

Subsidy Advice Unit

Press Office presentation, 18 May 2022

Summary of what we plan to cover

- The new subsidy control regime
- Role of the SAU
- Context of the subsidies that may be referred
- Comms and engagement milestones

- Now that Britain has left the European Union, it is no longer subject to EU State Aid rules
- HMG aims for its post-EU exit subsidy control regime to empower public authorities to award subsidies at pace with minimal red tape, while remaining compliant with its international commitments and managing any impact on domestic competition
- Subsidy Control Act achieved Royal Assent at the end of April
- Has established a 'Subsidy Advice Unit' (SAU) within the CMA to exercise several statutory functions as part of the new regime
- While streamlined routes will exist for direct subsidy awards, SAU will provide non-binding advice to public authorities on Subsidies of Interest and Subsidies of Particular Interest, as well as on other subsidies when requested by BEIS SoS (either before or after a subsidy has been granted)
- SAU will also carry out monitoring and reporting on the regime

- Review function will apply to Subsidies and Schemes of (Particular) Interest that are referred by public authorities, as well as subsidies referred pre- or post-award by BEIS SoS
- The SAU will review the PA's own assessment of compliance against the requirements set out in legislation (Subsidy Control and Energy/Environment principles, prohibitions, conditions)
- Statutory timescales of 5 Working Days (for review of referral and compliance with mandatory requirements in legislation), followed by 30 Working Day 'reporting period' (with provision for extension)
- SAU reports on referred subsidies will be advisory (non-binding) – it will be for PA to decide whether to proceed with/modify the subsidy

SSIs/SSPIs – proposed definitions

NB – confirmed definitions will be set out in regulations (BEIS consultation recently closed).

Subsidies and Schemes of Interest (discretionary referral)

- All subsidies between £5m and £10m regardless of any design features.
- All subsidies for rescuing ailing or insolvent enterprises, or for liquidating or providing liquidity support to deposit takers or insurance companies which are subject to the additional requirements in clause 19 and 22-23 of the Bill

Subsidies and Schemes of Particular Interest (mandatory referral)

- All subsidies for activities that relate to sensitive sectors in excess of £5m per recipient
- All subsidies in any sector above £10m.
- All subsidies for restructuring ailing or insolvent enterprises which are subject to the additional requirements in clause 20-21 of the Bill.
- Schemes of Particular Interest allow a Subsidy of Particular Interest to be granted within its parameters

Current list of sensitive sectors: Steel, other base metals, automotive, shipbuilding, aerospace, electricity generation

Note: This slide is redacted as out of scope

SAU monitoring function

- SAU will be required to monitor the effective operation of the subsidy control regime and to report on this at intervals
- First monitoring report indicatively due 3 years after commencement
- CMA will have a high-level annual reporting duty – details of subsidies reviewed to be included in CMA annual report
- Potential provision of ‘ad hoc’ advice to BEIS SoS on aspects of the regime, on request

Comms and engagement milestones

- **May – June:** engagement with DAs and key government departments
- **July:** consultation on SAU guidance (to coincide with BEIS guidance consultation)
- **September:** BEIS and SAU guidance published
- **September:** engagement with local authorities and external stakeholders (some joint with BEIS)
- **End of October:** SAU commences activity
- **SAU initial commencement activity:** potential referrals for nuclear and tax subsidies



Subsidy Advice Unit

Induction session

April 2022

Outline



- Introduction by Rachel
- 1/ Ice breaker activity
- 2/ Subsidy control regime
 - 2.1 Why a subsidy control regime
 - 2.2 Overview of the Bill
- 3/ The role of SAU
 - 3.1 Review function
 - 3.2 Monitoring function
- 4/ Workstreams' overview



Ice breaker (25/30 minutes)

2.1 Subsidy control regime: why a regime?



- Subsidy control helps ensure the UK meets its international subsidy control obligations and it seeks to deter ‘bad’ subsidies which might be damaging to competition, trade and investment.
- UK-EU Trade and Cooperation Agreement (TCA) requires the UK to establish a subsidy control regime, including the introduction of ‘subsidy control principles’ and the requirement to establish an ‘independent body’ with an ‘appropriate role’.
- UK is also bound by a range of other international obligations:
 - NI Protocol – EU State aid rules still apply in a limited number of cases – effect on trade in goods and wholesale electricity between NI/EU
 - WTO Agreement on Subsidies and Countervailing Measures – applies to subsidies dealing with trade in goods only, not services
 - Subsidy chapters of Free Trade Agreements (e.g., Japan, Israel)

2.2 Subsidy Control Regime: overview of the Bill



- Part 1 – Overview and Key Interpretation
 - Definition of key terms including ‘subsidy’, ‘subsidy scheme’, ‘streamlined subsidy scheme’
- Part 2 – Subsidy Control Requirements
 - Subsidy Control Principles – applies to all subsidies (6 TCA principles + additional principle intended prevent negative effects to domestic competition/investment)
 - Energy/Environment Principles – applies in addition to SC principles for E/E subsidies
 - Prohibitions – e.g., unlimited guarantees, rescue/restructuring subsidies (subject to certain conditions)
 - Other requirements – e.g., Services of Public Economic Interest (SPEI)
 - Transparency requirements – PAs to upload subsidies (above £100k) onto BEIS-operated transparency database within 3 months of award

2.2 Subsidy Control Regime: overview of the Bill (cont)



- Part 3 – Exemptions (from Subsidy Control requirements)
 - Minimum Financial Assistance ('de minimis') – £315k per recipient over 3 year period
 - SPEI - £725k per recipient over 3 year period
 - Other exemptions: natural disasters, economic emergencies, national security etc.
- Part 4 – Functions of the CMA
- Part 5 – Enforcement
 - Interested parties may challenge a decision to grant a subsidy (or make a subsidy scheme), generally within one month of the upload of information onto the transparency database
 - Enforcement through CAT – range of powers, inc. to quash subsidy/order recovery of subsidy

2.2 Subsidy Control Regime: overview of the Bill (cont)



- Part 6 – general provisions
 - Includes SoS regulation-making and guidance powers, commencement provisions
- Schedules
 - Subsidy Control Principles
 - Energy/Environment Principles
 - How SC Requirements apply to subsidies granted by primary legislation

3.1 Role of the SAU: Review function



- Mandatory SAU review of SSPIs plus subsidies ‘called in’ (pre-award) or ‘referred’ (post-award) by BEIS SoS
- Discretionary SAU review of SSIs – discretionary for both PAs and SAU
 - SSPI: working definition £10m+ (unless concerns sensitive sector), £5-10m (if concerns sensitive sector), restructuring subsidies
 - SSI: working definition £5m-10m (unless concerns sensitive sector), rescue subsidies, subsidies for liquidity provision/liquidation of banks/insurance companies
- SAU reports will consist of:
 - An ‘evaluation’ of the Public Authority’s assessment of compliance with the SC requirements in the Bill. This must take into account the subsidy’s effects on domestic competition/investment
 - At the SAU’s discretion, advice on how the assessment of compliance could be improved;
advice on how the subsidy could be modified to ensure compliance

3.1 Role of the SAU - Review function (cont)



- Statutory timescales of 5 Working Days (for review of referral and compliance with mandatory requirements in legislation), followed by 30 Working Day ‘reporting period’ (with provision for extension)
- SAU reports on referred subsidies will be advisory (non-binding) – it will be for PA to decide whether to proceed with/modify the subsidy

3.2 Role of the SAU – Monitoring function



- SAU will be required to monitor the effective operation of the subsidy control regime and to report on this at intervals:
 - First report, 3 years after commencement
 - Second report, after a further 3 years
 - Then move to a 5-yearly cycle
- CMA will be provided with information-gathering powers in support of this function – we will be developing and consulting on a Statement of Policy re enforcement of IGPs
- SAU will have a high-level annual reporting duty – details of subsidies reviewed to be included in CMA annual report

