Subsidy Advice Unit Report on the proposed restructuring subsidy to Post Office Limited

Referred by Department for Business and Trade

29 November 2023

Subsidy Advice Unit

Part of the Competition and Markets Authority

CONTENTS

1. Introduction

1.1 This report is an evaluation prepared by the Subsidy Advice Unit (SAU), part of the Competition and Markets Authority, under section 59 of the Subsidy Control Act 2022 (the Act).

1.2 The SAU has evaluated the Department for Business and Trade's (DBT) assessment of compliance of the proposed subsidy to Post Office Limited (POL), with the requirements of Chapters 1 and 2 of Part 2 of the Act (the Assessment).[1]

1.3 This report is based on the information provided to the SAU by DBT in its Assessment and evidence submitted relevant to that Assessment.

1.4 This report is provided as non-binding advice to DBT. The purpose of the SAU's report is not to make a recommendation on whether the subsidy should be given, or directly assess whether it complies with the subsidy control requirements. DBT is ultimately responsible for granting the subsidy, based on its own assessment, having the benefit of the SAU's evaluation.

1.5 A summary of our observations is set out at section 2 of this report.

The referred subsidy[2]

1.6 POL is a public non-financial corporation, which is wholly-owned by the Secretary of State for Business and Trade. Through POL, the UK government ensures the provision of a network of Post Office branches by way of a Service of Public Economic Interest (SPEI), delivering essential services[3] to customers across the UK, for which it provides POL with an annual network subsidy.

1.7 DBT is proposing to award POL a grant of up to £190 million, including £40 million contingency, to cover the costs of acting as a core participant in the Post Office Horizon IT (POHIT) Inquiry and operating its Remediation Unit (which delivers compensation and other Horizon-related activities).

1.8 In July 2021, POL prepared an original restructuring plan (the 2021 Restructuring Plan) to address POL's liabilities connected with its Horizon IT system or workers'

[1] Chapter 1 of Part 2 of the Act requires a public authority to consider the subsidy control principles and energy and environment principles before deciding to give a subsidy. The public authority must not award the subsidy unless it is of the view that it is consistent with those principles. Chapter 2 of Part 2 of the Act prohibits the giving of certain kinds of subsidies and, in relation to certain other categories of subsidy creates a number of requirements with which public authorities must comply.
[2] Referral of the proposed subsidy to Post Office Limited by the Department for Business and Trade - GOV.UK (www.gov.uk)
[3] These include: Access to post services, access to basic cash and banking facilities, universal payment facilities for public utility services, and provision of services on behalf of central and local government.

rights legislation, relating to previous years (the Horizon and Employment Liabilities).

1.9 The proposed subsidy is being given under a modification to the 2021 Restructuring Plan (the 2023 Modified Plan), which covers the increase in costs associated with the POHIT Inquiry and the operation of the Remediation Unit, for the financial years (FY) 2023/24 to the end of the 2024/25. The 2023 Modified Plan also covers other costs and activities associated with addressing the Horizon and Employment Liabilities more broadly which are not considered in this referral.

SAU referral process

1.10 On 13 October 2023, DBT requested a report from the SAU in relation to the proposed subsidy to POL.

1.11 DBT explained that the subsidy is a Subsidy of Particular Interest[4] because its value exceeds £10 million. In addition, it was explained that the subsidy is a restructuring subsidy.[5]

1.12 The SAU notified DBT on 19 October 2023 that it would prepare and publish a report within 30 working days (ie on or before 29 November 2023).[6] The SAU published details of the referral on 20 October 2023.[7]

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[4] In the information provided under section 52(2) of the Act.
[5] Section 20 of the Act.
[6] Sections 53(1) and 53(2) of the Act.
[7] Referral of the proposed subsidy to Post Office Limited by the Department for Business and Trade - GOV.UK (www.gov.uk)

2. Summary of the SAU's observations

2.1 The Assessment is drafted in line with the four-step process described in the Statutory Guidance for the United Kingdom Subsidy Control Regime (the Statutory Guidance) and as reflected in the SAU's Guidance on the operation of the subsidy control functions of the Subsidy Advice Unit (the SAU Guidance).

2.2 We consider that, overall, DBT has conducted an assessment which considers the subsidy's compliance with the subsidy control principles in line with the Statutory Guidance. However, we find that DBT could strengthen parts of its assessment.

