



KPMG LLP
KPMG Law
15 Canada Square
London E14 5GL
United Kingdom

The Directors
BMW (UK) Manufacturing Limited
Summit ONE
Summit Avenue
Farnborough
Hampshire
GU14 0FB

Our ref

Via email to

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

13 December 2023

Dear Directors,

[REDACTED] – Domestic Subsidy Control Report in support of the application by BMW (UK) Manufacturing Limited to Oxford City Council for an exemption from the Community Infrastructure Levy

1 INTRODUCTION

[REDACTED] we have prepared the following report in relation to the proposed application by BMW (UK) Manufacturing Limited (“**BMW**”) to Oxford City Council (“**OCC**”) (“**the Application**”) for exceptional circumstances relief from the charge to the Community Infrastructure Levy (“**CIL**”) (“**CIL Relief**”). If the Application is unsuccessful and OCC chooses not to grant CIL Relief, the charge to CIL will be imposed by OCC on certain proposed works at BMW’s manufacturing site in Oxford (“**Plant Oxford**”). Any decision whether to grant BMW CIL Relief is exclusively a matter for OCC.

This report considers (only) the subsidy control aspects of the Application for CIL Relief. In particular, it considers: (i) whether provision of relief by OCC, would constitute a subsidy for the purposes of the Subsidy Control Act 2022 (“**SCA**”); and (ii) if so, whether the subsidy would be lawful.

The Application is being prepared by Norton Rose Fulbright LLP (“NRF”) by reference to OCC’s Discretionary Exceptional Circumstances Relief Policy (“the Policy”)¹.

We have based our analysis and advice on the factual background as we understand it from BMW. BMW considered an earlier draft of the report and confirmed that the facts stated throughout this report are true and accurate.

We understand from BMW that OCC has taken legal advice from King’s Counsel in respect of the SCA. We are unclear as to the scope of the advice taken. Although we understand that OCC has offered to share the advice with BMW, a copy has not yet been provided to us. We have therefore not been able to comment or engage with the advice from King’s Counsel.

1.1 Important Notice Regarding the Transmission of this Report

KPMG has agreed that BMW may disclose this report to OCC (directly or via NRF) as part of the Application for CIL Relief. Any such disclosure is subject to the remaining paragraphs of this notice, to which your and OCC’s attention is drawn.

KPMG’s work for BMW was designed to meet BMW’s agreed requirements and the particular features of the engagement determined by BMW’s needs at the time. This report should not be regarded as suitable to be used or relied on by any party other than BMW for any purpose or in any context.

In consenting to the disclosure of this report to OCC, KPMG does not assume any responsibility to OCC in respect of its work for BMW, the report or any judgments, conclusions, opinions, findings or recommendations that KPMG may have formed or made. To the fullest extent permitted by law, KPMG will accept no liability in respect of any such matters to any party other than BMW. Should any other party receiving a copy of this report choose to rely on the report, they will do so at their own risk.

¹ Link:

https://www.oxford.gov.uk/downloads/file/6330/discretionary_exceptional_circumstances_relief_policy. We have accessed this document through OCC’s website, [where it is listed under “Document Downloads – Community Infrastructure Levy”](#) (link: [Document downloads - Community Infrastructure Levy | Oxford City Council](#)). We note however that the covering webpage says that the Policy was approved at a full Council meeting on 30 September 2013. By contrast, the Policy itself says that CIL Relief will be introduced from 1 June 2019. We have also seen minutes of a meeting of the Cabinet of OCC on 29 May 2019 in which the Policy appears to have been approved. Given that it is published on OCC’s website, we have assumed that the document we have considered is the correct and most up to date version of the Policy. It may be sensible, however, to confirm this with OCC as soon as possible.

The report may only be released by BMW to OCC on the basis that, save as may be required by law, it is not to be disclosed, in whole or in part, without KPMG's prior written consent.

Please note that the report is confidential and if shared with OCC, it is also confidential between BMW and OCC. Any disclosure of the report beyond OCC and BMW, and any disclosure of this notice beyond OCC and BMW, will or may substantially prejudice KPMG's or BMW's commercial interests. A request for KPMG's consent to any such wider disclosure may result in KPMG's agreement to these disclosure restrictions being lifted in part.

If OCC receive a request for disclosure of this report under the Freedom of Information Act 2000, the Freedom of Information (Scotland) Act 2002 or the Environmental Information Regulations 2004, it (or any other public body in receipt of the report) is responsible for determining what disclosures are required by this legislation and whether any exemption from disclosure applies. Having regard to these actionable disclosure restrictions the public body should, in accordance with guidance from the Information Commissioner, take reasonable steps to: (i) give KPMG advance notice of any disclosure; (ii) consult with KPMG before making any disclosure; and (iii) take into account any representations KPMG might make.

2 SUMMARY OF OUR CONCLUSIONS

For the reasons set out below, and adopting the definitions throughout this report, we conclude that:

- CIL Relief, if given, is very likely to count as a subsidy for the purposes of the SCA;
- None of the outright prohibitions in the SCA will be engaged by the Application and consequently, the provision of CIL Relief will not be a prohibited subsidy;
- Based on the information available to us, CIL Relief would not be given as part of a subsidy scheme (pursuant to s.10 SCA). It will therefore need to comply independently with the subsidy control principles;
- The evidence we have gathered generally supports the position that provision of CIL Relief is likely consistent with the subsidy control principles. If and to the extent that the energy and environment principles are engaged, the provision of CIL Relief will likely not be in breach of those principles given the aims of BMW's proposed development at Plant Oxford (battery electric vehicles being considered an environmental product which confer an environmental benefit via the reduction of air pollution);
- On the evidence provided, the EU State Aid regime as applicable to economic activity in Northern Ireland will not be engaged via Article 10 of the Windsor Framework because:

- there will be no “*genuine and direct link*” with Northern Ireland capable of falling under Article 10 as a result of OCC approving the Application for CIL Relief;
- no benefit of the CIL Relief will be passed on by BMW via the placing of MINIs onto the market in Northern Ireland at artificially low prices, nor will the number of MINIs placed on that market be affected; and
- there is no other evidence that the provision of CIL Relief will have any foreseeable effect on trade between Northern Ireland and the European Union, not least because of the relatively small amount of CIL Relief applied for by BMW in the context of proposed works at Plant Oxford;
- If and to the extent that the TCA remains relevant to this case (which is doubtful), then in light of the similarities between the TCA and the SCA, the provision of CIL Relief is likely to be equally permissible under the TCA as it is under the SCA;
- A mandatory referral to the CMA should not be necessary in this case as the CIL Relief if granted is less than £1million; and on that assumption, the CIL Relief is unlikely to be prohibited under s.31 SCA. However:
 - it is likely that the eRGF grant should be considered a “*related subsidy*” vis-à-vis the CIL Relief (and *vice versa*);
 - if the amount of the CIL Relief approved by OCC exceeds the £1million threshold, OCC will need to determine whether the provision of the CIL Relief pursues the same (or substantially the same) specific policy objective as the eRGF grant (in which case we would recommend that BMW makes full disclosure of the facts, circumstances, and policy objectives of the eRGF grant to allow OCC to come to a fully informed conclusion on the point);
 - in addition, and subject to the point above, exceeding the £1million threshold may cause the grant of CIL Relief to become a “*subsidy of particular interest*”, which will require OCC to make a mandatory referral to the CMA. This will have the effect of prohibiting the grant of CIL Relief pending the outcome of any such referral (although we should note that any such prohibition only applies until the end of the referral and any relevant cooling off period, after which the final decision on whether to grant CIL Relief will remain with OCC);
- The grant of CIL Relief is likely to be considered a “*subsidy of interest*”. As a result, OCC may make a voluntary referral to the CMA; if it chooses to do so and the CMA chooses to respond with a report, it would be open to OCC to delay its decision on the Application until the CMA completes that report. That said, OCC is not required to delay the decision and there is no statutory prohibition on the giving of a subsidy of interest pending the outcome of any such referral. Crucially, and in order to assist OCC to comply with its statutory duties, we recommend BMW make full and frank disclosure to OCC of the details of the eRGF grant and any other relevant information to allow OCC to come to a fully informed decision;

- We would recommend BMW ensure OCC is aware of the public law principles applicable to OCC’s consideration of subsidy control questions and the decision-making process on the Application; and,
- Finally, we consider it may be in BMW’s interests to alert OCC to its statutory duty to add an entry to the subsidy control database in respect of any subsidy granted by it for CIL Relief.

3 FACTUAL BACKGROUND

We have set out in this section the factual background as we understand it from BMW and our own historic involvement with the business. As we indicated at the start of this report, BMW have previously reviewed a draft of this section and confirmed that the facts and matters stated below are true and accurate.

3.1 The BMW Group

BMW is a wholly owned subsidiary of BMW (UK) Holdings Limited, which in turn is an (indirectly) wholly owned subsidiary of the ultimate Holding Company of the BMW Group, Bayerische Motoren Werke AG (“**BMW AG**”). BMW principally operates out of Oxford and operates as an arms-length contract manufacturer for BMW AG, with the wider BMW Group providing funding to support the operation of the various subsidiaries of the Group.

The BMW Group designs, manufactures and sells a range of cars and motorcycles under the BMW, MINI and Rolls Royce brands. The BMW Group also sells financial and other mobility services. In addition to the UK manufacturing presence, the BMW Group has manufacturing operations in Europe, Asia-Pacific (via a locally based joint venture) and the Americas.

The BMW Group’s product development activities are primarily conducted in Munich with additional smaller scale design and test centres located in other global locations. Alongside the sales of vehicles, the BMW Group offers motor vehicle related financial services and fleet management services through specialist businesses.

3.1.1 The BMW Group’s Sustainability Strategy

As part of the BMW Group’s wider sustainability strategy, the Group’s product portfolio is diversifying into electrified powertrains with a number of targets around CO2 reduction by 2030. As part of this the MINI brand will become an entirely electrified brand by the same deadline (i.e. 2030).

3.1.2 The BMW Group’s UK operations

In the UK, BMW has three manufacturing sites that are involved in MINI production: the Hams Hall facility manufactures engines; Swindon produces body pressings; and sub-

assemblies for MINI and the parts are then assembled at Plant Oxford – where body shell production, paint and final assembly takes place.²

BMW produces the majority of the MINI volume for the entire BMW Group. Since mid-2000, BMW has invested in Plant Oxford to produce multiple generations of MINI cars. During this time the brand has grown, increasing sales volumes and adding retail markets.

During 2010 the demand for MINI production was greater than the capacity of Plant Oxford. This led to the MINI Countryman being produced in Graz, Austria, demonstrating previous experience of using third party manufacturing as well as its own manufacturing facilities. In the period 2017 to 2019, MINI designed, built and launched a battery electric vehicle (“**BEV**”), with production commencing at the Oxford site. MINI also designed the production of the convertible which is produced within the Counterfactual case (discussed further below).

Following this, MINI announced in 2021 its last internal combustion engine (“**ICE**”) vehicle will be launched in 2024 and the MINI brand will become electric from 2030.

3.2 Project Overview

The BMW Group is currently requesting support from both HM Government and OCC to secure the investment required to facilitate the production of ██████████ electrified MINI vehicles in Plant Oxford from 2026 onwards. In bringing this new investment to the UK, the BMW Group also seeks to safeguard jobs where vehicle output is retained.

Through the BMW Group volume allocation, the next generation of MINI is already confirmed for Plant Oxford with production commencing in 2024. Three new models will be launched and all of these are ICE vehicles.

In addition to the new ICE models which are being launched in Oxford, new BEV models will be launched and manufactured in China through a joint venture partner, Great Wall Motors. The cars produced in China will primarily serve the markets in China, certain parts of Europe and the rest of world.

Alongside this, the Group is working through a strategic decision in relation to the commencement of European production of the BEV MINI models which is due to begin in 2026. This is to satisfy European and North American markets, where significant tariffs would be incurred if the vehicles were shipped from China. The Group also has a

² We note for completeness that within the UK, there is a fourth site relating to Rolls-Royce Motor Cars which is a wholly owned subsidiary of the BMW Group. Rolls-Royce vehicle manufacturing, sales and marketing operations are predominantly located at Goodwood near Chichester with product development operations largely located in Munich.

preference not to locate the production of this model in only one region. This safeguards against potential geopolitical risks.

The locations currently being assessed for the production of the BEV MINI models from a European perspective included Plant Oxford (“**Oxford case**”) and an outsourced provider ██████████ (“**Counterfactual case**”). The latter has produced the MINI since ████████. We understand that at present, the BMW Group is pursuing the Oxford Case.

