1 Introduction

The Withdrawal Agreement (WA) provided that EU competition law would continue to apply to Northern Ireland (as well as the rest of the UK) during the transition period (ie, up to and including 31 December 2020).[1] The WA (including the Protocol) was otherwise silent as to how competition law would apply in Northern Ireland (as well as the rest of the UK) in the longer term after the transition period specified in the WA had ended (what might be termed 'full Brexit'). This was in contrast with state aid law where the Protocol legislated for the continued application post-full Brexit of EU state aid rules to the extent that trade in Northern Ireland was affected by the Protocol[2] after the transition period ended or, more accurately, as long as the Protocol was applicable and contained the provision on state aid.[3] It was not until the Trade and Cooperation Agreement (TCA) that the EU and the UK agreed on how competition law would apply to both the EU and the UK (including Northern Ireland) post-full Brexit. This chapter examines how the TCA provides for competition law to apply and operate in this new era. It begins with an overview and then discusses various aspects of the topic including, in particular, how competition law is different in Northern Ireland after the WA and the TCA.

[1] WA Arts 126–132 (in particular, Art 127(1)).

[2] See Protocol Art 10(1). See George Peretz's incisive analysis of state aid in the context of the Protocol in Chapter 19.

[3] Protocol Art 10. See also Protocol Art 18 and, in particular, Art 18(1) which provides that Arts 5–10 of the Protocol could be disapplied by virtue of the 'democratic consent' mechanism in Art 18 of the Protocol.

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18.2 The TCA and Competition Law Generally

There is hardly a mention of competition in the WA;[4] there are no substantive competition law provisions in the WA, and there is no mention at all of 'competition' in the Protocol. Surprisingly, perhaps, competition did not even get a mention in the 'other areas of North–South cooperation' enumerated in Protocol Article 11, while a topic such as 'sport' is included.

In contrast to the WA, the TCA has several references to competition. However, despite these mentions, the five articles in the TCA dealing specifically with competition are less radical than the thirteen articles dealing with 'state aid' law or, as the TCA characterizes it, 'subsidy control' law.[5] These thirteen articles, though applicable to both parties, in effect require the UK to set up a new aid/subsidy regime, while the articles dealing with competition law largely reflect the pre-existing competition regimes at the EU and Northern Ireland/UK levels. There will therefore be less impact for Northern Ireland in terms of competition law than in terms of state aid/subsidy law. This is because it is still UK competition law (albeit influenced by the TCA) which applies in Northern Ireland[6] but, by contrast, there is the possibility of two state aid/subsidy regimes in Northern Ireland comprising: (a) the EU state aid law regime (ie, an external legal regime) to Northern Ireland (due to the Protocol); and (b) a new set of rules on subsidy control (due to the TCA). While not as radical or as significant as the area of state aid/subsidy, there are some significant provisions relating to competition in Title XI of the TCA,[7] which deals with, among other matters,[8] the key rules relating to competition (in addition to subsidy control).

[4] The word 'competition' appeared in contexts other than substantive competition law (eg, procurement law (WA Art 76(1)(a) and (3)) and in the context of procedural competition law (eg, Art 92(1)(b), Art 92(3)(c)(ii) and Art 95(2)).

[5] See the title to ch 3 of Title XI (ie, 'Subsidy Control') and the TCA Arts 363–75.

[6] EU competition law applies to conduct in Northern Ireland post-full Brexit in the same way that EU competition law applies to anywhere else in the world that is outside the EU (ie, it may well apply to the extent that the conduct has effects in the EU).

[7] That is, Title XI which is entitled 'Level Playing Field for Open and Fair Competition and Sustainable Development'.

[8] There are nine chapters in Title XI, titled: ch 1 'General Provisions'; ch 2 'Competition Policy'; ch 3 'Subsidy Control'; ch 4 'State-Owned Enterprises, Enterprises Granted Special Rights or Privileges and Designated Monopolies'; ch 5 'Taxation'; ch 6 'Labour and Social Standards'; ch 7 'Environment and Climate'; ch 8 'Other Instruments for Trade and Sustainable Development'; ch 9 'Horizontal and Institutional Provisions'. The taxation

