



COMPETITION APPEAL TRIBUNAL

NOTICE OF AN APPEAL UNDER SECTION 70 OF THE SUBSIDY CONTROL ACT 2022 Case No: 1775/12/13/26

Pursuant to Rule 14 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “Rules”), the Registrar gives notice of the receipt of an appeal on 10 June 2026, under s. 70(1) of the Subsidy Control Act 2022 (the “Act”), by McGill’s Bus Service Limited (the “Appellant”). The Appellant seeks review of a decision (the “ScotZEB3” decision) of the Scottish Ministers (the “Respondents”) to grant an alleged subsidy, as defined in s. 2(1) of the Act, of £45m to five recipients through the Scottish Zero Emission Bus Challenge Fund subsidy scheme (the “ScotZEB” subsidy scheme). The Appellant is represented by DLA Piper Scotland LLP, Collins House, Rutland Square, Edinburgh EH1 2AA (Reference: Alistair Drummond and Jennifer Talbot).

According to the Notice of Appeal (the “NoA”), the Appellant is bus operator based in Greenock, Scotland. The NoA states that it operates a diverse network of services across Scotland’s central belt, Dundee, Aberdeen and Inverness under the McGill’s, Midland Bluebird and Xplore Dundee brands.

The Respondents, through their executive agency Transport Scotland, established the ScotZEB scheme pursuant to s. 70 of the Transport (Scotland) Act 2001, in or around August 2021.

The ScotZEB scheme was registered on the Subsidy Database under subsidy control number SC10357 and its published budget was £120m. The NoA states that its purpose was to support bus operators in purchasing zero-emission buses (i.e. electric or hydrogen buses) instead of diesel buses, and in purchasing and installing associated infrastructure, and that it was designed to use the lowest possible level of subsidy to deliver the replacement of the maximum number of public service buses with zero-emission vehicles.

The NoA states that ScotZEB, according to the Scottish Government Subsidy Control Checklist as well as the ScotZEB Guidance for Participants, was initially envisaged as proceeding in two phases. The first phase (“ScotZEB1”) resulted in funding of £61.9m being awarded to 13 recipients, including an award of £9.01m to the Appellant. In December 2022, the second phase (“ScotZEB2”) was entered onto the Subsidy Database under a new subsidy control number, SC10759. The Subsidy Database entry stated that ScotZEB2, unlike ScotZEB1, was only open to consortia, and that there had been a permitted modification (in terms of s. 81 of the Act) to the ScotZEB scheme in the form of an increase in the overall budget by 25% to £150m and an extension in duration to 31 December 2028.

The NoA states that ScotZEB2 closed to applicants on 15 September 2023. Two consortia were shortlisted for awards: Zenobe Energy Ltd, of which the Appellant was a member, and Rock Road. On 11 April 2024, an award of £41.7m was made to Zenobe Energy Ltd, while Rock Road did not receive an award.

The NoA further states that, by letter dated 8 August 2025, the Cabinet Secretary for Transport, Fiona Hyslop, wrote to the Convenor of the Scottish Parliament’s Net Zero, Energy and Transport Committee expressing an intention to make a further £40m available through ScotZEB2. The Cabinet Secretary explained that the funding was to be made available to Rock Road only, should it meet the ScotZEB2 criteria. The NoA states that the lawfulness of that approach was challenged in

correspondence by various bus operators, including the Appellant. The NoA states that by letter dated 14 November 2025, the Respondents' agents confirmed that the Respondents would not make any further funding available under ScotZEB2 and referred instead to a plan to make additional funding available through a third phase of ScotZEB.

In November 2025, Transport Scotland announced a third and final phase of ScotZEB ("ScotZEB3"). The guidance document published by the Energy Saving Trust described ScotZEB3 as a "direct response to new UK Government legislation (Bus Services Act 2025)". The NoA states that the Bus Services Act 2025 was not in existence when the original ScotZEB scheme was established. Applications for ScotZEB3 closed on 26 February 2026, with total funding of £45m available. Unlike ScotZEB2, applicants were not required to apply as consortia. The Appellant applied, but was unsuccessful. On 25 March 2026, Transport Scotland confirmed that the Respondents had awarded the £45m available through ScotZEB3 to five applicants.