2.3 In relation to Principle A, the Assessment could be strengthened by explaining in more detail the relationship between the specific policy objectives of this subsidy and the wider benefits of maintaining the SPEI that are cited by DBT.

2.4 In relation to Principle F, the Assessment could be strengthened by considering in more detail, the extent of the impacts of potential distortions of competition in each of the relevant markets in which POL operates, as well as any impacts on investment by competitors as a result of the subsidy.

2.5 We consider that DBT could have provided further explanation of how it has satisfied itself that the 2023 Modified Plan meets the requirements of section 20 of the Act, in particular that it has been prepared with a view to ensuring the return of POL to long-term viability.

2.6 Our report is advisory only and does not directly assess whether the proposed subsidy to POL complies with the subsidy control requirements. The report does not constitute a recommendation on whether the subsidy should be given by DBT. We have not considered it necessary to provide any advice about how the proposed subsidy may be modified to ensure compliance with the subsidy control requirements.[8]

[8] Section 59(3)(b) of the Act.

3. The SAU's Evaluation

3.1 This section sets out our evaluation of the Assessment, following the four-step framework structure used by DBT.

Step 1: Identifying the policy objective, ensuring it addresses a market failure or equity concern, and determining whether a subsidy is the right tool to use

3.2 The first step involves an evaluation of the Assessment against:

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

(b) Principle 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.[9]

Policy objective

3.3 The Assessment states that the policy objective of the subsidy is to enable POL to cover the costs of acting as a core participant in the POHIT Inquiry and to support the continued operation of its Remediation Unit, a team within POL tasked to deliver the work set out in paragraph 3.6 below.

3.4 The Assessment further explains that by modifying the 2021 Restructuring Plan to include the costs associated with this referral, DBT is ensuring the continued operation of POL and its provision of the SPEI set out in paragraph 1.6 above. This in turn ensures delivery of UK government's wider policy objective of equity of access for UK consumers, including vulnerable customers and SMEs, to the range of SPEI on which they rely.

3.5 The Assessment explains that the POHIT Inquiry was established by Ministers in September 2020, before being designated as a public Statutory Inquiry in June 2021. POL's participation is essential to the successful completion of its work.

3.6 It goes on to explain the work of the Remediation Unit, which supports the operation of a range of postmaster compensation workstreams including activity relating to the overturning of convictions and associated handling and legal costs

[9] Further information about the Principles A and E can be found in the Statutory Guidance (paragraphs 3.18-3.42) and the SAU Guidance (paragraphs 4.7-4.11).

in relation to the remediation of past detriment. The proposed subsidy does not include costs of the compensation payments themselves.

3.7 In our view the Assessment clearly sets out the intended policy objective of the subsidy and the associated wider UK government policy objectives set out in paragraph 3.4. However, the Assessment could be strengthened by explaining in more detail the relationship between the specific policy objectives of this subsidy and the wider benefits of maintaining the SPEI that are cited by DBT.

Equity objective

3.8 The Statutory Guidance sets out that equity objectives seek to reduce unequal or unfair outcomes between different groups in society or geographic areas.[10]

3.9 The Assessment explains the equity objective for the subsidy is to:

(a) ensure that affected postmasters, and the wider public, obtain the full facts surrounding failings of the Horizon IT system at the Post Office and to enable the UK government to learn lessons to avoid recurrence.

(b) facilitate the work of the Remediation Unit including the delivery of compensation to affected parties. DBT notes that in the absence of funding, these activities would likely be significantly disrupted and delayed resulting in some postmasters not receiving timely compensation nor having their convictions overturned.

3.10 The Assessment further explains the range of SPEI[11] which will be maintained by providing the subsidy and ensuring the continued operation of POL and its provision of SPEI, and the equity objective behind them. However as discussed in paragraph 3.7 the Assessment DBT could have better explained the extent to which these benefits relate specifically to the policy and equity objectives of this subsidy. This point is discussed further in Step 2 below, where we consider the appropriate counterfactual(s).

3.11 DBT supports its conclusions with reasoning and evidence as to the extent and severity of the financial and other hardships experienced by postmasters and articulates the UK government’s aim of addressing those issues by awarding this subsidy.