Before turning to Title XI, it is useful to recall two recitals to the TCA which are relevant to the debate on competition. The ninth recital recognizes that there is a need for 'an ambitious, wide-ranging and balanced economic partnership to be underpinned by a level playing field for open and fair competition and sustainable development, through effective and robust frameworks for subsidies and competition and a commitment to uphold their respective high levels of protection in the areas of labour and social standards, environment, the fight against climate change, and taxation'. This therefore positions 'competition' with a range of unusual bed-fellows (labour and social standards, environment, as well as the fight against climate change) while traditionally in EU law, competition has been seen either in splendid isolation or in conjunction with state aid, taxation or perhaps intellectual property. The sixteenth recital to the TCA is specific. It notes that 'cooperation and trade between the Parties in these areas should be based on fair competition in energy markets and non-discriminatory access to networks'.[9]

18.3 TCA Title XI: The 'Level Playing Field'

Apart from those somewhat hortatory and political recitals, there is more substance in Title XI of Heading One of Part 2 of the TCA. Title XI is entitled 'Level Playing Field for Open and Fair Competition and Sustainable Development'. This title immediately demonstrates how the traditionally pure topic of 'competition' has been mixed in with 'sustainable development'. The title also demonstrates how the word 'fair' has been added to 'competition' despite EU competition law being traditionally more interested in 'free' competition rather than 'fair' competition.[10]

chapter deals with issues such as 'good governance' (TCA Art 383) and 'taxation standards' (TCA Art 384) so it is less relevant to this chapter on competition. Interestingly, there are references to tax contained in the provisions on subsidies (eg, TCA Arts 363(2)(a) and 369(2)).

[9] In this context, the term 'the parties' refers to the EU and the UK.

[10] The use of the word 'fair' to describe the form of competition which is regulated is noteworthy. While fairness or unfairness is mentioned in Art 102 TFEU, the concept of 'fairness' has not been as prominent in modern competition law as many non-competition lawyers may imagine. While it has been mentioned in some speeches by the incumbent European Commissioner for Competition, Margarethe Vestager, it is not a key part of EU competition law. Indeed, as Barry Hawk has put it so graphically in his book *Antitrust and Competition Laws* (Juris 2020) 163, 'in the current era [of US antitrust

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18.3.1 Competition and the 'Level Playing Field'

Chapter 1 of the Title provides that the EU and the UK recognize that trade and investment between the EU and the UK under the TCA require conditions that ensure (a) a level playing field for open and fair competition between the parties, with the need for 'fair' competition becoming all the greater as divergence occurs; and (b) that trade and investment take place in a manner conducive to sustainable development.[11] The parties 'affirm their common understanding that their economic relationship can only deliver benefits in a mutually satisfactory way if the commitments relating to a level playing field for open and fair competition stand the test of time, by preventing distortions of trade or investment, and by contributing to sustainable development'.[12] This mention of 'sustainable development' is historically unusual in the context of competition.[13] It becomes even more unusual by virtue of the fact that each party reaffirms, in the same context of provisions relating to competition, its ambition of achieving economy-wide climate neutrality by 2050.[14] The Title is, therefore, positioning competition in a far wider arena than it has ever appeared in the EU treaties. There are also references in the Title to concepts such as the environment,[15] human health[16] and labour conditions.[17] How competition interacts with those other concepts when these provisions of the TCA are interpreted is unclear.

Significantly, the parties have decided that the purpose of Title XI is *not* to harmonize the standards of the EU and the UK: 'the Parties recognise that the purpose of [the] Title is not to harmonise the standards of the Parties. The Parties are determined to maintain and

law] . . ., to more economics-minded observers, "fairness" is the embarrassing relative at the antitrust wedding'. What part the concept of 'fair' will play in the interpretation and operation of the TCA is uncertain.

[11] TCA Art 355. TCA Art 355(2) provides that the EU and the UK 'recognise that sustainable development encompasses economic development, social development and environmental protection, all three being interdependent and mutually reinforcing, and affirm their commitment to promoting the development of international trade and investment in a way that contributes to the objective of sustainable development'.

[12] TCA Art 355(4).

[13] On the topic, see Simon Holmes, Dirk Middelschulte and Martijn Snoep (eds), *Competition Law, Climate Change & Environmental Sustainability* (Concurrences 2021).

[14] TCA Art 355(3).

[15] TCA Art 356(1).

[16] TCA Art 356(1).