[REDACTED]

[REDACTED]

This slide is redacted as out of scope

[REDACTED]

[REDACTED]

[Redacted]



[Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

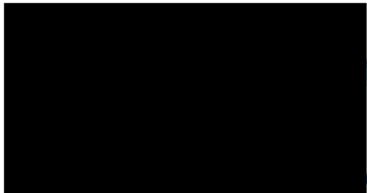
- [Redacted]

- [Redacted]

- [Redacted]

- This slide is redacted as out of scope

[Redacted]



[Redacted]

- [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
- This slide is redacted as out of scope

[Redacted]



[Redacted]

- [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
 - [Redacted]
 - [Redacted]

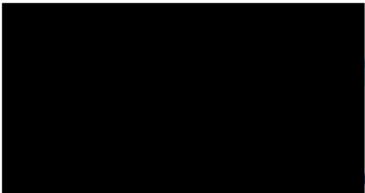
- This slide is redacted as out of scope



- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

- This slide is redacted as out of scope

[Redacted]



[Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

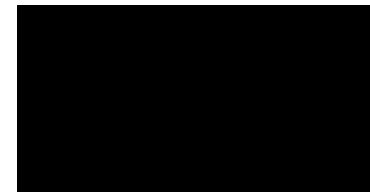
- [Redacted]

- [Redacted]

- This slide is redacted as out of scope



This slide is redacted as out of scope



- This slide is redacted as out of scope

Subsidy Advice Unit

Role of SAU

- The Subsidy Control Act will establish a 'Subsidy Advice Unit' within the CMA (as a Committee of the CMA Board) to exercise a number of statutory functions.
- SAU will act as the 'Independent Body', as required by the terms of the UK-EU Trade and Cooperation Agreement (TCA) – TCA gave UK Govt scope to decide on the parameters of the IB's role
- SAU plays a defined role in the regime (periodic monitoring plus advice to public authorities in a limited number of cases each year) – this will not be a decision-making, regulatory or enforcement role
- BEIS are UK-wide policy owners, are responsible for implementation of the overall regime, and will issue regime-wide statutory guidance
- BEIS and DAs also play a wider 'advice-giving' role to public authorities that are developing subsidies – this is likely to involve advising PAs on when to refer subsidies to the SAU (or begin pre-referral engagement)
- Commencement of the regime and SAU's functions likely to be January 2023 (although not confirmed)
- Enforcement within the regime will take place via challenges brought to the CAT

See SAU [draft guidance](#) for more information on proposed approach to exercising SAU functions.

- Review function only applies to certain subsidies: ‘Subsidies and Subsidy Schemes of Particular Interest’ and ‘Subsidies and Subsidy Schemes of Interest’ (SSoPI, SSol) that are referred by public authorities. (20-30 per year?)
- BEIS SoS can also refer any subsidy to the SAU pre- or post-award
- SSoPIs/SoS referrals – mandatory referral/review; SSols – discretionary referral/review (SAU will apply prioritisation principles in considering which SSols to review)
- The SAU will review the PA’s own assessment of compliance against the requirements set out in legislation (Subsidy Control and Energy/Environment principles, prohibitions, conditions)
- Statutory timescales of 5 Working Days (for review of referral and compliance with mandatory requirements in legislation, prioritisation decision for SSols), followed by 30 Working Day ‘reporting period’ (with provision for extension)
- SAU reports on referred subsidies will be advisory (non-binding) – it will be for PA to decide whether to proceed with/modify the subsidy
- Referrals will take place on an online Public Authority Portal – currently under development

SSols/SSoPIs – proposed definitions

NB – confirmed definitions will be set out in regulations that we expect to be laid in the Autumn. These definitions were consulted on by BEIS earlier in the year.

Subsidies and Schemes of Interest (discretionary referral)

- All subsidies between £5m and £10m regardless of any design features or sector.
- All subsidies for rescuing ailing or insolvent enterprises, or for liquidating or providing liquidity support to deposit takers or insurance companies which are subject to the additional requirements in clause 19 and 22-23 of the Bill

Subsidies and Schemes of Particular Interest (mandatory referral)

- All subsidies for activities that relate to sensitive sectors in excess of £5m per recipient
- All subsidies in any sector above £10m.
- All subsidies for restructuring ailing or insolvent enterprises which are subject to the additional requirements in clause 20-21 of the Bill.

Schemes of (Particular) Interest allow a Subsidy of Particular Interest to be granted within its parameters (only the overarching Scheme is referred to SAU, not individual subsidies made under it).

Current list of sensitive sectors: Steel, other base metals, automotive, shipbuilding, aerospace, electricity generation

SAU monitoring function

See SAU [draft guidance](#) for more information on proposed approach to exercising SAU functions.

- SAU will be required to monitor the effective operation of the subsidy control regime and to report on this at intervals
- First monitoring report due 3 years after commencement (second report after a further 3 years, and then a 5-yearly cycle)
- CMA will be provided with information-gathering powers in support of this function
- CMA will have a high-level annual reporting duty – details of subsidies reviewed to be included in CMA annual report

Note: This slide is redacted as out of scope



[Redacted]

[Redacted]

[Redacted]

[Redacted]

- Note: This slide is redacted as out of scope
-



[Redacted text]

[Redacted text]



[Redacted text]

[Redacted text]



[Redacted text]

[Redacted text]

[Redacted text]

- **Note: This slide is redacted as out of scope**

- **Note: This slide is redacted as out of scope**

SAU Critical Friends Forum

08 Aug 22

Agenda

- **SAU update – progress since last meeting**
- **Overview of round tables with public authorities**
- **Update on bilateral engagement activity**
- **Pipeline/Pre-referrals – proposed approach for SAU**

SAU update – key developments

- Go live date
- Draft guidance and draft policy statement
- Stakeholder engagement
- Public authority portal
- Training
- Recruitment
- Next steps

- Note: this slide is redacted under Section 22 of the FOI Act

[Redacted content]

- Note: this slide is redacted under Section 22 of the FOI Act
-

Pipeline/Pre-referral – proposed approach

Pipeline

- Early engagement with PAs for monitoring pipeline purposes
- Giving PAs general advice on SAU role and procedures [NB we expect BEIS and others to play an active role on this as well]
- For Sols, supports prioritisation decisions
- Delivered via pipeline and outreach team

Pre-referral

- Deeper engagement on specific subsidies certain to come to SAU
- Assessment of the PAs approach to supporting evidence to guide SAU evaluation
- Detailed advice on procedure including PAP
- Delivered by shadow case-teams

Live case

- Ongoing engagement with PAs on SSoPIs and SSols that have been referred
- Supporting decision-making, including communicating prioritisation decision for SSols during Day 1-5 period
- Case-team in place, based on existing pre-referral case-team

Pipeline/pre-referral issues

- Timing – estimate 4 months is earliest we would want to form a shadow case-team for pre-referral discussions
- Spotting and acting – if we spot a likely SSoPI should we proactively reach out to a PA to engage in pre-referral?
- Nature of pre-referral discussions: to what extent discussing substance of the PA assessment versus supporting evidence
- Prioritisation decisions – are these relative (i.e. are we considering an SSol for its significance and impact relative to other SSols in the pipeline) or in absolute terms?
- Any existing CMA tools or techniques for balancing resource against strategy/impact assessment?

SAU monitoring function

7 June 2022

Purpose of the meeting:

- Sense check progress/how to take the workstream forward?

Content:

- Background/legal basis
- SAU thinking (CF forum 9.10.2021+added points)
- Concerns raised during parliamentary debates
- Other examples of evaluation
- Next steps?