In September 2023, HM Government announced its intention to give BMW a significant Exceptional Regional Growth Fund grant (“**the eRGF grant**”) in the value of circa ██████████. The eRGF grant was applied for and granted to support the investment by the BMW Group in Plant Oxford (including the associated nearby works at Swindon and the wider BEV MINI project as a whole).

We understand that BMW has strong governance controls in place to ensure that any funds which are made available as a result of the granting of CIL Relief will not be used for any purpose other than capital investment in Plant Oxford. We understand, similar governance controls are in place to ensure that the eRGF grant is also not inadvertently used for other purposes. For example, the controls include (but are not limited to) an appropriate audit framework being put in place.

4 OVERVIEW OF THE LEGISLATIVE FRAMEWORK ON SUBSIDY CONTROL

In broad outline, subsidy control in the UK is now governed almost exclusively by the SCA. The SCA is an entirely domestic statute and it is supplemented by: (i) various Regulations; and (ii) HM Government’s Statutory Guidance for the United Kingdom Subsidy Control Regime (“**the Statutory Guidance**”).³ Although the Statutory Guidance does not have force of law, it provides important guidance to which all public bodies should have regard. It is also capable, in principle, of having important consequences as a matter of UK domestic public law.

The SCA, coupled with its related Regulations and the Statutory Guidance, is a relatively self contained legal code. Unlike other areas of law (e.g. the tax code), subsidy control is not the subject of a number of different statutes.

Prior to the end of the transition period for the UK’s departure from the European Union on 31 December 2020, subsidy control was governed by the EU’s State Aid regime. As subsidy control was exclusively an area of EU competency, there was no domestic framework in place of, or supplemental to, the EU’s State Aid regime. However, with one

³ Link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1176040/subsidy-control-statutory-guidance.pdf

exception, EU State Aid rules ceased to apply in the UK following the end of the transition period.

The one exception to which we have referred are those limited cases in which the Protocol on Ireland / Northern Ireland (“**the Northern Ireland Protocol**”) (subsequently amended and renamed as the Windsor Framework) applied. We discuss this in more detail below.

Immediately after the end of the transition period and before the enactment of the SCA, subsidy control was governed directly by the Trade and Cooperation Agreement between the UK and the EU (“**the TCA**”). In large part, the TCA regime has now been displaced by the SCA but we discuss the TCA and its ongoing relevance (if any) further below.

The SCA was enacted in 2022 and the majority of its provisions only applied from 1 January 2023. It has therefore not been subject to detailed judicial analysis. In fact, it has only been considered twice:

- First by the Divisional Court in *R (oao British Gas Trading) v Secretary of State for Energy Security and Net Zero* [2023] EWHC 737 (Admin) (“**BGT**”). However, the challenge in *BGT* was against decisions made under the earlier TCA regime and prior to the SCA coming into force. As a result, and although the Court helpfully considered the provisions of the SCA (some of which were considered at the time of the decisions under challenge), the comments of the Court are strictly *obiter* only; and
- Second by the Competition Appeal Tribunal in *Durham Co Ltd (t/a Max Recycle) v Durham CC* [2023] CAT 50 (“**Durham**”). The issue in that case, however, was confined to the narrow question of whether a local authority was capable of giving a subsidy to itself in circumstances where it was alleged that the local authority was permitting its household waste collection operation to subsidise its commercial waste collection operation. *Durham* is therefore of limited relevance to the present case.

5 CIL RELIEF AND THE SCA

5.1 CIL Relief

The following paragraphs have been included by way of background and as context only. We understand that detailed advice on CIL and CIL Relief are being provided by other advisors. Whether or not BMW is entitled to apply for CIL Relief is beyond the scope of our engagement.

The CIL is a discretionary planning charge introduced under the Community Infrastructure Levy Regulations 2010 (SI 2010/948) (the “**CIL Regulations**”). The CIL Regulations came into force on 6 April 2010 and were made under powers granted to the Secretary of State by Part 11 of the Planning Act 2008 (the “**PA 2008**”).

In summary, the CIL is designed to help local authorities deliver infrastructure to support the development of their local area. The principle behind the CIL is that most development will have an effect upon infrastructure and developers ought to contribute accordingly to the cost of providing or maintaining infrastructure. The CIL therefore allows local authorities to recover, at least in some part, that cost from the developers through a charge to the CIL.

The CIL Regulations allow local authorities to choose the rate for the CIL in their area, on a per square metre basis. Variations are allowed between different areas within those administered by a given planning authority, as well as for different intended uses.

The CIL applies in areas where a local authority has a charging schedule in place which sets out its CIL rates. Certain development may be eligible for relief or exemption from CIL, provided it meets the relevant criteria.

Regulations 55-58 of the CIL Regulations permit a local authority to offer relief from the CIL in exceptional circumstances, if the local authority considers it expedient to do so and if the local authority considers that payment of the CIL would have an unacceptable impact on the economic viability of the development. A local authority must publish notice of its intention to offer CIL Relief before making it available and there are various other procedural requirements. OCC has published such a notice.

Before 31 December 2020 and the end of the transition period for leaving the EU, Regulation 55 expressly said that a local authority could not grant CIL Relief unless it was “*satisfied that to grant relief would not constitute a State aid which is required to be notified to and approved by the European Commission*”. This was removed by the State Aid (Revocations and Amendments) (EU Exit) Regulations 2020/1470 but the Policy continues to say that in order for CIL Relief to be granted, OCC must consider that “*granting relief would not constitute state aid*”. As State Aid no longer applies in the UK (save where the Windsor Framework / Northern Ireland Protocol applies), we initially assumed that this wording has only survived because the Policy has not yet been updated. We understand that this assumption has subsequently been verified by OCC, who verbally confirmed on a call with NRF, BMW and David Lock Associates that references in OCC’s CIL Relief policy to “state aid” should now be taken as a reference to the UK’s domestic subsidy control regime.

After the enactment of the SCA, equivalent wording concerning the domestic subsidy control regime was not inserted into Regulation 55. However, the SCA will nonetheless apply if CIL Relief constitutes a subsidy under the SCA. This is expressly recognised in HM Government’s guidance on CIL.⁴

⁴ [Community Infrastructure Levy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/community-infrastructure-levy)

5.2 The Meaning of a “Subsidy”

5.2.1 Legal Framework

s.2(1) SCA defines a subsidy in the following terms:

“2 “Subsidy”

(1) *In this Act, “subsidy” means financial assistance which—*

- (a) is given, directly or indirectly, from public resources by a public authority,*
- (b) confers an economic advantage on one or more enterprises,*
- (c) is specific, that is, is such that it benefits one or more enterprises over one or more other enterprises with respect to the production of goods or the provision of services, and*
- (d) has, or is capable of having, an effect on—*
 - (i) competition or investment within the United Kingdom,*
 - (ii) trade between the United Kingdom and a country or territory outside the United Kingdom, or*
 - (iii) investment as between the United Kingdom and a country or territory outside the United Kingdom.*

(2) *For the purposes of this Act, the means by which financial assistance may be given include—*

- (a) a direct transfer of funds (such as grants or loans);*
- (b) a contingent transfer of funds (such as guarantees);*
- (c) the forgoing of revenue that is otherwise due;*
- (d) the provision of goods or services;*
- (e) the purchase of goods or services.*

(3) *Financial assistance given from the person’s resources by a person who is not a public authority is to be treated for the purposes of subsection (1)(a) as financial assistance given from public resources by a public authority if the involvement of a public authority in the decision to give financial assistance is such that the decision is, in substance, the decision of the public authority.*

(4) *For the purposes of subsection (3), the factors which may be taken into account when considering the involvement of a public authority in the decision of a person to give financial assistance include, in particular, factors relating to—*

- (a) the control exercised over that person by that public authority, or*
- (b) the relationship between that person and that public authority.*

(5) *For the purposes of this Act, financial assistance is to be treated as given to an enterprise if the enterprise has an enforceable right to the financial assistance.”*

S.2 SCA is supplemented by various additional provisions, all of which define key terms which are used more widely throughout the SCA. In particular, ss.3 and 4 SCA provide (in so far as relevant):

“3 Financial assistance which confers an economic advantage

(1) This section makes provision about determining whether financial assistance confers an economic advantage on an enterprise for the purposes of section 2(1) (b).

(2) Financial assistance is not to be treated as conferring an economic advantage on an enterprise unless the benefit to the enterprise is provided on terms that are more favourable to the enterprise than the terms that might reasonably have been expected to have been available on the market to the enterprise.

...

4 Financial assistance which is specific

(1) This section makes provision about determining whether financial assistance is specific for the purposes of section 2(1) (c).

(2) Financial assistance is not to be regarded as being specific if the distinction in the treatment of enterprises is justified by principles inherent to the design of the arrangements of which that financial assistance is part.

(3) For the purposes of subsection (2) as it applies to financial assistance given in the form of a tax measure, the following are examples of the principles that may be relevant in a particular case—

- (a) the need to fight fraud or tax evasion;*
- (b) administrative manageability;*
- (c) the avoidance of double taxation;*
- (d) the principle of tax neutrality;*
- (e) the progressive nature of income tax and its redistributive purpose;*
- (f) the need to respect taxpayers' ability to pay.*

(4) Financial assistance given by a public authority in the form of a tax measure is not to be regarded as being specific unless—

- (a) one or more enterprises obtain a reduction in the tax liability that it or they would otherwise have borne under the normal taxation regime, and*
- (b) that enterprise or those enterprises are treated more advantageously than one or more other enterprises in a comparable position under the normal taxation regime.*

(5) For the purposes of subsection (4), the normal taxation regime is to be identified from—

- (a) the internal objective of the regime,*
- (b) the features of the regime (such as the tax base, the taxable person, the taxable event or the tax rate), and*
- (c) the fact that the public authority whose regime it is—*

13 December 2023

- (i) is autonomous institutionally, procedurally, economically and financially as regards the regime, and*
 - (ii) has the competence to design the features of the regime.*
- (6) A special purpose levy is not to be regarded as being specific if—*
 - (a) its design is determined by non-economic public policy objectives (such as the need to limit the negative impacts of certain activities or products on the environment or human health), and*
 - (b) the public policy objectives are not discriminatory.*
- (7) The forgoing of an amount of special purpose levy which is otherwise due is not to be regarded as being specific if the provision enabling the forgoing of that amount satisfies the conditions in subsection (6)(a) and (b)."*

Similarly, s.6 SCA provides:

"6 "Public authority"

- (1) For the purposes of this Act, "public authority" means a person who exercises functions of a public nature, but does not include—*
 - (a) either House of Parliament,*
 - (b) the Scottish Parliament,*
 - (c) Senedd Cymru, or*
 - (d) the Northern Ireland Assembly.*
- (2) Subsection (1)(a) is not to be taken as applying to—*
 - (a) the Corporate Officer of the House of Commons,*
 - (b) the Corporate Officer of the House of Lords,*
 - (c) the House of Commons Commission, or*
 - (d) any other person who acts on behalf of either or both of the Houses of Parliament.*
- (3) Subsection (1)(b) is not to be taken as applying to—*
 - (a) the Scottish Parliamentary Corporate Body, or*
 - (b) any other person who acts on behalf of the Scottish Parliament.*
- (4) Subsection (1)(c) is not to be taken as applying to—*
 - (a) the Senedd Commission, or*
 - (b) any other person who acts on behalf of Senedd Cymru.*
- (5) Subsection (1)(d) is not to be taken as applying to—*
 - (a) the Northern Ireland Assembly Commission, or*
 - (b) any other person who acts on behalf of the Northern Ireland Assembly."*

Together, these provisions provide a complete and self-contained framework for determining whether something is or is not a subsidy.

5.2.2 Application of the Legal Framework

If granted, CIL Relief will qualify in principle as financial assistance for the purposes of s.2(2) SCA. That is because it is an exemption from a levy which, if granted, will involve OCC foregoing revenue otherwise due to it under the CIL.

Equally, OCC, as a local authority, performs public functions and is funded by public money (for example, council tax) and it does not fall within any of the exclusions of a “public body” under s.6 SCA. We therefore conclude that the grant of CIL Relief will be “given... by a public authority” for the purposes of s.2(1)(a) SCA.

The financial assistance offered by the grant of CIL Relief “confers an economic advantage” under ss.2(1)(b) and 3 SCA. Relief from having to pay the CIL is clearly advantageous for BMW from both a cash and an economic perspective. In addition, and by reference to s.3 SCA, the grant of CIL Relief is simply not available “on the market”. Although there are various ways in which BMW could seek to meet the cost of the CIL in the absence of CIL Relief (e.g. a bank loan), the terms of those options are likely to be less favourable than the grant of CIL Relief.

In order to determine whether the grant of CIL Relief is specific, as per ss. 2(1)(c) and 4 SCA, the starting point is that the CIL Relief (if granted) will benefit BMW over any other enterprise which has had to pay the CIL in materially similar circumstances (and/or who have applied for but been refused CIL Relief). *Prima facie*, the grant of CIL Relief could be seen as “specific” for the purposes of s.2(1)(c).