[17] TCA Art 356(3).

improve their respective high standards in the areas covered by [the] Title.'[18] This will mean that the historical convergence of competition law between the UK and Ireland brought about in the context of a shared membership of the EU over the last five decades will be replaced by divergence. Indeed, there is a built-in mechanism for divergence[19] and this divergence could manifest at both EU and UK levels (eg, the Digital Markets Act and the Penrose Report/'Hipster' competition, respectively).

18.3.2 Competition Policy

Chapter 2 of Title XI, entitled 'Competition Policy', is more familiar territory to competition lawyers. The parties recognize the importance of free and undistorted competition in their trade and investment relations and acknowledge that anti-competitive business practices can distort the proper functioning of markets and undermine the benefits of trade liberalization.[20] To implement these principles, the parties each agree to 'maintain' a competition law regime which 'effectively addresses' the three main forms of anti-competitive behaviour: (a) anti-competitive arrangements between 'economic actors', decisions by associations of 'economic actors' and concerted practices which have as their object or effect the prevention, restriction or distortion of competition; (b) abuse by one or more 'economic actors' of a dominant position; and (c) for the UK, mergers or acquisitions and, for the EU, concentrations, between 'economic actors' which have 'significant anti-competitive effects'.

One cannot help but think that many of these provisions in Chapter 2 are 'old wine in new bottles', designed to give the impression that the UK negotiators had broken free from the EU terminology and rulebook. An 'undertaking' in Northern Ireland, for the purposes of EU or UK competition law, will now be called, for the purposes of the TCA, an 'economic actor'. The concept of 'significant anticompetitive effects', in the context of mergers, acquisitions and concentrations in Northern Ireland, is probably not much different from 'substantial lessening of competition' for UK competition law purposes or 'significant impediment to effective competition' for EU competition law

[18] TCA Art 355(4).
[19] TCA Art 359(3).
[20] TCA Art 358(1).

purposes. These are very largely the same concepts but with new names.

The ultimate impact for Northern Ireland of Chapter 2 of the Title is that the UK must maintain in Northern Ireland (and in the rest of the UK) an effective competition law regime which addresses the three main issues of competition law (ie, anti-competitive arrangements, abuse of dominance and mergers/acquisitions/concentrations). The regime will apply irrespective of the nationality or ownership status of the economic actors involved.[21] Of course, while the UK will address the three main issues of competition law, it does not have to address them in exactly the same way as the EU does.

18.3.3 Electricity and Gas

It is well known that, by virtue of Article 9 of the Protocol, certain provisions of the EU law relating to wholesale electricity markets[22] apply to (and in) the UK in respect of Northern Ireland. There are also provisions in the TCA relating to competition in the electricity and gas markets.[23] These are specialist provisions, but some of the key principles are that: (a) with the objective of ensuring fair competition, each party must ensure that its regulatory framework for the production, generation, transmission, distribution or supply of electricity or natural gas is non-discriminatory with regard to rules, fees and treatment;[24] (b) each party must ensure that customers are free to choose, or switch to, the electricity or natural gas supplier of their choice within their respective retail markets in accordance with the applicable laws and regulations;[25] and (c) each party has the right to regulate in order to achieve legitimate public policy goals based on objective and non-discriminatory criteria.[26] There are also specialist provisions on the wholesale electricity and gas markets[27] (including rules on market abuse in those markets[28]). The wholesale electricity provisions in the TCA should be read in conjunction with Article 9 of

[21] TCA Art 359(2).
[22] Namely, those listed in Annex 4 to the Protocol.
[23] See TCA Arts 303–10.
[24] TCA Art 303(1).
[25] TCA Art 303(2).
[26] TCA Art 303(4).
[27] TCA Art 304.
[28] TCA Art 305.

the Protocol, which deals with the 'Single Electricity Market' on the island of Ireland.

18.3.4 State-Owned Enterprises, Enterprises Granted Special Rights or Privileges and Designated Monopolies

Chapter 4 of Title XI deals with state-owned enterprises, enterprises granted special rights or privileges and designated monopolies. The chapter applies to many (but not all[29]) so-called covered entities,[30] at all levels of government, engaged in commercial activities, but if a covered entity engages in both commercial and non-commercial activities, only the commercial activities are covered by the chapter. In essence, the chapter involves its own rules and the invocation of arrangements adopted by the Organisation for Economic Co-operation and Development (OECD).[31] Moreover, the chapter has some provisions which are pertinent in the context of competition, notably Article 380, which provides for non-discriminatory treatment by the parties of covered entities and that such covered entities would ordinarily act in accordance with commercial considerations. Ultimately, the provisions are somewhat sparse and general; it is possible (but not inevitable) that they could be augmented in subsequent supplemental agreements.

