



Clyde Blowers Capital IM LLP  
5 Redwood Crescent  
Peel Park u203474  
East Kilbride  
G74 5PA

[REDACTED]

Derek Mackay  
Cabinet Secretary for Finance, Economy and Fair Work  
St Andrews House  
Regent Road  
Edinburgh  
EH1 3DG

5 July 2019

Dear Mr Mackay

I refer to your letter of 4<sup>th</sup> July 2019 which was handed to me at a meeting with Liz Ditchburn and others yesterday.

Before addressing the issues contained in the letter, I wish to express our extreme disappointment in the way in which the meeting was handled.

When you met with Jim McColl a week ago, you indicated that you wanted the parties to work together to find a solution. We met with your representatives following your meeting and then issued a revised proposal. Our legal advisers Brodies also issued a detailed assessment of the procurement law position to your legal advisers Macroberts. In both the meeting and our follow-up, we provided commercial and legal arguments to support our position. Since then, despite reaching out on numerous occasions we have had no feedback or dialogue with your representatives and in particular, they have not sought to engage with us to work through any of the issues they may see arising from our proposal. [REDACTED]

[REDACTED]

It is very clear therefore that you have had no intention of trying to work together to find a solution.

We were then called to a meeting today in Edinburgh which was scheduled to last for 1 hour 30 minutes at which a prewritten statement was delivered by Liz Ditchburn. It was made clear that the Minister's decision was final and that there would be no debate on the matter. We find it completely disgraceful that we would be brought to such a meeting with the inference that we were to have a working session, to then be delivered with such a message which was clearly pre-determined when the meeting was called.

Moving on to the points raised in your letter and raised by Liz Ditchburn in the meeting.

We note that you are of the view that our proposal falls short of the Market Economy Operator Principle. We have shared our detailed view of why we believe we do meet this test. Can you therefore please provide your detailed reasoning for your position?

You have indicated that procurement remains a risk. Our lawyers have provided detailed legal argument why this is not the case and we would therefore ask you to provide the legal basis for your counter position.

Your letter states that there are on-going financial risks with the CBC proposal. As we have outlined many times before, not choosing to implement the CBC proposal will result in increased costs and will be worse from a taxpayer's perspective. This is something we will continue to highlight.

Considering the materiality of the issues at hand and the negative impact that your decision will have for the taxpayer, it is deplorable that in coming to your final decision, you have provided no transparency at all. To make the statements that there are "a number of serious legal risks" and "that entering into the proposal would be unlawful" without any substantiation, is lamentable.

At the meeting yesterday, Liz Ditchburn asked us to confirm if CBC would provide the level of funding we are asking the Scottish Government to provide. Firstly, as has been discussed with you previously, CBC cannot and will not provide cash investment to remedy a breach of contract by a Scottish Government subsidiary. That said, in order to try to work together and find a solution, as outlined in our proposal of the 28 June 2019, CBC is willing to accept 50% of the economic impact that the increased costs of 801 and 802 have had on the FMEL- increased costs that have arisen as a result of CMAL modifications and breaches of contract.

Liz Ditchburn also asked us to confirm the extension of the refund guarantee for 801. CBC is not a party to the refund guarantee and so is not able to confirm. I note however that Liz Ditchburn has posed this question to the directors of FMEL.

Finally, we note that you wish to work with us to find a deliverable solution that can provide a future for the yard. In the absence of having visibility on your proposal as to how you see us working together, we are not able to comment on this. We would note however that it is disappointing that you have shared your views on next steps with the directors of FMEL in terms of exercising your right to buy our shares, but you have not been up front with us as regards your intentions.

Yours sincerely



Partner