In addition, we are mindful that the granting of CIL Relief is subject to the absolute discretion of OCC (subject of course to its published policy and criteria, together with OCC’s public law duties). This is a further reason why the grant of CIL Relief is likely to be seen as specific for the purposes of the SCA.

We have considered whether the exception in the case of “the forgoing of an amount of special purpose levy which is otherwise due” provided by s.4(7) SCA could be said to apply and/or operate in this case. Curiously, the meaning of a “special purpose levy” is not defined in the SCA or elsewhere. Absent a definition, it is not clear whether the CIL would count as a special purpose levy or otherwise. We have, however, examined the purpose behind the CIL. Both government guidance⁵ and the Explanatory Memorandum to the CIL⁶ confirm that the CIL is a charge levied as a means of helping local authorities to fund the infrastructure required to support development in their area. In our view, supporting development is quintessentially an economic public policy objective. We

⁵ Link: <https://www.gov.uk/guidance/community-infrastructure-levy>

⁶ Link: https://www.legislation.gov.uk/uksi/2019/1103/pdfs/uksiem_20191103_en.pdf

therefore take the view that even if the CIL Relief did constitute a special purpose levy, the grant of CIL Relief is unlikely to fall within the exception provided for by s.4(7) SCA because the purpose of the CIL is to support development in the local authority's area and is therefore economic in nature.

We recognise however that there is a potential argument that the design and implementation of the CIL was determined by non-economic public policy objectives. We note, for example, that in June 2019, the Ministry of Housing, Communities and Local Government explicitly recognised in a consultation response that:

“The Government is committed to delivering 300,000 new homes a year by the mid-2020s. This must be supported by infrastructure to create places where people want to live and to secure the support of local communities for development. Delivery of these homes is being supported by an ambitious programme of reforms to the planning system, including the new National Planning Policy Framework and Planning Practice Guidance, the Housing Delivery Test and changes to the standard method for assessing housing need. The Government has also provided increased revenue, ring fenced for resourcing local authority planning departments, by increasing planning application fees by 20%.

Contributions from developers play an important role in delivering the infrastructure that these new homes, and local economies, require. The mechanisms for securing these contributions are section 106 planning obligations and the Community Infrastructure Levy (CIL)...The Levy allows planning authorities to charge a fixed rate per square metre of development to fund infrastructure which addresses the cumulative impact of development in their area. Together, these mechanisms levy £6 billion a year.”⁷

If and to the extent that the CIL has been designed to support the delivery of housing for non-economic reasons (e.g. the need to ensure adequate housing for the population), there may be an argument that the CIL is a special purpose levy which falls within s.4(7) SCA. For the reasons we have already given though, we consider that the better view is that the CIL is not designed for non-economic reasons, bearing in mind the much wider stated policy of funding development in the local area.

We have also considered whether the CIL is a tax measure capable of falling within ss.2(3-5) and ss. 4(3-5) SCA. Again, the meaning of a tax measure is undefined in the SCA but we think it more likely than not that the CIL is not a tax measure. In the absence of a definition, “*tax measure*” should be given its objective and ordinary natural meaning in the particular context in which the words were used.⁸ Applying that rule, we think a ‘tax measure’ should be interpreted as one which is confined to national taxes (e.g. those administered by HM Revenue & Customs), devolved taxes (e.g. Scottish taxes) and

⁷ Link:

https://assets.publishing.service.gov.uk/media/5cf632d640f0b60a2e0cc153/Developer_contributions_government_response.pdf

⁸ See *R (oao O (a minor, by her litigation friend AO) v SSHD* [2022] UKSC 3, [2023] AC 255 at [29-31].

council tax. We do not think it could be said to apply to the CIL. In addition, taxes are ordinarily understood as measures which are levied and for which monies are used for general public spending purposes. CIL is said to be for a specific purpose, namely development of local infrastructure. This supports our conclusion that CIL would not constitute a tax measure under the SCA.

Finally, we have considered whether it could be argued that the grant of CIL Relief is not specific as a result of s.4(2) SCA, which provides that “*financial assistance is not to be regarded as being specific if the distinction in the treatment of enterprises is justified by principles inherent to the design of the arrangements of which that financial assistance is part*”. We consider that unlikely. Regulation 55 of the Community Infrastructure Levy Regulations 2010 (“**the Levy Regulations**”), entitled “*Discretionary relief for exceptional circumstances*”, provides that CIL Relief can be granted by a local authority (such as OCC) if (amongst other things): (i) it appears that there are exceptional circumstances which justify doing so; and (ii) the local authority considers it expedient to grant CIL Relief. Likewise, the Policy is clear that the grant of CIL Relief is in the absolute discretion of OCC, subject of course to the terms of the Policy itself and OCC’s other public law duties. The Policy does not give any more guidance on when OCC may grant CIL Relief. Any distinction in treatment between BMW and: (i) any enterprise which has paid the CIL; and/or (ii) any enterprise which has applied for but been refused CIL Relief is therefore a matter of discretion for OCC within the framework of the Regulations and OCC’s public law duties. It is not justified by principles inherent in the design of the CIL (unlike, for example, the relief given by Regulation 49 of the Levy Regulations regarding social housing).

In all the circumstances, we conclude that CIL Relief, if granted, will be considered specific to BMW for the purposes of the SCA.

Lastly, s.2(1)(d) SCA examines the effect of financial assistance upon competition, investment and trade (i) within the UK and (ii) between the UK and external countries or territories. The Application is intended to assist in the development of Plant Oxford and to enable the production of BEVs, specifically the MINI brand of car which BMW aims to make fully electric from 2030. The granting of CIL Relief is therefore, at the very least, capable of having an effect on competition and investment within the UK, since it is likely to assist BMW in securing a greater share of the electric vehicle market in the UK. It is also likely to affect trade between the UK and a country or territory outside of the UK given that it may affect the balance of trade between the UK and other countries. We are especially mindful that an alternative proposal was to invest in an offshore factory (i.e. the Counterfactual case). If that had been pursued instead of the Oxford Case, it may well have led to a decrease in exports from the UK and an increase in imports.

In conclusion, we consider that:

- CIL Relief, if granted, will very likely constitute a subsidy for the purposes of the SCA. That is because it involves the provision of financial assistance by a public authority, namely OCC; it confers an economic advantage; it is specific; and it has, or is capable of, having an effect on competition and investment; and
- Accordingly, the SCA is engaged in respect of the Application for CIL Relief.

5.3 Prohibited Subsidies and Subsidies subject to Conditions

The SCA contains a number of outright prohibitions on: (i) different types of subsidies; and (ii) subsidies given in specific circumstances (although most of those prohibitions are themselves subject to various 'carve outs'). If any of them apply in this case, CIL Relief cannot lawfully be granted by OCC. In addition, the SCA also adds additional levels of control in certain other types of cases.

The prohibitions include:

- At s.15 SCA, subsidies in the form of a guarantee of debts or liabilities if various conditions are met. CIL Relief is not a guarantee and therefore does not fall within this prohibition.
- At s.16 SCA, subsidies that are contingent, in law or in fact, upon export performance relating to goods or services, subject to various 'carve outs' at s.16(2) SCA. We understand that CIL Relief is not contingent on any export performance and so does not fall within this prohibition. This is provided that such a condition is not added to CIL Relief at a later date (although we question whether it ever could be given the limited scope of OCC's powers and duties).
- At s.17 SCA, a subsidy that is contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods or services, subject again to a carve out at s.16(2) SCA. We are not aware of any requirement of CIL Relief which is being applied for that makes it contingent on the use of domestic goods or services. As a result, we consider that this prohibition does not apply.
- At s.18 SCA, any subsidy that is given subject to a condition that the recipient "*relocates all or part of its existing economic activities and the relocation of those activities would not occur but for the giving of the subsidy*". S.18(2) expressly provides that for these purposes, an enterprise relocates existing activities if: (i) a business is carrying on activities in an area of the UK before the subsidy is given; and (ii) it ceases to carry out those activities in favour of carrying them on in another area of the UK after the subsidy is given. Whilst the prohibition in s.18 does not apply if the conditions at ss.18(5-7) are met, we understand that CIL Relief is not contingent on the relocation of MINI production. On the contrary, the very purpose of BMW's application for CIL

Relief is to maintain production at Plant Oxford, its current site. The prohibition at s.18 is therefore not engaged, even without the 'carve out'.

- At ss.19-23 SCA, various subsidies to different types of ailing or insolvent enterprises, subject to the usual carve outs seen in the earlier sections. An ailing or insolvent enterprise is defined at s.24 as one which "*would almost certainly go out of business in the short to medium term without subsidies; is unable to pay its debts ... or the value of its assets is less than the amount of its liabilities*". BMW is a going concern with significant assets. It also has significant cashflows. There is therefore no evidence to suggest that any of the definitions at s.24 are met by BMW; in particular, there is no evidence that it will go out of business or is unable to pay its debts. Accordingly, it is neither ailing nor insolvent and the prohibitions against subsidies to ailing or insolvent enterprises do not apply.
- At s.27 SCA, a subsidy to an insurer that provides export credit insurance, as defined by s.16. An "*insurer*" for these purposes means a person who has permission to carry on the regulated activity of effecting or carrying out contracts of insurance. We understand that BMW does not have any such permission. Whilst other entities within the BMW Group do have that permission, we take the view that the strict controls on the use of the subsidy (discussed further below) prevent s.27 from applying.
- At s.28 SCA, a subsidy to an air carrier for the operation of a route. BMW is not an air carrier and this prohibition therefore doesn't apply.

In addition, s.29 imposes various conditions on the giving of a subsidy to "*a SPEI enterprise for the purpose of the provision of SPEI services*". "*SPEI*" in this context is a service of public economic interest and a "*SPEI enterprise*" is defined as "*an enterprise that is assigned with particular tasks in the public interest (including public service obligations)*". The meaning of this provision has not been considered by the UK courts, but in the Statutory Guidance, it is suggested that an enterprise will only be a SPEI enterprise if the service is provided for the benefit of the public and the service would not be provided, or would not be provided on the terms required, by an enterprise under normal market conditions.

Based on our own analysis of s.29, we take the view that BMW cannot be considered a SPEI enterprise and we are fortified in our conclusions by the Statutory Guidance. This is because BMW is not providing any particular services which are in the public interest. On the contrary, BMW is part of a multi-national group of manufacturing and other companies which places goods and services on the market and which can be bought or sold by individuals with the financial means to do so.

Accordingly, we take the view that CIL Relief would not be prohibited under the SCA.

Finally, and for completeness, we note that there is one further prohibition which only applies where the subsidy must be referred to the Competition and Markets Authority (“CMA”). This prohibition is different from the others because it is essentially a temporal prohibition pending the completion of the referral. We discuss that prohibition in its own section further below.

5.4 The Subsidy Control Framework

Although the grant of CIL Relief would not be prohibited outright by the SCA, it cannot lawfully be granted unless it complies with the remainder of the overall subsidy control framework.

Crucially, the framework of the SCA is such that a subsidy will not be permissible, even if it is not outright prohibited, unless: (i) the subsidy complies with various subsidy control principles; or (ii) the subsidy is given as part of an otherwise lawful subsidy scheme. The critical provision is s.12 SCA, which provides:

“12 Application of the subsidy control principles

(1) A public authority—

(a) must consider the subsidy control principles before deciding to give a subsidy, and

(b) must not give the subsidy unless it is of the view that the subsidy is consistent with those principles.

(2) In subsection (1) "subsidy" does not include a subsidy given under a subsidy scheme.

(3) A public authority—

(a) must consider the subsidy control principles before making a subsidy scheme, and

(b) must not make the scheme unless it is of the view that the subsidies provided for by the scheme will be consistent with those principles.”

5.4.1 Would the grant of CIL Relief be part of a subsidy scheme?

If CIL Relief is given as part of a subsidy scheme, then there would be no need for such grant to comply with any of the subsidy control principles. It is therefore convenient to consider this issue first.

A “subsidy scheme” is defined at s.10 SCA, which provides:

“10 Subsidy schemes and streamlined subsidy schemes

(1) In this Act, "subsidy scheme" means a scheme made by a public authority providing for the giving of subsidies under the scheme.

