

Subsidy Advice Unit Report on a Subsidy for The English National Opera

Referred by The Arts Council of England

11 May 2023

Subsidy Advice Unit

Part of the Competition and Markets Authority

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1. Introduction

- 1.1 This report includes 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). The report evaluates the assessment made by The Arts Council of England (Arts Council England) of the compliance of a proposed subsidy to the English National Opera (ENO), with the requirements of Chapters 1 and 2 of Part 2 of the Act (the Assessment).¹ The evaluation takes into account any effects of the proposed subsidy on competition or investment within the United Kingdom.
- 1.2 This report is based on the information provided to the SAU by Arts Council England in its Assessment and evidence submitted relevant to that Assessment.
- 1.3 This report is provided as non-binding advice to Arts Council England. 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. Arts Council England is ultimately responsible for granting the subsidy, based on its own Assessment, having the benefit of the SAU's evaluation.
- 1.4 A summary of our observations is set out at section 2 of this report.

The referred subsidy

- 1.5 Arts Council England is a non-departmental public body whose sponsor department is the Department for Culture, Media and Sport (DCMS), and it is England's development agency for creativity and culture.
- 1.6 ENO is the proposed recipient of the subsidy. Arts Council England states in its Assessment that ENO is engaged in a range of activities, principally the production of opera, but also learning and participation work with young people and educational institutions, and the implementation of a social prescribing programme for those recovering from coronavirus (COVID-19) (ENO Breathe). It also operates the London Coliseum, which it offers for rent when not required by the ENO.
- 1.7 London's arts organisations have, for many years, received a significant proportion of England's arts funding budget. In February 2022, the Secretary of State for Culture, Media and Sport issued instructions to Arts Council England to significantly increase investment outside of London and rebalance funding between regions to achieve a more even distribution, including through redistribution of funding allocated in the National Portfolio Investment Programme for 2023-26.²

¹ Chapter 1 of Part 2 of the Act requires a public authority to consider the subsidy control principles and, where applicable, the energy and environment principles, before deciding to give a subsidy. The public authority must not give the subsidy unless it is of the view that the subsidy 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 [Instruction from the Secretary of State for Digital, Culture, Media and Sport](#) (2022), pages 1–2.

Arts Council England told us the impact of this 'Levelling Up' agenda is that in future more funding will be available to arts and culture organisations outside London, than has been the case in recent years.

- 1.8 ENO, which is based in London, was unsuccessful in its application to Arts Council England's National Portfolio Investment Programme for 2023-26. Following a separate application process, Arts Council England is proposing to give funding of £11.46 million to support ENO up to March 2024.³ That funding package is the subject of this referral to the SAU. Arts Council England explained that this package is intended to address a 'viability gap' (which we refer to in the report as a funding gap) in ENO's expected costs and revenue which would affect ENO's ability to deliver its planned programme of activities, and to support the planning and development work associated with establishing a new base outside London and a new business model.
- 1.9 A number of policy objectives for the subsidy are put forward by Arts Council England in its Assessment, including:
- 1.9.1 'Enabling ENO to deliver its full programme of high quality, and large scale opera in the short to medium term, upon terms which are accessible to a wider range of people, including delivering that opera programme to the general public at different ticket price points.'
 - 1.9.2 'Facilitating ENO's 'community engagement and education activities.'
 - 1.9.3 'Giving ENO some time and space to look into ways to develop its business model, in light of changing conditions, and to explore options of opening up operations outside London.'
- 1.10 In the Assessment, Arts Council England states that it will inevitably take time for a complex organisation like ENO to develop a new business model. Arts Council England has announced that further funding is available, subject to application and assessment, to support ENO in the years 2024-25 and 2025-26. A decision in relation to this additional funding is expected to be made in summer 2023.⁴ ENO has stated that this provisional budget will be used to support a phased transition to a new artistic and business model and will include work split between their new main base and London.⁵ This report relates only to the proposed £11.46 million funding for 2023-24, which is the subject of the Assessment.

