

How to navigate the CMA referral process

A Practical Guide

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1. Role of the Subsidy Advice Unit

- What is the Subsidy Advice Unit?
- How does its role differ from that of the European Commission in EU State aid law?

Review

Evaluates proposed subsidies referred by public authorities under S.52 and S.55 of the SCA and publishes a report which can be used by the public authority to improve its assessment.

Monitor

Monitors and reports to Parliament upon:

- the effectiveness of the SCA; and
- its impact upon competition and investment within the UK

2. What types of subsidy must be referred?

Subsidy / Subsidy Scheme of Particular Interest	Subsidy / Subsidy Scheme of Interest
<u>Mandatory duty</u> to refer under S.52(1) SCA.	<u>Option</u> to refer a SOI under s.56(1) SCA
SOPI <ul style="list-style-type: none"> • involves award of a subsidy above £10m • involves award of a subsidy above £5m to a sensitive sector • Any restructuring subsidy • Any relocation subsidy above £1m • Involves award of above £1m and takes cumulative total for related subsidies above £10m / £5m if sensitive sector 	SOI: <ul style="list-style-type: none"> • Any subsidy above £5m • Any relocation subsidy • Any rescue subsidy • Any tax measure
Cooling off period – 5 days*	No cooling off period

*but may be extended where the Secretary of State considers that the CMA's report has identified that there are serious deficiencies in the public authority's assessment.

3. Submitting a referral



Public Authority Portal (PAP)



Basis for regarding the measure to be a SoPI / SOI

Transparency submission

Public Authority's assessment against SCA requirements

Supporting evidence



Five working days to review submission

If accepted, thirty working days to draft report

Five working day standstill period





4. Practical Tips

- Prepare, Prepare, Prepare
- Refer to the Statutory Guidance throughout the Principles assessment.
- Create a data room with evidence to substantiate key points
- Make use of pre-referral discussions with the SAU (but only once you have properly prepared)
- Be considerate about the timescales

5. Receiving the Report

- the Public Authority only sees the report when it is published on the CMA website.
- What are the implications of a good / bad report?
- How should the ‘Standstill period’ be used?





6. Learning from existing reports

- LiveWire - Warrington Borough Council
- Refugee Housing Programme Scheme - Greater London Authority.
- English National Opera Subsidy - Arts Council of England
- Energy Bills Discount Scheme for Energy and Trade Intensive Industries - the Department for Energy Security and Net Zero



7. Conclusion

- Public authorities need to have processes in place to identify when subsidies need to be referred to the SAU.
- If you do need to make a referral, make sure you:
 - prepare properly;
 - make use of the Statutory Guidance; and
 - enter into pre-referral discussions
- A negative report can still add value, but only if the findings are acted upon before the award is made.



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