18.4 Institutional Dimensions

18.4.1 Level Playing Field Committee

There exists a 'Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development' to address the matters in Title XI of Heading One of Part 2 and Annex 27.[32] However, there is no overarching competition agency applying to the EU and the UK (including Northern Ireland). Instead, and not surprisingly, each of the parties will continue to have its own institutional machinery relating to competition.

[29] See, eg, TCA Arts 376(2) and 376(3).

[30] See TCA Art 376(1)(d) which provides that a 'covered entity' means: (i) a designated monopoly; (ii) an enterprise granted special rights or privileges; or (iii) a state-owned enterprise.

[31] Eg, in TCA, each party commits in Art 381(1) to 'respect and make best use of relevant international standards including the OECD Guidelines on Corporate Governance of State-Owned Enterprises'.

[32] Annex 27 deals with energy and environmental subsidies.

18.4.2 Enforcement and Co-operation on Competition Issues

At one level, there ought to be no difference in the enforcement of competition law in that there must be enforcement[33] with an operationally independent authority (or authorities) competent to enforce effectively competition law[34] in a transparent and non-discriminatory manner, respecting the principles of procedural fairness (including the rights of defence) irrespective of the nationality or ownership status of those subject to competition law.[35]

The EU and the UK have agreed in the TCA that there will be co-operation between them in the field of competition law.[36] The parties are committed to co-operation between their respective competition authorities with regard to developments in competition policy and enforcement activities.[37] Both sides have agreed to endeavour to co-operate and co-ordinate, with respect to their enforcement activities concerning the same or related conduct or transactions, where doing so is possible and appropriate.[38] The European Commission and the competition authorities of the member states, on the one side, and the UK's competition authority or authorities (including those relating to Northern Ireland), on the other side, may exchange information to the extent permitted by each party's law.[39] To implement this objective of co-operation, the EU and the UK may (but do not have to) enter into a separate agreement on co-operation and co-ordination among the European Commission, the competition authorities of the member states and the UK's competition authority or authorities, which may include conditions for the exchange and use of confidential information.

The TCA's provisions on co-operation on competition are both soft and limited. There are already indications that the UK's Competition and Markets Authority (CMA) will flex its muscles more post-full Brexit both nationally and internationally,[40] so this could be important in the context

[33] TCA Art 360(1).
[34] TCA Art 360(2).
[35] TCA Art 360(3).
[36] TCA Art 361.
[37] TCA Art 361(1).
[38] TCA Art 361(2).
[39] TCA Art 361(3).
[40] Eg, 'CMA joins global partners to consider approach on pharma mergers', press release issued by the CMA on 16 March 2021, www.gov.uk/government/news/cma-joins-global-partners-to-consider-approach-on-pharma-mergers.

of Northern Ireland. It would be useful if there were greater co-operation among the EU, Ireland and the UK relating to competition in Northern Ireland, so one hopes that such co-operation agreements will be adopted both quickly and thoroughly.

18.4.3 Democratic Consent Mechanism

Were the democratic consent process in Article 18 of the Protocol to result in Article 10 of the Protocol ceasing to apply in Northern Ireland, then one would have a situation where the competition law provisions of the TCA would continue to apply but the rules in the TCA on state subsidies would have even greater force and relevance for Northern Ireland because the EU state aid rules would no longer apply. This would mean that the TCA would have much greater significance as far as concerns competition in Northern Ireland.

18.5 What Will Be Different?

It is trite but true that competition law in Northern Ireland post-full Brexit will not be the same as before, despite the WA and the TCA. While there will be (at least for some time) a degree of continuity in terms of EU state aid law,[41] this will not necessarily be such when it comes to competition law in terms of the rules and/or the results of proceedings. While the TCA provides that the UK will have competition laws relating to anti-competitive arrangements, abuse of dominance and mergers or acquisitions, this does not mean that the rules themselves will be the same in Northern Ireland as in Ireland or any other EU member state.

