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Response to consultation on the Growth Duty, Draft Statutory Guidance, Department for Business and Trade.

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The Growth Commission

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Response to consultation on the Growth Duty, Draft Statutory Guidance, Department for Business and Trade.

Consultation questions

Overarching:

1. The draft revised guidance sets out economic growth as ‘Sustainable Economic Growth’. This is in line with the recommendations of the McLean report and the Financial Services and Markets Act.

Do you have any views on this definition of economic growth?

Economic growth is best measured in terms of increasing GDP per capita. For growth to be sustainable it must be long term growth in GDP per capita terms. The Growth Commission’s work concludes that economic growth can be achieved by maximising a country’s openness to trade, the competitiveness of its market, and how well it protects property rights.

Sustainable growth needs to be further defined in order for it to be understood by regulators. There is a danger that if environmentally sustainable growth is an objective, then there will be a confusion between policy objectives. More importantly, there is no universally accepted way to measure environmentally sustainable growth, so it could not be used to measure regulatory performance or hold regulators to account. Even the McLean Report recommendations[1] suggest redefining growth as sustainable growth in the context of the UK’s Net Zero mission, but then goes on to suggest that factors of economic growth: innovation, competition and productivity, should be used to clearly assess the impacts of regulators ‘work on growth’. Innovation, competition and productivity are not relevant measures of the UK’s Net Zero mission. But altering a regulator’s statutory obligation from economic growth to growth in the context of Net Zero is likely to create confusion amongst regulators as to their more important regulatory duty as well as opening up the opportunity for spurious legal claims against regulators on the grounds of the environmental impact of their decisions and activity.

[1] *_8243__GCSA_Pro_Innovation_cross_cutting_Report_PDF.pdf(publishing.service.gov.uk)

It is possible to pursue GDP per capita growth as a duty or a responsibility, and to pursue environmental objectives separately, but not to pursue both in the same “Growth Duty”. We advocate limiting GDP per capita growth to the long term economic growth we highlight above.

The prudential objectives are already enshrined in regulatory duties (indeed it is why regulators exist). The point of the “Growth Duty” is to ensure that as regulators pursue those prudential goals, they do so in a manner that does not sacrifice GDP per capita growth unduly. By suggesting that both prudential and economic growth objectives can be subsumed in a single duty, the draft guidance risks negating the value of either consideration to regulators, and putting even more emphasis on the prudential objective. The purpose of imposing a “Growth Duty” on regulators is precisely to ensure that prudential goals are achieved in the least distortive manner possible.

2. The draft revised guidance outlines that economic growth has a number of different drivers and behaviours and describes some, but does not attempt to provide an exhaustive list.

In this way, is the revised guidance clear on the Government's exectations of regulators on meeting the Growth Duty?

There is a danger in trying to list out every factor that could lead to growth, that regulators will receive confused signals from guidance, and will thus be unable to meaningfully execute on any Growth Duty. It is better to focus on the key areas where economic growth will likely result by being more specific about the constituent elements of the Growth Duty.

These elements, we believe, should be maintaining the openness of the trade regime; competition policy as an organising principle for the economy; (with competition envisioned as the maximisation of productive and allocative efficiency); and property rights protection. These are fundamental to growth, as noted by the Growth Commission's Growth Budget.[2]

Also fundamental to effective economic growth is regulation of the six economic arteries of: Land use planning, housing, transport and communications, finance and energy. Regulation of these arterial sectors drives the rest of the economy and so it is important to ensure that they are competitive and innovative. In 2019 these sectors contributed £653.4 billion in costs to other sectors of the economy, about 47% of the total purchases of goods and services.[3]

[2] - The Growth Commission (growth-commission.com)

[3] SINGHAM, Shanker and McWilliams Douglas, Making the UK more successful through better regulation, Paper Three, The Growth Commission (2023)

3. Do you have any examples of behaviour that encapsulate the application of the Growth Duty that the guidance would benefit from using as case studies?

Any area of regulatory promulgation that impacts trade openness, competition or property rights protection in theory implicates the Growth Duty. A prudential approach can consist of many different elements which have different impacts on these areas. For example, concerns about the fiscal stability of the banking sector may be addressed by an across-the-board capital adequacy requirement. This might well have the effect of causing certain banks to exit the market – having a negative effect on both competition and potentially trade openness (to the extent that foreign banks are affected). On the other hand, the same prudential result can be achieved by proportionate regulation where capital adequacy ratios take into account the size of the bank. This would have fewer growth-damaging consequences (by reference to trade and competition openness), but achieve the same or similar prudential goals.

