

## **PE1801/G**

Petitioner submission of 4 January 2021

We would like to thank the Minister for Small Business, Consumers and Labour Markets for their submission of 10 December 2020, the Finance and Constitution Committee for their submission of 10 December 2020 and the Scottish Government for their submission of 15 December 2020.

Since the submission of our petition and the responses offered above, The EU (Future Relationship) Bill, based on the UK-EU Trade and Cooperation Agreement (TCA) and the Internal Market Act have been passed. These underline the concerns that our petition sought to highlight and address.

The TCA “commits both parties to additional disciplines on their State owned enterprises, designated monopolies and enterprises granted special rights or privileges...”

The detail of what this means can be found in chapter 4 of the full agreement. It is apparent that it is permitted to have state owned enterprises if they behave like private enterprises and if monopoly is excluded. So, for example, under requirements for postal services it is not allowed to use revenues from the main business – the universal service obligation – “to cross-subsidise the supply of an express delivery service or any delivery service which is not subject to a universal service obligation.”

And while the UK has escaped the European Court of Justice jurisdiction, the agreement continues to ensure that State Aid, now rebranded as ‘Subsidy’ is heavily policed:

“And both sides have the right, in certain constrained ways, and subject to arbitration, to take countermeasures if they believe they are being damaged by measures taken by the other Party in subsidy policy, labour and social policy, or climate and environment policy.”

Specifically Article 3.5 (Prohibited subsidies and conditions) sets out that unlimited state guarantees are prohibited, that rescuing failing economic actors is subject to conditions; that export subsidies are banned with some limited exceptions; that subsidies to use domestic content are banned and that Cross Border projects are only allowed subject to conditions as are targeted energy and environment subsidies.

Given that the Internal Market Act (IMA) has amended the devolution statutes (for Scotland, Wales and Northern Ireland) to take back powers devolved to provide financial aid to industry and further to ensure that it will not be possible for the devolved legislatures to amend the IMA by primary or secondary legislation in areas

of devolved competence, the scope for challenging the potentially harmful TCA in the Scottish Parliament is limited.

However, in the new circumstances, we believe it would be useful to clarify as soon as possible how the Westminster government intends to interpret, and use, its powers under the UK Internal Market Act, and would therefore propose that the Scottish Government interrogate its terms by asking if it would be legal under the new dispensation to grant state subsidy - specifying concrete examples such as BiFab, the Springburn Rail workshops where State Aid has been judged not to be allowable.