

The UK Falls Into an Elephant Trap of Its Own Making on Brexit



It is the quiet before the storm on Brexit. After a three-week summer break, UK and EU negotiators reconvene this week for another round of talks. They have just several weeks to overcome the key obstacles to a deal—disagreements on state subsidies and fisheries—and to complete a treaty running to hundreds of pages before the end of October when EU leaders expect a ready agreement.

Boris Johnson insists that a good deal can still be found. Yet, as the UK prepares for the endgame of the negotiation, the prime minister may find himself disappointed. His current strategy leads him into a trap of his own making – when he has abandoned all UK offensive interests and boxed himself in between accepting a thin deal on the EU's terms and a disruptive no-deal.

The UK now has to shift its strategy: either it scales back its ambition for trade or pivots on 'level playing field'

So far, Boris Johnson's government has prioritised two distinct—and not entirely consistent—objectives in the negotiations with Brussels. It has, on the one hand, fiercely argued for a classic free-trade agreement—a neat replica of the EU's previous deals with Canada and Japan—without any special rights or obligations. On the other, British negotiators have asked the EU for far more than is typically granted to countries outside the single market. Their asks include, for example, recognising the qualifications of British professionals within the bloc of the 27 countries or putting the EU's "equivalence" regime, which UK financial services firms will use to access the EU's market, on a more stable footing.

It is completely reasonable for the UK to defend its offensive interests in the negotiation over a trading relationship that covers 45 per cent of all UK exports. But after four months of talks, and with just several weeks left to find a compromise, the government now has to choose how it adjusts its negotiating offer. It either scales back its ambition for trade—by dropping its services ask and accepting potential future tariffs—in return for fewer level-playing field obligations.

Or, it takes a more forward-leaning stance on the level-playing field, for which it seeks concessions from Brussels on its offensive interests: services sectors and fisheries.

Officials on both sides now say that the UK is leaning towards the first option. In the last round of talks, David Frost, chief UK negotiator, indicated this clearly to his counterpart, Michel Barnier. According to one EU diplomat, the UK has now opted for a “low-quality” deal—a thin agreement that would provide mostly tariff-free trade but offer little for the UK’s critically important exports of services to the EU, which last year totalled £130 billion, or almost 6 per cent of UK GDP. Lowering ambition for trade would also mean accepting new tariffs in the future, which could be imposed as retaliatory measures if either side gave their companies a potential unfair advantage.

Scaling back ambition on trade doesn’t mean a free-for-all on state subsidies

That the UK is prepared to drop most of its offensive interests in the hope of getting away with fewer obligations reflects a deep hostility in Downing Street towards any agreement that would tie Britain into constraints on its regulatory sovereignty. EU state-aid and procurement rules, in particular, are an anathema to Dominic Cummings, the prime minister’s chief advisor, for whom freedom from EU rules is key to the radical transformation of the state and economy that he seeks to pursue.

Mr Cummings is said to like ‘superforecasting’ as a tool for making better policy decisions. Yet the government’s present strategy not only deprives the UK of the opportunity to secure its offensive interests—on services—with its largest trading partner, but it also leads the government to at least two serious miscalculations.

The first is the assumption inside Downing Street that a lower ambition on trade would push the EU into “a zone of possible agreement” by lowering the EU’s expectations for commitments on state aid. The problem for No10 is that the EU27 made up their mind about the need for “robust level playing field guarantees” three years ago and have clear expectations from Britain if it wants to have preferential access to their lucrative single market of 450 million customers. Michel Barnier is in a difficult position now as he threads a thin line between finding a compromise with London and appeasing high expectations of key member-states.

Indeed, they are already concerns among several EU states that Mr Barnier is “too soft” towards the UK.

The best outcome the prime minister and his advisors can wish for is to push Brussels away from its insistence that EU rules are to be used as a reference point for judging future divergence. The middle ground could be found if the prime minister offered more clarity on its post-Brexit state-aid regime. EU officials, even at the risk of upsetting more hardline member-states, are now indicating that they could drop their initial ask for the UK to follow the bloc’s state-aid rules for a less stringent alternative, if the UK can show a robust domestic system with an independent domestic regulator. But EU officials are privately clear that they won’t be able to moderate the demands of member-states with anything less than that. It would be a mistake for Downing Street to believe that Britain could have the complete free-for-all on state aid. The deal, in the EU’s eyes, is possible only if both sides bind mutual trust through clear and enforceable rules. It is an act of oversight, not a calculated strategy, to believe otherwise.

If it miscalculates now, the UK will find itself forced to choose between a thin deal on the EU’s terms and no deal

Worse, this strategy will put the UK in a very hard position in the endgame of the negotiation. If there is one lesson that the prime minister and his advisors ought to learn from the tortuous saga of the Brexit years, it is that Brussels excels at dominating the process. It will shy away from making any big concessions until the clock runs out. Then, when it confronts the prime minister with an oven-ready treaty text prepared in advance by EU lawyers, Boris Johnson will find himself facing a stark choice between accepting a bare-bones trade deal—asking the UK to commit to rules on state-aid but without any quid pro quo on the UK’s offensive interests—and a disruptive no-deal. Having abandoned his offensive asks by that point, he will have little bargaining power at that crucial phase of the negotiation.

Facing this difficult choice before the covid-19 crisis struck, the government may well have opted for no-deal. However, with the economy in a deep recession and the pandemic here to stay, the political pressure to press on with a deal on the table would be immense. Rejecting even a thin deal for significant economic disruption would hardly be a patriotic decision protecting the UK’s long-term interests. Rather, it would expose a clear failure of the UK’s negotiating strategy

and call into question the government's general competence. Boris Johnson needs a deal, even a bad one.

If the prime minister wants to avoid this dire prospect, a more sensible strategy would be for him to take a more forward-leaning stance on its 'level playing field' offer, particularly by setting out details of its post-Brexit state-aid regime. In return, the prime minister could then seek concessions for the UK's offensive interests on services trade and fisheries. If he pulls this act and comes back from Brussels with the grand bargain, he can demonstrate to his cabinet and parliamentary party that the deal is worth the cost.

Whatever happens, Mr Johnson will be keen to salvage a deal. But if he makes ill-considered choices now, he will be caught in a self-imposed trap in the endgame. He might want to dress it up as an inevitable consequence of the torturous negotiations. But it will be nothing less than a consequence of the government's own muddled decisions.

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