The TCA obliges the parties to have effective competition laws, but it does not oblige the parties to have the same rules or outcomes. It is quite possible that the UK will adopt some policies and preferences (eg, protection of small businesses, promotion of innovation, promotion of UK industry and protection of certain interests) which will change the nature of competition law in Northern Ireland leading to further divergence between competition law in Northern Ireland and that in the EU. The TCA expressly allows some of that to occur.

Divergence between Northern Ireland and the EU (including its member states) is likely to increase rather than diminish. There will be certain policies (eg, the 'internal or single market imperative' which is important

[41] As a result of Protocol Art 10.

in EU competition law) that now have little or no relevance for Northern Ireland and the courts or competition agencies there.[42] In so far as there is a gradual ongoing convergence of the substantive and procedural rules on competition law across the EU, the UK (including Northern Ireland) is now no longer part of that process. This means that compliance costs for undertakings (or economic actors) and associations of undertakings (or economic actors) will grow over time as they will have to comply with two different competition regimes which will no longer be in such close harmony – this could manifest itself in additional investigations at the UK level alongside the EU ones. Parallel investigations could lead to parallel appeals with different timetables, standards, approaches and outcomes.

Important adaptations in EU competition law (eg, the Modernisation Regulation,[43] the Damages Directive[44] and the ECN+ Directive[45]) will all be largely irrelevant to the internal competition law of Northern Ireland. It will therefore become less easy, for example, to claim damages in the courts in Northern Ireland for breaches of EU competition law – but damages for breach of UK competition law remain available. Although the EU Merger Regulation (EUMR)[46] was never of enormous practical significance in Northern Ireland, there is now even less chance that Northern Irish businesses will benefit from the 'one-stop shop' under the EUMR whereby the European Commission (rather than the EU member state competition agencies) adjudicates on concentration control.[47]

[42] It would be relevant in the context of EU state aid law for so long as Protocol Art 10 applies.

[43] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Arts 81 and 82 of the Treaty OJ L 1, 4.1.2003, pp 1–25, ELI: http://data.europa.eu/eli/reg/2003/1/oj.

[44] Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union OJ L 349, 5.12.2014, pp 1–19, ELI: http://data.europa.eu/eli/dir/2014/104/oj.

[45] Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market OJ L 11, 14.1.2019, pp 3–33, ELI: http://data.europa.eu/eli/dir/2019/1/oj.

[46] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings OJ L 24, 29.1.2004, pp 1–22.

[47] Since UK turnover (including Northern Irish turnover) no longer counts for the purposes of the Union dimension within the meaning of the EUMR. See reg. 139/2004, Art 1. The UK's CMA would adjudicate on mergers and acquisitions in Northern Ireland.

Cross-border investigations will be more complicated because the CMA in Northern Ireland will no longer be as closely aligned with the Competition and Consumer Protection Commission (CCPC) in Ireland or the European Commission at the EU level. While the CMA, the CCPC and the European Commission will continue to meet and interact through the wider International Competition Network (ICN), they will no longer all be part of the tighter European Competition Network (ECN). One particular feature of EU cross-border investigations – the Article 22 investigation – has disappeared. Article 22 of the Modernisation Regulation[48] provides for investigations to be undertaken by one EU member state's national competition agency on behalf of, and in conjunction with, a counterparty agency in *another* EU member state. Such a facility is no longer ordinarily possible in regard to Northern Ireland.

Given the introduction of new rules and new concepts in the TCA, there will also be more novel and preliminary issues (eg, the new concepts in the TCA) needing to be addressed in litigation than would be the case without these new rules and concepts. The settled law relating to the comparable EU rules and concepts may be a good authority, but each new rule and concept could well be tested in the courts, leading to more delays and costs for litigants. Article 4(1) of the TCA provides that the provisions of the Agreement and any supplementing agreement shall be interpreted in good faith in accordance with their ordinary meaning in their context and in light of the object and purpose of the agreement in accordance with customary rules of interpretation of public international law, including those codified in the 1969 Vienna Convention on the Law of Treaties.[49] This means that, in so far as the TCA applies to competition in Northern Ireland, there will be a difference in approach to the way in which the EU treaties are interpreted. Interpretation matters. Interpretation of the competition provisions of the TCA will no longer have the benefit of any of the usual EU influences, which could lead to different approaches and outcomes for competition laws as contemplated by the TCA and in EU or UK law.

