

CASTLE TOWARD – COMMUNITY BUY OUT PROPOSALS

1.0 EXECUTIVE SUMMARY

1.1 This report provides further information received from South Cowal Community Development Company (SCCDC) and from the Scottish Government's State Aid Unit in relation to the proposed community buy out of Castle Toward and associated estate.

1.2 It is recommended that the Committee:

notes the content of the additional information and takes account of the information in reaching a decision on the request by SCCDC to purchase the property at Castle Toward Estate at a discounted purchase price of £750,000.

CASTLE TOWARD – COMMUNITY BUY OUT PROPOSALS

2. INTRODUCTION

2.1 This report provides further information received from South Cowal Community Development Company (SCCDC) and from the Scottish Government's State Aid Unit in relation to the proposed community buy out of Castle Toward and associated estate.

2.2. It is recommended that the Committee:

notes the content of the additional information and takes account of the information in reaching a decision on the request by SCCDC to purchase the property at a discounted purchase price of £750,000.

3. FURTHER INFORMATION

3.1 This matter is the subject of a detailed report to the Committee to be considered on 18 December 2014 (the "Principal Report").

3.2 In paragraph 5.3 of the Principal Report, it was stated that it was the intention of SCCDC to provide further information. Further information has been received from SCCDC on the issue of State Aid. State Aid is referred to in paragraph 4.6 of the Principal Report and within the Appendices to the Principal Report.

3.3 The additional information provided by SCCDC is contained within Appendix 1 to this report and consists of (1) advice from Messrs Burness Paul, Solicitors, who were instructed by SCCDC to provide advice to them on this issue and (2) comment from Michael Russell, MSP, together with a transcript of communications between Mr Russell and Richard Lochhead, MSP, Cabinet Secretary for Rural Affairs, Food and the Environment

3.4 In addition to providing additional information, SCCDC has stated that "the directors of SCCDC are happy to rely on the advice given by Burness Paul, we are after all liable to repay should there be an issue".

3.5 The additional information received from the Scottish Government's State Aid Unit is set out in Appendix 2 hereto.

4. IMPLICATIONS

4.1 Policy: As stated in the Principal Report

| | |
|----------------------|-----------------------------------|
| 4.2 Financial: | As stated in the Principal Report |
| 4.3 Legal: | As stated in the Principal Report |
| 4.4 HR | None |
| 4.5 Equalities | None |
| 4.6 Risk | As stated in the Principal Report |
| 4.7 Customer Service | None |

Councillor Ellen Morton
Policy Lead for Asset Management

Cleland Sneddon
Executive Director of Community Services

Douglas Hendry
Executive Director of Customer Services

Pippa Milne
Executive Director of Development & Infrastructure

17 December 2014

For further information contact:

Cleland Sneddon, Executive Director of Community Services
Tel 01546 604112

Appendices

1: Additional Information Provided by SCCDC on 16 December 2014

2. Additional information provided by the Scottish Government's State Aid Unit on 18 December 2014

Appendix 1: Additional Information Provided by SCCDC on 16 December 2014

1. Opinion provided by Burness Paul, Solicitors, for SCCDC

Date: 16.12.14

Draft: 2



**SOUTH COWAL COMMUNITY DEVELOPMENT COMPANY
CASTLE TOWARD COMMUNITY RIGHT TO BUY PURCHASE**

STATE AID OPINION

File: 2020205 v 2

SOUTH COWAL COMMUNITY DEVELOPMENT COMPANY
CASTLE TOWARD COMMUNITY RIGHT TO BUY PURCHASE
STATE AID OPINION

1 INTRODUCTION

- 1.1 We have been instructed to advise South Cowal Community Development Company (charity number SC044716) (“**SCCDC**”) on the state aid implications of a below-market value purchase of the Castle Toward estate from Argyll & Bute Council (the “**Council**”), with a view to SCCDC sharing our conclusions with the Council.
- 1.2 We understand that SCCDC has received grant funding of £750,000 from Scottish Land Fund towards the purchase. This represents a £1million shortfall, having regard to the district valuer’s assessment that the estate has a value of £1.75m. SCCDC has made a formal request to the Council to accept the reduced purchase price.
- 1.3 SCCDC has secured a commitment from PGL Travel Ltd (“**PGL**”) to take up a lease of part of the estate (more specifically, the “Mansion House”) for use as an outdoor education centre. It is anticipated that PGL’s tenancy of the Mansion House will create significant employment opportunities in the local area, of around 70 full time posts. PGL has confirmed that it anticipates that a maximum of 5% of its guests will be from outwith the UK, the majority of guests being school groups and uniformed organisations from the UK.
- 1.4 It is our understanding that the main project to be undertaken by SCCDC after the purchase of the estate is the development of the “Gate House”, with a view to establishing a tea-room, bunkhouse, three self catering accommodation units, four workshop/retail units, a children’s playpark, and a car park. We note that it is intended that the income generated from these facilities will support other charitable activities being undertaken by SCCDC.
- 1.5 Aside from the Mansion House lease, and the Gate House development, it is intended that the estate will be available to the local community and visitors who will benefit from the walks, cycle routes, and bridal paths created following the purchase of the estate. Environmental improvement works will be undertaken through an allotments project and sports clubs will be able to make use of practice pitches.

2 STATE AID – THE LEGAL POSITION

- 2.1 There are five criteria which need to be met in order for financial support (whether in cash or in kind) to constitute state aid; **all** five criteria must be met for state aid rules to apply. The criteria are as follows:
- (a) Is the measure granted by or through state resources?
- (b) Does it confer an advantage to an undertaking?

(c) Is it selective, favouring certain undertakings?

(d) Does it distort or have the potential to distort competition?

(e) Is the activity tradable between EU member states?

2.2 It is important to note that being a charity or a not-for-profit body does not automatically exclude the application of the state aid rules. The European Commission focuses on the activity being undertaken and the relevant market, rather than the nature of the entity itself.

3 APPLICATION OF THE STATE AID RULES

3.1 In relation to the first criterion above, acceptance by the Council of SCCDC's offer of £750,000 for the purchase of the estate at a £1million discount would constitute a measure granted through state resources.

3.2 There is, however, a question over whether SCCDC would be regarded as an "undertaking" for the purposes of the second criterion. The European Commission has stated that an undertaking is an entity which is involved in an **economic activity**. It is possible for an entity to be involved in both economic and non-economic activities. Support towards economic activities will meet this test, whereas support towards non-economic activities will not.

3.3 The definition of "economic activity" used by the European Commission is an activity which consists of offering goods or services on a given market and which could, at least in principle, be carried out by a private operator for profit.

3.4 The carrying out of heritage conservation work, including the preservation of an ancient building, would not of itself appear to be an economic activity.

3.5 However, SCCDC are proposing to go further than the restoration of the Castle Toward estate, namely:

(a) leasing the Mansion House to PGL Travel Ltd (the "Mansion House Project");

(b) developing the Gate House into a number of separate enterprises (the "Gate House Project"); and

(c) providing outdoor recreational facilities (the "Recreational Facilities Project").

3.6 We comment upon whether these would be regarded as economic activities and the consequent state aid treatment of each project in turn, below.

Mansion House Project

- 3.7 So long as SCCDC acts as landlord, and will not carry out any economic activities itself in relation to the Mansion House, it would not be regarded as an 'undertaking'. Any discount given by the Council in respect of the purchase of the land would therefore not be state aid.
- 3.8 Provided that PGL is independent from SCCDC and pays rent at an open market rate, there would be no state aid. If the rent charged is not in line with market rents, then there might be state aid because PGL as tenant would be the ultimate beneficiary, and there is no doubt that PGL is an "undertaking". The discrepancy between rent at an open market rate, and any lower rent agreed would, however, have to fall foul of the de minimis rule before it could be regarded as state aid: the European Commission considers that public funding to a single recipient of up to €200,000 over a 3 year fiscal period has a negligible impact on trade and competition, and does not require notification.

Gate House Project

- 3.9 The building and refurbishment of accommodation may be viewed by the European Commission as an economic activity. Indeed, there is at least one decision where the Commission has determined that financial support to a hotel would not be compatible with the state aid rules.
- 3.10 Having said that, it is possible to distinguish the international market in hotels from what is proposed in the current project. First, the project appears to be primarily a heritage conservation project. Secondly, it is located in an area of low employment, suffering market failure in the provision of community infrastructure generally and, specifically, a lack of this type of accommodation. Thirdly, we assume the accommodation (comprising the bunkhouse plus the self catering units) is of a small scale and is not specifically targeting the international market – that is, visitors would not come to the UK for the primary purpose of visiting the bunkhouse and self-catering units.
- 3.11 While operating the accommodation, the tearoom and workshop/retail units **would** be an economic activity (on the basis that it consists of offering goods or services on a given market which could, at least in principle, be carried out by a private operator for profit), the fourth test in paragraph 2.1 above can become relevant – whether the aid has a potential to distort competition across the EU.
- 3.12 While the European Commission has tended to take a very wide interpretation of this clause – such that most activities will have the potential to distort competition - there have been a number of decisions where it has agreed that financial support to an entity would not be state aid as the particular project would only benefit the local market and was not designed to attract international visitors to the facility.
- 3.13 Examples include: (a) a decision relating to renewal and renovation of Brighton pier; and (b) support to ski centres in Italy. The Commission decision that it would not distort trade was