The application of the precautionary principle in the area of SPS goods can be carried out in a way that damages competition and trade, but may not necessarily be better at ensuring the protection of consumers. In general, the issue is not whether the prudential regulation is required at all, but rather how it will be applied.

An example which demonstrates a process in how we could better apply The Growth Duty, we note past failures on similar Government commitments to economic analysis of policy decisions and what process must be undertaken for The Growth Duty to be effective. An example of poor process when applying economic analysis to policy making process was noted in the Growth Commission's third paper, where a Business Impact Assessment has yet to be published on the cost of the Government's decision to ban the production of Internal Combustion Engine vehicles from 2030.

This is despite its progress through the parliamentary process and being a legal requirement and has resulted in the policy's economic impact avoiding any public or parliamentary scrutiny. For the Growth Duty to be an informative exercise on its contribution to growing the UK economy, an economic assessment on the impact on growth, (specifically the on impact to GDP per capita) The Growth Commission would advise a 'Business Impact' assessment on any policy or decision's impact on GDP per capita, should be a legally binding commitment which is released and available to the public ahead of any further political engagement or parliamentary process.[4]

Another example which demonstrates the potential of The Growth Duty to grow the economy is where OECD evidence has shown that even a relatively small improvement in the quality of regulation can boost GDP by 5%, which is likely to multiply over the longer term.

A particular case study we would recommend is changes in regulation in the 1980s and 90s in Australia and New Zealand, which produced boosts to GDP of 20-25% over a 25 year period associated with packages of regulatory reform. In the case of Australia, the impact of proactively ensuring that competition considerations played a dominant role in regulatory promulgation, encouraged by its productivity commission, has had a significant impact on the Australian economy. The multiplier of the total GDP effect of regulatory reform proved to be about five times the initial cost-based estimates of the benefits.

[2] SINGHAM, Shanker and McWilliams Douglas, Making the UK more successful through better regulation, The Growth Commission (2023)

Case Studies:

We highlight some hypothetical case studies illustrating how prudential concerns can lead to damaging impacts on GDP per capita. This is not to say that one would not regulate where GDP per capita is lessened, but rather that it is important to know what the GDP per capita impact actually is before deciding whether a particular regulatory approach should be pursued.

1. Prudential concerns in banking suggest high capital adequacy requirements (application of Capital Requirements Regulations (EU), but these can have anti-competitive effects by causing some banks to exit the market, leading to a lessening of competition. If the regulator does not consider the impact on competition, there is no downward pressure on this requirement to be as least anti-competitive as possible. Under the plans we propose, the regulator now knows the cost to GDP per capita of proposed regulation and can properly evaluate whether the cost is worth paying to achieve the prudential goal, or whether there are other ways of achieving the prudential goal.

2. The application of environmental targets (Net Zero or otherwise) are used by the regulator (consistent with the McLean Report and Financial legislation described in question 1) to apply a regulatory framework in the banking sector that causes small banks to exit the market as they cannot fulfil these mandates. The impact on growth as we have defined it in this consultation is that competition in the financial markets declines as firms exit the market. This leads to a reduction in GDP per capita based on our ACMD/Growth Commission micro-model that is measurable. Once again regulators can now weigh the environmental objective against the costs incurred. The public can also evaluate their approach to the environmental objective based on the impact its eventual realisation will have on GDP per capita.

3. Delays in regulatory decision making (especially in areas like planning) can lead to erosion of property rights (property owners are limited in what they can do with their property). A reduction in the quality of property rights also leads to a reduction in GDP per capita according to the ACMD/Growth Commission Micro Model. Speed of decision-making is therefore an important factor which regulators should bear in mind as it directly impacts economic growth (as measured in GDP per capita terms).

4. Responses to climate change suggest mechanisms to deal with carbon leakage such as the EU CBAM. If the UK follows CBAM directly, then this will raise tariff barriers to the UK's trading partners and lead to a decline in the openness of its trade regime, the first pillar of the ACMD/Growth Commission Micro Model. A reduction in the international trade pillar of 15% leads to a 7.6% reduction in GDP per capita over the length of time it takes for that change to take effect. As the UK regulators determine precisely how the UK's approach to carbon leakage should be applied, they can evaluate different mechanisms that have different GDP per capita impacts more easily.