3.12 In our view, the Assessment articulates the equity objective that it seeks to address and explains effectively how the subsidy will achieve that objective.

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[10] Statutory Guidance, paragraphs 3.35-3.39.
[11] These include; Access to post services, access to basic cash and banking facilities, universal payment facilities for public utility services, and provision of services on behalf of central and local government.

Consideration of alternative policy options and why the POL restructuring subsidy is the most appropriate and least distortive instrument

3.13 In order to comply with Principle E, public authorities should consider why the decision to give a subsidy is the most appropriate instrument for addressing the identified policy objective, and why other means are not appropriate for achieving the identified policy objective.[12]

3.14 The Assessment states that the subsidy is being made in response to a significant increase in the estimated lifetime costs of POL's Remediation Unit and Inquiry Team. It explains that meeting these costs is non-discretionary and the drivers behind the increases, such as the level of required Inquiry participation and Ministerial decisions about the scope and extent of compensation schemes, are outside POL's control.

3.15 The Assessment sets out several alternative policy options that were considered by DBT. These options included (i) an examination of the capacity of POL to absorb these costs internally alongside cost reduction strategies; (ii) the potential for another provider, including UK government, to directly deliver the activities, and (iii) the use of loans.

3.16 It explains that following financial due diligence undertaken by independent consultants, DBT concludes that POL does not have the capacity to further fund Inquiry and Remediation Unit activities in FY 2023/24 and 2024/25, that cost reduction strategies/self-help are not viable and that additional funding is required.

3.17 The Assessment also considers whether another provider, including UK government, could step in to deliver the activities. However, it concludes that this is not a viable proposition for legal, administrative and procedural reasons. Further, the Assessment states that only POL has the detailed records as well as the necessary resources and processes in place to support the delivery of compensation to affected postmasters as well as to effectively discharge its legal responsibilities to the POHIT Inquiry.

3.18 Finally, DBT considered whether costs could be met through loans. It concludes that loans would not be viable in this case as the relevant costs are not considered a commercial proposition.

3.19 In our view, the Assessment demonstrates that several options for achieving the policy objective were considered and explains why DBT concludes the subsidy to be the most appropriate means to address the policy objective.

[12] Statutory Guidance, paragraphs 3.40-3.41.

Step 2: Ensuring that the subsidy is designed to create the right incentives for the beneficiary and bring about a change

3.20 The second step involves an evaluation of the assessment against:

(a) Principle C: First, subsidies should be designed to bring about a change of economic behaviour of the beneficiary. Second, 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; and

(b) Principle D: Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.[13]

Counterfactual assessment

3.21 In assessing the counterfactual, the Statutory Guidance explains that public authorities should assess any change against a baseline of what would happen without the subsidy (the 'do nothing' scenario').[14] This baseline would not necessarily be the current 'as is' situation (the 'status quo') but what would likely happen in the future – over both the long and short term – if no subsidy were awarded.

3.22 The Assessment states that in the absence of the proposed subsidy POL would (to the extent other funding or support was not forthcoming) be unable to continue funding the Inquiry and Remediation Unit costs, without increasing the likelihood of POL entering into administration. Moreover, as set out in paragraphs 3.4 and 3.10, given that POL provides a SPEI, should POL's likelihood of entering into administration increase, its network of post offices would be adversely impacted, severely impairing the provision of SPEI.

3.23 The Assessment considers and discounts three alternative counterfactual scenarios, including (i) where the costs associated with POL being a core participant in the POHIT Inquiry and operating its Remediation Unit were met through the divestment of assets, (ii) a reduction of SPEI by POL, or (iii) UK government paying costs associated with POL being a core participant in the POHIT Inquiry and operating its Remediation Unit directly.

3.24 DBT assessed that no saleable assets would produce the required funding within the necessary timeframe. The Assessment further notes that it would be costly to implement SPEI reductions, with savings only being generated in the longer term and that direct payments by UK government is not considered as a realistic

[13] Further information about the Principles C and D can be found in the Statutory Guidance (paragraphs 3.43 to 3.57) and the SAU Guidance (paragraphs 4.12-4.14).
[14] Statutory Guidance, paragraphs 3.46-3.47.

counterfactual as set out above in paragraph 3.17. DBT therefore concludes that none of these alternative counterfactual scenarios are credible.