made on the basis that people would not travel, for example to the United Kingdom, for the specific purpose of visiting the pier in Brighton.

- 3.14 There is a further decision which involved a project for the development of the Przemysl Stronghold historical area in Poland for the purpose of cultural tourism. While a large proportion of the funding provided by the state related to improvements to roads, part of the funding involved the restoration and conversion of a palace, manor house and park complex to provide rooms for training, conferences, catering and tourist information. One of the complexes would also be used as an accommodation facility with 20 places. Once the restoration and conversion works were completed, the intention was that the training rooms and accommodation, etc would be rented out to private operators. In essence, the parties carrying out the restoration of the facilities would not themselves operate the accommodation, etc. The external operators were to be selected by transparent tender and the lease would be on normal market terms.
- 3.15 The Commission took the view that the commercial assets were created purely with the aim of protecting cultural heritage and stimulating development of tourism. As the owners of the site would only be receiving a rent from the operators, they would not be carrying out economic activities themselves.
- 3.16 The Commission also stated that the funding for the commercial aspects of the project would not have the potential to affect trade between member states due to the small scale and local character – they would not purposely attract tourists from other member states and would not be capable of *“deviating tourist flows from other Member States and any possible foreign users ... can be deemed to have made their decision to travel to Poland irrespective of the existence of these facilities.”*
- 3.17 This decision should be distinguished from the Gate House Project, where it is proposed that SCCDC **will** operate the various enterprises, and as such will be carrying out economic activities directly. However, it provides a helpful indication of what the European Commission considers to be relevant to a credible “local market” argument in terms of establishing that the project would not have the potential to affect trade between member states.
- 3.18 We would reiterate the scale of the Gate House Project, and that the activities are local in nature – they are not intended to reach an international market and would be unlikely to be a primary attraction for visitors outside the UK. To quote from the Przemysl Stronghold decision, the Gate House Project would probably not be capable of *“deviating tourist flows from other Member States”*.

Recreational Facilities Project

- 3.19 As regards the outdoor pitches, there will be no state aid provided the facilities are for the use of the local community (i.e. as opposed to for hosting large scale international sporting events).

- 3.20 Provision of walking facilities and routes accessible to the public without limitation and free of charge cannot be regarded as a commercial activity – the aim of the project is to make natural heritage accessible to the public (many of whom will be residents in the local area) and/or to stimulate tourism. Accordingly, there is no state aid element here.

4 **CONCLUSION**

- 4.1 The assessment of whether an activity is economic in nature can be difficult. Indeed, the Commission advises that the question of whether an activity is economic or non-economic in nature can vary from state to state and over time. The Commission has final determination over whether funding constitutes state aid, subject to the review of the court.
- 4.2 Non-compliance with the state aid rules can result in the recipient of the aid being required to repay that aid together with interest to the grantor. It is not possible to contract out of a risk in respect of possible re-payment.
- 4.3 While recognising that the final decision of whether funding is state aid rests with the European Commission, we are of the view for the purposes of the Mansion House Project and Recreational Facilities Project, SCCDC is not involved in an economic activity, and so cannot be regarded as an undertaking.
- 4.4 In relation to the Gatehouse Project, we would consider it likely that SCCDC will be found to be involved in an economic activity. However, having regard to our analysis set out above, if we can be satisfied that the activities to be undertaken by SCCDC would be solely of local market relevance such as not to distort trade across EU member states, then we would be satisfied that the discounted purchase price for the land would not constitute state aid.

2. Comment from Michael Russell MSP to Alan Stewart SCCDC, with exchange of communications between Mr Russell and Richard Lochhead MSP Cabinet Secretary for Rural Affairs, Food and the Environment

Dear Alan

As you know I have been enquiring about the issue of State Aids in the light of the rejection of my earlier advice by the Council.