These studies also demonstrate that there are significant GDP per capita losses attributable to following a version of the Growth Duty highlighted in question 1.

[2] SINGHAM, Shanker and McWilliams Douglas, Making the UK more successful through better regulation, The Growth Commission (2023)

4. Is there anything you think the draft revised guidance should or should not reflect?

The Growth Commission's micro model is based on the Singham-Rangan-Bradley ("SRB") model of Anti-Competitive Market Distortions ("ACMDs") (now the Beta-SRB model). This is the first model of its kind which provides a basis for evaluating the impact on GDP per capita across the three critical pillars of trade openness, competition and property rights protection.[5]

Trade Openness

Other countries already require regulators to consider impact on trade in their regulatory promulgation efforts (see US treatment detailed below).

Competition

While it is generally accepted that regulators should consider the impact on competitiveness of their regulations, this can be an ambiguous ask that regulators may find difficult to operationalise. We suggest that a better (and easier to operationalise) benchmark is the impact of regulations on competition.

For a detailed treatment and analysis of the SRB Model and its progeny, see Singham and Abbott, Trade Liberalisation, Competitive Markets and Domestic Regulatory Reform (Routledge 2023);

[5] Alden F. Abbott, and Shanker A. Singham 'Enhancing welfare by attacking anticompetitive market distortions' (2021)Revue Concurrences No. 4-2011, Art. No. 39547; Shanker A. Singham 'Freeing the Global Market: How to Boost the Economy by Curbing Regulatory Distortions' (Council for Foreign Relations , October 2022) < https://www.cfr.org/sites/default/files/pdf/2012/09/CFR_WorkingPaper15_Singham.pdf>; Shanker A. Singham and U. Srinivasa Rangan, The effect of anticompetitive market distortions (ACMDs) on Global Markets (2014) Concurrences

Property rights protection

Property rights protection is an important contributor to GDP per capita gains. The Growth Commission Micro/ACMD Model shows that where property right are eroded, GDP per capita is lessened.

The Beta-SRB model has been used to generate the ACMD-Growth Commission model which correlates these three pillars with GDP per capita movements and finds significant correlation between them.

Movements of one unit (on a scale of 1 to 7) in each pillar can lead to significant GDP per capita increases. For the UK, a one point positive movement in each of the pillars translates to the increase in GDP per capita of between 12.1% and 13.3% (domestic competition), 6.5%-11.1% (property rights), and 7.6% (property rights). Since regulators already have prudential requirements in their regulatory areas, growth must continue to refer to economic growth. And since regulators are regulating private firms, their obligation under Section 108 of the Deregulation Act 2015, to promote economic growth, known as the "Growth Duty" must be understood in terms of improving sustained economic growth. Economic growth is well defined and measurable, so can be an effective tool for evaluating regulatory effectiveness.

Other countries require regulators to consider the impact on the economy and trade of their regulatory promulgation efforts and to produce for cost benefit analyses of any new regulatory proposals. We would recommend that the UK follows the US Regulatory Impact Analysis (RIA). Which requires agencies proposing economically significant regulation to produce a regulatory impact analyses that includes: a justification for the regulation; a baseline and time horizon for the financial analysis, a range of alternative regulations, identify and monetised the benefits and cost of both the proposed regulation and the alternatives; discount any future benefits and costs; evaluate any non-quantifiable or non-monetised benefits or costs; and most importantly explain any uncertainly in the results.[6]

This US quest to improve its regulations started under President Reagan whose Executive Order 12291 first introduced the RIA.[7] President Clinton added to this with Executive Order 12866 in 1993 requiring a cost benefit analysis of any new regulation that was economically

[6] *Circular A-4, "Regulatory Impact Analysis: A Primer" (whitehouse.gov)

[7] Executive Order 12291—Federal Regulation | The American Presidency Project (ucsb.edu)

significant, defined as having an annual effect on the economy of more than $100 million or adversely affecting the economy, productivity, competition or jobs. President Biden has since increased the economic significance limit to $200m.

