

- A. The role of the CMA's Subsidy Advice Unit
- B. Enforcement of the Subsidy Control Act 2022

- The Act creates a 'Subsidy Advice Unit' to review public authorities' assessments against the Subsidy Control Principles and, where relevant, make recommendations on how to improve those assessments, or better design the subsidy (***NB***: non-binding advice)
- *Advisory role*: additional layer of review
 - *cf.* EU State aid prior approval system
- Unlike the European Commission, the CMA will have no powers to:
 - prohibit or approve subsidies
 - investigate of own initiative
 - receive complaints by third parties

A radical change from the EU State aid regime

- 2 categories of subsidies will be subject to referrals to the CMA:
 - A. Mandatory** pre-award referrals for **Subsidies of Particular Interest (SOPI)**
 - SoS can issue a ‘call-in direction’ for CMA report if risk of negative effects on competition or investment (Section 55)
 - B. Voluntary** pre-award referrals for **Subsidies of Interest (SOI)**
- SoS will have the power to request ex post referrals – after the subsidy is granted
- CMA will have 30 working days to publish a report
- ‘Cooling off’ period of 5 working days before aid can be awarded

- Competition Appeal Tribunal to hear applications for Judicial Review
 - from ‘interested parties’
 - beneficiaries, competitors and trade associations
 - possibly local authorities and devolved administrations
 - the Secretary of State
 - against subsidy decisions made by a public authority (**not against CMA reports**)
- Strict 30-day deadline to apply
 - *cf.* the European Commission’s power to investigate State aid up to 10 years after the aid is granted
- The Tribunal will have the power to:
 - grant JR remedies (set aside the award)
 - make recovery orders

Compared to the EU experience..

- Enforcement will be fundamentally different under the Act
 - System of private enforcement: unlike the European Commission, the CMA is not an enforcer (cannot investigate of own motion or following a complaint)
 - cost implications
 - Short timeline to challenge a decision: 30 days vs. 10 years post-award
 - Standard of review: limited to JR grounds, not a full merits review
 - *Wednesbury* irrationality – high bar
 - Incompatible subsidies: the distortive effect will continue until issue finally decided by Courts which can take a number of years (while Commission decision that declares the aid incompatible applies immediately and aid is recovered until final Court decision)
- Less favourable regime for adversely affected parties
- Greater legal certainty for authorities and beneficiaries

Contact Information



Tatiana Siakka

Senior Associate

London | Brussels

T +44 20 7655 1692

Tatiana.Siakka@squirepb.com