³ [Joint statement from Arts Council England and the English National Opera](#) (January 2023)

⁴ [Joint update from Arts Council England and the English National Opera](#) (April 2023)

⁵ [Arts Council Funding Update \(April 2023\)](#)

SAU referral process

- 1.11 On 21 March 2023, Arts Council England requested a report from the SAU in relation to its proposed subsidy to ENO.
- 1.12 Arts Council England explained in its submission why, because of its value, the ENO subsidy is considered to be a ‘subsidy of particular interest’,⁶ and, accordingly, is subject to mandatory referral under the Act.⁷
- 1.13 The SAU notified Arts Council England on 27 March 2023 that it would prepare and publish a report within 30 working days (ie on or before 11 May 2023).⁸ The SAU published details of the referral on 28 March 2023.⁹

⁶ Regulation 3 of [The Subsidy Control \(Subsidies and Schemes of Interest or Particular Interest\) Regulations 2022](#) sets out the requirements for a subsidy (or scheme) to be considered a ‘subsidy of particular interest’.

⁷ Section 52(2) of the Act.

⁸ Sections 53(1) and 53(2) of the Act.

⁹ [SAU webpage - Referral acceptance details](#)

2. Summary of the SAU's observations

- 2.1 Overall, the Assessment indicates that Arts Council England has engaged with each of the subsidy control principles outlined in the Act (the Principles), as well as having considered whether any of the Chapter 2 requirements are relevant. Arts Council England has provided (or referenced) evidence which helps demonstrate how the conclusions in the Assessment have been reached.
- 2.2 The subsidy partly represents a continuation of operational funding that ENO has previously received from Arts Council England. This makes some aspects of the assessment of compliance with the Principles more challenging as part of the subsidy does not relate to new or specific projects that can be differentiated from the day-to-day activities of ENO. The subsidy is also intended to facilitate changes to ENO's business model and enable it to scope options for relocating certain operations outside London.
- 2.3 As explained in more detail in section 3, the Assessment would have been stronger if:
- 2.3.1 The reasoning behind conclusions in the Assessment had been more clearly explained, and if there were a more systematic reliance on relevant evidence.
- 2.3.2 Noting that a range of objectives are mentioned throughout the Assessment, a specific policy objective (or objectives) had been clearly identified which directly related to identified market failures and/or equity objectives. The Assessment might have made better use of aspects of the *Guidance on the operation of the subsidy control functions of the Subsidy Advice Unit*, SAU1, November 2022 (the [SAU Guidance](#)) and *Statutory Guidance for the United Kingdom Subsidy Control Regime*, November 2022 (the [Statutory Guidance](#)) in order to express the market failure aspects and strengthen explanation of the relevant equity objectives (particularly relevant for Principle A). The identification of specific policy objectives would have helped establish the appropriateness of the subsidy as a means of achieving them, including through identification and consideration of relevant alternative options (particularly relevant for Principle E).
- 2.3.3 There had been a more detailed assessment of both the situation likely to arise in the absence of the subsidy (the 'counterfactual' – particularly relevant for Principle C) and the additional projects or activities to which the subsidy would be likely to give rise (particularly relevant for Principle D), although we note the challenges posed by the identification of relevant effects in the context of ongoing operational funding.

2.3.4 There had been a more detailed assessment of both positive and negative effects of the subsidy (particularly relevant for Principle G). A primarily qualitative exercise would have been more feasible in this instance. This should include specific consideration of any impacts on international trade and investment.

2.4 Our report is advisory only and does not directly assess whether the subsidy complies with the subsidy control requirements. We have not considered it necessary to provide any advice about how the proposed scheme may be modified to ensure compliance with the subsidy control requirements.¹⁰

¹⁰ Section 59(3)(b) of the Act.

3. The SAU's Evaluation

3.1 This section sets out our evaluation of the Assessment. The Assessment addresses each of the Principles in turn and our evaluation follows this structure. We refer to the [Statutory Guidance](#) and the [SAU Guidance](#) where appropriate. In preparing this report we have taken a view on the appropriate commensurate approach given the specific circumstances of this subsidy referral.

Principle A

3.2 Principle A states that 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).¹¹

Policy objectives

3.3 The Statutory Guidance sets out that public authorities may only give subsidies to pursue a specific policy objective.¹²

3.4 The Assessment explains that a long-term aim of Arts Council England is to help promote a wider range and higher quality of arts and culture in England than would otherwise exist. It states that Arts Council England's public policy objective is therefore to 'provide the short-term financial support to enable ENO to continue to deliver high quality opera, as well as to support ENO continue with its community engagement and education activities, whilst also supporting ENO looking into ways to develop its business model, in light of changing conditions, and to explore options of opening up operations outside London.'

