

# TONBRIDGE & MALLING BOROUGH COUNCIL

## CABINET

26 March 2013

### Joint Report of the Director of Health and Housing and Director of Central Services and Monitoring Officer

#### Part 1- Public

#### Matters for Information

#### 1 DEFRA GRANT FOR AIR QUALITY WORK – SUPPLEMENTARY REPORT IN RESPECT OF “STATE AID”

##### Background

At the Local Environmental Management Advisory Board on 4 March 2013, Members requested that clarification of the position regarding “state aid” be included in the agreement to provide the necessary safeguards for the Council.

#### 1.1 What is “State Aid”?

1.1.1 State Aid refers to the award of a grant to a company which could potentially give them a commercial advantage in a competitive environment. Where a public body provides financial support to an undertaking, it is necessary to consider whether such support constitutes state aid. Financial support granted to undertakings must meet **all** the components set out in the European Community (EC) Treaty for it to be considered as state aid.

1.1.2 Extensive discussions regarding the state aid question have been held with Legal Services and they have concluded that state aid should not be an issue for us.

#### 1.2 Meeting the Tests

1.2.1 The four necessary components for state aid to be present are:

- 1) aid must have been given through State resources;
- 2) aid must favour an undertaking (that is, an organisation engaged in economic activity);
- 3) the aid must distort or threaten to distort competition; and
- 4) the aid must affect trade between Member States.

1.2.2 In this instance, the first two pre-conditions are met. The fourth condition is very easily met. The beneficiary need not itself carry out trade between Member States, provided that the activity is engaged in is traded between Member States. Here providing public transport is traded between Member States and therefore the fourth test is met.

1.2.3 The remaining test which must be satisfied for there to be state aid is that the aid must distort or threaten to distort competition. It is believed that Arriva will not receive any competitive advantage as the equipment is being given to them in order to carry out a study. In addition other bus companies who operate along the A20 corridor were approached to see whether they were willing to take part in the study and they declined.

### **1.3 Undertakings**

1.3.1 To protect the Council's position further a number of undertakings are being requested from Arriva to ensure that they do not have any competitive advantage which could threaten to distort competition. These are:

- Arriva agrees that the emissions abatement equipment ("the Equipment") will not be used in the procurement of any new bus contracts (which could otherwise give them a competitive advantage if energy efficiency was required under the contract);
- In addition, retrofitting Arriva buses with the emissions abatement kit will not result in a fuel saving cost on these buses and therefore the company would not accrue a financial benefit. The addition of the kit would actually result in an increase in fuel costs with the necessary addition of "AdBlue". AdBlue is a solution that is injected into the emissions abatement equipment to neutralise the nitrogen dioxides/ pollutants in the exhaust rendering them harmless. Hence the equipment has to be regularly topped up to ensure the correct amount of Adblue is maintained within the equipment. It has been estimated that this would result in an additional cost for Arriva in the region of £500 to £1,500 per bus. This further demonstrates there is no competitive advantage to Arriva from having the Equipment fitted.
- In the event of the Undertakings being breached by Arriva and/or state aid being found to have been given, Arriva agrees to repay to the Council the amount of grant which they have received in state aid.

1.3.2 The Undertakings that Arriva are being asked to sign up to will be included in a Partnership Agreement which will be signed by the Council, Arriva and the other partners, Maidstone Borough Council and KCC. The Partnership Agreement also sets out the obligations of each party in respect of the project and any financial contributions which have been promised. If any of the partners do not sign up to

the Partnership Agreement, the project will not proceed and the grant money will be returned to DEFRA in full.

Background papers:

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Nil

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