The NoA states that no entry has been made on the UK Subsidy Database in relation to ScotZEB3, either as a modification of ScotZEB or as a new subsidy scheme. The Appellant made a request for information under s. 76 of the Act by letter dated 17 April 2026. In their response dated 15 May 2026, the Respondents stated that no "separate or additional subsidy control assessment was required for subsequent phases of ScotZEB", and that ScotZEB3 operated "within the scope of the overarching ScotZEB subsidy control assessment". The Respondents further stated that ScotZEB3 constituted a permitted modification of a legacy scheme in accordance with s. 81 of the Act.

The Appellant submits that the Respondents have erred in fact and/or law by:

1. Treating ScotZEB3 as a permitted modification of the ScotZEB subsidy scheme under s. 81 of the Act, when, according to the Appellant, ScotZEB3 was not a "legacy subsidy modification" in terms of s. 81(3)(a), and was not permitted under the terms of the original ScotZEB scheme as they had effect before s. 81 came into force.
2. Failing to treat ScotZEB3 as the making of a new subsidy scheme for the purposes of Part 2 of the Act, and consequently failing to comply with the subsidy control requirements applicable to new subsidy schemes.
3. Failing to consider the subsidy control principles and the energy and environmental principles before establishing ScotZEB3, contrary to ss. 12 and 13 of, and Schedules 1 and 2 to, the Act.
4. Failing to treat ScotZEB3 as a subsidy scheme of particular interest in the terms of s. 11 of the Act, and breaching the duty under s. 52(1)(a) of the Act to request a report from the Competition and Markets Authority before establishing ScotZEB3, meaning ScotZEB3 is prohibited pursuant to s. 31(1) of the Act.
5. Failing to make an entry on the Subsidy Database in respect of ScotZEB3, contrary to s. 33 of the Act.

By way of relief, the Appellant seeks:

1. A declarator that, in making ScotZEB3, the Respondents did not make a permitted modification to the ScotZEB subsidy scheme in terms of s. 81(3) of the Act.
2. A declarator that the making of ScotZEB3 is to be treated for the purposes of the Act the making of a new subsidy scheme for the purposes of the subsidy control requirements in Part 2 of the Act.

3. A declarator that the Respondents, in establishing ScotZEB3, have breached their duty under s. 12(3) of the Act to consider the subsidy control principles before making a subsidy scheme.
4. A declarator that the Respondents, in establishing ScotZEB3, have breached their duty under s. 13(3) of the Act to consider the energy and environment principles before making a subsidy scheme.
5. A declarator that the Respondents, in establishing ScotZEB3, have breached their duty under s. 52(1)(a) of the 2022 Act to request a report from the Competition and Markets Authority before making a subsidy scheme of particular interest.
6. A declarator that ScotZEB3 is prohibited pursuant to s. 31(1) of the Act.
7. A declarator that the Respondents have breached their duty under s. 33(1)(b), failing which under s. 33(5) of the Act to ensure that an entry in the Subsidy Database is made in respect of ScotZEB3.
8. Reduction of the decision to make ScotZEB3.
9. Such further or other order as appropriate.
10. The Appellant's expenses.

Any person who considers that they have sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with Rule 16 of the Rules.

Please also note that a direction of the President is currently in place as to the electronic filing of documents: see paragraph 2 of the [Practice Direction](#) relating to Covid-19 published on 20 March 2020. Therefore, a request for permission to intervene should be sent to the Registrar electronically, by email to registry@catribunal.org.uk, so that it is received within **three weeks** of the publication of this notice.

Further details concerning the procedures of the Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP, or by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa CBE, KC (Hon)
Registrar

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