3.5 The Assessment states that the activities are considered to be in line with the priority outcomes within Arts Council England's 2023-26 Investment Programme,¹³ including its 'four Investment Principles:

3.5.1 ambition and quality: cultural organisations are ambitious and committed to improving the quality of their work;

3.5.2 dynamism: cultural organisations are dynamic and able to respond to the challenges of the next decade;

3.5.3 environmental responsibility: cultural organisations lead the way in their approach to environmental responsibility; and

¹¹ [Statutory Guidance](#), paragraph 3.7 and [SAU Guidance](#), paragraph 4.10.

¹² [Statutory Guidance](#), paragraph 3.18.

¹³ [Arts Council England 2023-26 Investment Programme](#)

3.5.4 inclusivity and relevance: England’s diversity is fully reflected in the organisations and individuals that we support and in the culture they produce.’

- 3.6 The purpose of setting out the policy objective under Principle A is to demonstrate that there is a rationale for making the subsidy aligned to policy commitments, as well as supporting the specific form of subsidy proposed. Identifying a specific policy objective that addresses a market failure or equity rationale is a crucial first step, as it lays the basic framework for the assessment of compliance against the other Principles.
- 3.7 The supporting evidence provided by Arts Council England includes a policy objective summary, which references ‘Let’s Create’,¹⁴ Arts Council England’s 10-year strategy for arts and culture, and details of its National Portfolio Investment Programme.¹⁵ This strategy and programme set out ambitions for Arts Council England in relation to creativity and culture.¹⁶ The Assessment would have been strengthened if the relevant policy objectives relating to the specific subsidy had been linked with the 10-year strategy and the high-level objectives pursued by Arts Council England in delivering funding to recipients.

Market failure and equity rationale

- 3.8 The Statutory Guidance sets out that in order to ensure there is a benefit to wider society, the specific policy objective or objectives must be ones which remedy a market failure or address an equity concern.¹⁷
- 3.9 The Assessment states that the award of the subsidy is necessary to address an equity rationale of ‘sustaining and ensuring availability of [the] highest quality opera at accessible prices to the British public’. It states that ‘opera can be perceived as expensive and therefore exclusive’, and that the market would provide opera at a ‘price point and location that would exclude the majority of people and communities within the UK’. The Assessment states that to help address this ‘ENO has long been involved in providing discounted tickets, undertaking community engagement and supports arts education’, and that ‘Arts Council England wishes to avoid a situation where fewer members of the community are able to experience opera’.
- 3.10 The Assessment also explains that an equity rationale is shown in the direction from DCMS to amend the allocation of England’s arts funding budget in order to rebalance funding between England’s regions.

¹⁴ Arts Council England, [Let's Create](#)

¹⁵ Arts Council England, [2023-26 Investment Programme: Making your application](#)

¹⁶ Arts Council England, [The strategy](#)

¹⁷ [Statutory Guidance](#), paragraphs 3.18 and 3.19.