3.25 In our view, the Assessment adequately explains that in the counterfactual scenario, the policy objective could not be achieved by POL without negatively impacting on the continued operation of POL. It also considers alternative counterfactual scenarios and explains why DBT found none to be credible.

Changes in the economic behaviour of the beneficiary

3.26 The Statutory Guidance sets out that subsidies must bring about something that would not have occurred without the subsidy.[15] In demonstrating this, public authorities should consider the likely change or additional net benefit.

3.27 The Assessment states that the subsidy will enable POL to meet the costs associated with being a core participant in the POHIT Inquiry and operating its Remediation Unit and that this would not occur absent the subsidy.

3.28 We sought clarification from DBT regarding the period to which the subsidy relates. DBT confirmed the subsidy would cover the FY 2023/24 and 2024/25. This includes costs that POL incurred in FY 2023/2024 in the expectation that financial support would be provided by DBT. DBT provided further information on the nature of the costs involved and how the provision of funding for costs already incurred in the current FY supports its policy objectives.

3.29 In our view, the Assessment adequately explains the change in POL's behaviour, consistent with the counterfactual. We consider that DBT has assured itself and explained adequately why it considers it appropriate to funds costs already incurred in the current FY in line with the policy objectives.

Additionality assessment

3.30 'Additionality' means that subsidies should not be used to finance a project or activity that the beneficiary would have undertaken in a similar form, manner, and timeframe without the subsidy.[16]

3.31 The Assessment sets out that POL is a large-sized enterprise and that it has contributed almost £250 million up to the end of FY 2021/22 from its own reserves. This includes contribution towards the costs of remediation, the POHIT Inquiry, as well as payments related to the Group Litigation Order and towards the cost of settlements made under the Horizon Shortfall Scheme. DBT has further explained

[15] Statutory Guidance, paragraph 3.50.
[16] Statutory Guidance, paragraphs 3.49-3.53.

that it considers that POL has made a significant contribution to these costs in FY 2022/23.

3.32 The Assessment concludes that despite cost reduction initiatives and sale of assets, POL has no budget, and no saleable assets executable within the required timeframes, which could fund the costs associated with being a core participant in the POHIT Inquiry and operating its Remediation Unit in FY 2023/24 and 2024/25.

3.33 In our view, the Assessment demonstrates that the subsidy does not finance a project or activity that would have been undertaken in a similar form, manner and timeframe without the proposed subsidy.

Step 3: Considering the distortive impacts that the subsidy may have and keeping them as low as possible

3.34 The third step involves an evaluation of the Assessment against:

(a) Principle B: Subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it; and

(b) Principle F: Subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom.[17]

Proportionality

3.35 The Assessment explains the policy objective in Step 1 and sets out the alternatives considered and why these would not be suitable to achieve the policy objective. It also describes the extent that POL has self-funded these costs to date, as well as identifying and implementing cost reductions, both of which are no longer viable and, consequently, new funding is required.

3.36 The Assessment states that the subsidy is strictly limited and ringfenced to costs associated with participation in the POHIT Inquiry and the costs of the Remediation Unit, both of which do not relate to commercial activities of POL. The subsidy is also time limited until the end of FY 2024/25, by which point DBT expects much of the 2023 Modified Plan to have been completed.

3.37 The Assessment states that the subsidy amount is based on financial forecasts, on which financial due diligence was undertaken by independent consultants to provide external assurance. The subsidy is an ‘up to’ amount and payments will be

[17] Further information about the Principles B and F can be found in the Statutory Guidance (paragraphs 3.58-3.93) and the SAU Guidance (paragraphs 4.15-4.19).

adjusted to reflect actual costs, which will be monitored on an ongoing basis to ensure only the minimum required is spent in order to achieve the policy objective.

3.38 It outlines the ongoing monitoring and evaluation mechanisms of the subsidy including a full Monitoring and Evaluation Plan for Inquiry and Remediation Unit Costs. This includes regular interaction between DBT and POL, ongoing monitoring of costs, and delivery of the relevant activities against key performance indicators.

3.39 In our view, the Assessment appropriately considers compliance with Principle B and systematically engages with Step 3 of the Statutory Guidance.

Design of subsidy to minimise negative effects on competition and investment

3.40 The Assessment states that POL does not trade internationally, and therefore any impacts on competition would only impact those in a domestic setting.