(2) A subsidy scheme may be made—

13 December 2023

- (a) *by a public authority that is not a primary public authority only for the giving of subsidies by that public authority;*
- (b) *by a public authority that is a primary public authority for the giving of subsidies by other public authorities (in addition to the primary public authority so far as the scheme may provide).*
- (3) *In subsection (2), "primary public authority" means a public authority of any of the following descriptions—*
- (a) *a Minister of the Crown;*
 - (b) *the Scottish Ministers;*
 - (c) *the Welsh Ministers;*
 - (d) *a Northern Ireland department;*
 - (e) *any other public authority which, in the exercise of its functions, makes a scheme for the giving of subsidies by other public authorities.*
- (4) *In this Act, "streamlined subsidy scheme" means a subsidy scheme which—*
- (a) *is made by a Minister of the Crown, and*
 - (b) *specifies it is made for the purposes of this Act as a streamlined subsidy scheme.*
- (5) *A streamlined subsidy scheme must be laid before Parliament after it is made.*
- (6) *If a streamlined subsidy scheme is modified after it is laid, the scheme as modified must also be laid before Parliament.*
- (7) *If, within the 40-day period, either House of Parliament resolves not to approve the scheme, or the scheme as modified, then, with effect from the end of the day on which the resolution is passed, the scheme, or the scheme as modified, is to be treated as not having been made.*
- (8) *Nothing in subsection (7)—*
- (a) *affects any subsidies given under the scheme before the end of the day on which the resolution is passed, or*
 - (b) *prevents a further scheme being laid before Parliament.*
- (9) *In this section, "the 40-day period" means—*
- (a) *if the scheme is laid before both Houses of Parliament on the same day, the period of 40 days beginning with that day, or*
 - (b) *if the scheme is laid before the Houses of Parliament on different days, the period of 40 days beginning with the later of those days.*
- (10) *In calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses of Parliament are adjourned for more than 4 days.*
- (11) *A subsidy scheme or streamlined subsidy scheme may provide for the value of a subsidy to be determined by reference to its gross cash amount or the gross cash equivalent."*

We have considered the Subsidy Control Database maintained by HM Government.⁹ There does not appear to be any scheme for the giving of a subsidy in the form of the grant of CIL Relief (or any other exemption to the CIL). On that basis, we have assumed that CIL Relief (if given) would not be given under a subsidy scheme (although it is ultimately a question for OCC). If that assumption is correct, it is vital that CIL Relief (if given) independently complies with the subsidy control principles.

5.4.2 Would the grant of CIL Relief comply with the Subsidy Control Principles?

The grant of CIL Relief and application of the subsidy control principles is ultimately a matter for consideration and determination by OCC.

Schedule 1 of the SCA sets out seven subsidy control principles to consider before a public authority, such as OCC, can decide whether it is appropriate to provide a subsidy to an enterprise. As we have already said, compliance with the principles is ordinarily mandatory (subject to various extreme cases which do not apply in this case, e.g. subsidies given as part of the government's response to a national emergency).

The SCA subsidy control principles are:

- A. **Common Interest:** subsidies should pursue a specific policy objective in order to remedy an identified market failure or address an equity rationale (such as local or regional disadvantage, social difficulties or distributional concerns).
- B. **Proportionate and necessary:** subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it.
- C. **Designed to change economic behaviour of beneficiary:**
 - a. Subsidies should be designed to bring about a change of economic behaviour of the beneficiary.
 - b. That change, in relation to a subsidy, should be conducive to achieving its specific policy objective, and something that would not happen without the subsidy.
- D. **Costs that would be funded anyway:** subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.

⁹ Link: [View subsidies awarded by UK government - GOV.UK \(www.gov.uk\)](https://www.gov.uk/view-subsidies-awarded-by-uk-government)

- E. **Least distortive means of achieving policy objective:** subsidies should be an appropriate policy instrument for achieving their specific policy objective and that objective cannot be achieved through other, less distortive, means.
- F. **Competition and investment within the United Kingdom:** subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom.
- G. **Beneficial effects to outweigh negative effects:** subsidies' beneficial effects (in terms of achieving their specific policy objective) should outweigh any negative effects, including in particular negative effects on competition or investment within the United Kingdom or international trade or investment.

These principles and their application to the facts of this case are considered in more detail in Appendix 1, but the overall conclusions are:

- A. We understand that the primary policy aim of the subsidy is to mitigate potential economic impacts associated with the automotive industry's shift towards BEV production.¹⁰ This would represent an equity rationale. Secondary objectives include promoting green employment and facilitating the transition to zero-emission vehicles.
- B. The grant of CIL Relief would represent less than 0.1% of the total project cost, a minor portion of the overall expenditure.
- C. The grant of CIL Relief would contribute to the bridging of the gap between the required return as per BMW's investment policy and the currently calculated return. The grant of CIL Relief would therefore influence the project's financial viability, and potentially impact the investment decision.
- D. As mentioned in the discussion of Principle C, the grant of CIL Relief, as part of a broader financial framework, will influence the project's financial viability, and potentially impact the investment decision. It is therefore possible that, in the absence of CIL Relief, BMW's internal rate of return ("IRR") threshold for the investment to proceed would not be reached, and so the associated costs would not be incurred.
- E. As discussed in Principle C, the grant of CIL relief, as part of a broader financial framework, provides the support necessary for BMW's IRR threshold to be reached. BMW has verbally confirmed that a loan is not an option, that BMW

¹⁰ Based on an email between OCC and BMW, we understand that the primary policy aim of CIL Relief, if granted, is to mitigate local economic disruption, particularly the potential loss of high-skilled jobs due to factory closures.

Group does not undertake external loan financing for capex related projects and that it would not positively influence the IRR calculation.

- F. Under the primary counterfactual scenario, where the Electrified MINI is produced at alternative premises outside the UK, any pricing impact appears likely to be highly immaterial, as the grant of CIL Relief represents a very small portion of market revenue, and production costs are not materially different.
- G. Given that the evidence gathered indicates that any potential negative impacts on competition or investment are likely to be extremely immaterial, the beneficial effects of the grant of CIL Relief would appear to be likely to outweigh the negative effects.

When approaching the subsidy control principles, we have considered the evidence gathered within the wider and overall context of the Application. We think this is the better approach, rather than considering the Application for CIL Relief in isolation.

In conclusion, we consider that the grant of CIL Relief is likely to be compatible with the subsidy control principles. It would therefore be a lawful subsidy under the SCA, subject to the additional factors we discuss further below.

5.5 The Energy and Environment Principles

In addition to the usual subsidy control principles, a public body must consider the energy and environment principles before deciding to give a subsidy in relation to energy and the environment. Those principles are set out in Schedule 2 of the SCA. Similarly, a subsidy in relation to energy and the environment cannot be given unless it is consistent with both the ordinary subsidy control principles which we have discussed above and the energy and environment principles.

"*Energy and environment*" does not appear to be defined in the SCA. Given that the Act is relatively new, there is also no case law on the proper interpretation of that phrase – neither *Durham* nor *BGT* address the point. However, given the aim of the development which is being pursued by BMW and for which the Application is being made, we consider there is a reasonable argument that the grant of CIL Relief in this case would constitute a subsidy in relation to energy and the environment.

Accordingly, and whilst the position is not clear cut, we think there is a possibility that the energy and environment principles are engaged. We are fortified in our conclusions given the breath of situations which are considered to fall within the energy and environment principles in the Statutory Guidance.

Nonetheless, we take the view that the principles - if engaged - are satisfied in this case. We discuss this in more detail below; but as an overarching point we note that BEVs,

such as those which BMW hope to produce at Plant Oxford, are considered an environmental product which confer an environmental benefit due to their ability to reduce air pollution.

Turning the to the specifics, there are nine energy and environment principles. They include:

- A. Subsidies in relation to energy and environment shall be aimed at and incentivise the beneficiary in: (a) delivering a secure, affordable and sustainable energy system and a well functioning and competitive energy market; or (b) increasing the level of environmental protection compared to the level that would be achieved in the absence of the subsidy. BMW does not deliver any energy and the first limb of this principle is therefore not applicable. The second limb is, however, probably met as CIL Relief has the effect of encouraging greater levels of environmental protection by enabling BMW to create more BEV cars at its factory.
- B. Subsidies in relation to energy and environment shall not relieve the beneficiary from liabilities arising from its responsibilities as a polluter under the law of England and Wales, Scotland or Northern Ireland. CIL Relief has been specifically applied for by BMW to invest in Plant Oxford. If granted, CIL Relief will be used for that investment, particularly in relation to the expansion of the factory required to produce BEV MINIs. CIL Relief is not, therefore, being applied for in order to offset liabilities arising under the law of England and Wales as a result of BMW's role as a polluter (if any). Furthermore, BMW has robust governance procedures to ensure that funds which are made available as a result of CIL Relief are not diverted for another purpose other than BEV MINI investment in Plant Oxford. We are therefore confident that CIL Relief cannot be considered as relief from liabilities arising as a result of BMW's responsibilities as a polluter (if any). Nor could it be used for such a purpose.
- C. Subsidies for electricity generation adequacy, renewable energy or cogeneration: (i) shall not undermine the ability of the United Kingdom to meet its obligations under Article 304 of the TCA (provisions relating to wholesale electricity and gas markets); (ii) shall not unnecessarily affect the efficient use of electricity interconnectors provided for under Article 311 of the TCA (efficient use of electricity interconnectors); and (iii) shall be determined by means of a transparent, non-discriminatory and effective competitive process. This principle does not apply as BMW does not produce energy.
- D. Subsidies for electricity generation adequacy may be limited to installations not exceeding specified CO₂ emission limits. This principle does not apply as BMW does not produce energy.

- E. Subsidies for renewable energy or cogeneration shall not affect beneficiaries' obligations or opportunities to participate in electricity markets. This principle does not apply as BMW does not produce energy.
- F. Subsidies in the form of partial exemptions from energy-related taxes and levies in favour of energy-intensive users shall not exceed the total amount of the tax or levy concerned. This principle is not engaged. First, BMW only seeks an exemption from the amount of the CIL due; as a result, CIL Relief (if granted) will not exceed the total amount of levy concerned. Second, it is highly unlikely that the CIL is an “energy related levy” given it’s focus on boosting development in the local area.
- G. Subsidies in the form of compensation for electricity-intensive users given in the event of an increase in electricity costs resulting from climate policy instruments shall be restricted to sectors at significant risk of carbon leakage due to the cost increase. This principle does not apply because CIL Relief does not compensate for an increase in electricity costs.
- H. Subsidies for the decarbonisation of emissions linked to industrial activities in the United Kingdom shall: (i) achieve an overall reduction in greenhouse gas emissions; and (ii) reduce the emissions directly resulting from the industrial activities. It is unclear whether this principle applies; we think the better view is that it does not, because CIL Relief will not be applied to help decarbonisation of emissions by BMW, but it will help to achieve the UK’s overall net zero targets by increasing the level of production of BEVs in the UK.
- I. Subsidies for improvements of the energy efficiency of industrial activities in the United Kingdom shall improve energy efficiency by reducing energy consumption, either directly or per unit of production. Again, it is unclear whether this principle applies and we think the better view is that it does not. If it does, however, the grant of CIL Relief is consistent with it because of the benefits of BEV cars.

As a result, and in these circumstances, if and to the extent that the Energy and Environmental Principles need to be met (as a consequence of a collateral/ancillary environmental purpose), we consider it likely that they are met. If so, the grant of CIL Relief would again be permissible under the SCA.

5.6 The Applicability of the Windsor Framework (formerly known as the Northern Ireland Protocol)

5.6.1 The Legal Framework

Article 10 of the Windsor framework (“**Article 10**”) (formerly known as the Northern Ireland Protocol until it was renamed by Joint Declaration No. 1/2023 of the Union and the UK in the Joint Committee established by the Agreements of the Withdrawal of the

UK from the EU on 24 March 2023) provides that various provisions of EU law "*shall apply to the United Kingdom ... in respect of measures which affect that trade between Northern Ireland and the Union which is subject to this Protocol*".

As a result of Annex 5 of the Windsor Framework, the provisions of EU law which continue to apply in the UK includes the EU State Aid regime. Consequently, State Aid continues to apply if Article 10 is engaged. Article 10, along with the rest of the Northern Ireland Protocol (as it was then) was given effect in domestic law by s. 7A of the European Union (Withdrawal) Act 2018.

Article 10 was supplemented by the Unilateral Declarations by the European Union and the UK in the Withdrawal Agreement Joint Committee on Article 10(1) of the Protocol on 17 December 2020. These comprised: (i) a short declaration by the EU which affirmed that "*an effect on trade between Northern Ireland and the Union which is subject to this Protocol cannot be merely hypothetical, presumed, or without a genuine and direct link to Northern Ireland. It must be established why the measure is liable to have such an effect on trade ... based on the real foreseeable effects of the measure*"; and (ii) a declaration by the UK taking note of the EU's declaration.