- 3.11 The Assessment states that many of the art forms supported by Arts Council England, including opera, are unlikely to be provided by the market, in the quantity or to the quality that society enjoys, or at the prices to make the same generally accessible, without the support of public funding. The Assessment states that the arts, cultural and creative sectors, including ENO, bring huge benefits to society, supporting educational attainment, bringing communities together, and helping to make areas attractive places to live, work and visit. It claims that engaging with culture leads to broader benefits for society, and that culture can support community cohesion and help to tackle social isolation.
- 3.12 The equity rationale of making opera more inclusive is consistent with the policy objectives underpinning the Arts Council England activities, although the Assessment is not explicit on which groups of people are the target for redistribution (other than by reference to pricing concerns). This aspect of the Assessment could be strengthened. Although we understand that ENO discounts tickets to younger people, the Assessment is not explicit about this being its target cohort, or how the proposed subsidy will achieve the equity objective by improving access and participation by this or other groups.¹⁸ This would be of relevance to other aspects of the Assessment, for example in establishing the positive effects of the subsidy, as is relevant to Principle G. We note that the long-term intention of transitional funding is to allow ENO to establish its base outside London which is consistent with the intentions of rebalancing arts funding.
- 3.13 Arts Council England also states that the subsidy addresses a market failure, in that without such public intervention, society's outcomes are reduced because there would be fewer arts and culture activities. This is because market forces alone would result in an outcome that is not socially desirable, but may be financially rational on solely commercial terms.
- 3.14 The Assessment would have been strengthened if the consideration of market failure had more closely reflected the Statutory Guidance.¹⁹ In particular, we would expect the Assessment to have explained the relevant market failures which cause an inefficient outcome, in this case the under-delivery of opera. In this case, the Assessment alludes to the benefits to society that opera provides (see paragraph 3.11). These are positive externalities in that customers would not take them into account in choosing whether to pay for tickets. The Assessment also references the investment by ENO in training and developing artistic talent which could also be regarded as providing a positive externality to the opera sector.

¹⁸ We note that [The Culture White Paper](#), DCMS (2016), emphasises increasing opportunities for children and young people.

¹⁹ [Statutory Guidance](#), paragraphs 3.21–3.32.

Principle B

- 3.15 Principle B states that subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it.

Proportionality and minimum necessary

- 3.16 In the Assessment, Arts Council England states that it has considered ENO's efficiency in delivering its programme of work, and notes that '[t]his is a time limited award focussed on very specific activities, each with identified costs', and the 'appropriateness of the activities (both the programme of events and scoping work)'. Arts Council England states that '[t]he amount of funding being offered has been determined, taking account of exhaustive eligibility and viability gap assessments'. Furthermore, Arts Council England states that 'the short-term funding towards ENO's delivery of its planned programme of activities [...] for the period up to 31 March 2024 takes account of an identified deficit'.
- 3.17 ENO's assessment of the funding gap goes into some detail regarding the costs that ENO faces for its programme of events, operating the London Coliseum, its community engagement work, as well as its relocation scoping work. Arts Council England provided supporting evidence including ENO's investment plan, financial statements, management information and projections to support its funding gap assessment.
- 3.18 The grant does not cover 100% of the funding gap and, therefore, we understand that there will be some depletion of reserves. Arts Council England has also set out ENO's main sources of funding in addition to the grant funding: box office receipts, membership fees and donations, catering and merchandise sales and commercial hire of the London Coliseum, for which ENO is trialling increased commercial use.
- 3.19 The Assessment explains that ENO would not be able to deliver its planned season without an award. ENO is a long-term recipient of funding from Arts Council England. and has received approximately £12.4 million a year since 2015-16, according to the information provided by Arts Council England. The Arts Council England grant to ENO for the period to 31 March 2024 will fall to £11.46 million, a reduction of £1.14 million compared to the £12.6 million awarded for the previous year. This funding expectation has fed into its planning cycles as the Assessment explains a 'typical planning cycle for large scale opera is 12 to 24-months planning in advance before staging/performance of the opera'. Arts Council England state that 'significant disruption to ENO's programming and operations is to be expected without additional funding and, as such, the application and attachments strongly evidence financial need'.
- 3.20 Arts Council England considers that the information provided by ENO indicates that funding is limited to what is needed, but no more, and the subsidy falls within an

identified funding gap. It notes that ENO's budgeted costs appear appropriate and proportionate to the scale of delivered activity and states that there are strong financial controls in place.

- 3.21 The Assessment could be strengthened by providing evidence of how the level of subsidy was determined (ie a £11.46 million grant as opposed to a different amount), and by modelling of the impacts of different levels of support on the recipient. This could have included an explanation of the impact on ENO's planned programme from changes to the grant funding as well as other variables, such as the periods of commercial use of the Coliseum, number of opera productions, expected audience numbers and the revenue earned from box office receipts.²⁰
- 3.22 However, we note that the grant proposal is one year of funding in an otherwise multi-year production programme, which is likely to present challenges in terms of conducting this aspect of the Assessment. In this context, Arts Council England has focussed on the efficiency with which the grant is utilised, as well as ENO's dependency on it, to explain why the subsidy is consistent with Principle B. We consider that while these are relevant considerations, the Assessment could have been strengthened by linking the proportionality and necessity analysis more closely to the stated policy objectives as required by Principle B.
- 3.23 We note that the grant funding has not been ring-fenced for any specific costs and activities. This would have helped to understand precisely the activities that the grant is being used to fund and, accordingly, which specific policy objectives are being addressed. Of the £11.46 million, only £2 million is notionally attributed to specific activities such as community engagement and education activities and relocation scoping.