Background/legal basis

Clause 65 of Subsidy Control Act

‘Monitoring and reporting on subsidy control’

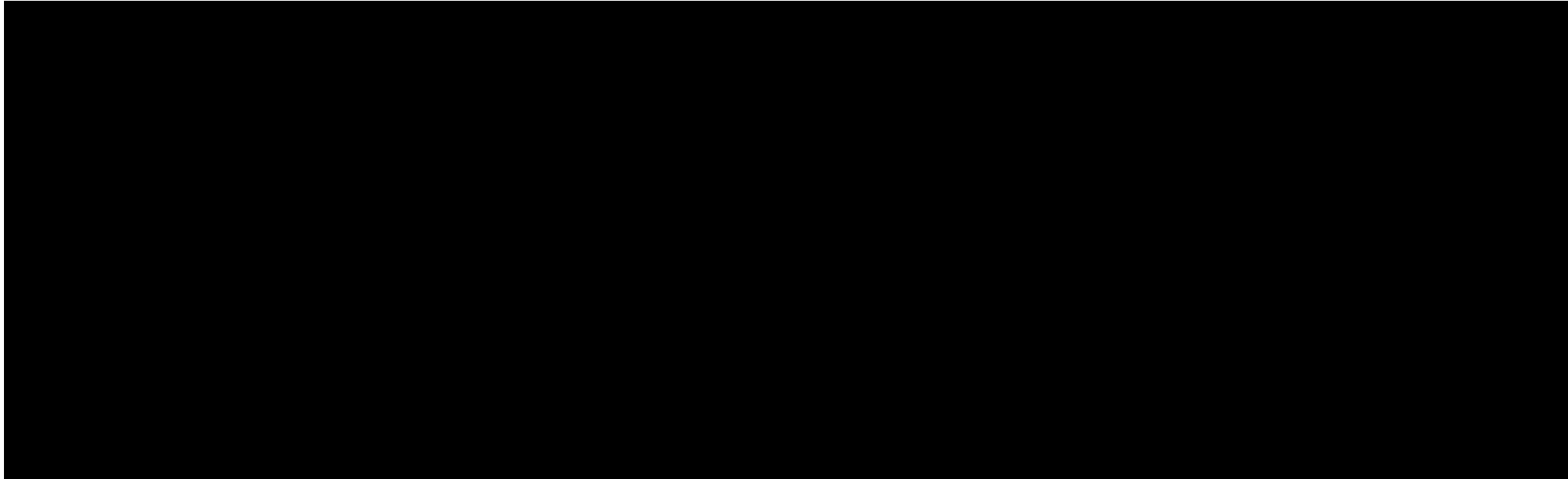
(1) “The CMA must, in relation to each relevant period, undertake a review of –

- (a) the effectiveness of the operation of this Act, and**
- (b) the impact of the operation of this Act on competition and investment within the United Kingdom.”**

(2) “The CMA must prepare a report on the outcome of the review in relation to each relevant period.”

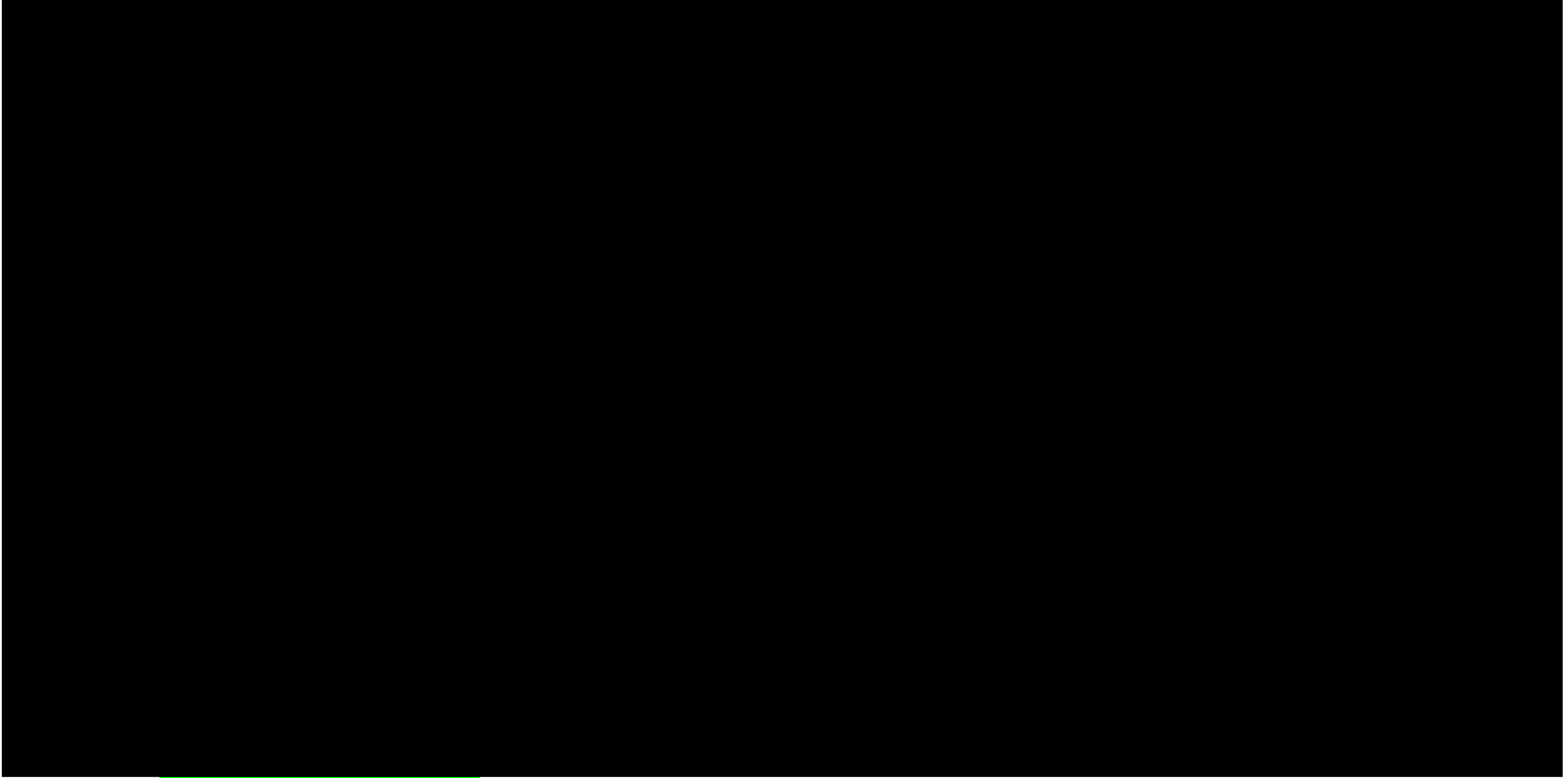
Timings

- Regime to enter into force: 31 October 2022
- Evidence gathering
- Analysis/report writing
- Relevant period: up to **31 March 2025**
- **CMA must publish a report as soon as practicable after the end of the period to which it relates and in such manner as the CMA considers appropriate**
- [Q: What evidence do we need to gather from the start?]