The proper interpretation of Article 10 of the Northern Ireland Protocol (as it was then) was considered by the High Court of England & Wales in *R (oao British Sugar PLC) v Secretary of State for Internal Trade* [2022] EWHC 393 (Admin) ("**British Sugar**"). The Court accepted that the proper interpretation of the Protocol was to be approached on the basis of the Vienna Convention on the Law of Treaties 1969 (1980) (Cmd 4140), "*which themselves codify customary international law*". Critically, the Court also accepted that: (i) the Declarations of 17 December 2020 are admissible as to the proper interpretation of Article 10; (ii) the Declarations should be given purpose and effect when interpreting and applying Article 10; and (iii) as a result, a "*genuine and direct effect*" on trade must be demonstrated in order to engage Article 10.

When the Northern Ireland Protocol was amended and renamed as the Windsor Framework, there were no substantive amendments to Article 10 itself. Accordingly, we consider that *British Sugar* remains an important authority in England and Wales.

In addition, and although there were no substantive amendments, Article 10 was supplemented by a Joint Declaration of the EU and the UK in the Joint Committee Established by the Agreement on the Withdrawal of the UK from the EU of 24 March 2023 on the Application of Article 10(1) of the Windsor Framework ("**the Joint Declaration**"). Consistent with *British Sugar* and the approach taken in that case to the Declarations of 17 December 2020, we consider that the Joint Declaration is an important aid to construction of Article 10 of the Windsor Framework.

In summary, the Joint Declaration:

- repeats the declaration by the EU of 17 December 2020;
- confirms that a measure must have a genuine and direct link to Northern Ireland to have an effect on trade that is subject to the Windsor Framework;
- provides that for a measure to have such a genuine and direct link, the measure "*needs to have real and foreseeable effects on that trade*" and those effects "*should be material, and not merely hypothetical or presumed*", and
- further provides that if the measure is granted to a beneficiary in Great Britain (rather than Northern Ireland), "*the mere placement of goods on the Northern Ireland market is not sufficient, on its own, to represent a direct and genuine link...*" it must be further demonstrated that the economic benefit of the subsidy would be wholly or partially passed onto an undertaking in Northern Ireland or through the relevant goods placed on the market in Northern Ireland, for example through selling below market price.

5.6.2 Application of the Legal Framework

All of the evidence indicates that if CIL Relief is granted by OCC, there will not be a "*genuine and direct link*" with Northern Ireland and which is capable of falling under Article 10. In particular:

- BMW is a company incorporated in England and Wales and all of its manufacturing sites are situated in England. It has no sites in Northern Ireland or elsewhere in the UK.
- The CIL is a charge which is levied by OCC on new developments in their area. As a result, it is arguable that the effect of any exemption from the CIL is inherently and exclusively confined to that area. If so, it cannot be said to relate to Northern Ireland and therefore have any effect on the trade between Northern Ireland and the European Union.
- In addition, and as we have said, we understand that BMW has strong governance controls in place to ensure that any funds which are made available as a result of the grant of CIL Relief will not be used for any purpose other than capital investment in Plant Oxford. Similarly, CIL Relief (if granted) supports the overall business case for investing in Plant Oxford. It does not release additional funds to be spent on capital investment. There is therefore no practical way in which the grant of CIL Relief (or its benefits) could be diverted for the benefit of an undertaking in Northern Ireland or the European Union. Nor could it be used to cross-subsidise or otherwise support such an undertaking.
- Although it is likely that the MINIs produced at Plant Oxford will be placed on the Northern Ireland market, that is not enough in our view to engage the Windsor Framework:

- There is no evidence that the economic benefit of the grant of CIL Relief will be passed on through the placing of the MINIs onto that market, for example through selling below market price. On the contrary, we understand that any MINIs placed on the Northern Ireland market will be placed at market value and in the ordinary course of business.
- We also understand from Management that the number of MINIs placed on the Northern Ireland market is not dependent on where they are produced. The numbers will therefore not fluctuate depending on whether the MINIs are produced at Plant Oxford or anywhere else.
- For both reasons, we think it is reasonable to conclude that if CIL Relief is granted, there will be no effect on goods placed in Northern Ireland.
- There is no other evidence that the grant of CIL Relief will have any foreseeable effect on trade between Northern Ireland and the Union. And
- Finally, the very small size of the CIL Relief applied for (circa £800,000) as compared to the size of BMW and the wider BMW Group further indicates that there is no foreseeable effect on trade in any event.

Accordingly, our opinion is that CIL Relief (if granted) would not fall under Article 10 of the Windsor Framework. The State Aid regime therefore should not apply.

5.7 The TCA

The provisions of the TCA were implemented in domestic law by s.29(1) of the European Union (Future Relationship) Act 2020 (“**EUFRA**”) and the relevant legal principles were distilled in *BGT*. In essence:

- *Prima facie* the TCA does not, according to its own terms, have direct effect in the UK; but this is without prejudice to how the UK decides to implement the TCA as a matter of domestic law.
- Parliament has implemented the TCA into domestic law via EUFRA and particularly s.29 EUFRA. S.29 EUFRA does not lay down a principle of interpretation but is more fundamental and it amounts to “*a blanket, generic, mechanism to achieve full implementation, without the need for any further Parliamentary or other Executive intervention*”. As a result: (i) s.29 transposes the TCA into domestic law, expressly and mechanistically changing it in the process; and (ii) domestic law on an issue affected by s.29 means what the TCA says, not what the domestic law itself says (or said).
- This wide-ranging effect is subject to two statutory clarifications. The first of these is that s.29(1) applies only so far as necessary for complying with the international obligations of the United Kingdom, i.e. it does not modify domestic law that is otherwise already consistent with the TCA. The second is the section only applies so

far as the TCA is not otherwise implemented by other provisions of domestic law. We discuss this second clarification further below.

- There will be many circumstances where a court must determine the meaning of domestic law by reference to the TCA. This was recognised by Parliament in s.30 EUFRA 2020, which itself cross-refers to the TCA and the principles of public international law applicable to its interpretation.

In addition, the effect of s.29(1) is limited by s.29(2)(a), which provides that s.29(1) is “*subject to any equivalent or other provision ... which (whether before, on or after the relevant date) is made by or under ... any other enactment Which is for the purposes of (or has the effect of) implementing to any extent the [TCA]*”. As the Divisional Court recognised in BGT at [207], the SCA is “*such an enactment*”, in so far as it has the purpose and effect of implementing in domestic law the UK’s subsidy control obligations under the TCA. For the same reasons, it is likely that it is no longer necessary to implement the TCA into domestic law now that the SCA has been enacted.

As a result, we think the better view is that: (i) s.29(1) no longer applies in respect of the subsidy control provisions of the TCA and; (ii) accordingly, the TCA no longer has any direct effect on or in domestic law. However, we can envisage the argument that the TCA may continue to apply through s.29(1) in so far as the SCA does not implement and does not comply with the TCA (in full or in part). We have not identified any aspect of the SCA which may be vulnerable to that challenge; but it is a factor which OCC may take into account when considering whether to grant CIL Relief.

In addition, and applying ordinary public law principles (discussed further below), the TCA arguably continues to apply as a relevant factor which the OCC should take into account when deciding whether to grant CIL Relief, at least to the extent that its principles are not replicated in the SCA.

For both these reasons, we have briefly considered whether the grant of CIL Relief is consistent with the TCA. The relevant provisions of the TCA are much shorter than the SCA but its structure is broadly similar. In particular, the TCA lays down various principles which the parties (i.e. the UK and EU) must respect when giving a subsidy. They are similar to, but not identical, to the subsidy control principles in the SCA which we discuss above in this report. Similarly, the TCA prohibits various subsidies and those prohibitions are similar to but not identical to the outright prohibitions in the SCA. Finally, the TCA likewise has additional principles on the giving of subsidies relating to energy and environment which are also similar but not identical to those in the SCA.

Although the TCA, as an international treaty, needs to be interpreted slightly differently from the SCA, we take the view that the two regimes are sufficiently similar that if a subsidy is permissible under the SCA it is likely to be permissible under the TCA (save, perhaps, in exceptional circumstances). As we explained above, we consider: the grant of CIL Relief complies with both the SCA and the subsidy control principles; and we are

unaware of any fact or legal principle which would change the analysis if considered against the TCA.

5.8 Prohibited Subsidies and Subsidies Subject to Conditions – Mandatory Referral to the CMA

In certain circumstances, a subsidy is subject to a mandatory referral to the CMA (see s.52(1) SCA). In these cases, s.31 SCA automatically prohibits a subsidy which is subject to a mandatory referral to the CMA when a referral has not yet been made or completed.

We have therefore considered whether a mandatory referral is necessary and whilst it is a matter for OCC, we think there are good arguments that:

- a mandatory referral is not necessary in this case; and
- CIL Relief is therefore not prohibited under s.31 SCA.

S.52 SCA provides that a public authority, like OCC, must request a report from the CMA when directed to do so by the Secretary of State or before giving a subsidy of “*particular interest*”. Where either condition applies, the mandatory request must meet the requirements specified at s.52(2).

We do not know – and have not been told – whether the Secretary of State has given a direction to OCC. We therefore cannot comment on this any further. For the remainder of this advice however, we have assumed that a direction has not been given.

A subsidy of “*particular interest*” is defined by Regulation 3 of the Subsidy Control (Subsidies and Schemes of Interest or Particular Interest) Regulations 2022/1246 (“**the Subsidy Regulations**”). In effect, a subsidy is of “*particular interest*” if Regulations 3(2)-(5) apply – see Regulation 3(1).

Regulation 3(2) defines a subsidy as a subsidy of particular interest if the subsidy:

- exceeds £1 million;
- if the total amount of the subsidy and any other related subsidy given to the same enterprise exceeds £10million during the “*applicable period*” (defined in Regulation 5 as the elapsed part of the current financial year and the two financial years immediately preceding the current financial year); and
- none of the provisions mentioned in Regulation 4(4) of the Subsidy Regulations applies.

This was essentially summarised by the Divisional Court in *BGT* as “*any subsidy the total amount of which over a three-year period exceeds £10m*”. It is important to note

however that these various requirements are cumulative; if a subsidy does not meet all of them, it will not be a subsidy of particular interest.

Regulation 3(3) provides that subsidies granted in sensitive sectors will instead be a subsidy of particular interest if the subsidy exceeds £1 million; if the total amount of the subsidy and any other related subsidy given to the same enterprise exceeds £5million during the "applicable period" and none of the provisions mentioned in Regulation 4(4) of the Subsidy Regulations applies. Automobile manufacturing is not a listed sensitive sector. As a result, the lower threshold of £5million does not apply to CIL Relief.

Regulation 3(4) only applies if the subsidy would be subject to s.18 SCA. That concerns the relocation of activities. Likewise, Regulation 3(5) applies if the subsidy would be subject to ss.20 and 21 of SCA. As we have already concluded at section 5.3, none of those provisions apply in this case.

Regulation 5 defines a related subsidy. In so far as relevant, it provides:

- “(1) This regulation applies for the purposes of regulations 3(2)(b) and (3)(b) and 4(2).*
- (2) A "related subsidy" , in relation to a subsidy given other than under a subsidy scheme made in the form of a tax measure, is a subsidy which—*
- (a) is given by any public authority 1 in respect of the same (or substantially the same) project, costs or activities, and*
 - (b) pursues the same (or substantially the same) specific policy objective as referred to in Schedule 1 to the Act.*
- (3) A "related subsidy" , in relation to a subsidy given under a subsidy scheme made in the form of a tax measure, is a subsidy which is given as part of the same tax measure.*
- ... “

Given our conclusions above on a “tax measure”, Regulation 5(3) does not apply to a grant of CIL Relief. As a result, the relevant definition is given by Regulation 5(2).

The value of CIL Relief is circa £800,000 and therefore falls below the £1million threshold under Regulation 3(2) of the Subsidy Regulations. However, we are conscious that BMW has recently been awarded the eRGF grant by HM Government. That grant was awarded in September 2023 and it has either already been paid to BMW or will be shortly. It has also been given in respect of the same project for which CIL Relief is also being sought. There is therefore a risk that CIL Relief is a “*related subsidy*”.