President Obama extended the requirement to improve regulation with executive Order 13563 which reaffirmed the principles of E.O. 12886 but added that regulations must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. President Obama's additions also encouraged agencies to coordinate their regulatory activities to reduce the burden of regulation while maintaining flexibility and freedom of choice for the public.[8] The Executive Order also provided that regulators must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.[9]

Austrailia also requires the use of cost benefit analysis taking into account all of the positive and negative effects of a proposed regulation, to assess regulatory proposals in order to encourage better decisions making and discourage regulators from making decisions based on the impacts on a single group within the community.[10]

Australia also requires all policy proposals with a direct bearing on trade performance, to produce a trade impact assessment (TIA) which must be incorporated into the Impact Analysis to give the decision maker a summary of the impact of policy options and the overall impact on Australia's international trade.

The lesson for the UK from these countries is the need to keep regulatory impact assessment focused not only on business compliance costs but critically, also on the impact on the three pillars of the Growth Commission/ACMD Model.[11]

[8] Summary of Executive Order 12866 - Regulatory Planning and Review | US EPA

[9] Executive Order 13563 -- Improving Regulation and Regulatory Review | whitehouse.gov (archives.gov)

[10] Cost-benefit analysis Guidance Note (pmc.gov.au)

[11] Trade impact assessments (pmc.gov.au)

Reporting:

5. Do you consider that the Government should commence the statutory reporting requirement of the Growth Duty in Section 110A of the Deregulation Act 2015?

Having a statutory responsibility is a key requirement as forcing regulators to explain the application of the growth duty in regulatory promulgation. Assessing the impact of regulation on competition and trade is not controversial or new. Indeed, the OECD and ICN have precisely recommended this in the Competition Assessment, Regulatory Toolkit and ICN competition advocacy materials.

However, despite this, no G7 country properly adopts this in their regulatory promulgation, suggesting that unless there is a statutory duty, this provides political decision makers further opportunity to enforce trade barriers. However, regulators should be allowed to fulfil their statutory obligations by free form reporting subject to the following minimum requirements:

- **i.** They must respond with best available metrics on what the impact of regulation might be on the three economic pillars of property rights, trade openness and competitive markets as discussed above.
- **ii.** They may respond in narrative form, but such narrative must cover at a minimum description of the regulatory action, the impact on each of the three pillars (using the Growth Commission/ ACMD midel or other similar metrics which they must then explain).
- **iii.** The treatment of the impact on trade must include a dynamic analysis of trade effects.
- **iv.** The treatment of competition must reference to the impact on both productive and allocative efficiency of the market being considered.
- **v.** The treatment of property rights must include the impact on both tangible and intangible property rights.

We are concerned that the consultation suggests that there will be a standalone statutory report on the Growth Duty generally. We do not think this will be helpful unless each treatment of regulatory action (or inaction) is accompanied by a statutorily required analysis of the impact of that action on the three pillars set out above. The Growth Commission believes that the costs must be calculated in a transparent manner so that the public can understand why regulatory actions have led to economic gains as well as to economic losses.

We query why a regulator would ever be considered too small to fulfil their reporting function or why the costs of doing so would be disproportionately larger than for other regulators. We presume regulators are only small because they have fewer providers to regulate, or fewer regulations to enforce, so they should have the capacity to produce a detailed report. That is what they were established to do, after all, and we doubt the Government has established any regulators that are too small to do the job required of them.

However, small regulators could limit impact by drawing on the input and advice of relevant DBT officials and the Competition and Markets Authority with regard to impact on competition. We do think the input of these agencies/regulators should be in the statutory provisions, so that CMA and DBT views must be sought by the regulators as part of their statutory response. We consider that the views of DBT and CMA must be required statutory inputs, because in the past CMA has weighed in on regulatory matters and then been ignored (rail review, 2015, energy review and OFGEM).