3.41 It further explains that the subsidy will not have a distorting effect on competition in the markets in which POL operates, as the subsidy funding is limited and ringfenced to costs associated with the POHIT Inquiry and Remediation unit. Neither of these activities relate to the commercial activities of POL, nor do they impact how POL operates in the relevant commercial markets.

3.42 The Assessment states that should the counterfactual (as described in paragraph 3.22 above) be realised, this could potentially benefit competitors in the commercial markets in which POL is active. In those markets, the absence of POL could allow competitors to increase their market share. It also considers the potential positive impacts on competition from retaining POL as a competitor, especially in certain markets where there are a limited number of competitors.

3.43 The Assessment identifies relevant commercial markets including: (i) mails, (ii) banking, (iii) government services and (iv) bill payment markets. DBT concludes that there is not currently a comparable provider that could provide the same range of services and on the same geographical spread, and in some cases these services could not be fully provided by the remainder of the market as a whole.

3.44 In our view, the Assessment appropriately considers why a direct grant is the most effective option to achieve the policy objective, whilst highlighting that this type of intervention (direct grant) has a higher potential to distort competition. It also outlines that by ringfencing the subsidy to specific costs and introducing monitoring of both costs and delivery against key performance indicators, any potential distortions to competition should be limited.

Assessment of effects on competition or investment

3.45 The Assessment clearly identifies and provides information about the relevant markets in which POL is commercially active, including identifying relevant competitors and, for certain markets, the market shares and trends. It captures the key areas where competition distortions may occur and concludes that the impact on competition in the relevant markets compared to their current state would be negligible.

3.46 The Assessment has captured at a high level that, in the counterfactual scenario, there may be opportunities for competitors to increase their market share and make commercial gains, in locations where POL's activities are profitable.

3.47 In our view, the Assessment appropriately considers potential distortions of competition against both the current market and the counterfactual, and explains how the scheme design could mitigate these. However, the Assessment could be strengthened by considering in more detail, the extent of the impacts of potential distortions of competition in each of the relevant markets in which POL operates, as well as any impacts on investment by competitors as a result of the subsidy.

Step 4: Carrying out the balancing exercise

3.48 The fourth step involves an evaluation of the Assessment against subsidy control Principle G: subsidies' beneficial effects (in terms of achieving their specific policy objective) should outweigh any negative effects, including in particular negative effects on: (a) competition or investment within the United Kingdom; (b) international trade or investment.[18]

3.49 The Assessment lists the direct beneficial impacts of the subsidy. These include the delivery of compensation to affected parties in a timely manner, supporting the POHIT Inquiry to ensure that the full facts and events surrounding the Horizon IT system are made available to those affected and to enable lessons to be learned.

3.50 The Assessment further explains that the subsidy will allow POL to maintain the provision of its existing SPEI, which ensures reasonable equity of access for UK consumers, including vulnerable customers, to the range of post office services nationally.

3.51 We consider that the Assessment sets out the benefits of the subsidy and demonstrates how they relate to the specific policy objective, and support the overall equity objective.

[18] See Statutory Guidance (paragraphs 3.96-3.98) and SAU Guidance (paragraphs 4.20-4.22) for further detail.

3.52 The Assessment sets out a number of negative effects. It discusses the potential negative effects on competition and investment in the UK, with regard to the counterfactual position and provides an explanation of the likelihood of occurrence and the size of impact. It also explains that the impact on competition in the relevant markets would be minimal.

3.53 As set out in paragraph 3.40, the Assessment states that POL does not trade internationally, and therefore any impacts on competition would only impact those in a domestic setting.

3.54 In our view, DBT has balanced the benefits and negatives of the subsidy and explained how it concludes that the benefits outweigh the negatives, in terms of addressing the equity objective.

Other Requirements of the Act

3.55 This step in the evaluation relates to the requirements and prohibitions set out in Chapter 2 of Part 2 of the Act, where these are applicable.[19]

Section 20: Restructuring

3.56 As set out in paragraph 1.9, DBT considers this to be a restructuring subsidy. The Statutory Guidance explains that restructuring subsidies can be granted by public authorities to ailing or insolvent enterprises, provided certain conditions are met, such as a requirement that the recipient has prepared a credible restructuring plan based on realistic assumptions that look to return the enterprise to long term viability within a reasonable period of time.