Vital to the analysis is whether the grant of CIL Relief pursues the same or substantially the same specific policy objective as the eRGF grant and whether it is material that the eRGF grant is being given by a different public authority. As to these:

13 December 2023

- Our understanding, based on information provided by BMW following discussions with OCC, is that the subsidy's primary policy aim is to mitigate local economic disruption, particularly the potential loss of high-skilled jobs due to factory closures. Secondary objectives include promoting green employment and facilitating the transition to zero-emission vehicles.
- Our understanding concerning the eRGF application was that the policy objectives being pursued by this subsidy were to support green jobs, accelerate the shift to zero emission vehicles, and to prevent the economic shocks caused by the potential loss of high skilled jobs in the event of a factory closure.
- Based on our understanding of the eRGF application and its background, we consider there is a real risk that a public body (including OCC) and/or a Court or Tribunal of England and Wales would conclude that a grant of CIL Relief in the circumstances pursues the same or substantially the same policy objectives as the eRGF grant.
- We do not think it is material that the eRGF grant is being given by a different public authority than OCC. Regulation 5 of the Subsidy Regulations refers to “any” public authority that gives a subsidy in respect of the same or substantially the same project. That includes both HM Government and OCC, both of whom have given or are contemplating the giving of (separate) subsidies in respect of the same project,

As a result, we consider that the grant of CIL Relief should be considered a “related subsidy” vis-à-vis eRGF grant (and *vice versa*). That is important because the total amount of the subsidy in this case (namely CIL Relief) and any other related subsidy (namely the eRGF) given to BMW within the last 3 years exceeds the £10million threshold.

The grant of CIL Relief will nonetheless not be treated as a subsidy of particular interest if itself remains under £1million. That is because, although it and the related subsidy exceed the £10million threshold, the grant of CIL Relief itself must also exceed £1million in order for it to be a subsidy of particular interest. If the amount of CIL Relief increases above £1million then this point will need to be revisited. That is especially true given that the margin between the expected amount of CIL Relief and the £1million threshold is relatively small (circa £200,000).

For completeness, we note that:

- If the grant of CIL Relief does exceed the £1million threshold, it will ultimately be a matter for OCC to determine whether or not the grant of CIL Relief in the circumstances pursues the same (or substantially the same) specific policy objective as the eRGF. We would recommend that BMW makes full disclosure of facts, circumstances and policy objectives of the eRGF so as to allow OCC to come to its own conclusions on this point.

- If the grant of CIL Relief does exceed £1million and it is a subsidy of particular interest, then it be referable by OCC to the CMA and as we have noted, any CIL Relief would automatically be prohibited pending the outcome of that referral. Under s.31 SCA, the prohibition on the giving of a subsidy subject to a mandatory referral lasts until the referral has been made; during the reporting period; and, if the report has been published, during the cooling off period following publication. S.53(3) sets the reporting period at 30 working days after the CMA gives a notice under s.53(1), which itself must be made within 5 working days of the referral being made under s.52. The 30 day period is however capable of being extended by agreement or on the direction of the Secretary of State at the request of the CMA. In any event, the CMA must publish its report within the, as extended, reporting period and the cooling off period is then 5 working days after. Accordingly, if the grant of CIL Relief was a subsidy of particular interest, OCC is prohibited from granting CIL Relief for at least a period of 40 working days after the initial referral is made to the CMA; and
- In the event that CIL Relief is prohibited pending a referral to the CMA, the prohibition is only temporal in nature. It applies so long as the referral is ongoing. Once the referral and any cooling off period is complete, the prohibition will be lifted. In addition, the CMA is only an advisory body; it is not a ‘gate keeper’. As a result, although OCC will need to consider the comments and feedback from the CMA after the referral, the CMA has no power to block the grant of CIL Relief. It does have the power to advise OCC that the subsidy would not meet the subsidy control principles and, in these circumstances, OCC may decide not to grant CIL Relief. But for the reasons set out in Appendix 1, as summarised in the report above, we consider the risks of this are low.

5.9 Prohibited Subsidies and Subsidies Subject to Conditions – Voluntary Referral to the CMA

Although CIL Relief will not be considered a subsidy of particular interest provided it remains below the threshold of £1million, it is likely to be a subsidy of interest. That is because of Regulations 4(1-2) of the Subsidy Regulations, which provide:

4. Subsidy, or subsidy scheme, of interest

(1) A subsidy is a subsidy of interest if—

(a) it is not a subsidy of particular interest within the meaning of regulation 3(1) to (5), and

(b) paragraph (2), (3), (4) or (5) of this regulation applies to the subsidy.

(2) This paragraph applies to a subsidy if the total amount of the subsidy and any other related subsidy given to the same enterprise within the applicable period exceeds £5 million.

A related subsidy for these purposes is the same as a related subsidy for the purposes of determining whether a subsidy is a subsidy of particular interest. As we have said, it

is ultimately a matter for OCC to determine whether or not CIL Relief pursues the same (or substantially the same) specific policy objective as the eRGF. For that reason, we reiterate our advice that BMW makes full disclosure of facts, circumstances and policy objectives of the eRGF. We note that this is so even if CIL Relief does not exceed the £1million threshold.

Notwithstanding that it is ultimately a matter for OCC, as we have said in the section above, we think there is a high risk that a public body and/or a Court or Tribunal would conclude that CIL Relief does follow the same or substantially the same policy objective. For that reason and for the reasons already discussed above, it is highly likely that CIL Relief is a related subsidy to the eRGF and vice versa. Together, both subsidies exceed the £5million threshold which is set by Regulation 4(2) of the Subsidy Regulations and as CIL Relief is not already a subsidy of particular interest, it is therefore a subsidy of interest.

Subsidies of interest may, but need not, be referred by a public body to the CMA. If such a referral is made, the CMA may decide to prepare a report in response or it may decide not to do so. It is vital that BMW makes full disclosure of the eRGF to OCC so that OCC can consider whether it has the power to refer and (if so) whether it wishes to do so.

It will ultimately be a matter for OCC to decide whether to make a referral to the CMA. There is no statutory prohibition on the giving of a subsidy which has been voluntarily referred to the CMA; on the contrary, the SCA appears to contemplate this very scenario (see for example s.57(4)). It would however be open to OCC to delay a final decision until the CMA had completed its report (if any).

5.10 Other Considerations

We have considered whether there are any other more general points which BMW should be aware of for the purposes of OCC's consideration of the Application for CIL Relief in the context of subsidy control.

5.10.1 Application of Public Law

s.72 SCA provides that on a review of a subsidy by the Competition Appeals Tribunal ("CAT"), the CAT must apply the same principles as would be applied by the High Court on judicial review. This is a broad test encompassing all public law tests and it is therefore far wider than the discrete question of whether a particular subsidy is lawful and/or complies with the subsidy control principles. It is also far wider than the analysis which the European Commission would have applied under the EU State Aid regime.

Thus, in our view, when considering whether to grant CIL Relief OCC should consider potential public law issues which arise (or may arise) in this case. Clearly it is for OCC to conduct its own analysis and BMW itself does not fall within the scope of public law. But

we have provided an overview below of potentially relevant considerations that OCC may consider and which BMW may want to ensure OCC is aware of when deciding the Application.

Public law is a very wide body of law but in essence, a public body giving a subsidy (including OCC when giving CIL Relief) will need to ensure that:

- it acts *intra vires* (i.e. within its powers);
- it has a clear and documented policy objective in support of its behaviour and that it does not act capriciously;
- it acts reasonably and rationally by taking into account all relevant factors and excluding all irrelevant factors;
- it does not make an error of law;
- it does not unfairly breach a legitimate expectation, unlawfully depart from a published public policy which meets relevant criteria or (in certain cases) apply a secret or unpublished policy;¹¹
- it complies with all duties and obligations imposed by statute or common law;
- it does not unlawfully fetter or abdicate its discretion, duties and obligations; and
- in any event, it acts within the bounds of reasonableness.

In addition, it would seem that the principle of proportionality must also be considered when a public body chooses to give a subsidy, although the context of the grant of CIL Relief is also very important: See, for example, *BGT* at [235] and [238-246]. As we have said, *BGT* was decided under the regime under the TCA, not the SCA, but it seems likely that the case will still apply by analogy (especially as the Court took the opportunity to consider, *obiter*, the terms of the SCA itself).

As we have said, the effect of the SCA is that these ordinary principles of public law are now part of the subsidy control considerations which OCC should be aware of when deciding whether to proceed with granting CIL Relief. It is equally important that OCC's considerations and conclusions are documented in written form which could be disclosed on review by the CAT.

¹¹ This may be particularly relevant if the version of the Policy published on OCC's website is not the most up to date or accurate version. See footnote 1 above.

Of particular relevance in this case is the fact that, at present, BMW's IRR has not yet been achieved (even were the grant of CIL Relief to be approved). This is discussed in more detail in Appendix 1 but for present purposes:

- It is important from a public law perspective that any grant of CIL Relief is conditional on BMW commencing and continuing its development of Plant Oxford.
- We understand from Management, however, that this would be consistent with BMW's own approach, namely that if the development does not proceed or is aborted because it does not meet the required IRR, then BMW would not ask for, claim or continue to pursue CIL Relief (if and to the extent that the issue remained live in any event – we assume, but do not know, that if the development of Plant Oxford was aborted, CIL might not be leviable in any event).
- In addition, this point (whilst currently relevant for OCC when considering whether to approve the Application) is likely to fall away given the commitment by Management to try and meet the required IRR.
- Despite the preceding two bullet points, the fact that the IRR has still not yet been achieved is still a point which OCC may want to bear in mind when considering the Application.

Given the scope of our engagement and information publicly available to us, we are unable to consider further whether any of the wider principles of public law are in issue in this case.

5.10.2 Subsidy Control database entry

Finally, we note the specific statutory duty imposed on any public body, including OCC, to add an entry on the subsidy control database in respect of any subsidy given by it. That duty is imposed by s.33(1) SCA. Although the duty does not apply in the cases prescribed by s.33(2), none of them apply in this case. OCC should therefore be aware of its obligation to add an entry in respect of the grant of CIL Relief if the Application is allowed. The entry will need to be made within the timeframe prescribed by s.33(3) and OCC will need to ensure that it applies with all the obligations laid down by the various sub-provisions of s.33.

As OCC will no doubt be aware, the information which must be included is provided for by Regulation 3 of the Subsidy Control (Subsidy Database Information Requirements) Regulations 2022/1153 ("**The Database Regulations**"). Regulations 4-7 of the Database Regulations modify the transparency requirements in certain cases and although we think those Regulations are unlikely to apply in this case, it is ultimately a matter for OCC to confirm its reporting obligations and to discharge them in an appropriate and lawful manner.



KPMG LLP

██████████ – Domestic Subsidy Control Report in support of the application by BMW (UK)
Manufacturing Limited to Oxford City Council for an exemption from the Community
Infrastructure Levy

13 December 2023

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KPMG Law, part of KPMG LLP

Appendices

**Appendix 1: Evaluation of the Subsidy Control Principles & their Applicability
to BMW's Application for CIL Relief**

Appendix 1

Subsidy Control: Principles

Subsidy Control Principles - Introduction

Schedule 1 of the SCA sets out seven subsidy control principles. We have considered the Community Infrastructure Levy (“CIL”) relief against these principles.

The SCA¹

Schedule 1 of the SCA sets out seven subsidy control principles to consider before a public authority can determine that it is appropriate to provide a subsidy to an enterprise.

We have considered the CIL relief against these principles, based on information provided by BMW and from other publicly available sources, and present below any evidence concerning each principle. For the avoidance of doubt, and as it is a matter entirely for the awarding public body, this does not represent a formal opinion on whether the CIL relief meets these principles.

The SCA subsidy control principles are:

- A. Common Interest:** Subsidies should pursue a specific policy objective in order to remedy an identified market failure or address an equity rationale (such as local or regional disadvantage, social difficulties or distributional concerns).
- B. Proportionate and necessary:** Subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it.
- C. Designed to change economic behaviour of beneficiary:**
 - 1) Subsidies should be designed to bring about a change of economic behaviour of the beneficiary.
 - 2) That change, in relation to a subsidy, should be conducive to achieving its specific policy objective, and something that would not happen without the subsidy.
- D. Costs that would be funded anyway:** Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.
- E. Least distortive means of achieving policy objective:** Subsidies should be an appropriate policy instrument for achieving their specific policy objective and that objective cannot be achieved through other, less distortive, means.
- F. Competition and investment within the United Kingdom:** Subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom.
- G. Beneficial effects to outweigh negative effects:** Subsidies' beneficial effects (in terms of achieving their specific policy objective) should outweigh any negative effects, including in particular negative effects on competition or investment within the United Kingdom or international trade or investment.

Source:

1. HM Government (2022) Subsidy Control Act 2022: <https://www.legislation.gov.uk/ukpga/2022/23/enacted>

Subsidy Control Principles - Detail

Strategic Aims of the Subsidy: Mitigating Economic Disruption, Promoting Green Employment, and Facilitating the Transition to Zero-Emission Vehicles.

A. Subsidies should pursue a specific policy objective in order to remedy an identified market failure and address an equity rationale (such as local or regional disadvantage, social difficulties or distributional concerns)

Overview

Our understanding, based on discussions with BMW and an email from OCC to BMW¹, is that the subsidy's primary policy aim is to mitigate local economic disruption, particularly the potential loss of high-skilled jobs due to factory closures. It may also support secondary objectives, such as promoting green employment and facilitating the transition to zero-emission vehicles. We set out the economic evidence that we are aware concerning these objectives below.