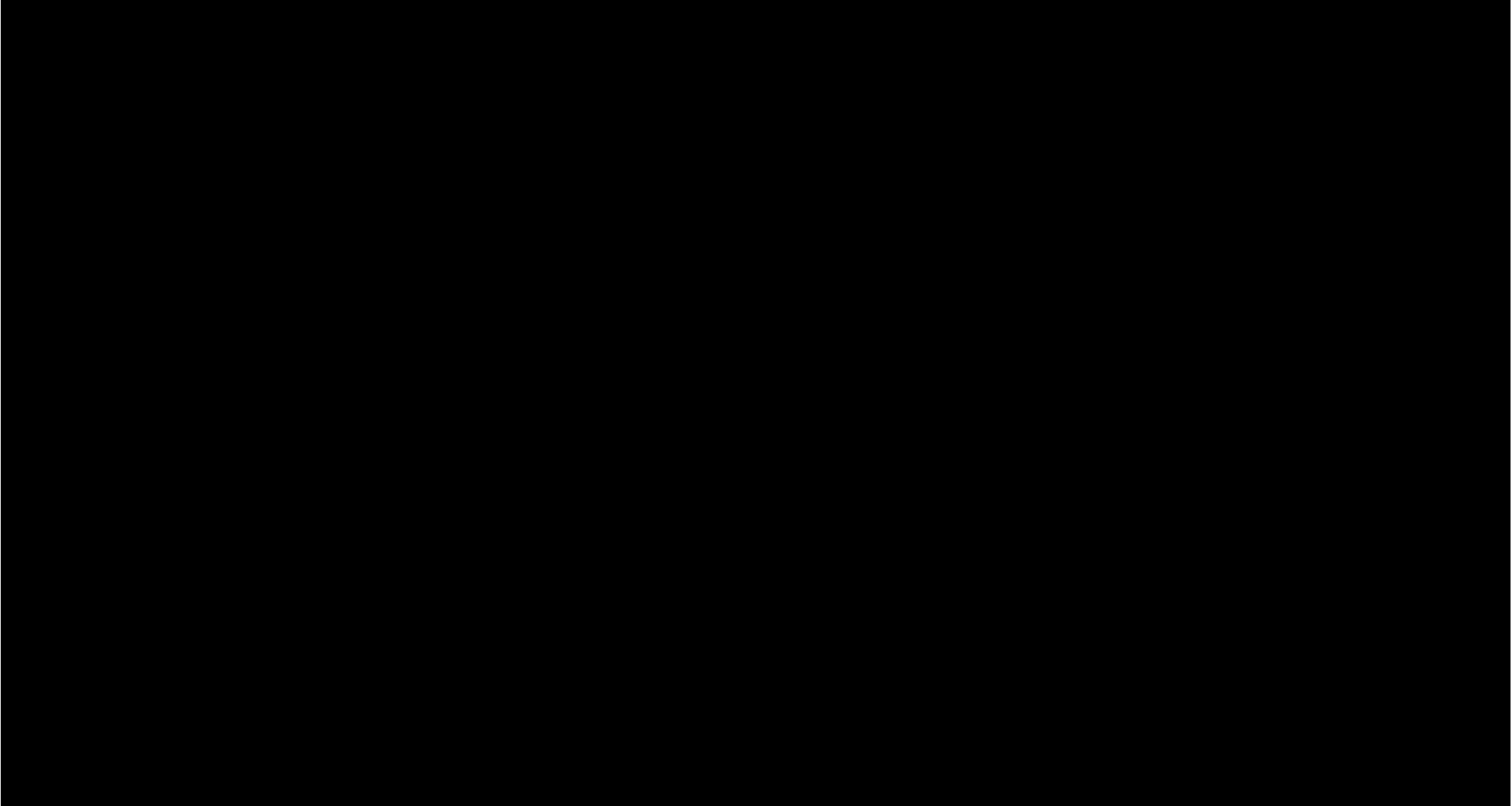


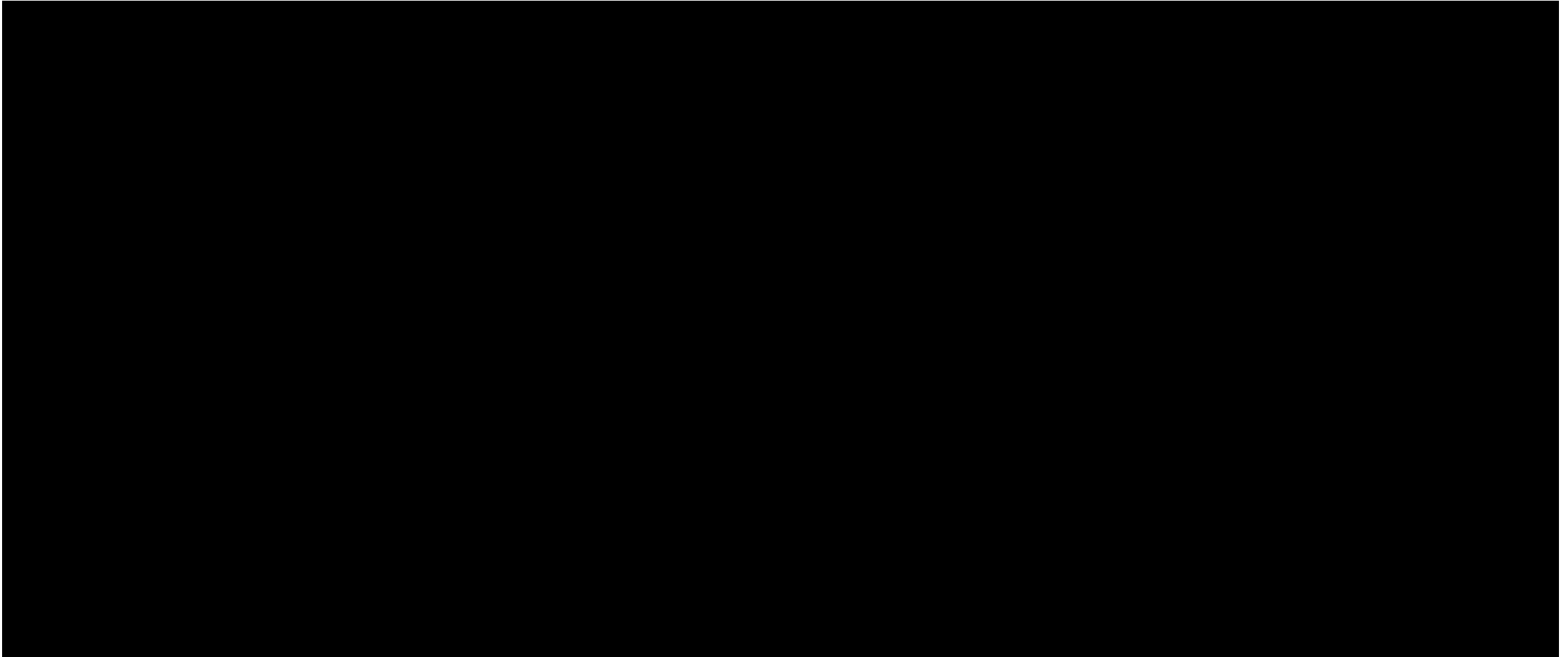
Note: This slide is redacted under Section 31 of the FOI Act