The CMA did look into the energy sector with the specific emphasis on competition and noted:

"The rules and regulations governing energy markets are set out in legislation, licence conditions and codes. These regulations have a profound effect on the nature and form of competition in both wholesale and retail markets, and we are therefore concerned that some key aspects of the structure and governance of the regulatory framework – including the roles and responsibilities of institutions and the design of decision-making processes –increase the risk of policies being developed in the future that are not in customers' interests and inhibit the development of policies that are in their interests. We also consider that elements of this framework have contributed to the lack of trust in the sector that many parties have highlighted in the course of our investigation."[12]

[12] Competition and Markets Authority, 2026, Energy market investigation, Final Report (2016)

The CMA has made recommendations regarding improving competition in the market for passenger rail services. The rail sector in the U.K. was privatised in the 1990s, but competition problems remained, because the government remained in control of the network itself, and regional monopolies were created that did not compete. The lack of on-rail competition has been highlighted by the CMA's report on increasing competition in the rail sector in 2016. Network Rail is owned by the government and charges access fees for use of the track to rail franchisees. In-market competition is quite limited (where you have multiple franchisees for a single route). But this is precisely the competition that will have an effect on price and cost. The decision in 2001 to reduce the number of franchisees has severely limited this competition. CMA acknowledges that on-rail competition would have significant competition benefits for both price and service.

Competition is a key element when considering growth and defining the term in regards to "The Growth Duty" As part of our work at The Growth Commission, we have proven three core cariables which is altered, have significant impact on GDP per capita growth. These are Competition, Property Rights and Trade Openness. As part of our investigation into regulators adopting competition, we observed that in cases where the CMA has made recommendations to regulators to encourage competition, these have either been delayed or not adopted at all. We draw examples from Network Rail, National Grid and Ofgem in our Growth Budget 2023. We would recommend that for "Growth Duty" to be effective in terms of growing the economy via the measurement of GDP per capita 'Growth Duty' should include a definition which instates competition as a key variable in any assessment carried out under the Growth Duty, with a clear calculation as to whether a decision or policy increases competition.[13] If regulators are to seek advice from the CMA to support their economic analysis to inform their decisions (and fulfil their Growth Duty) there must be a clear way of tracking the implementation of these recommendations and a frequent and public update from regulators on their progress on implementing CMA recommendations.

[13] McWILLIAMS Douglas, Shanker Singham, *The Growth Budget 2023*, Paper Four, The Growth Commissions (2023)

6. The consultation document sets out a high-level alternative approach for non-statutory reporting.

Would this approach deliver improved outcomes compared to the statutory requirement? Would this approach ensure suitable levels of transparency and accountability? Do you have any other comments?

The Growth Commission would advise an assessment of any policy or regulation for its impact on GDP per capita. This should be a legally binding commitment which is published ahead of any further political engagement or parliamentary process.

In order to prevent the negative economic impacts which comes from a lack of competition and trade protectionism, it is vital that there is some actual, legally binding requirement on regulators to at least explain how the actions they are considering would actually lead to an improvement in trade openness, competition and property rights protection. Where there is a net cost to the policy or regulation, that cost must be made explicit and must be published ahead of the parliamentary process.

Their explanations in these areas will provide the basis in which to understand a policy's impact on GDP per capita.

The Growth Commission has developed two economic models to forecast the effect of certain policies on GDP per capita. To do this we have created two models, a macro model and a micro model. The Micro model (also known as the AMCD model) has been developed over the course of fifteen years and demonstrates the effects on GDP per capita derived from three main variables/categories (Competition, Trade Openness and Property Rights) which the majority of regulations (we call market distortions) fall under. For each category we have allocated "sub-values" which inform these pillars (Efficiency of Judicial System, Intellectual property Protection, Integrity of the Legal System, Enforcing Contracts, Resolving Insolvency) these are then broken down into other data variables which are informed by data from a variety of known global indexes. The effect of a regulation on GDP per capita can be calculated using this method. This model has been proven to demonstrate an increase in GDP per capita.[14]

[14] McWILLIAMS Douglas, Shanker Singham, *The Growth Budget 2023*, Paper Four, The Growth Commission (2023)

We also note the track record of regulators and Government departments publishing the economic impact reports of activity and for policy decisions within regulators, has been poor despite being a legally binding commitment. For example, a Business Impact Assessment on the cost of regulation regarding the Government's environmental policy; Ban of Combustion Engines from 2030, is yet to be published despite its progress through the parliamentary process and being a legal requirement. This has resulted in the policy's economic impact avoiding any public or parliamentary scrutiny.

For the Growth Duty to be an informative exercise on any regulation's contribution to growing the UK economy, an economic assessment on the impact on growth (specifically on the impact to GDP per capita), must be publicly published ahead of the parliamentary process.

7. Considering the plurality of regulators and regulated sectors, which metrics would be effective for regulators to report against, to enable a comparative assessment of their applications of the Growth Duty?