3.57 In the case of a large enterprise, the recipient must make a significant contribution to the cost of the restructuring. The public authority must also be satisfied that the subsidy contributes to an objective of public interest, such as preventing job losses, or that the circumstances are exceptional.

3.58 Subsidies for restructuring ailing or insolvent enterprises are prohibited under section 20(1) of the Act unless certain conditions, set out in section 20(2)-(6) are met. These are discussed in turn below.

s.20(2)-(3) The public authority is satisfied that there is a restructuring plan which is credible, based on realistic assumptions, and prepared to ensure a return to long-term viability within a reasonable time period.[20]

3.59 The Assessment states that DBT is satisfied that the 2023 Modified Plan is credible, based on realistic assumptions and is prepared with a view to ensuring

[19] Statutory Guidance, chapter 5.
[20] Sections 20(2) and 20(3) of the Act.

POL's return to long-term viability by the end of FY 2024/25, at which point DBT anticipates much of the plan is due to have been completed. The Assessment bases this view on POL's draft three-year forecast.

3.60 However, the Assessment also states that some liabilities associated with activities within the 2023 Modified Plan are not entirely within POL's control, for example, compensation for overturned convictions will become eligible depending upon the Courts' decisions.

3.61 In addition, the Assessment recognises that forecasting costs for a long-term remediation programme and the ongoing POHIT Inquiry presents a significant challenge, and that benchmarking to other remediation programmes is difficult.

3.62 We consider that DBT could have provided further explanation of how it has satisfied itself that the 2023 Modified Plan meets the requirements of section 20 of the Act, in particular that it has been prepared with a view to ensuring the return of POL to long-term viability.

s.20(4) Contribution to the cost of the restructuring.

3.63 The Statutory Guidance states that the Public Authority's support should be limited to the smallest amount necessary to make the restructuring possible.[21]

3.64 DBT sets out that POL is a large-sized enterprise and that it has contributed almost £250 million up to the end of FY 2021/22 from its own reserves. This includes contribution towards the costs of remediation, the POHIT Inquiry, as well as payments related to the Group Litigation Order and towards the cost of settlements made under the Horizon Shortfall Scheme. DBT has further explained that it considers that POL has made a significant contribution to these costs in FY 2022/23.

3.65 The 2023 Modified Plan explains that this contribution has been funded by POL's operating activities and asset sales, and it represents a significant share of the total expected lifetime cost of the various liabilities and costs.

3.66 In our view, the Assessment adequately explains that POL has made a significant contribution to the cost of the restructuring.

[21] Statutory Guidance, paragraph 5.56.

s.20(5) The public authority is satisfied that it contributes to an objective of public interest by avoiding social hardship or preventing severe market failure.[22]

3.67 The Statutory Guidance states that the Public Authority should be satisfied that the subsidy contributes to an objective of public interest by avoiding social hardship or preventing severe market failure.[23]

3.68 The Assessment states that the subsidy contributes primarily to an objective of public interest by avoiding social hardship, primarily by ensuring that compensation due is paid to affected postmasters. It also explains that the subsidy will ensure the continued delivery an important public economic interest service that is difficult to replicate, without negatively impacting on the continued operation of POL.

3.69 In our view, the Assessment adequately explains how the subsidy contributes to the objective of avoiding social hardship.

s.20(6)-(7) Second restructuring subsidy within a five-year period.

3.70 The Statutory Guidance explains that restructuring support should not be given to an enterprise if it has previously received restructuring support on a different occasion in the last five years unless the circumstances that led to the need for the subsidy were unforeseeable and not caused by the beneficiary.[24]

3.71 The Assessment notes that POL has been given a restructuring subsidy within the last five years and that the current subsidy arises from modifying the 2021 Restructuring Plan, as described above. However, DBT noted that the cost increases are due to the complexity of remediation and by the change from a non-statutory to a Statutory Inquiry as well as wider changes in the Inquiry's timeline and scope. DBT noted that these were not caused by POL, nor could they have been foreseen. Therefore, DBT considers that it has met the requirements of the Act.

3.72 In our view, DBT has clearly explained its reasoning for its assessment under these provisions.

[22] Section 20(5) of the Act.
[23] Statutory Guidance 5.62.
[24] Statutory Guidance 5.66-5.67.