

**From:** [Moore, Stephen \(DFE\)](#)  
**To:** [McCormick, Andrew \(DFE\)](#)  
**Cc:** [Adair, Joanne](#); [Smith, Alan](#); [Dukelow, Victor](#); [Murphy, Shane](#); [McMurray, Stephen](#); [McAdams, Jonathan](#); [Marten, Lucy](#)  
**Subject:** RHI State aid notification - draft of suggested response to DG Comp questions arising from conference call on 28 February  
**Date:** 03 March 2017 17:09:59  
**Attachments:** [SA 47501 - NI RHI scheme - DfE responses to DG Comp questions arising from 28 Feb Teleconference - DRAFT.DOCX](#)  
[image001.png](#)

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Andrew

Grateful if you could consider the attached draft response to the issues and questions raised by the Commission during a conference call on Tuesday.

These relate to the a banding issue and the rationale for the CHP tariffs.

The banding issue is that some biomass boilers that move from the large biomass tariff to the medium biomass tariff as a result of the changes in the 2017 Regulations do better (i.e. instead of a flat rate of 1.5p/kWh they receive 6.51 p/kWh for the first 1314 hours and then 1.5p/kWh).

OFGEM have now confirmed that the only one biomass boiler is moving from the large biomass tariff to the medium biomass tariff and that this is a boiler at CAFRE.

However, CAFRE is not an 'undertaking' (i.e. it is part of a Government department) and does not engage in economic activities.

Therefore any RHI aid for this CAFRE biomass boiler is not State aid and does not need to be included within the scope of DG Comp's State aid decision.

In relation to the proposed wording, I do not think we need to mention this CAFRE boiler in the written response, but I would recommend that we speak to Kate Kelliher so she has a clear understanding why we have said there are no 'undertakings'.

In relation to the CHP tariffs and the fact that Commission needs to assess these against point 131 of the Environmental aid guidelines, whilst this is a lesser issue for the Commission, it is slightly more problematic for us as the 2013 CEPA analysis was not undertaken with any knowledge of the Commission's 2014 guidelines.

As a result, the CEPA analysis may not be seen by DG Comp as being consistent with the 2014 Guidelines and you will see we are offering to prepare an addendum to the CEPA report, so the Commission can say definitively that the proposed tariff levels are in line with the 2014 Guidelines.

Happy to discuss.

Stephen

**Stephen Moore**

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**NEW** - 'State aid: A Beginner's Guide for Public Bodies in Northern Ireland' can now be accessed through the DFE Internet site: <https://www.economy-ni.gov.uk/publications/state-aid-beginners-guide-public-bodies-northern-ireland>

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**From:** Marten, Lucy  
**Sent:** 02 March 2017 10:21  
**To:** McAdams, Jonathan; Moore, Stephen (DfE)  
**Cc:** Adair, Joanne; Smith, Alan; Dukelow, Victor; Murphy, Shane; Murray, Amanda; McMurray, Stephen; McCormick, Andrew (DFE)  
**Subject:** RE: RHI State aid notification - draft of suggested response to DG Comp questions arising from conference call on 28 February

Stephen

I am content. I will let you know as soon as I hear anything back from Ofgem and have chased again this morning.

Just one very minor change, 'department' should be 'Department' in the last paragraph.

Lucy

**Lucy Marten**

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**From:** McAdams, Jonathan  
**Sent:** 02 March 2017 09:48  
**To:** Moore, Stephen (DfE) <[Stephen.Moore@economy-ni.gov.uk](mailto:Stephen.Moore@economy-ni.gov.uk)>; Marten, Lucy <[Lucy.Marten@economy-ni.gov.uk](mailto:Lucy.Marten@economy-ni.gov.uk)>  
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**Subject:** RE: RHI State aid notification - draft of suggested response to DG Comp questions arising from conference call on 28 February

Stephen,

I think the CHP approach is a good one and it gives us the best chance of a decision by 1 April.

We are still awaiting confirmation from Ofgem of our analysis that identified a single boiler affected by the banding issue the Commission raise but hope to have something soon!

Regards,

Jonathan

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**From:** Moore, Stephen (DfE)

**Sent:** 01 March 2017 16:10

**To:** Marten, Lucy; McAdams, Jonathan

**Cc:** Adair, Joanne; Smith, Alan; Dukelow, Victor; Murphy, Shane; Murray, Amanda; McMurray, Stephen; McCormick, Andrew (DFE)

**Subject:** RHI State aid notification - draft of suggested response to DG Comp questions arising from conference call on 28 February

Lucy / Jonathan

Please find attached a first draft of a response to the issues and questions raised by the Commission during yesterday's conference call.