This evidence includes that identified in a report commissioned by BMW and authored by Volterra, an economic consultancy specialising in the economic and social impact of development project. We have not sought to verify the analysis conducted by Volterra or the conclusions they reach.

Preventing Economic Shocks

The primary policy aim of the subsidy is to mitigate potential economic impacts associated with the automotive industry's shift towards electric vehicle (EV) production. Plant Oxford is a key employer in the region, providing around 3,400 direct jobs and indirectly supporting an estimated 8,000 jobs within the UK's wider supply chain. The expansion is anticipated to avert job losses, particularly in specialised roles such as maintenance specialists and production leaders, where skills are not readily transferable, posing retraining challenges. As per Volterra, a reduction in these skilled positions could lead to significant disturbances in the local economy and exacerbate labour market frictions in the short to medium term².

Volterra also state that the investment would increase the efficiency, competitiveness and reliability of the EV supply chain³. This is consistent with the principle of economies of scale, which states that as production volume increases, the cost per unit decreases, leading to more efficient and economically viable operations. In the absence of the expansion to Plant Oxford, the UK automotive sector may benefit less from these economies of scale. This could potentially result in increased production costs and reduced competitiveness.

By 2026, Plant Oxford is expected to start producing two new all-electric MINI models, aligning with the UK's environmental objectives. Volterra state that this strategy is expected to ensure the plant's long-term viability and resilience, and to protect the economic stability of the local area and maintain the integrity of the UK's automotive manufacturing industry⁴.

Sources:

1. [REDACTED]
2. Economic Statement - BMW MINI Oxford - Extensions to Logistics Centre and Body Shop, Volterra, 2023, Section 4.
3. Economic Statement - BMW MINI Oxford - Extensions to Logistics Centre and Body Shop, Volterra, 2023, p31
4. Economic Statement - BMW MINI Oxford - Extensions to Logistics Centre and Body Shop, Volterra, 2023, p8-9 & p36.

Subsidy Control Principles - Detail

Strategic Aims of the Subsidy: Mitigating Economic Disruption, Promoting Green Employment, and Facilitating the Transition to Zero-Emission Vehicles.

Local Economic and Social Benefits

As per Volterra, the plant's expansion is expected to yield local economic and social benefits, including job creation and retention. The plant is a major regional employer, and the development is anticipated to offer employment opportunities across various skill levels, contributing to inclusive economic growth and community support¹.

Additionally, the Plant Oxford programme's collaboration with Oxford University additionally contributes to the plant's economic significance to the region². This partnership focuses on sustainable production practices and workforce development, aiming to improve EV manufacturing techniques and operational efficiency.

Support for Green Jobs and Accelerated Shift to Zero Emission Vehicles

The expansion of Plant Oxford is evaluated within the UK Government's Net Zero strategy³ and the Ten Point Plan for a Green Industrial Revolution⁴. This initiative aligns with national objectives to reduce carbon emissions and transition from petrol, diesel, and certain hybrid vehicles by 2030 and 2035. The shift towards EV production at the Oxford Plant addresses the market failure associated with greenhouse gas emissions, which impose societal costs. The UK Government's Net Zero Review⁵ underscores the significance of this market failure, particularly the negative externalities of greenhouse gas emissions.

The production of Battery Electric Vehicles (BEVs) at the Oxford Plant aligns with the EU's recognition of BEVs as environmentally beneficial products⁶, aiming to mitigate air pollution and contribute to environmental sustainability⁷. The UK Government has recognised the need for considerable investments in the automotive industry for a prompt transition to zero-emission vehicles, complicated by the typical vehicle product cycle of 5-7 years⁸. The International Energy Agency also notes significant challenges in the availability and pricing of critical supply chain elements⁹.

Sources:

1. Economic Statement - BMW MINI Oxford - Extensions to Logistics Centre and Body Shop, Volterra, 2023, Section 5.
2. Economic Statement - BMW MINI Oxford - Extensions to Logistics Centre and Body Shop, Volterra, 2023, p45.
3. [HM Government \(2021\) Net Zero Strategy: Build Back Greener](#)
4. [HM Government \(2020\) The Ten Point Plan for a Green Industrial Revolution](#)
5. [HM Government \(2020\) Net Zero Review: Interim report](#)
6. Reporting of electric and more resource-efficient transport equipment in EPEA and EGSS accounts, 4.2.1
7. Economic Statement - BMW MINI Oxford - Extensions to Logistics Centre and Body Shop, Volterra, 2023, Section 3.
8. [HM Government \(2023\) ZEV Mandate and non-ZEV Efficiency Requirements Consultation-stage CBA, p132-134](#)
9. [Electric cars fend off supply challenges to more than double global sales – Analysis – IEA](#)

Subsidy Control Principles - Detail

The evidence that we have reviewed is consistent with the subsidy being both proportionate to its specific policy objective and limited to what is necessary to achieve it.

B. Subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it.

Proportionality of the Subsidy

The request for £832,421 in CIL relief by BMW is a component of the comprehensive financial plan for the Oxford Plant expansion. This project, which includes the production of the new Electrified MINI, involves a substantial investment of approximately €690 million (around £600 million). The CIL relief, representing less than 0.1% of the total project cost, is a minor portion of the overall expenditure.

In line with the UK Government's subsidy control guidance¹, subsidies should be evaluated against the investment costs they are intended to offset. The guidance emphasizes that higher subsidy rates, particularly those exceeding 70% of project costs, could lead to competitive imbalances. The proposed CIL relief, being significantly below these thresholds, indicates a low risk of market distortion.

Considering the European Union's projected annual investment needs of €4.9bn to €8.7bn for zero-emission vehicles from 2031 to 2050², the scale of BMW's investment and the requested subsidy appear proportionate.

The UK Government's Net Zero Strategy³, which includes over £970 million for vehicle grants and infrastructure, places the CIL relief within a larger context of financial support for zero-emission transition, which would also indicate that it is likely to be viewed as proportionate.

Limitation to What is Necessary

From discussions with BMW, we understand that the CIL relief for the Oxford Plant expansion is part of a broader package of measures aimed at achieving BMW's internal rate of return (IRR) benchmark of 12% for vehicle projects.

The current IRR stands at approximately [REDACTED]. Additional financial measures are therefore necessary for BMW to reach the targeted IRR, and the Oxford Plant expansion may not go ahead if this IRR target is not reached.

A Financial Viability Assessment prepared by DS2 LLP for BMW⁴ indicates that while the CIL relief aids in improving the financial viability of the project, it is not the sole factor in achieving the targeted IRR. This indicates that the proposed subsidy is aligned with the principle of limitation to necessity, as the CIL relief contributes to the financial targets but is not the only measure in place.

Source:

- (1) HM Government (2022) Statutory Guidance for the United Kingdom Subsidy Control Regime, 3.74: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1117122/uk-subsidy-control-statutory-guidance.pdf
- (2) Commission Staff Working Document Impact Assessment accompanying Proposal for a Regulation of the European Parliament and of the Council Amending Regulation (EU) 2019/1242, and repealing Regulation (EU) 2018/956, 6.3.1.1.2 https://climate.ec.europa.eu/system/files/2023-02/policy_transport_hdv_20230214_impact_assessment_en_0.pdf
- (3) HM Government (2021) Net Zero Strategy: Build Back Greener, p24: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033990/net-zero-strategy-beis.pdf
- (4) BMW Mini Plant, Oxford - Financial Viability Assessment For Exceptional CIL Relief, DS2 LLP, 2023. We have not sought to verify the analysis conducted by DS2 or the conclusions they reach.

Subsidy Control Principles - Detail

The evidence that we have identified is consistent with the subsidy being designed to bring about a change in economic behaviour, not compensating for costs that would have been funded in the absence of the subsidy, and being an appropriate policy instrument for the objective.

C. Subsidies should be designed to bring about a change of economic behaviour of the beneficiary. That change, in relation to a subsidy, should be conducive to achieving its specific policy objective and something that would not happen without the subsidy

Assessing the impact of the CIL relief on BMW's decision-making process requires a nuanced understanding of the decision-making process in the context of major investments. The decision-making process in such contexts is typically influenced by a range of factors, and it is challenging to isolate the impact of the CIL relief. However, the evidence identified indicates that it forms part of a broader set of considerations that collectively guide BMW's investment decisions.

From discussions with BMW, we understand that BMW's investment policy requires a minimum internal rate of return (IRR) of 12% for vehicle projects, and that the current IRR for the Oxford Plant project, including the exceptional Regional Growth Fund (eRGF) grant of █████, is approximately █████. The CIL relief would contribute to the bridging of this gap between the required return as per BMW's investment policy and the currently calculated return. The CIL relief would therefore influence the project's financial viability, and potentially impact the investment decision.

The role of the CIL relief in the project's economic feasibility is further underscored by the Financial Viability Assessment prepared by DS2 LLP for BMW, which calculates a £61.6m viability deficit when comparing the implied residual land value of the BMW MINI Plant Oxford against an appropriate benchmark land value¹. The CIL relief, as part of a broader financial framework, would contribute to the bridging of this viability gap.

182

Source:

(1) BMW Mini Plant, Oxford - Financial Viability Assessment For Exceptional CIL Relief, DS2 LLP, 2023, 1.12-1.14.

Subsidy Control Principles - Detail

The evidence that we have identified is consistent with the subsidy being designed to bring about a change in economic behaviour, not compensating for costs that would have been funded in the absence of the subsidy, and being an appropriate policy instrument for the objective.

D. Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy

As mentioned in the discussion of Principle C, the CIL relief, as part of a broader financial framework, will influence the project's financial viability, and potentially impact the investment decision. It is therefore possible that, in the absence of the CIL relief, BMW's IRR threshold for the investment to proceed would not be reached, and so the associated costs would not be incurred.

E. Subsidies should be an appropriate policy instrument for achieving their specific policy objective and that objective cannot be achieved through other, less distortive, means

We understand that the CIL relief is the primary policy instrument being considered for this objective, and that no other forms of subsidy were considered by BMW.

As discussed in Principle C, the grant of CIL relief, as part of a broader financial framework, provides the support necessary for BMW's IRR threshold to be reached.

BMW has verbally confirmed that a loan is not an option, that BMW Group does not undertake external loan financing for capex related projects and that it would not positively influence the IRR calculation.

Subsidy Control Principles - Detail

The evidence we have gathered indicates that the narrowest plausible definition of the product market is the market for small BEVs (for the J01 Electrified Mini) and the market for SUV BEVs (for the J05 Electrified Mini). The narrowest plausible definition of the relevant geographic market is likely to be the UK national market.

F. Subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom

To assess the negative effects of the subsidy on competition and investment within the UK, we have taken the following approach:

1. Define the product market impacted by the subsidy;
2. Define the geographic market impacted by the subsidy;
3. Assess the potential impact of the subsidy to alternative product and geographic markets.

There is no established precedent on product or geographic market definition under the UK Subsidy Control Act, and so we have relied upon EU competition case precedent when considering market definition.

Product Market Definition

There are currently two main types of EVs in the market:

1. **Fully Electric Vehicles:** these vehicles rely solely on electricity as a power source, most commonly through a battery, which are known as BEVs.
2. **Hybrid Electric Vehicles (HEVs):** these vehicles have both a battery and a motor, and can either be plug-in or non plug-in.

In 2017, the EC considered whether EVs constitute a separate product market to Internal Combustion Engine vehicles. The EC did not reach a firm conclusion on this issue, stating that the majority of competitors submitted that electric cars do not constitute a separate product market, but also distinguished between BEVs and HEVs.⁽¹⁾ The EC left the issue open at that point.

Source:

- (1) EC (2017) Case M.8449 - PEUGEOT / OPEL: <https://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX:32017M8449>
- (2) European Environmental Economic Accounts (EEEA) (2020) Guidance note – Reporting of electric and more resource-efficient transport equipment in EPEA and EGSS accounts: <https://ec.europa.eu/eurostat/documents/1798247/12177560/Guidance+note+on+electric+transport+equipment+-+technical+note.pdf/2ddec6dc-8ca9-1736-0f36-18ed2233af0b?t=1609859296315>
- (3) EC (2017) Case M.8449 - PEUGEOT / OPEL: <https://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX:32017M8449>

The EC also defines separate product markets for different models of passenger cars. These are: mini cars, small cars, medium cars, large cars, executive cars, luxury cars, sport cars, sport utility vehicles (SUVs) and multipurpose vehicles.⁽¹⁾

From our discussions with BMW, we understand that the J01 Electrified Mini would likely fall into the class of 'small car', while the J05 Electrified Mini would likely fall into the class of 'SUV'.