Note: This slide is redacted under Section 31 of the FOI Act

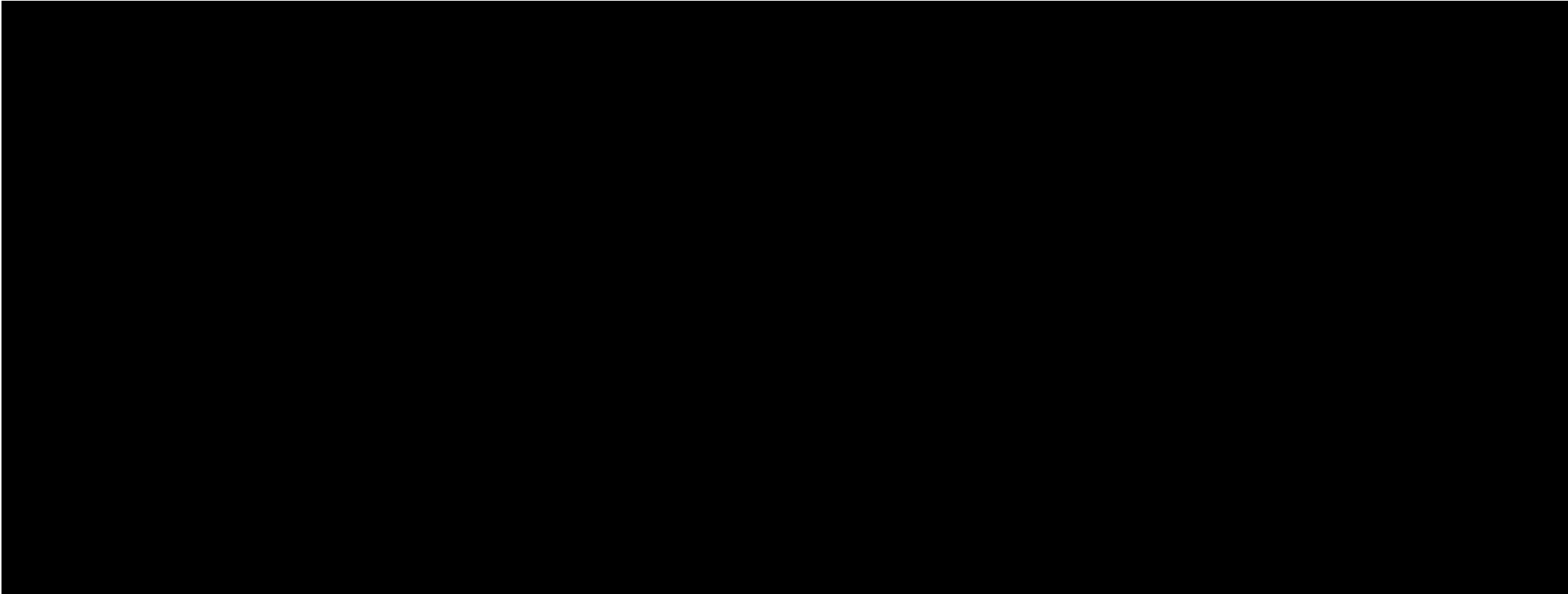


Note: This slide is redacted under Section 31 of the FOI Act

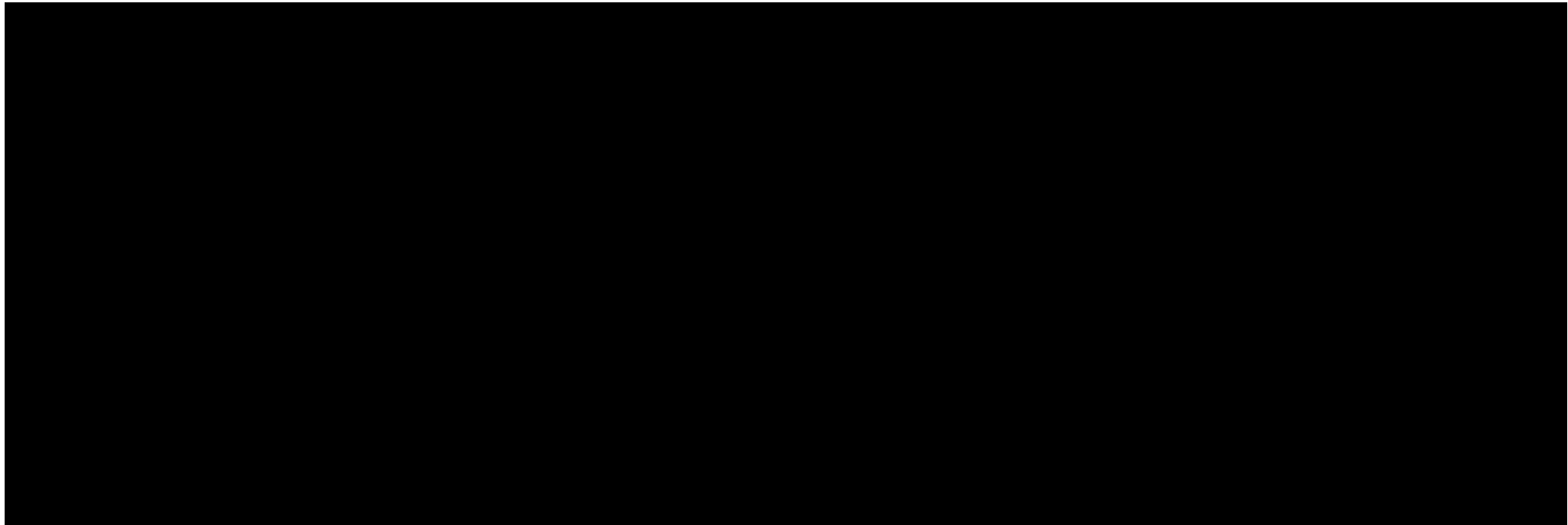




Note: This slide is redacted under Section 31 of the FOI Act

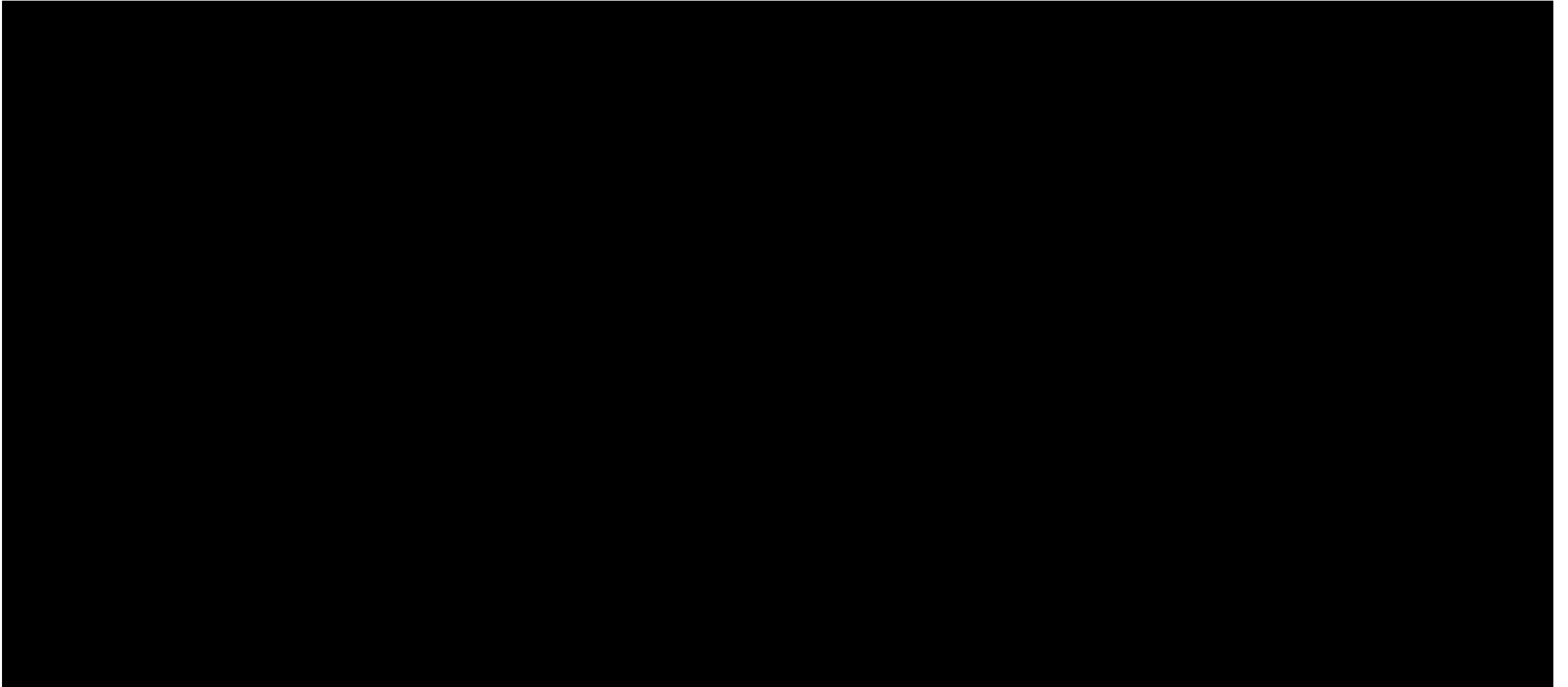


Note: This slide is redacted under Section 31 of the FOI Act

