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ROUNDTABLE ON CARTELS INVOLVING INTERMEDIATE GOODS

-- United Kingdom --

27 October 2015

This document reproduces a written contribution from United Kingdom submitted for Item 3 of the 122nd meeting of the Working Party No. 3 on Co-operation and Enforcement on 27 October 2015.

*More documents related to this discussion can be found at:
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Introduction

1. This paper is submitted by the United Kingdom's Competition and Markets Authority ("**CMA**").
2. The hypothetical scenario raises complex questions of extraterritorial application of competition law and the competition authorities' approach to imposing penalties for infringements of competition law concerning cartels involving intermediate goods.
3. The CMA's response addresses issues raised by the hypothetical scenario under two themes, headed: "**Jurisdiction: extraterritoriality**" and "**Penalties**".
4. The CMA's response is submitted to aid discussion at the OECD roundtable to be held by Working Party No. 3 on 27 October 2015. The response does not include an exhaustive consideration of all the issues raised by the hypothetical scenario and should not be interpreted as an indication of how the CMA would proceed in practice were it necessary to consider a case that raised similar issues.

1. Jurisdiction: extra-territoriality

1.1 The legal framework

5. In the UK, section 2(1) of the Competition Act 1998 ("**CA98**") prohibits anti-competitive agreements or concerted practices between undertakings which appreciably prevent, restrict or distort competition in the UK and may have an effect on trade within the UK ("**Chapter I prohibition**").
6. The Chapter I prohibition is closely modelled on Article 101 of the Treaty on the Functioning of the EU ("**Article 101**"), which prohibits as incompatible with the internal market anti-competitive agreements that have an effect on trade between EU Member States.
7. Both Chapter I and Article 101 expressly list price-fixing agreements as falling within the scope of the prohibitions. Price-fixing is a restriction of competition by "object" i.e. a restriction that is considered to be anti-competitive by its very nature such that there is no need for the CMA to establish that it had an anti-competitive effect on competition for it to be found to infringe Chapter I/Article 101.
8. In addition to the civil enforcement under Chapter I/Article 101, an individual can be investigated and be subject to criminal prosecution for a substantive infringement of competition law (the cartel offence). The criminal cartel offence under the Enterprise Act 2002 ("**EA02**") only applies where the individual is involved in the most serious and damaging forms of anti-competitive behaviour (hard core cartels).
9. Section 188 of the EA02 provides that an individual is guilty of an offence if he or she agrees with another that undertakings will engage in certain cartel activity (including horizontal price-fixing agreements), provided that the exclusions from the offence in section 188A and the defences to the offence in section 188B do not apply.¹

¹ Until 1 April 2014 the cartel offence required the individual to have acted dishonestly. The dishonesty element of the offence was removed, and the statutory exclusions and defences referred to above added, by the Enterprise and Regulatory Reform Act 2013. The amended offence only applies to agreements made on or after 1 April 2014, so dishonesty will continue to be a feature of cases concerning conduct prior to that date.

10. The CMA can also apply to court to seek disqualification orders against directors of companies that have been found to have infringed competition law (a Competition Disqualification Order (“CDO”)).²

1.2 *Jurisdictional considerations: civil enforcement*

1.2.1 *“Effect on trade”*

11. Where the CMA intends to take enforcement action in relation to a potentially anti-competitive agreement (such as the alleged price-fixing agreement between Alpha and Beta), it needs to decide whether to proceed on the basis of the Chapter I prohibition alone or whether it should also proceed under Article 101.

12. The “effect on trade” criterion defines the sphere of application of EU rules in relation to national laws.³

13. Where an agreement affects trade between Member States the CMA is obliged, if it decides to apply national competition law (e.g. by issuing an infringement decision under Chapter I), also to apply EU law (e.g. by issuing an infringement decision under Article 101).⁴

14. Historically, the European Commission and the EU Courts have adopted a wide interpretation of the concept of “effect on trade between Member States”. This approach is reflected in the guidelines of the European Commission on the effect on trade concept (“**Effect on Trade Guidelines**”).⁵ The CMA will have regard to the Effect on Trade Guidelines when considering whether agreements are likely appreciably to affect trade between Member States.⁶

15. A price-fixing cartel with an international dimension of the type identified in the hypothetical scenario is likely to have an effect on trade between Member States and therefore fall to be assessed by the CMA under both Chapter I and Article 101.

1.2.2 *Extra-territoriality*

16. In respect of the Chapter I prohibition, section 2(3) of the CA98 provides that:

“Subsection (1) applies only if the agreement [...] is, or is intended to be, implemented in the UK.” (emphasis added)

² A court is required to make a CDO in respect of an individual director if an undertaking, which is a company of which the individual is a director, commits a breach of competition law, and if the court considers that the individual’s conduct as a director makes him unfit to be concerned in the management of a company. The maximum period for disqualification under a CDO is 15 years. Section 9A Company Directors Disqualification Act 1986.

³ Joined Cases 6/73 and 7/73 *Istituto Chemioterapico Italiano and Commercial Solvents v European Commission* [1974] ECR 223, paragraph 31.

⁴ Article 3(1), Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 of the Treaty (“**EU Implementing Regulation 1/2003**”).