Principle C

- 3.24 Principle C states that subsidies should be designed to bring about a change in the economic behaviour of the beneficiary. That change in relation to a subsidy, should be (a) conducive to achieving its specific policy objective, and (b) something that would not happen without the subsidy.²¹

Counterfactual assessment

- 3.25 The Statutory Guidance explains that public authorities should consider what would happen in the absence of the subsidy to provide a baseline against which to assess change arising from the subsidy. The baseline would not necessarily be the

²⁰ [Statutory Guidance](#), paragraph 3.75 notes that public authorities 'should use cost modelling to determine the appropriate, proportionate size of the subsidy' where data is available and it is commensurate to do so.

²¹ [SAU Guidance](#), paragraph 4.13.

current 'as is' situation but what would likely happen in the future – over both the long and short term – if no subsidy were awarded.²²

- 3.26 In its Assessment, Arts Council England states that it is not possible to know which of ENO's activities would continue in the absence of the subsidy. However, it states that ENO would have to consider one or more of the following actions:
- 3.26.1 significantly reduce its programme;
 - 3.26.2 make some staff redundant;
 - 3.26.3 reduce the quality of operas;
 - 3.26.4 scale back education and community engagement activities;
 - 3.26.5 increase ticket prices (and/or reduce the discounting of tickets); and
 - 3.26.6 stop the investment in professional advice to improve its business model and to move out of London.
- 3.27 The Assessment would have been strengthened if Arts Council England had set out clearly, for each of ENO's activities, including commercial use of the Coliseum, what ENO would do in the absence of the subsidy. We acknowledge that in the context of a history of continued operational funding this may be difficult, but where possible, we would expect the Assessment to estimate which, if any, and to what extent, activities could continue on a commercial or self-funded basis. This analysis would have been beneficial not only in helping to explain why the subsidy brings about a change in economic behaviour, but also in demonstrating what effects the subsidy would have on competition and investment (Principle F).

Changes in economic behaviour of the beneficiary

- 3.28 The Statutory Guidance explains that subsidies must bring about something that would not have occurred without the subsidy.²³
- 3.29 Arts Council England states in its Assessment that the subsidy will help ENO to continue to deliver its activities and to work on a plan to change its business model and to move out of London. It also explains that the subsidy is largely operational funding and lists the activities that ENO has committed to undertake as part of its application for the subsidy.
- 3.30 Arts Council England's Assessment could have been strengthened by setting out more clearly the specific activities that would have been enabled by the subsidy (even if some or all of them relate to the day-to-day running of ENO) and drawing

²² [Statutory Guidance](#), paragraphs 3.46.

²³ [Statutory Guidance](#), paragraph 3.50.

the appropriate conclusions on what ENO is incentivised to do by comparison with the counterfactual baseline.

Principle D

- 3.31 Principle D states that subsidies should not normally compensate for ‘business as usual’ costs – in other words, those costs that the beneficiary would have incurred and had to fund itself in the absence of any subsidy.²⁴ According to the Statutory Guidance, ‘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.²⁵
- 3.32 In its Assessment of Principle D, Arts Council England explains that, without the grant funding, a significant element of the planned activities (including performances and community engagement) would need to be cancelled. The Assessment goes on to outline that £1.1 million of the total proposed grant funding is for ENO to properly consider the different options, and the impact of each, to operate outside London.
- 3.33 We understand that the grant funding received by ENO from Arts Council England is largely a maintenance grant covering day-to-day operational funding and makes the application of Principle D challenging. In relation to ENO’s activities, as they are outlined, it is not clear what is considered to be ‘additional’ activity arising from the grant, having regard in particular to the fact that productions are planned and produced over a timeframe of more than one year against a backdrop of regular grant funding. The Assessment under Principle D instead focusses on what would happen without the subsidy.
- 3.34 We consider that the Assessment could have better outlined ENO’s specific activities or programme of events, and associated costs, that are taking place as a result of Arts Council England’s continued support by way of regular grant funding. Consideration of the benefits accrued from those specific activities would be relevant in the context of identifying the positive effects of the subsidy for the purposes of Principle G.
- 3.35 In the counterfactual analysis under Principle C, Arts Council England explains that without the grant ENO may need to reduce the number of discounted tickets it makes available. The Assessment would have been strengthened if, as a relevant measure of additionality, it had considered the impact of the subsidy in widening access to opera, for example through the number and cost of additional discounted tickets made available and the effects on participation and attendance by particular target groups.