I thought it was best to get actual words from the responsible Minister, who is the Cabinet Secretary for Rural Affairs, Food and the Environment. I had the opportunity to question him at the Rural Affairs Committee last week during evidence on the Community Empowerment Bill (which is directly relevant to the sale of Castle Toward dealing as it does with the transfer of assets to communities).

I can do no better than quote directly from the Official Report of the Meeting, which officials of Argyll & Bute Council can also access. Mr Lochhead's evidence indicates very strongly that State Aids should not be a concern in this case and indeed that the importance given to State Aids up until now was misplaced.

More widely the evidence to the Committee on this bill clearly shows that where there is a will to transfer assets from the public sector to communities it can be done. It is the Government's intention to encourage that and the Castle Toward buyout is a classic example of what should happen. I hope it does.

You are of course free to use this however you wish.

I hope this is helpful.

Regards as ever

Michael

- [Michael Russell \(Argyll and Bute\) \(SNP\): Share](#)

Good morning, cabinet secretary. More availability of money would be a huge boost. In the past year, more money has become available and the idea of more money being available as a result of other changes is great. However, lack of money is only one problem. There is a quagmire of issues such as state aid rules, public finance regulations and a range of other matters, which can create genuine difficulties for communities when buying land or assets.

What is required—and I would be interested to know what steps you are taking to put this in place—is a diagram of the way through for communities. We need some thinking through of the difficulties that each community will have and to create a path for community purchase that is not bedevilled by those issues.

As you know, in my area we have the issue of Castle Toward, where state aid is possibly being used as an excuse to delay or even derail a buyout. In fact, political will would allow the buyout to take place without much difficulty.

- [Richard Lochhead: Share](#)

You have illustrated your interest in and knowledge of land reform issues. I hope that we will be able to tap into your ideas and that those will be reflected in the committee's recommendations at stage 1.

State aid has at times been a challenging issue for the Government in the context of the community right to buy, the use of the land fund and so on—I know that you have taken a close interest in the matter for many years. We recently issued fresh guidance, which takes a much more relaxed view of state aid issues. A community-run cafe in the middle of Argyll is not necessarily a threat to the competition 50 miles away, and we are instructing that a much more relaxed attitude can be taken to such things.

Your point about equipping communities with more information about and understanding of the issues is a good one. We have to give much more thought to that. The land reform review group recommended that we set up a community land agency, and we have responded by saying that we will set up a unit in Government, which will look at the issues and work with communities, giving much better advice and operating as a huge support mechanism that facilitates community buyouts. An important function of the new unit will be to explain state aid and the pathway, as you put it, and I will ensure that it does that.

- [Michael Russell: Share](#)

That is helpful. May I press you a little on state aid? The new guidance is quite clear in saying that a much more relaxed view should be taken. Is it being punted—if I may use the word—to local authorities in an aggressive manner, so that they realise that those burdens will not normally exist in the context of community buyout?

- [Richard Lochhead: Share](#)

I will do my best to make sure that that is the case. The buyout of the Aigas forest in the north of Scotland has just been unlocked as a result of the more relaxed attitude to state aid rules, so there is evidence that the new guidance is being heeded. I take the point that we must ensure that all public agencies and communities are aware of the guidance and understand the message that it sends out.

- [Michael Russell: Share](#)

Is the message that community buyout will be easier to do?

- [Richard Lochhead: Share](#)

Yes.

Appendix 2

Additional information provided by the Scottish Government's State Aid Unit on 18 December 2014

Burness Paul's assessment at Section 3.7 that SCCDC are not acting as undertakings appears to rely on the Commission decision on the Przemysl Stronghold SA.34891

In that case the Commission concluded there was no aid for two reasons;
(a) the public financing of the non-commercially used infrastructure does not support any economic activity and thus does not benefit any undertaking, (para 33)

*The infrastructure created as a result of these tasks will be an open-air tourist attraction addressed to persons interested in historic and cultural tourism. It will also serve children and young people from the primary and secondary schools for an educational purpose complementary to history lessons. This infrastructure will continue to have a public character and will remain available and accessible for tourists without any limitation and totally free of charge. It will therefore **not be commercially used** (Commission's emphasis) and no business activity will be conducted in this area. (Para 18).*

In the case of Castle Toward, 80% of the public funding could be regarded as supporting commercially used infrastructure as PGL – a company that operates across the EU - are renting the Mansion House for delivery of commercial contracts.