We recommend for the areas of impact on trade, competition and property rights, that the Growth Commission Models (specifically the ACMD or SRB-Beta model) be used to assess impact (measured in GDP per capita). There are other ways of assessing the specific impact of an action on competition, such as the ordinary tools of merger analysis (determining whether a particular merger will substantially lessen competition). For these purposes a regulatory intervention in the market can be proxied by a merger or acquisition, and the usual methods of determining anti-competitive effect can be used.

As mentioned previously, The Growth Commission has developed two economic models to forecast the effect of certain policies on GDP per capita. The Micro model (also known as the AMCD model) demonstrates the effects on GDP per capita derived from three main variables, property rights, domestic competition, and trade openness.

Broadly, anti-competitive government policy affects the way the market functions through one of these variables. For each variable we have allocated "sub-values" which inform these variables (for example, property rights can be broken down into: Efficiency of Judicial System, Intellectual property Protection, Integrity of the Legal System, Enforcing Contracts, and Resolving Insolvency) these are then broken down into other data variables from a variety of known global indexes. The effect of a regulation on GDP per capita can be calculated using this method.

Movements of one unit (on a scale of 1 to 7) in each sub-value can lead to significant GDP per capita increases. For the UK, a one point positive movement in domestic competition translates to increase in GDP per capita of between 12.1% and 13.3% (domestic competition), a one point positive movement in property rights produces an increase in GDP per capita of between 6.5% and 11.1%, and a one point increase in trade openness is on average associated with an increase in GDP per capita of around 7.6%.[15]

[15] ibid

Regulatory Agility:

8. Would the International Fast Track outlined in this consultation help to improve the speed of regulatory decision making? What would you expect the impacts of such a process to be?

We agree that where another regulator in a trusted jurisdiction has already approved the product, we should generally approve it as well. This was agreed already for pharmaceutical products approved by the MHRA, EMA or FDA (UK, EU or US). We suggest more regulator-to-regulator dialogues to facilitate this international fast tracking process. The consultation suggests that international fast tracking would affect the speed of the decision but not its outcome.

We agree that international fast tracking should be adopted to speed up decisions, but we question why the outcome of decision making should not also be affected (as is the case for the pharmaceutical example we have suggested).

We suggest a tiered trusted regulatory approach. Under this approach, there would be different levels of trust between the UK regulator and other regulators. At the highest level of trust, such as is the case for medicines between the UK, US and EU, an approval in one would count as approval in the UK. At lower levels of trust, international fast tracking could apply to the process but not the substantive outcome.

However, we question why International Fast Track approvals should cost more, as suggested on page 17 of the Consultation Document, if the majority of the work has already been done by international regulators. If anything, such a process should cost less.

If however, you are suggesting that all regulatory approvals should be a two speed process, dependant on how much an applicant is willing to pay, you are implying that faster approval is possible now, but that it would require additional staffing. We question why is it not regular service? Which business would opt for a slower approval for a licence, permission or product approval? Maybe better incentives for regulators would produce quicker approvals. Regulators have nothing to gain from processing applications with greater speed. Without an incentive, the price of applications would increase but the time taken would eventually return to its previous level.

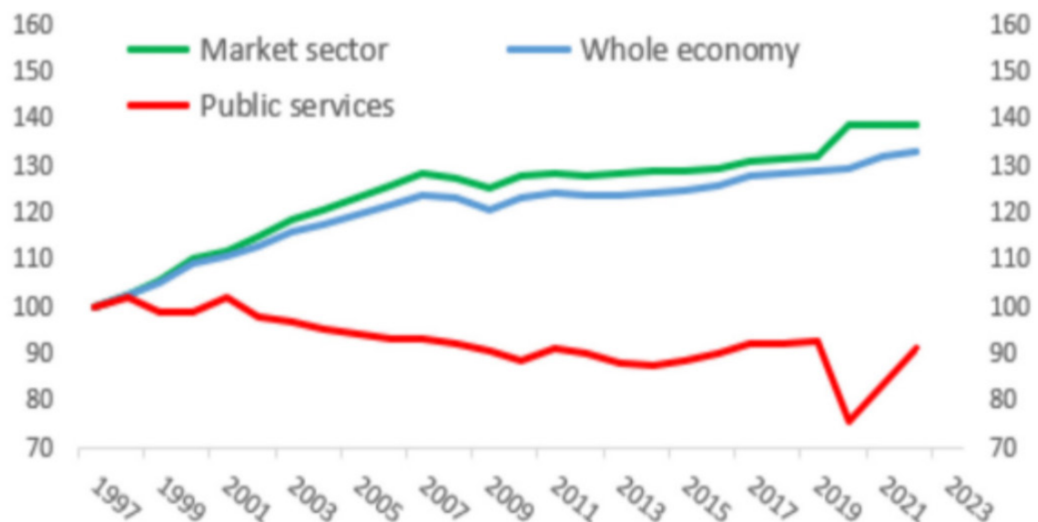
9. What is your view on the proposed Targets for Regulatory Approvals as outlined within this consultation document? What impact would you see from the enactment of this?