²⁴ [Statutory Guidance](#), paragraph 3.52.

²⁵ [Statutory Guidance](#), paragraphs 3.49–3.53.

- 3.36 With regard to the exploration of options to base ENO outside London, the Assessment could have been strengthened if it was explicit about the activities and costs that the £1.1 million associated with this would support, including whether any of these costs could have been funded by ENO in the absence of the subsidy.

Principle E

- 3.37 Principle E states that subsidies should be an appropriate policy instrument for achieving their specific policy objective and that these cannot be achieved through other, less distortive means.²⁶
- 3.38 The Assessment states that only the proposed subsidy in the form of a grant will address a funding gap affecting ENO's ability to deliver its planned programme of activities in 2023-24. The Assessment considers two alternative options for addressing the funding gap. These are:
- 3.38.1 Guarantees and loans (treated together), which Arts Council England considers will not address the funding gap, will not provide funding in the timescales required to ensure continuation of certain ENO activities, and would be less effective in ensuring that ENO focuses on activity to deliver against Arts Council England's Outcomes and Investment Principles.
 - 3.38.2 Tax rebates, which Arts Council England states that it is unable to offer unilaterally.
- 3.39 In relation to an equity objective of improving access to the arts, the Assessment considers direct funding of tickets for eligible groups. Arts Council England states that, by comparison with a grant, this option would be less cost effective, more distortive, and would impose additional costs on ENO.
- 3.40 The Assessment could have been strengthened had it focussed systematically on how the proposed subsidy, and alternative approaches, achieve specific policy objectives. Taken in isolation, focusing on addressing a funding gap precludes fuller consideration of alternative options to address an identified market failure or equity objective. This would also involve a more comprehensive and detailed consideration of the policy objectives that apply to the proposed subsidy, the relevant alternative options to achieve those objectives, and consideration of these options against relevant factors set out in Statutory Guidance.²⁷ This could include options involving coordination between different Government bodies, where relevant, such as the option of tax rebates identified by Arts Council England in the Assessment.

²⁶ [Statutory Guidance](#), paragraphs 3.40–3.41.

²⁷ [Statutory Guidance](#), paragraph 3.41.

3.41 The option of direct funding of discounted tickets is discussed in high level terms, and the Assessment could be strengthened by developing this further, for example, in considering whether this option might be a more appropriate means of enabling ENO to widen access to opera amongst target groups than the proposed subsidy. The Assessment could also be strengthened if the reasoning behind Arts Council England's conclusion that the direct funding of tickets for eligible groups would be more distortive than the proposed subsidy had been explained and backed up with appropriate supporting evidence. Similarly, the claim that a loan or guarantee would be less effective in ensuring that ENO focuses on activity to deliver against Arts Council England's Outcomes and Investment Principles (a consideration which is not directly discussed in relation to the other options identified) is not explained and evidenced.

Principle F

3.42 Principle F states that subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom.²⁸

3.43 The Assessment sets out four main activities of ENO, and Arts Council England states clearly that it believes the subsidy has no or only limited effects on competition. These activities comprise:

3.43.1 opera production;

3.43.2 learning and participation work;

3.43.3 ENO Breathe (see paragraph 1.6); and

3.43.4 theatre rentals of the Coliseum.

3.44 Arts Council England states that (i) opera production is costly and would not take place to the same extent without subsidies; (ii) other opera companies also receive subsidies; (iii) that there is a history of co-existence and cross-industry support within opera production through the National Opera Coordinating Committee (eg to avoid duplication); and (iv) the proposed funding is considered to have overall positive effects on competition.