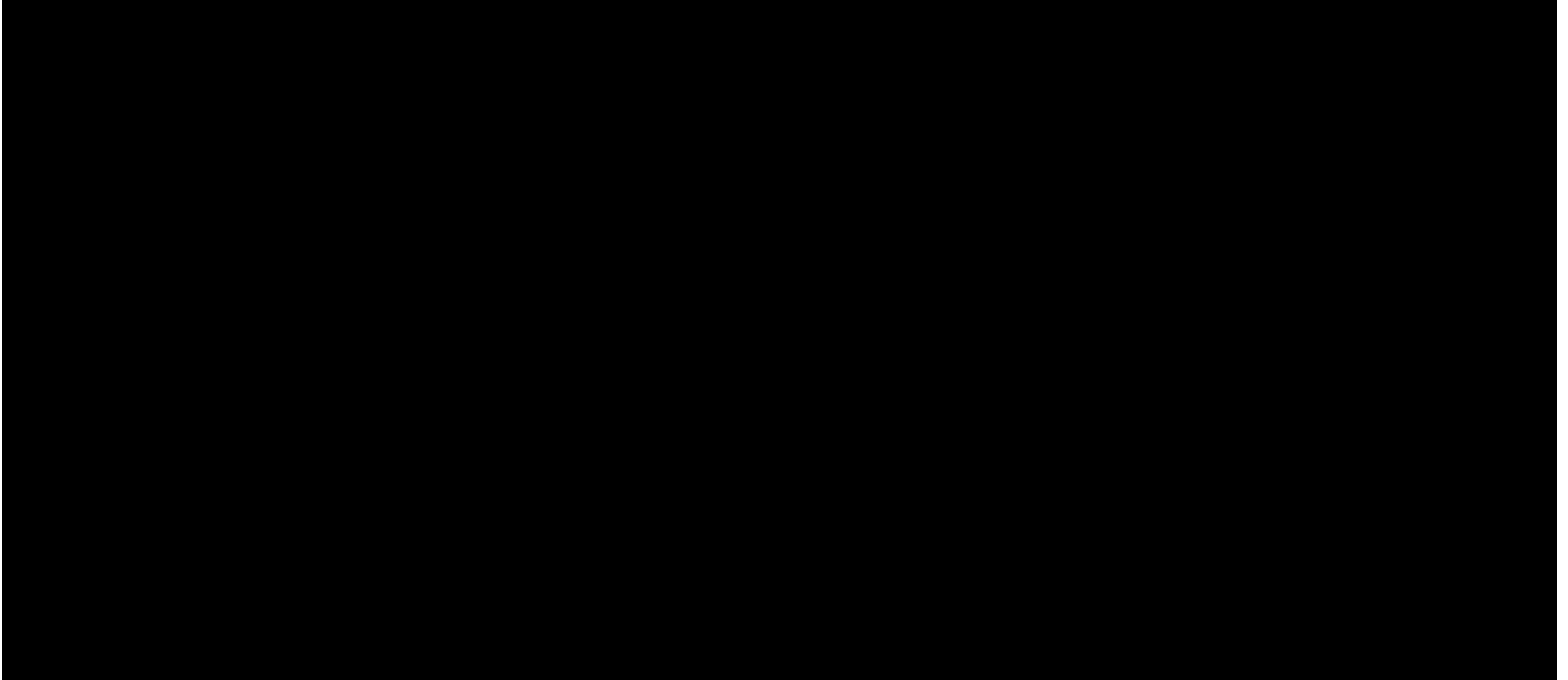


Note: This slide is redacted under Section 31 of the FOI Act

Note: This slide is redacted under Section 31 of the FOI Act



Note: This slide is redacted under Section 31 of the FOI Act



Note: This slide is redacted under Section 31 of the FOI Act

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

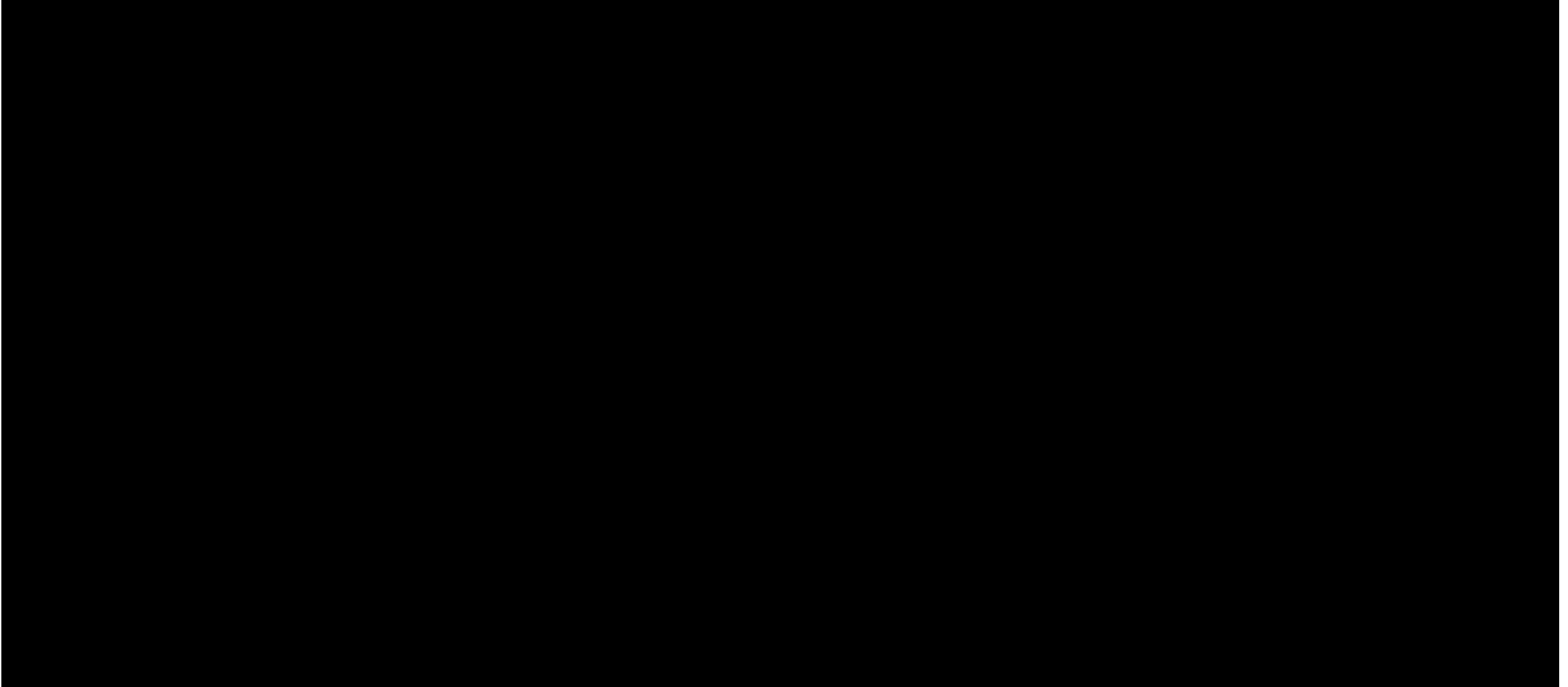
[Redacted]

