STATE AID – HGV INCENTIVISATION PROGRAMME

Introduction

This document sets out some of the issues around State Aid that could impact on a potential HGV Incentivisation Programme (HIP).

The intention is to help the Air Quality Programme Team consider the potential effect of State Aid for HIP and develop a risk-based approach to its policy development. It provides background information to help Highways England's counsel consider and advise on specific questions.

Background

Highways England is considering developing HIP as part of a range of activities to improve air quality on its roads. HGVs have a disproportionate impact on air quality on major roads. New HGVs compliant with the latest EURO VI specification offer significant environmental and pollution-related benefits, especially for nitrogen dioxide emissions (NO_2), compared with old vehicles.

It is understood that HGV fleets are replaced, on average, every 7 years. This means that by 2022 the fleets are likely to comply with the new standards irrespective of whether government intervenes. The change will provide long-term benefits, but is not quick enough to address the short-term need to reduce NO_2 levels across the Strategic Roads Network. The proposal is to make a capital grant available to HGV users of the network, ideally targeting those regularly using the most polluted parts of the network, to encourage a more rapid transition to the cleaner Euro VI HGVs.

The design and operation of HIP is still being developed. For the purposes of this document, it is assumed that HIP will involve providing subsidy on a per-vehicle basis to reduce the cost of replacing old HGVs with Euro VI HGVs. This subsidy could be provided directly to the buyers or as a recoverable cost to the sellers.

State Aid Rules

Where a public body provides financial support to an economic undertaking (generally a company), it is necessary to consider whether such support constitutes State Aid. The Aid is likely to be illegal where it could distort competition by favouring certain undertakings. The Commission may agree to the aid in exceptional circumstances where the advantages outweighs the disadvantages. In such cases, the aid has to be shown to be an effective, proportionate and appropriate way of addressing the problem whilst limiting the distortions on competition.

The following three points summarise the State Aid position:

- Measures that solely target private individuals do not constitute State Aid.
- Measures genuinely open to all undertakings active in a Member State do not constitute State Aid.
- Measures that are only open to certain undertakings could constitute State Aid.

Would HIP involve State Aid?

There are four criteria to consider when assessing whether the funding is State Aid:

1. Is the support granted through state resources?
2. Does the support confer a selective advantage to an undertaking?
3. Does the support distort or have the potential to distort competition?
4. Does the support affect trade between member states?

It appears as though HIP is likely to meet all four of the criteria. This is discussed further in the table below.

Criterion	Met?	Comment
1.	Yes	The support would be provided from government using air quality designated funding.
2.	Yes	The support provided by HIP is likely to benefit 'undertakings' both directly and indirectly. The direct support would be received by private companies operating HGVs. The indirect support would be to those suppliers in the market that built vehicles to the Euro VI specification. The financial support is a form of 'advantage'. The support could also lead to a more environmentally friendly image for the beneficiary, which may also create a commercial value. It is highly probable that the advantage would be offered on a 'selective' basis (certainly in respect of direct beneficiaries). It will be necessary to be selective in respect of certain regional criteria in order to ensure that the intervention delivers the purpose of the scheme: reduced NO_2 on the Strategic Roads Network.
3.	Yes	The receipt of monies or subsidy strengthens the beneficiaries' positions relative to market competitors. It either reduces the cost-base or improves sales, depending on whether it is viewed from the perspective of direct or in-direct beneficiaries.
4.	Yes	The companies that use HGVs are likely to offer services which are trade-able between Member States. The sellers and manufacturers of Euro VI HGVs also operate in cross-border markets.

Options for developing the scheme in compliance with State Aid requirements

There are four options available for ensuring the scheme is legal. These are listed in order of preference below:

1. Re-design the scheme so that the criteria above are not met.
2. Rely on an exemption available under the General Block Exemption Regulations [1](GBER).
3. Ensure that the State Aid assistance complies with the *de minimis*[2] procedure requirements, including being below €100k per recipient over a three year period for undertakings active in the road transport sector and mindful that such aid shall not be used for the acquisition of road freight transport vehicles[3].

[1] FAQ on GBER: http://europa.eu/rapid/press-release_MEMO-08-482_en.htm?locale=en
[2] Detailed guidance on *de minimis:* https://www.gov.uk/government/publications/state-aid-manual
[3] Commission Regulation (EU) No. 1407/2013, para 5 and Article 3, paras 2 http://ec.europa.eu/competition/state_aid/legislation/de_minimis_regulation_en.pdf

4. Apply to establish a standalone State Aid scheme for HIP in the UK or use a non-GBER umbrella scheme.

Option 1 is not considered in this paper. The Air Quality Programme team is evaluating a range of interventions to reduce the amount of NO_2 on its network.

GBER has been extended over recent years to permit interventions designed to protect the environment. This includes early adoption of more environmentally friendly specifications to comply with or exceed impending EU standards. These applied where such measures have been adopted at an EU-level but are not yet in force. The use of GBER appears to be the best way to notify and secure approval of this scheme. This should be considered against the general rules for State Aid and discussed in more detail with State Aid advisers in the Highways England, most likely through counsel, and BIS.