In one important respect, however, EU competition law will continue to apply to Northern Ireland in the way in which it does today. EU competition law will apply to trade in goods or services in Northern Ireland in so far as there is an effect on trade between EU member states in the same way as EU competition law would apply to any 'third

[48] OJ L 1, 4.1.2003, pp 1–25.
[49] https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

country'. The fact that EU competition law could still apply to (mis) conduct in Northern Ireland, and that the European Commission is able to impose fines on undertakings and associations of undertakings for breaching EU competition law, will probably come as a surprise to many in Northern Ireland. And when it applies, it will be more complex. While trade or commerce between Ireland and Northern Ireland might still trigger the application of EU competition law, for example, it will not do so as simply as it would have done before full Brexit.[50]

The continuing application of EU competition law to the UK as a third country also adds yet further 'red tape' and complications to the plethora of new laws and regimes that now apply. Not only is the UK competition law regime applicable in Northern Ireland, but there is also EU competition law (in so far as it would apply to any third country), EU state aid law provided for in the Protocol, and now the competition and state subsidy regimes in the TCA. The TCA regimes are not independent or separate legal regimes; they are frameworks or rules by which the competition and state subsidy regimes in Northern Ireland must be designed and operated.

As a result, there will be plenty of opportunity for more complication, complexity, controversy and even, sadly, some confrontation (particularly concerning UK–EU trade). The relative absence of such disputes to date may not be an accurate basis for predicting the future. The frictions and fissures which are likely to occur could have been delayed because of the postponement of the entry into force of several trade and customs-related aspects of the Protocol, changed trading patterns by hauliers and the Covid-19 crisis. Even so, there are early indications that there is already friction due to (or, at least, blamed on) these arrangements.[51]

18.6 Conclusions

The WA and the Protocol are somewhat silent on the longer-term operation and application of competition law in Northern Ireland post-full

[50] Eg, Commission Decision 89/205/EEC of 21 December 1988 relating to a proceeding under Article 86 of the EEC Treaty (IV/31.851 – Magill TV Guide/ITP, BBC and RTÉ), OJ L 078, 21/03/1989 pp 0043–0051 (http://data.europa.eu/eli/dec/1989/205/oj) where sales in Northern Ireland of the RTÉ Guide (published in Ireland) triggered the effect on intra-EU trade but that is no longer the case. Article 86 of the EEC Treaty is now largely TFEU Art 102.

[51] While few could rationally blame the provisions on competition law and policy, these provisions are part of the wide legal regimes embodied in the WA (including the Protocol) and the TCA.

Brexit – whether that be EU or UK competition law. This is in contrast with EU state aid law which the Protocol provides will apply in respect of measures which affect trade covered by the Protocol between the EU and the UK.

The case for legislating for state aid law to apply under the Protocol was strong because of the way in which Northern Ireland would have special advantages in terms of trade with the EU but still be part of the UK's customs territory[52] and the possible destabilizing effect of UK (or, indeed, EU member state) state aid on trade. However, one could see private (rather than state) breaches of competition law (whether relating to anti-competitive arrangements or abuse of dominance or both) having similar negative effects on trade. In practice, the negotiators of the Protocol probably feared the possibility of a damaging intervention in the marketplace by the UK in terms of state aid more than the intervention of undertakings and associations of undertakings; as a result, the Protocol addressed state aid but not competition law, except in the limited way discussed.

The broader issue of competition law needed to be addressed as part of the TCA. Undoubtedly, the TCA does this in a unique way. Traditionally, competition has been seen in EU law either in splendid isolation or in conjunction with state aid, taxation or perhaps intellectual property. The TCA, however, has positioned 'competition' within a range of unusual bed-fellows (including labour and social standards, the environment, and the fight against climate change). It will be interesting to see how the provisions in the TCA will eventually be interpreted in this context. Given the approach to the interpretation of the TCA[53] and the absence of the EU's internal market imperative, it is possible that competition could be given a lesser role than has been the case in the past or in an EU context. Could, for example, the provisions on 'competition' be given less significance and importance than, say, 'sustainable development'? The future of competition law in Northern Ireland is not only uncertain; it also looks to be very different. The historical convergence of competition law between Northern Ireland (and the rest of the UK) and the EU member states (including Ireland) brought about through shared EU membership will now be replaced by divergence to a greater or lesser extent.

[52] Protocol Art 4.
[53] TCA Art 4(1).