



Department for
Business, Energy
& Industrial Strategy

Lord Callanan
Minister for Business, Energy and
Corporate Responsibility

**Department for Business, Energy &
Industrial Strategy**
1 Victoria Street
London
SW1H 0ET

T +44 (0) 20 7215 5000

E enquiries@beis.gov.uk

W www.gov.uk

Lord Fox
House of Lords
London
SW1A 0PW

2 February 2022

Dear Lord Fox,

Following the first Committee session on the Subsidy Control Bill on 31 January, I am writing as promised on the point you raised about market failure and how changes in customer preference, and therefore the evolution of a market itself, may be applied retrospectively to the assessment of the potential impact of a subsidy.

I would like to clarify that for the vast majority of subsidies, it will not be necessary to comprehensively define the market in order to identify whether there is a market failure or equity rationale which a subsidy could address. However, before a subsidy can be given, of course public authorities must satisfy themselves that the subsidy complies with the principles, informed by the evidence available to them at the time.

For example, consider a public authority which is analysing whether a market failure exists when a business is producing excess carbon emissions, and then whether awarding a subsidy to this business, to enable a change in activity which may reduce these emissions, would be justified. In this instance, the public authority would only have to demonstrate that using a subsidy to facilitate a reduction in emissions would have a wider benefit to society, beyond the private benefit to the individual business, and that the business would not have reduced these emissions itself and been compensated for this by the market - for example through increased revenues or reduced costs.

Comprehensively analysing the market that a business operates within, or anticipating how this market may evolve over time, would not be necessary to determine whether the market failure exists and whether this may justify intervention. Some assessment of market context will be required to assess whether awarding a subsidy may give a business an advantage relative to its competitors, or whether a subsidy could be reasonably redesigned to minimise this advantage.

The illustrative guidance that my Department published last week gives further examples of how public authorities should demonstrate that a subsidy targets a market failure or equity rationale. We will develop this further ahead of regime implementation to ensure there is clarity for public authorities on what they should consider as part of their assessment, and to provide reassurance that their obligations are proportionate and realistic.



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I trust that this additional information addresses your concerns. I will be placing a copy of this letter in the Libraries of the House.

Yours sincerely,

A handwritten signature in blue ink, reading "Martin Callanan". The signature is written in a cursive style with a long horizontal flourish at the end.

Lord Callanan