ARDTORNISH, MORVERN, OBAN, ARGYLL, PA80 5UZ [redacted]

16 November 2021

I am writing to you as clerk to the committee on the Subsidy Control Bill about an issue having a highly damaging effect on a number of businesses Scotland that could be resolved by the Bill currently in committee.

Several businesses producing hydropower have been heavily penalised by the determination under the EU State Aids policy that non-domestic rates relief on hydropower is State Aid. While the UK was in the EU this limited their eligibility under the Scottish Government's hydro rates relief scheme – such that in 2020/21 our business at Ardtornish in west Inverness-shire paid over £500,000 in rates on a small hydro enterprise. We were probably the highest rate-payer, pro rata to turnover, in Scotland.

In addition to the highly damaging effect on individual businesses, this anomaly is also choking off further investment in hydropower in Scotland, at a time when decarbonising power supplies is an urgent national priority.

The new subsidy control policy being developed provides the opportunity to resolve this unintended anomaly.

I am writing to request that the Subsidy Control Bill clarifies that rates relief on hydropower is clearly excluded from the definition of subsidy.

It is demonstrable that non-domestic rates relief (NDRR) is not a subsidy: NDRR does not affect output of hydropower; nor does it affect the price received for power. NDRR is therefore not distortive of trade. Its application does not discriminate between businesses (except in a negative way, insofar as those businesses with limited access to relief are heavily discriminated against). Therefore, under the definitions of subsidy in the Trade and Co-operation Agreement, rates relief is not a subsidy.

However, hydro producers currently penalised by not being eligible for full Non-Domestic Rates Relief on hydro schemes are on notice from the Scottish Government Subsidy Control unit that relief will continue to be subject to the de minimis limit. In other words, the Subsidy Control unit continues to regard rates relief as a subsidy. Unless this point is clarified in the Bill or the accompanying secondary legislation or guidance, these businesses will continue to be penalised, and further development of hydro will be choked off.

The businesses concerned are represented by the British Hydropower Association, which will be forwarding to you an additional submission. I attach below an extract from the submission made by the BHA in March to the public consultation on subsidy control conducted by BEIS.

Yours sincerely,

Hugh Raven
Managing Director, Ardtornish Hydro

British Hydropower Association response to the BEIS Subsidy Control Consultation

1. Categorisation of reliefs as a subsidy

1.1 The previous EU wording is excessively rigid in deeming that any reducing of fiscal burden is deemed to be a subsidy which then falls under State Aid rules. This might be reasonable where fiscal equivalence applies across the United Kingdom, however an exemption should be possible where differential fiscal levels apply across devolved nations.

1.2 In the specific case of non-domestic rates relief for small-scale hydro schemes, the prevailing scenario is that the burden of rates on Scottish and Welsh schemes is markedly higher, as a proportion of turnover. It should also be noted that the rates burden on small-scale hydro is materially higher than on comparable renewable energy technologies such as onshore wind and standalone solar PV.

1.3 The higher rates burden for hydro is an unintended consequence of valuation methodologies designed for quite different circumstances. The intervention of the Scottish and Welsh Governments by way of relief schemes is tacit acknowledgement of this unintended outcome and has been designed to adjust the rates burden to the level experienced by equivalent entities within the renewable energy sphere.

In time it is hoped that valuation legislation and methodologies will be updated however in the absence of such change, devolved Government intervention in the form of reliefs and grants remains necessary.

1.4 The BHA argues that such a subsidy or grant, that is expressly introduced to restore fiscal evenness, should only be categorised as a subsidy for State Aid purposes, if it results in a net outcome that sees recipients paying a lower level of tax than their counterparts in the rest of the UK.

2. Demonstration of trade distortion

2.1 The BHA proposes that new legislation should require that there must be demonstrable distortion to competition for a subsidy to be categorised as State Aid.

2.2 Previous EU legislation assumes that a subsidy automatically distorts competition. The prospects of challenging this assumption within the EU legislation are widely accepted to be very poor.

2.3 The BHA urges that future legislation is worded in a manner that facilitates situations where there is no demonstrable or realistic prospect of distortion to competition, to be exempted from State Aid rules.

2.4 In the specific case of non-domestic rates relief for small hydro operators, this 'subsidy' has zero impact upon the wholesale price of electricity, either locally, nationally, or internationally.

2.4.1 Equally, it has no impact upon investment decisions, since there is no certainty of reliefs continuing – as evidenced by the refusal of banks to factor such reliefs into their lending decisions.