

**Response to the CMA’s consultation on ‘Guidance on the operation of the subsidy control functions of the Subsidy Advice Unit’ July 2022 and also the CMA’s consultation on the Statement of Policy on the Enforcement of the SAU’s Information Gathering Powers**

On behalf of: The Advanced Propulsion Centre UK Ltd.

SIC 71122

Contact details:

We are a small enterprise, based in the West Midlands, and provide a national service across the UK, principally as delivery partner for BEIS and the Automotive Council

We give consent for our responses to be made public.

**In response to the CMA’s consultation on the ‘Statement of Policy on the Enforcement of the SAU’s Information Gathering Powers’**

We have only one comment to make on this consultation:

- In respect of Information Gathering powers under s41 of the UKIM 2020 Act, the requirement to produce document that are *‘legible and intelligible’* and may be subject to requests to explain the same, we would make the SAU aware that in many cases in relation to subsidies where the beneficiary is an internationally headquartered or operating entity, documentation in its original form may not exist in the English language. It would not be reasonable, in our view, to interpret the power such that all documents must be translated into English by the person or entity to whom notice to provide has been given, as this would add a significant cost burden to that entity and furthermore prejudice its ability to provide such documentation within reasonable timescales and/or the permitted response period.

**In response to the CMA’s consultation on ‘Guidance on the operation of the subsidy control functions of the Subsidy Advice Unit’**

In addition to our response the six questions specifically targeted by the CMA in the consultation, there is one overarching point that we wish to make:

- Subsidies (and to an extent schemes) that are targeted at driving investment in either capital plant or R&D programmes are key to decisions that are made by industry – by definition – otherwise they would not comply with the Common Principles set out in the Subsidy Control Act. Businesses make decisions based on contemporary information and with the timing often determined by short windows of opportunity for commercial routes to market. Excessive process time for subsidy assessments has the potential to undermine a project’s viability if investment decisions are delayed through uncertainty. It is our view that time-bound processes, set out clearly and observed rigorously by the SAU are vital to avoiding project attrition. Any uncertainty, even if perceived through referral to the SAU will effectively postpone an investing entity’s decision or at best result in a risk-related

discounting of the potential subsidy's value. This could lead to failed projects, or projects whose viability is dependent on larger subsidies than would otherwise be needed if definitive and expedient.

Businesses operate at their own pace, frequently faster than regulation-driven process in government or in partner agencies. The SAU is encouraged to remain focused on the purpose of subsidies – (appropriately to encourage commercial entities to add value to the UK, in multiples of the cost of any subsidy and using the minimum quantum of government intervention to do so) – in executing these processes expediently. Protracted, or non-time-deterministic processes can unintentionally act counter to those primary subsidy objectives.

In particular, the “Pre-referral discussions” stage, whilst helpful in subsequently ‘setting the countdown clock ticking’, has itself no set time period; this risks protracted periods of uncertainty during which there exists the potential for many iterations of testing the scope and scale of documentary evidence which would be needed by the SAU.

Furthermore we would not consider it ‘reasonable’ to materially impact the speed of the process nor the scale as a consequence of resource availability (or otherwise) in the SAU. This would place business’ projects at the mercy of the SAU’s internal resourcing plan and over which they have no influence.

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

Whilst we agree with the basic objectives for pre-referral discussions, the point raised in the paragraph above in relation to resource-availability having the potential to impact progress should be noted.

**Question 2: Do you agree with the proposed approach to Transparency?**

- We endorse the principle of transparency wholeheartedly.
- Whilst we understand that third parties might reasonably bring to the SAU’s attention (under 3.20, 3.21) various factors or considerations, we would query whether it is appropriate for these representations *not* to be published if they are considered as relevant by the SAU. This would appear to be somewhat skewed; we would suggest that this position be reconsidered, or at least discussed with the public authority respondent. In effect, as a consequence of publication of the summary information at the time of referral, the SAU ‘sets the duck up’ and yet the public authority or beneficiary has no sight or knowledge of any ‘shot’ and consequently no opportunity to respond.
- On 3.22, the opportunity for public authorities to clarify information post-submission also perhaps risks the misinterpretation of submitted evidence by the SAU- particularly if of a technical nature.
- In publishing summary information at the time of a referral, we consider that it is important to ensure that the summary is free from misinterpretation of information and perhaps it might be of value to consider discussing the summary with the public authority ahead of publication to ensure that misunderstandings have not arisen.

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

- Overall the approach seems reasonable, however there are certain points that require care and a balanced approach by the SAU. For example:
  - Complex documentation commonly comprises a mixture of confidential/commercially-sensitive information and information that can reasonably be made public. To avoid such documentation effectively having to be 'marked up' with all relevant sections annotated as 'to be redacted' in advance is very time-consuming for the submitting party and may not be necessary if ultimately the information is not needed for the SAU's evaluation.
  - Denying submitting parties the opportunity to classify the entire document in such a way initially (which could subsequently be reviewed by discussion if the SAU deemed it appropriate to consider publication) does not seem practical or reasonable in our view.

**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?**

- The proposals set out in 4.26-4.29 broadly set out an appropriate scope for such reports in our view.
- We would encourage feedback to be as specific as possible to the case under evaluation, and separately draw out recommendations that might be of value to any subsequent case more generally and identify such feedback and commentary explicitly.
- If any aspects of the subsidy or scheme are assessed as not appropriately satisfying any one or more of the seven principles, we would expect the nature, scope and scale of this finding to be outlined in the report, and whether in fact any part of the finding related to uncertainty or an incomplete evidence base (therefore 'case not proven satisfactory') or whether the evidence strongly indicated failure to comply (therefore 'case proven unsatisfactory'). Drawing out this distinction is important to improve the expectations for evidence base for any subsequent referral.

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

- The evaluation criteria scope set out in 4.30-4.32 seems appropriate but we would add an explicit point around consideration of timeliness in executing the operation of the Act and the operations of the SAU. In effect, monitoring performance against appropriate 'service level standards', and also to set out the casual factors of any delays or reduced efficacy of its own operations.
  - Explicitly, we would expect to see analysis of the ability of the SAU to appropriately resource its activities in line with the demand.
  - We would also expect to see analysis of whether the publication of outcomes of prior assessments (in the form of feedback for improvement) has improved the timeliness or assessed compliance position of subsequent assessments. i.e. have lessons been learned?
  - We would expect analysis of subsidy and scheme level assessments to set out any common causes for failure (e.g. against any one or more of the seven principles) or issues that might arise in particular parts of the pre-referral or evidential submission stages.

- Public authorities and beneficiaries need to adapt and orientate towards a new regime (having materially been aligned previously to the EU-SAR). Feedback on how best to navigate this landscape successfully through exemplars and analysis of weaker submissions is vital.
- To this end, having the first monitoring review and publication after three elapsed years seems to miss an opportunity to build-in feedback to identify and address issues, and we would therefore encourage an earlier 'first look' review after 12-18 months of operation, even if in shorter form.

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

- These principles appear to be proportionate and reasonable overall.