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Ysgrifennydd y Cabinet dros Gyllid, y Cyfansoddiad
a Swyddfa'r Cabinet
Cabinet Secretary for Finance, Constitution & Cabinet Office



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref MA/RE/0930/24

Chris Prett
General Counsel
Competition and Markets Authority

9th April 2024

Dear Mr Prett,

May I take this opportunity to congratulate you on your appointment as permanent Counsel General for the Competition and Markets Authority (CMA), following your time in the role on an interim basis. I look forward to engaging with you as the UK's subsidy control regime becomes more established, so that we may work together to support future prosperity and ongoing economic development of Wales.

Your officials have brought to our attention the consultation on the CMA Subsidy Advice Unit's (SAU's) role to monitor and review the effectiveness of the operation of the Subsidy Control Act 2022 (the Act) and the impact of the Act on competition and investment within the UK. We welcome the additional clarity that this consultation exercise will bring to the SAU's function, and the impact it will have in the operation of the UK subsidy regime.

The Welsh Government did not respond to the public consultation due to our ongoing role in the development of the UK's subsidy control regime. However, I thought it would be useful to set out some concerns that the consultation raises for us.

I note that in undertaking your statutory review duty for the period up to 31 March 2026, you are proposing to focus on whether the Act works as intended and whether the practical arrangements in place to facilitate its operation are working and sufficient. We do have some concerns as to whether these are the right areas to focus on. Given the early stage in the lifecycle of the regime many public authorities are still familiarising themselves with the Act and its operation. This, coupled with the ongoing significant financial pressures being experienced by all public authorities and the subsequent decline in the number of regular subsidies being given by public authorities, suggests that it may be premature to seek to measure whether the Act is operating as intended, or at least to do so without taking account of the unique circumstances that will surround this first review. It may instead be more illuminating to examine how well public authorities understand the new subsidy regime and

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

have adapted to it, as well as identifying the lessons that can be learned as the regime's use likely increases beyond 2026.

Linked to the above point, the ability for Public Authorities to 'grandfather-in' their existing subsidy schemes at the point of commencement means that many Public Authorities are operating predominantly or exclusively under either the previous TCA-based regime or even the EU State aid regime with, at present, little need to engage with the subsidy control regime. This means that the current regime is not yet being fully 'stress-tested' in a manner that would reveal opportunities for improvement or amendment.

This issue extends to the use of the subsidy database as a source of data to inform your considerations. Given the aforementioned presence of large numbers of legacy schemes, the lack of requirement for subsidy providers to report 'scheme' awards of less than £100,000 in value and the absence of any form of annual reporting requirement for schemes in order to provide an understanding of total *per annum* spend regardless of individual award value, risks giving a false picture of historic and ongoing activity. Whilst I recognise that this approach to building a quantitative dataset is likely to be the least-worst option and will provide an objective point of reference, these issues with the reliability of the data should not be downplayed and we expect to see it clearly reflected in the review that is carried out, both in terms of its remit and in the publication of its results.

In terms of your proposal to consider the question of whether the practical arrangements in place to facilitate the Act's operation are working and sufficient, we agree that this appears to be a sound starting point. However, in asking this question it will be vital that the theoretical assumptions of expected need that were made by UK Government during their policy development process are appropriately stress-tested against the lived experiences of those public authorities actually tasked with providing financial assistance. It is vital that time is given to develop a sufficient evidence base to enable practicable proposals for improvement to be developed and put forward.

It is noted that paragraph 3.4 of the consultation details the particular assessments that CMA propose to make when looking at how the practical arrangements work, and I welcome those suggestions. One aspect of the subsidy control regime that is proving concerning from a Welsh Government perspective is the use of blanket value thresholds for the 'Subsidies and Schemes of Interest and Particular Interest' (SSoI/PI). Given the rapidly-spiralling costs of materials and labour these thresholds seem far too low to serve their intended purpose of capturing only the largest and most distortive subsidies to ensure that they receive an appropriate level of scrutiny and quality assurance. The thresholds as they currently stand risk drawing in a huge number of routine subsidies and could merely serve to swamp officials and obscure the real subsidies of concern to interested parties. Accordingly, we would welcome an opportunity to input these concerns into your review and make the case for these thresholds to be doubled to make the referral process more targeted and fit for purpose.

In a similar vein, I would hope and anticipate that your review would look at whether the threshold for referral could be relaxed in some cases (e.g. low risk, subsidies of public economic interest); how effectively the voluntary referral process for subsidies of interest is; whether more use could be made of the streamlines subsidy scheme provisions (and whether for example, there is a case for extending the powers in relation to those to devolved governments); and how effective the challenge and appeals mechanisms are in practice.

Finally, we would urge the CMA to link its review of the effectiveness of the Act's operation to the UK's international commitments under the UK-EU Trade and Co-operation Agreement as I feel that compliance with those commitments is a key aspect of whether or not the subsidy control regime can be seen as fit for purpose and effective.

I hope this helps inform your understanding of our position on the subsidy control regime. We look forward to engaging with the SAU to ensure that Welsh subsidies remain as targeted and fit for purpose as possible and, I hope, having further opportunities to contribute views and reflections into the review that you will be carrying out.

I am copying this letter to Minister for Small Business, Innovation, Tourism and Trade, Richard Lochhead MSP and Minister for the Economy, Conor Murphy MLA.

Yours sincerely,

Rebecca Evans AS/MS

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