So although Burness Paul state correctly from the Commission decision *"mere use of its capital is insufficient to characterise as economic an activity of the entity when it gives rise only to the income which is merely the fruits of the ownership of an asset."* (Para 25) This is in regard to a non-commercially used asset.

However, previous statistics provided by the HIE Economic Impact Assessment showed that the client group PGL will attract are mainly from within the UK so even though the Commission could deem the Mansion House activity as 'economic' a 'local' trade position could still be made.

Also if the potential income generated from the Mansion House is restricted due to the maintenance costs and that it will be recycled to support the other hub activity this would fit with the Commission statement on the income generated by the Przemysl Stronghold

"The project is expected to generate yearly revenues of approximately PLN 265 thousand (app. EUR 65,000⁸) coming exclusively from the rent of the facilities described in paragraph 19 above which, however, will be more than offset by operational costs related to the maintenance of the whole Stronghold, resulting in net losses of approximately PLN 175 thousand (app. EUR 46,000⁹) per year". (Para 21) and may support that SCCDC are not acting as an undertaking.

(b) the public financing of the commercially used infrastructure will not have an effect on trade between Member States. (Para 33)

This position fits with my assessment of the Gatehouse activity that the local and very small scale character of the commercial activities to be carried out in Hubs 2,3 and 4 are unlikely to have an effect on intra-Union trade.

Overall there are similarities with the Commission decisions quoted by Burness Paul and the position at Castle Toward but differences also. Whether SCCDC would be regarded as an undertaking therefore would be looked at by the EC on a case by case basis.

With regard to the guidance referred to in the committee. It refers to guidance for rural communities on how to have a 'local trade' position. Find it here.

<http://www.scotland.gov.uk/Resource/0046/00465155.pdf>

In my view the Mansion House activity is still a medium to low risk. The other hub activity 2,3 and 4, I would consider a low risk.

I cannot give a definitive position whether state aid is present or cover is required (only the Commission can do that). This is a risk based decision and up to you to decide based on the information provided by all parties.

Our definition of a 'medium risk' is that state aid cover is advisable but is a risk based decision for the funding body. Our definition of 'Low risk' is that all four tests do not appear to be met and evidence supports this. This risk rating is also noted in previous advice.

And yes, I did take the guidance referred to in the committee into account in my analysis

The Guidance referred to is as follows:

State Aid and Public intervention towards projects in Scotland's Rural and Remote Areas

Background

1. The State aid rules are set out by the European Commission in accordance with Article 107 (1) of the Treaty on the Functioning of the European Union. All Member States of the EU must abide by these rules, which can apply to the public intervention in projects and remote or rural areas in all of these Member States.

2. In order to identify the likely presence of State aid in any public intervention measure we apply the four State aid tests [Click here](#). All four of the tests must be met for State aid to be present.

3. A recent Draft Commission Notice on the notion of State aid provides some useful guidance on assessing measures against the State aid tests, particularly the fourth, which is perhaps the most contentious of the four tests for projects in remote regions and the islands of Scotland, mainly due to their geographic location, the lack of land borders with other Member States. While it is sometimes difficult to assess whether

this test is met, this Commission Communication is helpful in identifying ways in which local trade is not affected and the risk of State aid is minimised.

Effect on Intra-Community Trade

4. An advantage granted to an undertaking operating in a market which is open to competition will normally be assumed to distort competition and also be liable to affect trade between Member States. Indeed, “where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by the aid” Public support can be considered capable to affect intra-EU trade even if the recipient is not directly involved in cross-border trade. For instance, the subsidy may make it more difficult for operators in other Member States to enter the market by maintaining or increasing local supply.

5. Even a public subsidy granted to an undertaking which provides only local or regional services and does not provide any services outside its State of origin may nonetheless have an effect on trade between Member States where undertakings from other Member States might provide such services (also through the right of establishment) and this possibility is not merely hypothetical. For example, where a Member State grants a public subsidy to an undertaking for supplying transport services, the supply of these services may, by virtue of the subsidy, be maintained or increased with the result that undertakings established in other Member States have less of a chance of providing their transport services in the market in that Member State. Such an effect may however be less likely where the scope of the economic activity is very small, as may be evidenced by a very low turnover.