We believe that targets for approvals in terms of timing are always important provided they are real, and do not perversely lead to unnecessarily high levels of rejections or blanket approvals to reduce a backlog. We are not convinced by the connection between regulator approval times and UK productivity. Indeed, a case can be made that rapid responses on regulatory approvals are particularly needed when the economy is NOT doing well. This is when it is most important that new products that could lead to higher productivity in the economy should be quickly assessed. We also note that public sector productivity is particularly low (see graph below).

Public sector productivity

Figure 22 Rise in general government spending as % of GDP 2019-28 forecast by IMF

Output per hour worked (1997-2022)
(Index where 1997=100) (Data source: ONS)



10. What is your view on the proposed Productivity Lock as outlined in this consultation document? What impact would you see from enactment of this?

We are not convinced by the Productivity Lock or the connection between UK productivity and the regulators' responsibilities. The critical point is that regulators should be subject to strict timelines, and they should feel pressure to keep to these deadlines. We believe correlating this to general productivity is overcomplicating what should be a simple and straightforward issue. Given low public sector productivity, we believe driving deadlines is vital. Those who are subject to regulatory actions are entitled to expect timely actions, and they should have legal ways of forcing the regulator to act in a timely fashion. The only way we have found that actually works to impose strict time limits is to reverse the burden of proof, so that if the regulator does not act, then the regulated entity is entitled to rely on this lack of action in a timely fashion, as tacit approval. This is especially true when it comes to planning regulatory actions.

Monitoring:

11. In your view what would be the best way to monitor the regulatory application of the Growht Duty? Would would best undertake this role? What would be the most effective comparative metrics to assess performance against the Growth Duty?

There should be a regular regulatory stocktake to assess how regulations chosen have impacted markets across the dimensions of trade openness, competition on the merits as an organising principle and property rights protection. This could be done in a yearly report by the regulator concerned. Yearly reviews by DBT and CMA of particular regulators' approaches to trade and competition would also be very valuable. The critical thing is for regulators to know that there will be some time of ex post review on a regular basis of their inclusion of these issues.

Periodically, it would be valuable to look back for a longer period of time, and do an ex post analysis of the impact of regulatory decisions on a market over a ten year period. Regulators and competition agencies do not engage in this type of ex post analysis and it can be very important in understanding the actual real world impact of decision making and whether the projected impacts actually occurred.

The US Federal Trade Commission under Chairman Bill Kovacic did engage in this type of analysis (the FTC at 100 project).[16] Reviews of past decisions and performance are very useful and have revolutionised safety in the airline industry.

[16] The Federal Trade Commission at 100: Into Our Second Century | Federal Trade Commission (ftc.gov)

Other:

12. Do you have anything else you would like to raise that is relevant to this consultation?

Since regulators already have prudential requirements in their regulatory areas, any Growth Duty must continue to refer to economic growth, as it is generally understood (i.e. impact on GDP per capita). And since regulators are regulating private firms, their obligation under Section 108 of the Deregulation Act 2015, to promote economic growth, known as the "Growth Duty" must be understood in terms of improving GDP per capita. More importantly any variable used to evaluate performance must be unambiguously measurable. Economic growth, defined as GDP per capita, is well defined, universally understood and measurable, so can be an effective tool for evaluating regulatory effectiveness.

The Growth Commission's academic work shows that private sector economic growth can be achieved by maximising the openness of a country's trade regime, how competitive its market is, and how well it protects property rights. Regulators should be required to consider and calculate the impact of their regulations on these three variables.

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