3.45 Arts Council England states that it believes that its learning and participation work as well as ENO Breathe are non-commercial activities where there is little to no competition.

²⁸ [Statutory Guidance](#), paragraphs 3.58–3.94.

- 3.46 The Assessment states that ENO operates in a competitive theatre rental market and that the subsidy helps ENO maintain the current programme at the Coliseum and therefore does not significantly change its rental activities.
- 3.47 The Assessment would have been strengthened if the consideration of the subsidy's effects on competition or investment had more closely reflected the Statutory Guidance.²⁹ Throughout its Assessment, Arts Council England has provided some information about the subsidy, but it has not undertaken an assessment of the extent to which its features and characteristics may have the potential to lead to distortive effects, including in relation to the relevant questions and factors set out in the Statutory Guidance. The Assessment would be more in line with the Statutory Guidance if it were to include a discussion of this nature.
- 3.48 Arts Council England notes elsewhere in its Assessment that the subsidy may impact other entertainment entities. We would expect the Assessment of Principle F to have included a brief explanation of the markets that may be affected by each of ENO's activities. Arts Council England's Assessment focuses on each of ENO's activities that it committed to undertake in its application for the grant. A fuller consideration of effects on competition and investment would have taken account of the markets where any ENO activity could have distortive effect.
- 3.49 Although Arts Council England indicates that it considers there to be no, or only negligible, effects on other forms of entertainment and theatre rental, its reasoning in this regard could be better developed. A more thorough consideration of both the subsidy characteristics and whether any ENO activity could have affected any markets would have facilitated a fuller assessment of Principle G.

Principle G

- 3.50 Principle G states that 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 and (b) international trade or investment.³⁰
- 3.51 The Assessment sets out the following beneficial effects of the subsidy:
- 3.51.1 Enabling the continuation of the high-quality opera programme ENO was planning, thereby improving the fabric of the UK's arts and culture.
 - 3.51.2 Enabling the continuation of ENO's community outreach and education activities, thereby helping more people who would otherwise be unable to afford tickets, and enjoy opera. This would help mitigate social difficulties.

²⁹ [Statutory Guidance](#), paragraphs 3.62–3.92 and Annex 2.

³⁰ [Statutory Guidance](#), paragraphs 3.97–3.103 and [SAU Guidance](#), paragraphs 4.20–4.22.

- 3.51.3 Enabling ENO to investigate its business model options, delivering long-term positive effects for ENO and allowing Arts Council England to spend its funds elsewhere.
- 3.52 Arts Council England recognises that the subsidy could distort the opera market by reducing the cost base of one of the most high-profile opera companies in the UK, and impact upon other entertainment entities. It concludes that, as considered in Principle F, such potential negative effects are not considered likely or serious.
- 3.53 In Arts Council England's view, the potential negative effects of the subsidy are outweighed by the beneficial effects. This is because the subsidy is unlikely to significantly change the pre-existing state of the market, and it is limited to the identified funding gap.
- 3.54 The Assessment does not address whether there are any negative effects on international trade or investment. Furthermore, there is no discussion of geographical distribution.
- 3.55 In our view, the Assessment identifies relevant beneficial and negative effects of the subsidy and draws a clear and consistent conclusion. However, several statements could have been better supported by an explanation of the analysis undertaken, for instance of the positive distributional impacts of discounted tickets. Shortcomings in earlier principles also weaken the arguments contingent upon them in Principle G, for instance insufficient discussion of the markets that may be affected in Principle F. Although Arts Council England has carried out a balancing exercise, the Assessment could have explained how each of the beneficial and negative effects were balanced.

Other Requirements of the Act

- 3.56 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.³¹
- 3.57 Arts Council England has confirmed that none of the prohibitions or other requirements in relation to the giving of subsidies apply. With regard to the rules prohibiting subsidies for relocation of activities where the subsidy is conditional on relocation and would not have occurred without the subsidy,³² Arts Council England stated that 'the funding is not in any way contingent upon relocation, rather it informs the options of ENO to assist it to make an informed decision'.

³¹ [Statutory Guidance](#), Chapter 5.

³² Section 18 of the Act.