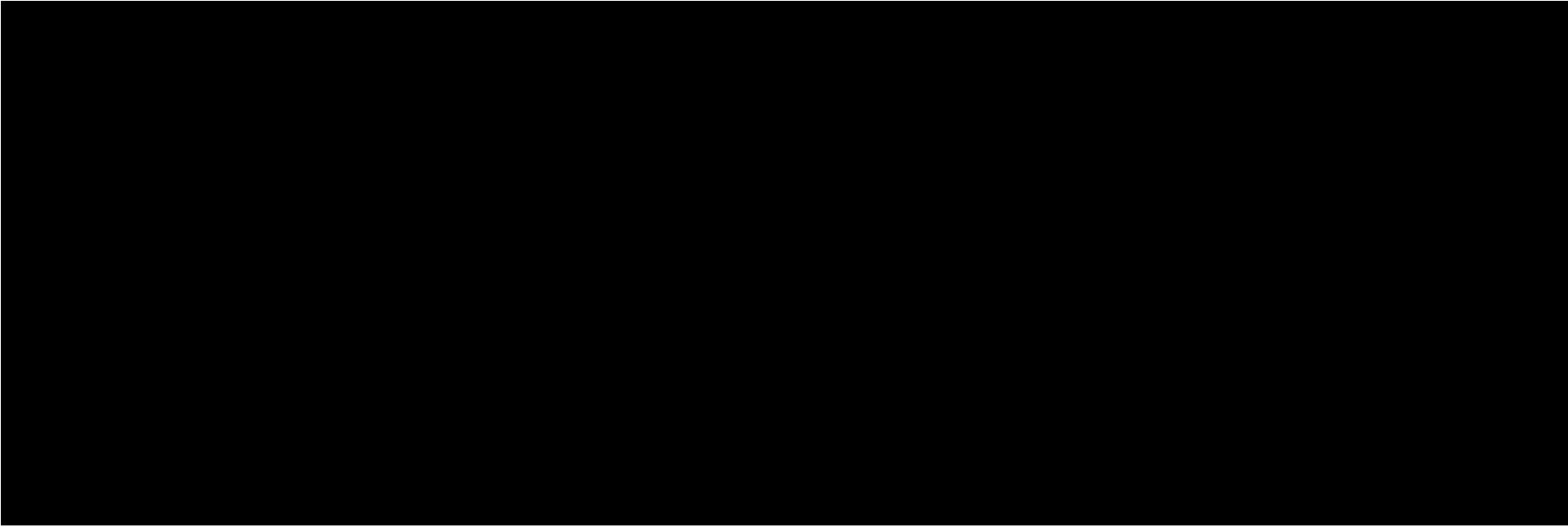
[Redacted]

[Redacted]

[Redacted]

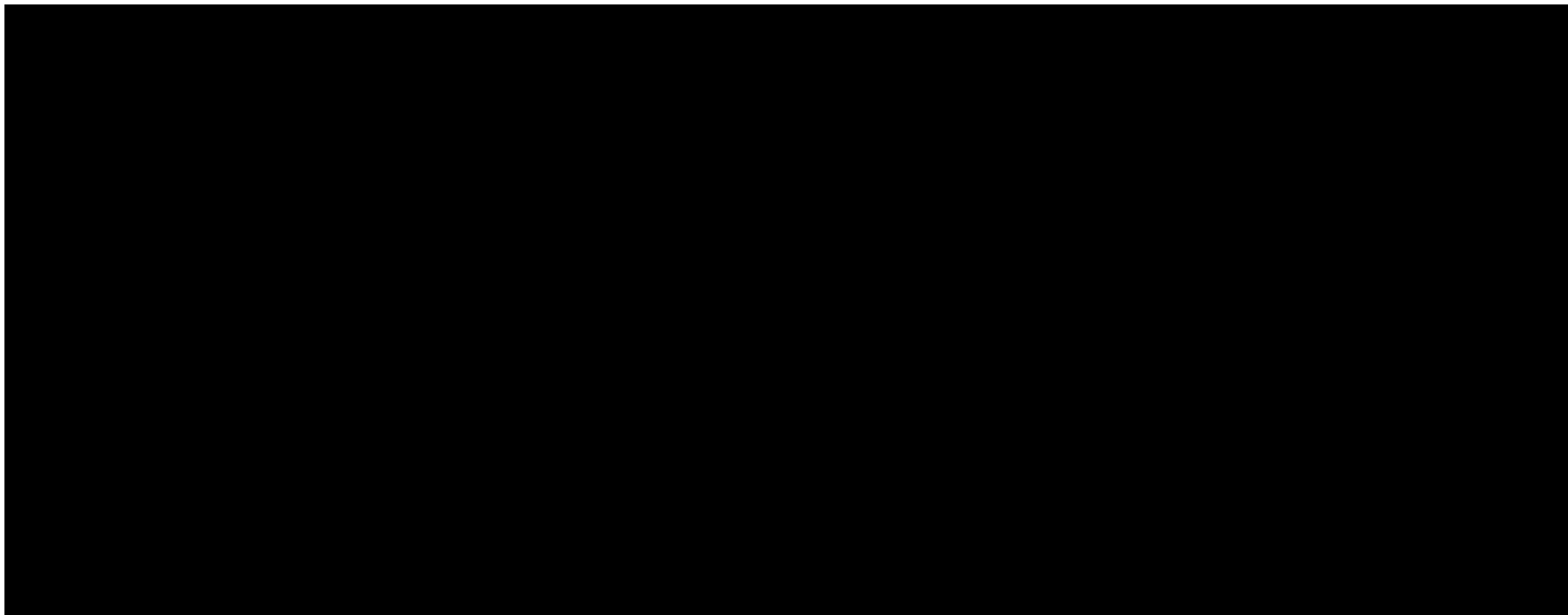
Note: This slide is redacted under Section 31 of the FOI Act





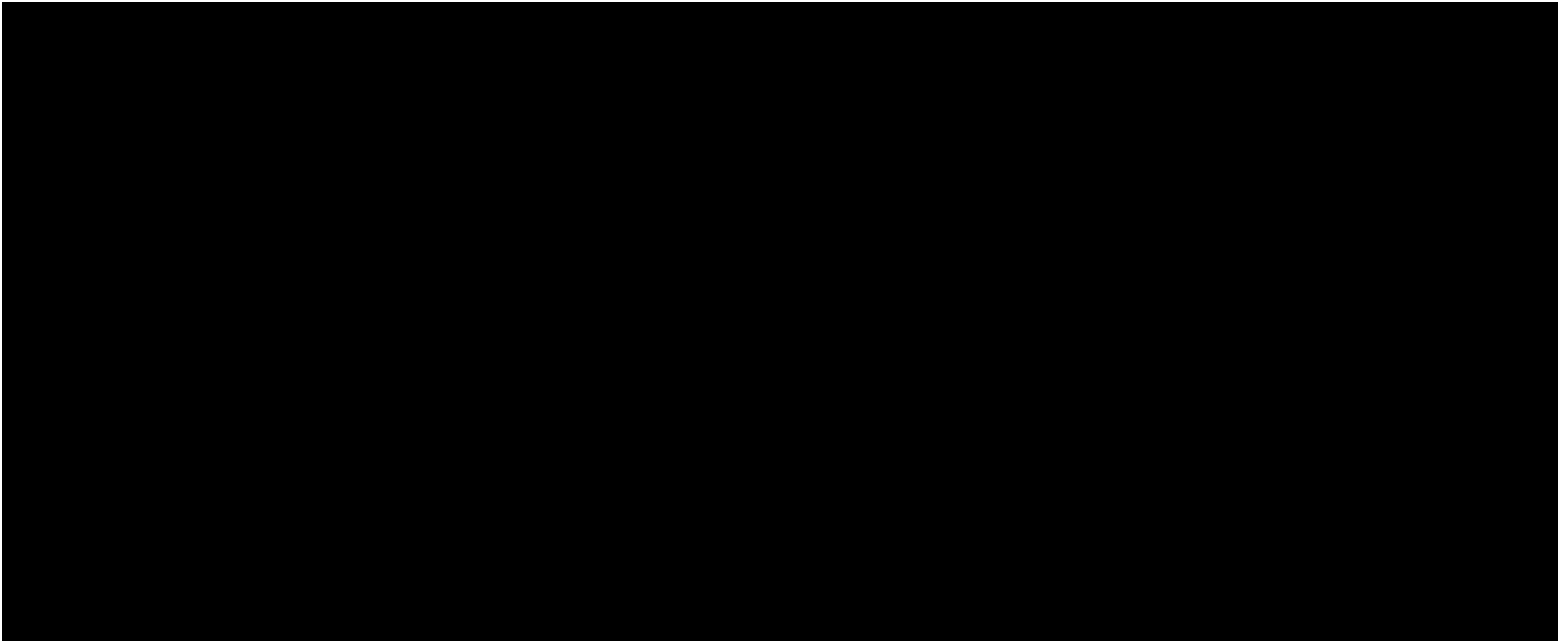
Note: This slide is redacted under Section 31 of the FOI Act

