

Arts Council England response to the Competition and Markets Authority's consultation on the draft guidance and draft policy statement for the CMA's subsidy advice unit

August 2022

Question 1: Do you agree with the objectives for pre-referral engagement?

Yes, they appear appropriate.

We believe it would also be helpful for public bodies if the CMA could provide advice on whether potential subsidies would qualify as subsidy, and if they did qualify as subsidy, whether they would meet the criteria for referral. Arts Council England awards grants to individuals and organisations operating in the arts and culture sector, where most organisations are not-for-profit organisations that do not represent a threat to market competition. Other public bodies, including local authorities, also operate in the arts and culture sector. Confirmation and guidance from the CMA that public funding awarded to arts and culture organisations does not constitute subsidy would be beneficial. If this is not possible, pre-referral advice about whether specific arts and culture grants or programmes constitute subsidy would be welcome.

It is relevant to note that the Arts Council has encouraged BEIS to explore whether a Streamlined Route for arts and culture would be appropriate; if this becomes available to the arts and culture sector, support and advice from the CMA in navigating such a Route would be particularly helpful for public bodies operating in this space.

Question 2: Do you agree with the proposed approach to transparency (including publication of summary information at the time of a referral)?

N/A

Question 3: Do you agree with the proposed approach to the treatment of confidential information?

N/A

Question 4: What might public authorities, beneficiaries, and other interested parties expect to be included in SAU reports. In particular, how much advice should the SAU give on how to improve the assessment or modify the subsidy or scheme?

As noted above, the Arts Council has encouraged BEIS to consider a Streamlined Route for Arts and Culture. If it is not deemed appropriate to have a Route for arts and culture, we would ask the SAU to recognise the low-risk nature of such grants as part of their assessment and confirm this in the report.

Question 5: What might stakeholders find useful to see included in the SAU's monitoring reports?

We would be interested to see if there are any subsidies deemed to be subsidy in low-risk sectors, such as arts and culture, and information about the take-up of Streamlined Routes.

Question 6: Do you agree with the SAU's Prioritisation Principles?

Yes, they appear appropriate.

It is unlikely that grants awarded by the Arts Council will fall within the SSOI criteria, but would note that for those that do, arts and culture subsidies are generally viewed to be low risk with minimal impact on competition, and with significant public benefit, as demonstrated by the previous State Aid General Block Exemption Regulation that applied to arts, culture and heritage subsidies.

We would welcome further conversation with the CMA to discuss the issues outlined above.