Based on the precedent and evidence identified, the narrowest plausible definition of the product market is likely to be the market for small BEVs (for the J01 Electrified Mini) and the market for SUV BEVs (for the J05 Electrified Mini).

Geographic Market Definition

The EC has left open the question of whether the geographic scope of the markets for manufacturing and supply of passenger cars is EEA-wide or national. However, it notes that all of the factors that it has considered indicate that the market is national in terms of scope.⁽³⁾

As per evidence provided by BMW, they expect to sell 86% of the cars produced at Oxford within the European market, 17% of the cars produced at Oxford (included within the above 86%) are expected to be sold within the UK.

As we are considering the impact of the subsidy on competition or investment in the United Kingdom, the narrowest plausible definition of the relevant geographic market is likely to be the UK national market, considering only the vehicles produced at Plant Oxford that are expected to be sold within the UK.

Subsidy Control Principles - Detail

We have designed revenue, cost and volume tests to assess the potential impact of the subsidy on competition and investment.

Assess the impact of the subsidy to alternative product and geographic market

Overview

In order to assess the impact of the subsidy, it is necessary to identify a counterfactual scenario, which considers what would happen in the absence of any subsidy.

From discussions with BMW we understand that, in the absence of any subsidy, the most likely alternative would be for the Electrified MINI to be produced instead at alternative premises outside of the UK.

In this counterfactual, there would be no volume impact as a result of the subsidy, as the same volume of vehicles would still be produced, and they would plan to sell the same numbers of cars into the same markets (including the UK). However, there may be a pricing or margin impact, which is covered by our revenue analysis. This may also lead to a second-order pricing impact on volumes, which we discuss as part of our analysis.

For completeness, we have also considered a counterfactual scenario where, in the absence of the subsidy, BMW do not invest into increasing production of the Electrified MINI. Under this counterfactual, there would be a volume impact as a result of the subsidy, as it would increase the volume of vehicles supplied into the market.

We have therefore designed three tests to assess the potential impact of the subsidy on competition and investment:

1. Under the primary counterfactual scenario, we have designed:
 - a) a revenue test, comparing the relevant portion of the subsidy to the annual market revenue.
 - b) a cost test, comparing the difference in unit costs under the two scenarios.
2. Under the 'no investment' counterfactual scenario, we have designed a volumes test, comparing the relevant portion of the vehicles produced at Plant Oxford to the annual sales volumes for the relevant market.

These will provide evidence to assess whether the subsidy is likely to materially impact competition and investment in the relevant market under either scenario.

Considering our product and geographic market analysis, and given that the majority of cars are expected to be sold in the non-UK European market, we have conducted our analysis on the following markets:

1. UK Small Car BEV market
2. UK SUV BEV market
3. Europe Small Car BEV market
4. Europe SUV BEV market

Subsidy Control Principles - Detail

The proposed CIL relief represents at most 0.19% of the annual revenue of any of the identified markets.

Assess the impact of the subsidy to alternative product and geographic markets (cont.)

Revenue Test

As per UK Subsidy Control Act guidance, a subsidy that represents only a small proportion of total market size is less likely to have a significant impact on competition and investment in the UK.⁽¹⁾

To identify the relevant portion of the subsidy, we have split the [REDACTED] grant between geographic markets based on the BMW split of sales volumes. We then split this between the small car and SUV product markets based on BMW production mix:

	UK	Europe
Total Subsidy Value (A)	[REDACTED]	[REDACTED]
Geographic Share of Sales ⁽²⁾ (B)	17.1%	86.2%
Small Car production share ⁽³⁾ (C)	47.9%	47.9%
SUV production share ³ (D)	52.1%	52.1%
Small Car share of grant (A*B*C)	[REDACTED]	[REDACTED]
SUV share of grant (A*B*D)	[REDACTED]	[REDACTED]

To identify market revenue, we have used data on BEV market revenue in UK and Europe, alongside a split of BEV availability by car size.

Source:

- (1) HM Government (2022) Statutory Guidance for the United Kingdom Subsidy Control Regime, 16.8: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1117122/uk-subsidy-control-statutory-guidance.pdf
- (4) Statista (2023) Battery Electric Vehicles – Europe: <https://www.statista.com/outlook/mmo/electric-vehicles/battery-electric-vehicles/europe?currency=gbp>, Statista (2023) Battery Electric Vehicles – United Kingdom: <https://www.statista.com/outlook/mmo/electric-vehicles/battery-electric-vehicles/united-kingdom?currency=gbp>. Data extracted on 23/05/2023
- (5) IEA (2023) Breakdown of available cars by powertrain and segment, 2022: <https://www.iea.org/data-and-statistics/charts/breakdown-of-available-cars-by-powertrain-and-segment-2022>. Please note that this data covers model availability, rather than sales, which is a limitation to our analysis.

	UK	Europe
Projected BEV Market Revenue (2027) ⁽⁴⁾ (A)	£15.2bn	£131.5bn
Small Car availability share ⁽⁵⁾ (B)	19%	19%
SUV availability share ⁽⁵⁾ (C)	41%	41%
Small Car BEV Market Revenue (A*B)	£2.89bn	£24.99bn
SUV BEV Market Revenue (A*C)	£6.23bn	£53.92bn

	UK	Europe
Small Car share of grant (A)	£68.2k	£343.7k
SUV share of grant (B)	£74.2k	£373.9k
Small Car BEV Market Revenue (C)	£2.89bn	£24.99bn
SUV BEV Market Revenue (D)	£6.23bn	£53.92bn
Small Car Grant/Market Revenue	< 0.01%	< 0.01%
SUV Grant/Market Revenue	< 0.01%	< 0.01%

Subsidy Control Principles - Detail

The evidence we have gathered for our revenue and cost tests is consistent with the position that the CIL relief is unlikely to lead to a difference in pricing that would have a market-distorting impact.

Assess the impact of the subsidy to alternative product and geographic markets (cont.)

Revenue Test (cont.)

The subsidy represents an amount less than 0.01% of the annual revenue of any of the identified markets. We note that:

1. The subsidy is intended to support the extension of Plant Oxford which will secure the long term commercial prospects beyond the end of ICE production in 2030; and so the impact on any individual year is likely to be significantly lower.
2. 2027 represents the second year of production for Plant Oxford. BEV market revenue is expected to grow by 15% per annum in the UK, and 19% per annum in Europe⁽¹⁾, so the impact would be lower were this analysis carried out on later years.

This is a very low variance, so we view it as extremely unlikely that this could lead to a difference in pricing that would have a market-distorting impact.

Given the small scale of the potential pricing impact, any second-order volume impact would be likely to be immaterial.

Cost Test

From discussions with BMW, we understand that the net present value of the Plant Oxford production costs are [REDACTED] (inclusive of the CIL relief), as compared to [REDACTED] for the primary counterfactual scenario. This is a cost variance of 0.7%.

This is a very low variance, and as costs are higher under the Plant Oxford scenario, we view it as extremely unlikely that this could lead to a difference in pricing that would have a market-distorting impact.

As with the revenue test, given the small scale of the potential pricing impact, any second-order volume impact would be likely to be immaterial.

Source:

- (1) Statista (2023) Battery Electric Vehicles – Europe: <https://www.statista.com/outlook/mmo/electric-vehicles/battery-electric-vehicles/europe?currency=gbp>, Statista (2023) Battery Electric Vehicles – United Kingdom: <https://www.statista.com/outlook/mmo/electric-vehicles/battery-electric-vehicles/united-kingdom?currency=gbp>. Data extracted on 23/05/2023

Subsidy Control Principles - Detail

Our volume test compares the number of vehicles produced at Plant Oxford to an estimate of the volumes sold in the relevant market.

Assess the impact of the subsidy to alternative product and geographic markets (cont.)

Volume Test

To identify the relevant portion of the vehicles produced at Plant Oxford, we have split the volumes produced between geographic markets based on BMW split of sales volumes. We then split this between the small car and SUV product markets based on BMW production mix:

	UK	Europe
Total Production Volumes (2026) ⁽¹⁾ (A)	[REDACTED]	[REDACTED]
Geographic Share of Sales ⁽²⁾ (B)	17.1%	86.2%
Small Car production share ⁽³⁾ (C)	47.9%	47.9%
SUV production share ⁽³⁾ (D)	52.1%	52.1%
Plant Oxford Small Car Volumes (A*B*C)	[REDACTED]	[REDACTED]
Plant Oxford SUV Volumes (A*B*D)	[REDACTED]	[REDACTED]

To identify total market volumes, we have used data on total BEV registrations in Europe and the UK in 2021. We have then applied forecast annual BEV registration growth rates for Europe to arrive at forecast BEV registrations for the relevant years. These are then split based on a split of BEV availability by car size:

	UK	Europe
BEV Registration Volumes (2021) ⁽⁴⁾ (A)	192,000	1,231,000
BEV Registration Growth Rate ⁽⁵⁾ (B)	17.3%	17.3%
Forecast BEV Registration Volumes (2026) C = (A*(1+B)^5)	425,496	2,728,049
Small Car availability share ⁽⁶⁾ (D)	19%	19%
SUV availability share ⁽⁶⁾ (E)	41%	41%
Forecast Small Car BEV Registration Volumes (2026) (C*D)	80,844	518,329
Forecast SUV BEV Registration Volumes (2026) (C*E)	174,453	1,118,500

Source:

[REDACTED]

- (4) IEA (2022) Electric car registrations and sales share in China, United States, Europe and other regions, 2016-2021: <https://www.iea.org/data-and-statistics/charts/electric-car-registrations-and-sales-share-in-china-united-states-europe-and-other-regions-2016-2021> and IEA (2022) Electric car registrations and sales share in selected countries, 2016-2021: <https://www.iea.org/data-and-statistics/charts/electric-car-registrations-and-sales-share-in-selected-countries-2016-2021>
- (5) Average growth rate from 2020-2030 from IEA (2022) Global EV sales by scenario, 2020-2030: <https://www.iea.org/data-and-statistics/charts/global-ev-sales-by-scenario-2020-2030>. We have assumed that UK registration volumes will grow at the same rate as European registration volumes.
- (6) IEA (2023) Breakdown of available cars by powertrain and segment, 2022: <https://www.iea.org/data-and-statistics/charts/breakdown-of-available-cars-by-powertrain-and-segment-2022>. Please note that this data covers model availability, rather than sales, which is a limitation to our analysis.

Subsidy Control Principles - Detail

The evidence we have gathered is consistent with the position that, under the most likely Counterfactual, the subsidy is unlikely to have a material impact on competition or investment within either the UK or the wider European market.

Assess the impact of the subsidy to alternative product and geographic markets (cont.)

2026 Forecast	UK	Europe
Plant Oxford Small Car Volumes (A)	████████	████████
Plant Oxford SUV Volumes (B)	████████	████████
Small Car BEV Market Volumes (C)	80,844	518,329
SUV BEV Market Volumes (D)	174,453	1,118,500
Plant Oxford Small Car Volumes/Market Volumes	████████	████████
Plant Oxford SUV Volumes/Market Volumes	████████	████████

The cars being produced at Plant Oxford represent at most ██████████ of forecast total annual market volumes for any of the identified markets.

We note that Plant Oxford production peaks at ██████████ units in 2032.¹ If we assume that the BEV markets will continue growing at the 17.3% growth rate identified, then by 2032 the proportion of UK Small Car BEVs being produced at Plant Oxford will have fallen from ██████████

Summary

Under the primary counterfactual scenario, where the Electrified MINI is produced at alternative premises outside the UK, any pricing impact appears likely to be highly immaterial, as the subsidy represents a very small portion of market revenue, and production costs are not materially different.

If an alternative counterfactual is considered where BMW do not invest in increasing production of the Electrified MINI, the subsidy may have a small impact on the volumes sold in the UK BEV Small Car and SUV markets, although the scale of this impact would decline over the lifetime of Plant Oxford.

Source:



G. Subsidies' beneficial effects (in terms of achieving their specific policy objective) should outweigh any negative effects, including in particular negative effects on competition or investment within the United Kingdom and international trade or investment

Beneficial Effects

The subsidy proposed for the Plant Oxford expansion primarily addresses the policy aim of avoiding local economic disruptions, particularly the potential loss of high-skilled jobs due to factory closures. The evidence that has been gathered indicates that the subsidy is likely to support the achievement of these policy objectives, and so generate beneficial effects.

Negative Effects

The subsidy's size, constituting a small fraction of the annual market revenue, suggests a limited capacity to disrupt key competition or investment, both within the UK and in the broader European market. This assessment is based on the current understanding of the market dynamics and the relative scale of the subsidy in question.

Comparison

Given that the evidence gathered indicates that any potential negative impacts on competition or investment are likely to be extremely immaterial, the beneficial effects of the subsidy would appear to be likely to outweigh the negative effects.

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