In relation to the banding issue, which was the biggest issue for the Commission, I am assuming we have not yet received confirmation from OFGEM that the only biomass boiler that falls into this subset is the CAFRE boiler.

In relation to the proposed wording, I do not think we need to mention there is one biomass boiler in this subset.

This is because CAFRE is not an 'undertaking' (i.e. it is part of a Government department and does not engage in economic activities that distort competition or have any effect on trade between Member States) and therefore any RHI aid for this biomass boiler is outside of the scope of the EC's State aid rules and does not need to be included within the scope of DG Comp's State aid decision.

In relation to the possible need to assess the CHP tariffs against point 131 of the Environmental aid guidelines and my suggestion that, if required, we could prepare an addendum to the CEPA report, whilst we could challenge this conclusion by the Commission, on the grounds that previous court decisions have suggested that the compatibility of State aid should be tested against the rules in place at the time the aid was awarded, this might simply antagonise the Commission with the result that the Commission's decision would be delayed.

Grateful for your thoughts on the attached draft.

Happy to discuss.

Stephen

**Stephen Moore**

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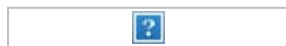
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Kate Kelliher  
State Aid Case Handler  
European Commission  
DG COMPETITION  
State Aid: Energy and Environment  
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B-1049 Brussels/Belgium

[N] March 2017

Dear Kate

**SA.47501 Renewable Heat Incentive Amendments Pre-Notification**

Please see below responses from the Department for the Economy (DfE) to further questions raised in relation to SA 47504 Renewable Heat Incentive Amendments following our teleconference call on 28 February 2017.

**Effect of November 2015 change in the upper limit of the Medium Biomass tariff**

As you have correctly identified, a large biomass installation, which was accredited on or before 18 November 2015 and which had an installed capacity of between 100kWth and above but less than 200kWth, would move to the medium biomass tariff, as a result of the changes made in the Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017.

However, while in theory this does mean that these installations receive a greater level of support from the RHI scheme, there are no installations that fall into this sub-set which are owned and operated by undertakings.

**CHP tariff methodology**

In June 2013 Cambridge Economic Policy Associates Ltd and Ricardo – AEA report (CEPA) provided advice to the Department on a number of different questions in relation to the NI RHI scheme, including the appropriate tariff levels for CHP.

As the report is 132 pages long and most of the content does not relate to CHP, I am only attaching Annex G, which is the section that deals specifically with the setting of the CHP tariffs.

As you will see CEPA's recommendations are based on its conclusions that the counterfactual fuels for 'new' and 'conversion' CHP installations in Northern Ireland would be natural gas and coal.

During the conference call you explained that, as the inclusion of CHP in the NI RHI scheme was not previously notified, DG Comp has to assess the compatibility of this aid against point 131 of the Guidelines on State aid for environmental protection and energy 2014-2020 (the Guidelines).

We understand that point 131 of the Guidelines state that for energy from renewable sources other than electricity, operating aid will be considered compatible with the internal market if the following cumulative conditions are met:

- a) the aid per unit of energy does not exceed the difference between the total levelised costs of producing energy ('LCOE') from the particular technology in question and the market price of the form of energy concerned;
- b) the LCOE may include a normal return on capital. Investment aid is deducted from the total investment amount in calculating the LCOE;
- c) the production costs are updated regularly, at least every year; and
- d) aid is only granted until the plant has been fully depreciated according to normal accounting rules in order to avoid that operating aid based on LCOE exceeds the depreciation of the investment.

Unfortunately, in 2013, when CEPA produced the report, we were not aware of these conditions and hence were not able to ensure the CEPA report was structured in a way that makes it clear the four cumulative conditions in point 131 are met.

Having reviewed the CEPA analysis, we are satisfied that the CHP tariffs would have met all four conditions.

Therefore, if required, we would be happy to revisit the CEPA analysis and provide an addendum to the report that tests the CHP tariffs against the conditions in point 131 of the Guidelines.

However, this would clearly take some time and we are keen to avoid any activities that might delay the Commission from adopting a no objection decision.

As no CHP installations have yet been accredited, if the Commission requires an addendum as outlined above, the Department would be happy to commit to not accrediting any CHP installations until an addendum, to the Commission's satisfaction, has been agreed.

Best Regards

**Stephen Moore**