If HIP does not fit within the GBER (or another existing State Aid scheme), it may be possible to provide subsidy using the *de minimis procedure.* The *de minimis procedure* allows small amounts of State Aid to be paid without the need to notify the Commission.

There are limitations and risks in relying on *de minimis.* A company is not allowed to receive more than €200k *de minimis* aid over a three year period though this is limited to €100k for undertakings active in the road freight transport sector. However, for those undertaking the aid shall not be used for the acquisition of road transport vehicles, which appears to be a significant barrier to using *de minimis* for HIP. This includes all *de minimis* from all Member States. This could impact on the amount on the amount of support that could be provided to companies with large fleets though evidence to date suggests that most fleets are owner-operator. There are also limits on the restrictions on the use of *de minimis* aid for companies involved an export and agricultural activities as other State Aid schemes exist to support this sector. The *de minimis* might be an option provided the barrier concerning acquisition of road freight transport vehicles be overcome and should GBER prove to be inappropriate. However, the inherent limitations and risks of the procedure mean that it is likely to negatively affect the level of interest from the target audience.

Where GBER and *de minimis* are not appropriate, Highways England could look to set up a new scheme or apply under another pre-existing scheme. For example, there are a number of other State Aid approved schemes aimed at improving environmental performance, but none have yet been identified that appear to be appropriate for this type of intervention. Applying for a new scheme would be resource intensive and would delay HIP's implementation and benefits. The use of GBER would make the notification process simpler than applying for a standalone notification. A decision on the scheme would be taken within 20 working days of providing notification, whereas the notification process for a new scheme would take over 6 months.

Other Schemes Promoting Environmentally Friendly Vehicles

Around a dozen European member states have operated environmentally-friendly vehicle schemes during the past 7 years. In Germany, for example, a scheme was established in 2008 to encourage take-up of the Euro V class of HGV. These provide points of learnings that can be used to develop a compliant scheme for England. However, it is equally important to recognise that there are some fundamental differences in the schemes approved to date compared with the HGV scheme being contemplated. The main differences relate to the extent to which access to the schemes are likely to be open to all and whether there are conditions imposed on the ways or places that the new vehicles should be used, especially if Highways England looks to target hauliers using a specific polluted part of the network (which could help support major scheme delivery). The issues are likely to be important in terms of how the scheme is assessed by the Commission.

The obvious challenge for Highways England is how to create a scheme that is affordable, non-selective yet sufficiently targeted to deliver benefits to the Strategic Roads Network. The approved schemes are not selective in terms of the direct or indirect benefits. In other words, the schemes were open to anyone. Furthermore, the schemes do not impose any specific conditions on those that buy the new vehicles, e.g. how or where the new vehicles should be used.

There is recent experience within the UK of vehicle-purchase incentivisation schemes. This involved making subsidy available for purchasing new vehicles where certain criteria were met and the old vehicles were to be scrapped. The original scheme sought to boost demand to support the automobile industry, which had seen sales decline during the recession. In these cases, the direct beneficiaries were individuals (not economic undertakings), but State Aid implications arose because of its aim to address supply market issues. More recent schemes – such as the Ultra-Low Emissions Vehicles (ULEV) scheme – sought to encourage demand for environmentally friendly vehicles to encourage new entrants to the manufacturing market. Other European countries have supported scrappage schemes on the justification of the environmental benefits. This has included schemes that were dependent on the grant recipient purchasing new vehicles that complied with particular emission standards.

Design of HIP in relation to State Aid requirement

In order to secure Commission support for HIP, it is recommended that the Highways England considers:

- How it can demonstrate that buying behaviour would not change and the purpose of the scheme would not be delivered without an ability to provide the support proposed. The scheme needs to be shown as being "necessary".
- Whether the proposed support is "proportionate". This means that the level of support on offer is the minimum necessary to achieve the required changes in behaviours. The level of support can be measured in terms of the value and duration of the scheme.
- Whether the scheme can be shown to be the most effective option to address the problem. This is likely to involve showing the other options that were considered.
- Whether there is any overlapping aid already being provided that could lead to double-subsidisation. None have been identified in the research for this paper.

Conclusions

The main conclusions are:

- **The scheme is likely to involve State Aid.**

- **The scheme appears to fall within the generality of the General Block Exemptions Regulations.**
- **The *de minimis* procedure may also be possibility provided exemptions preventing aid being used for the acquisition of road freight transport can be overcome. However, even then there are inherent risks that could impact on the effectiveness of the scheme.**
- **The scheme would need to include certain selectivity criteria to deliver the required benefits and work is required to ensure that these comply with general State Aid requirements. An alternative is a truly national scheme, but the benefits would need to be considered.**
- **Specialist State Aid legal advice (initially via counsel and through BIS) should be sought for the design and the development of the scheme.**
- **The pilot study into HIPS should therefore confirm:**
    - **Whether the proposed scheme falls within the generality of GBER;**
    - **If not, whether the scheme could be effective if relying on the *de minimis* procedure;**
    - **If geographic or other restrictions would need to be apply to target users of the Strategy Roads Network (rather than simply a national scheme);**
    - **What these restrictions would be; and**
    - **How these could be designed to maximise likelihood of no objections being raised by the European Commission through the notification process.**