

28 June 2019

First Minister
Cab Sec Finance, Economy and Fair Work
Cab Sec Transport and Connectivity
Minister for Transport and the Islands
Lord Advocate

UPDATE ON OPTIONS IN RELATION TO FMEL AND HULLS 801/802 FOLLOWING COMMUNICATION WITH CBC

Purpose

1. To provide an update on the current position and offer recommendations for next steps.

Priority

2. URGENT.

Background

3. On 27 June SG/TS officials and advisors held a follow-up meeting with CBC (Jim McColl and [REDACTED] and their advisors Brodies. This was following the meeting Mr McColl had with Mr Mackay and officials on 24 June, to enable both sides to discuss all means to ensure any proposal is legally compliant.

4. No new proposals were offered by CBC, instead the meeting focused on the view around their proposal meeting MEOP tests and therefore avoiding any State Aid issues. They also argued that the model proposed does not have any procurement implications (as the contract does not change and CMAL do not pay more for the vessels – as this is funded through the £50m+ equity SG would put into the business). Advisors and officials challenged these assumptions and no agreement was reached. CBC continued to push towards a scenario where this would be a commercial negotiation - officials were clear this is not the circumstances we are in.

5. However, we gave CBC the opportunity to provide further evidence that may support its views and both sides consented on the legal teams continuing to engage directly on this matter to better understand the respective positions.

Legal Position

6. This information has now been received and considered by SG/TS officials and our legal advisors MacRoberts. There has been close scrutiny of the Proposal initially shared verbally at a meeting on 24 June and then in writing.

7. [REDACTED]

8. [REDACTED]

[REDACTED]

[REDACTED]

Next Steps

- 11. Officials will arrange a meeting with CBC directors for Monday 1 July, to give further feedback on the proposals and the position advanced by CBC, and to highlight the duties of FMEL directors to cooperate and support the continued efforts to keep the shipyard in operation.
- 12. Additional information has been received today from CBC, and officials will consider this with advisors over the weekend before meeting CBC next week
- 13. Officials will arrange early engagement with HCCI next week, and will update CMAL on current position.
- 14. Officials are working to prepare more detailed advice to Ministers on the CBC proposal. It is likely that this will be with Ministers for consideration next week.

Recommendation

- 15. To note legal advice received regarding CBC proposals, and next steps.

[REDACTED]
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