Note: This slide is redacted under Section 31 of the FOI Act

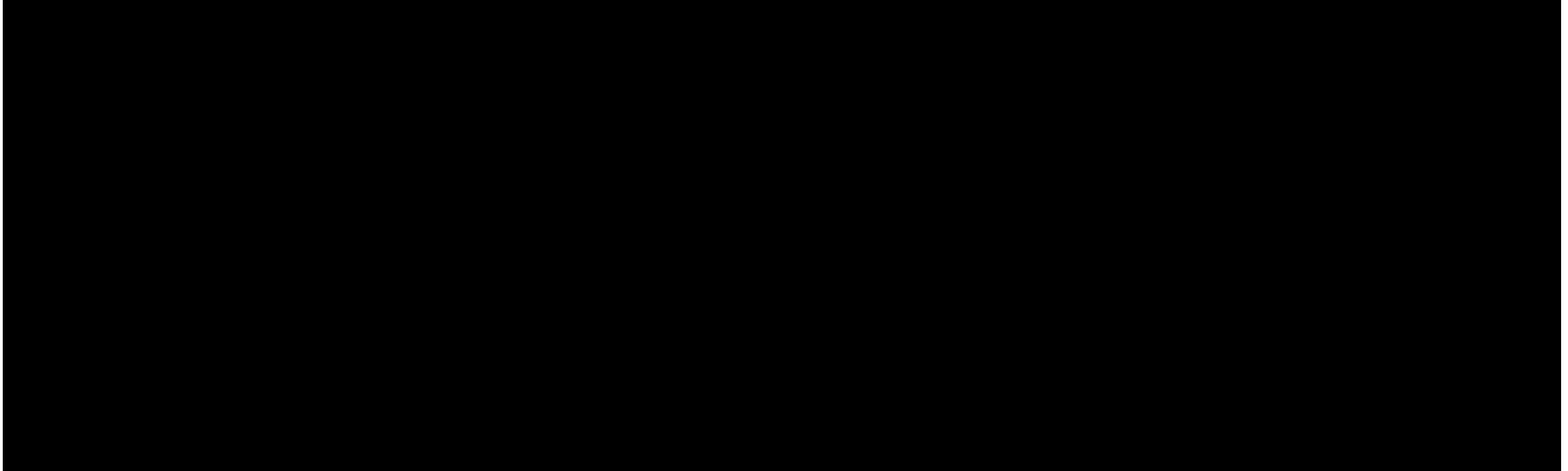




Note: This slide is redacted under Section 31 of the FOI Act



Note: This slide is redacted under Section 31 of the FOI Act



Note: This slide is redacted under Section 31 of the FOI Act

Note: This slide is redacted under Section 31 of the FOI Act



SAU Team Streamlined routes

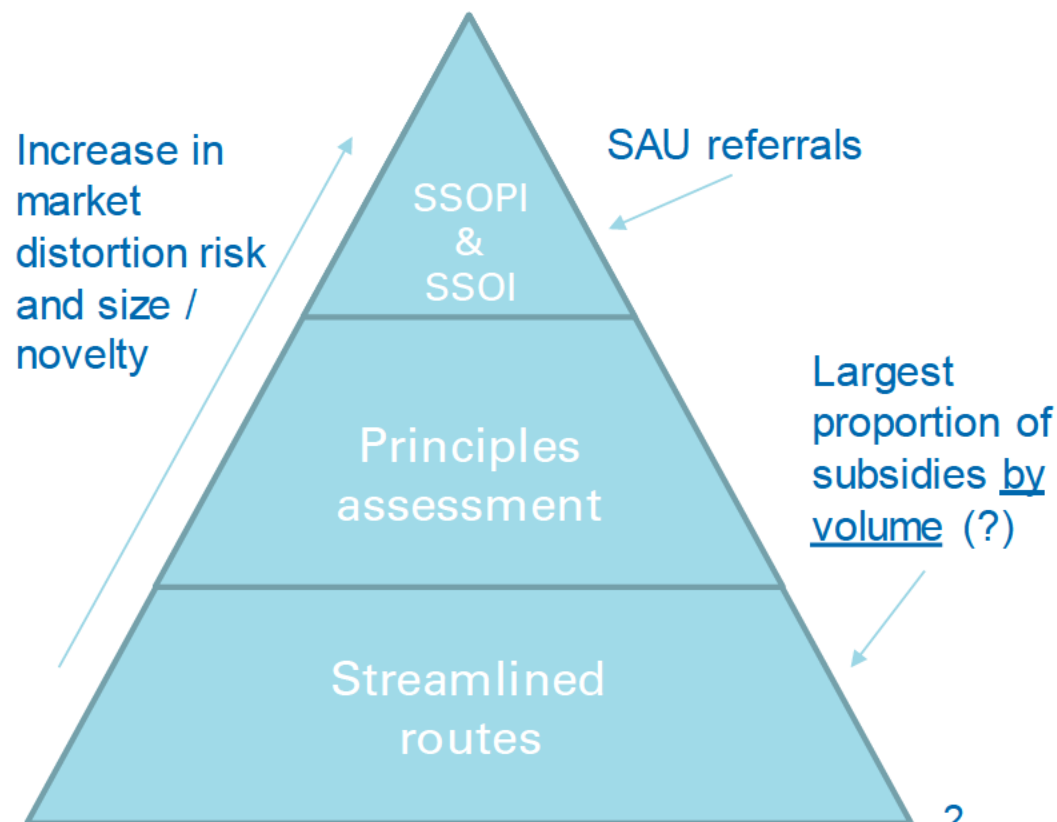
**Introduction
18/05/2022**

What are streamlined routes (streamlined subsidy schemes)?

- Ministers can create Streamlined Subsidy Schemes in the UK subsidy regime:
 - They must be laid before Parliament (but not as secondary legislation)
 - No referrals to SAU (exemption applies to Streamlined Subsidy Schemes themselves, and all subsidies and schemes under them)

Purpose:

- Reduce burden of principles assessment
- Increase legal certainty for public authorities
- Focused on addressing established market failures with low risk of distortion
- Deliver HMG's policy priorities e.g. Levelling Up



- EU State aid similarities
 - Key win for HMG during TCA negotiations was not having a system that looked similar to EU State aid
 - GBER was perceived as a complex lengthy regulation that reduced the creativity of public authorities to design subsidies
 - Streamlined routes were only agreed after lengthy cross Whitehall negotiations
- External stakeholders
 - Unified support for Streamlined routes during Parliamentary debates and by external commentators e.g. lawyers, Local Government Association, DAs
 - Key criticism of the Act has been that it is a framework Act that does not indicate HMG's policy priorities
 - Key issue: creation of a Streamlined route for Levelling up (NB tricky issue of EU Regional aid maps and criteria for disadvantaged areas)
- Devolved Authorities
 - Wanted to have equal powers as HMG Ministers to create Streamlined Routes but did not get them under the Act

- [REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]

- [REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- Note: This slide is redacted under Section 35 of the FOI Act