


Reaction to the new Subsidy Control Bill: The Government must not sacrifice clarity at the altar of reducing red tape

Browne Jacobson government and infrastructure lawyer and Legal Director, Alex Kynoch gives his reaction.

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The new [subsidy control bill](#) is being introduced today and the legislation is expected to officially come into force in 2022.

Browne Jacobson government and infrastructure lawyer and Legal Director, Alex Kynoch gives his reaction: “It is interesting to see the shape the new regime is likely to take. Some of the key points to note include:

- **the introduction of the concept of displacement, assessing whether subsidies relocate economic activity or jobs from one part of the UK to another.** - This will mean that for the first time, UK public bodies will need to consider not only the impact of their subsidy on competition with the EU and other countries that the UK has trade agreements with, but also the impact that it may have on other parts of the UK. This is something that public bodies have not had to face before, and it may be that this results in an increased risk of challenge to subsidy decisions, on the basis that a subsidy is more likely to impact upon economic activity and jobs within the UK than it is on any economic activity with the UK’s trading partners. It will be very interesting to see what the bill requires in this regard;
- **the role of the Competition and Markets Authority (CMA) as an advisory body** – Again, another first for the UK because until now there has been no domestic body with a role in subsidy control, other than the courts. The establishment of a subsidy control advisory body is welcome, but its role must be broad enough to be effective, providing public bodies with clear and authoritative guidance on specific cases;
- **responsibility for subsidy control enforcement moving to the competition appeal tribunal** - This suggests that the role of the CMA will be purely limited to advice, and therefore that the Government has not sought to imbue the CMA with a role similar to that of the EU Commission with respect to State aid. If the CMA has no role in enforcement itself, then we anticipate that any guidance it can give will be non-binding – meaning that the benefit of taking the CMA’s advice will be reduced for public bodies, unless the CMA can give advice which is sufficiently detailed and authoritative to be persuasive to the Competition Appeals Tribunal. If it cannot, then the role of the CMA may not be as impactful as it could be.

“Although limited exemptions are referred to it will be interesting to see whether we receive the safe harbours which public authorities have been clamouring for – or whether they will follow over time.

“Much has been made of the departure from the old state aid regime and while there was certainly room for improvement, the Government must ensure it does not sacrifice clarity and certainty at the altar of reducing red tape.”

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