6. In principle, trade can also be affected even if the recipient exports all or most of its production outside the Union, but in such situations the effect is less immediate and cannot be assumed from the mere fact that the market is open to competition. In establishing a distortion of competition or an effect on trade, it is not necessary to define the market or to investigate in detail the impact of the measure on the competitive position of the beneficiary and its competitors. All that must be shown is that the aid is such as to be liable to affect trade between Member States and to distort competition.

Exceptions and Precedents

7. Despite the apparent difficulties in demonstrating intra-community trade is not affected, the Commission has in several cases considered that, due to their specific circumstances, certain activities had a purely local impact and consequently did not affect trade between Member States. Common features of such decisions are that:

(a) the aid does not lead to demand or investments being attracted to the region concerned and does not create obstacles to the establishment of undertakings from other Member States;

(b) the goods or services produced by the beneficiary are purely local or have a geographically limited attraction zone;

(c) there is at most a marginal effect on the markets and on consumers in neighbouring Member States;

Some examples are:

- swimming pools and other leisure facilities intended predominantly for a local catchment area¹;
- small harbours and marinas for predominantly recreational crafts²
- museums or other cultural infrastructure unlikely to attract visitors from other Member States³;

- hospitals and other health care facilities aimed at a local population⁴;
- news media and/or cultural products which, for linguistic and geographical reasons, have a locally restricted audience⁵;
 - a conference centre, where the location and the potential effect of the aid on prices is unlikely to divert users from other centres in other Member States⁶;

¹ Commission Decision on State aid N 258/2000 Leisure Pool Dorsten, OJ C 172, 16.6.2001, p. 16.

² State aid and the effect on trade criterion – Commission paper - The Netherlands: measures in favour of non-profit harbours for recreational crafts

³ Commission decisions in State aid cases N 630/2003 Local Museums Sardinia, OJ C 275, 8.11.2005, p. 3 and SA.34466 Cyprus – Center for Visual Arts and Research, OJ C 1, 4.1.2013, p. 10.

⁴ Commission decisions in State aid cases N 543/2001 Ireland – Capital allowances for hospitals, OJ C 154, 28.6.2002, p. 4 or SA.34576 Portugal – Jean Piaget North-east Continuing Care Unit, OJ C 73, 13.03.2013, p. 1.

⁵ Commission's decisions in State aid cases N 257/2007 Subsidies for theatre productions in the Basque country, OJ C 173, 26.07.2007, p. 1; N 458/2004 Editorial Andaluza Holding; SA.33243 Jornal de Madeira, OJ C 131, 28.05.2005, p. 12.

⁶ Commission's decision in State aid case N 486/2002 Sweden – Congress hall in Visby, OJ C 75, 27.03.2003, p. 2. 50

8. Using these precedents, there are further general examples where there may not be a distortion of EU trade, including:

- Business units, shops and social enterprise activities that serve predominantly the local community;
- Improved access to land, and;
- Village halls.

9. In its assessment of a measure in Poland, the European Commission found that public funding of commercially used infrastructure did not constitute State aid because they were of a scale (two rooms for training and conference purposes with a capacity of 20 people and accommodation facilities also with a capacity of 20) that wouldn't distort tourist flows from other Member States.

10. In another example, when the Commission investigated several non-profit organisations (mostly sailing clubs) that had received public funding to improve marinas, it concluded that some local distortion of competition was probable but that this was not on a scale sufficient to distort intra-EU trade. The key criterion that assisted this conclusion was that foreign tourists used only 0.25% - 14% of moorings in these marinas.

11. In some cases it may be possible to argue that undertakings operating in a rural location will be unlikely to affect intra community trade but this may not always be the case depending on factors such as size and access to markets.

12. The scale of activity that may be judged to affect intra community trade will differ between markets and should therefore be assessed on a case by case basis.

Summary

13. In conclusion, projects that are small in nature, operate in unprofitable markets, remote in location, and/or not traded or marketed beyond the UK border are not likely to involve State aid. Even grants of less than €200,000 should not be given under the de minimis regulation if they do not constitute State aid because that will limit their subsequent ability to receive it for other purposes.

14. If projects do involve economic activity on a scale that is sufficient to distort intra-EU trade, the State Aid Unit can advise on how to fit the aid within the limits of the appropriate regulations.

15. Sole competence on the presence, or otherwise, of State aid rests with the European Court - it is important to note, therefore, that any 'no aid' argument will by definition have some risk attached without full notification of the measure to the European Commission