⁵ Commission Notice 2004/C 101/07 of 27 April 2004, Guidelines on the effect on trade concept contained in Articles 101 and 102 of the Treaty.

⁶ Agreements and concerted practices, OFT401, December 2004, para 2.23. This guidance, which was originally published by the CMA’s predecessor, the Office of Fair Trading (OFT), has been adopted by the CMA Board.

17. This provision specifically⁷ gives legislative effect in the UK to the “implementation” doctrine for establishing jurisdiction set out by the Court of Justice of the European Union in *Wood Pulp I*,⁸ where the Court of Justice held that:

“16 It should be observed that an infringement of Article [101], such as the conclusion of an agreement which has had the effect of restricting competition within the common market, consists of conduct made up of two elements, the formation of the agreement, decision or concerted practice and the implementation thereof. If the applicability of prohibitions laid down under competition law were made to depend on the place where the agreement, decision or concerted practice was formed, the result would obviously be to give undertakings an easy means of evading those prohibitions. The decisive factor is therefore the place where it is implemented.

17 The producers in this case implemented their pricing agreement within the common market. It is immaterial in that respect whether or not they had recourse to subsidiaries, agents, sub-agents, or branches within the Community in order to make their contacts with purchasers within the Community.

18 Accordingly the Community's jurisdiction to apply its competition rules to such conduct is covered by the territoriality principle as universally recognized in public international law.”

18. It follows that agreements by non-UK undertakings would be caught by the Chapter I prohibition (provided that they meet the other requirements of the prohibition) if they are implemented in UK. Conversely, the fact that price-fixing meetings take place in the UK may not in itself be sufficient to establish the CMA’s Chapter I jurisdiction in the absence of another UK nexus.

19. Therefore, it would appear to be possible to rely on the “implementation” doctrine to assert jurisdiction in Country B on the basis that the cartelised product (Component X) was sold into the territory of Country B. In respect of Country A, facts that might go to the assessment of whether the agreement was implemented in Country A include: if finished product integrators had purchased Component X in Country A, or if the alleged cartel extended to the pricing of Component X in Country A to purchasers other than the finished product integrators in Country B.

20. As to Country C, it may be easier to prove that the agreement was “implemented” in Country C if Alpha and/or Beta sold Component X directly into the Country C (for incorporation into the finished product in Country C).

21. As regards the application of Article 101, there is no equivalent express provision for “implementation” contained in Article 101 itself or in the EU Implementing Regulation 1/2003 as there is in the Chapter I prohibition. However the European Commission states in the Effect on Trade Guidelines that both Article 101 and Article 102 TFEU⁹ apply to an agreement or practice irrespective of where the undertakings are located or where the agreement was concluded, provided that “*the agreement or practice is either implemented inside the [EU], or produce [sic] effects inside the [EU].*”¹⁰ (emphasis added)

⁷ See the comments of Lord Simon of Highbury in debates on the Competition Bill: Hansard (HL) 13 November 1997, cols. 260-261
<http://www.publications.parliament.uk/pa/ld199798/ldhansrd/vo971113/text/71113-05.htm>.

⁸ Cases 114/85 etc *A. Ahlström Osakeyhtiö and others v European Commission* [1988] ECR 5193.

⁹ Article 102 TFEU prohibits any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it in so far as it may affect trade between Member States.

¹⁰ Para 100.

22. The latter basis for establishing jurisdiction referred to in the Guidelines, namely the “qualified effects” doctrine, has been endorsed by the General Court of the European Union as an alternative basis for establishing jurisdiction to the “implementation” doctrine, at least in relation to cases under Article 102 TFEU and under the EU Merger Regulation.¹¹

23. Under the “qualified effects” doctrine, jurisdiction can be established simply on the basis of the economic effects produced within a given territory; “implementation” of the agreement within that territory is not required.

24. The “qualified effects” doctrine is arguably a more expansive basis for establishing jurisdiction than the “implementation” doctrine. The General Court has held that “qualified effects” refers to the criteria of “*immediate, substantial and foreseeable effect*”.¹² As such, the “qualified effects” doctrine may be an alternative avenue to seek to establish jurisdiction in Country C.

25. The assessment of whether the criteria are satisfied in relation to Country C is likely to be highly fact specific. The fact that Alpha and Beta had contacts with finished products purchasers in Country C, including negotiations regarding Component X pricing (Country C3), or that finished products are sold around the world and Alpha and Beta are unaware or indifferent to whether the finished products are sold in Country C (Country C4), could go to the assessment of “implementation” or “qualified effects” but may not be determinative either way. Point C5 raises the question of whether vertically integrated companies should be treated differently than others (see *InnoLux* below).

26. Whilst there may be circumstances in which it could be argued that the “qualified effects” doctrine applied but the “implementation” doctrine did not, this is unlikely, in practice, to affect the CMA’s ability to take enforcement action in a case of this kind, given that trade between EU Member States is likely to be affected and the CMA would therefore need to apply Article 101.

1.3 Criminal cartel offence

27. In addition to a potential civil enforcement action under Chapter I/Article 101 against undertakings (Alpha and Beta), the CMA would also need to consider in the hypothetical scenario whether individuals might be guilty of the criminal cartel offence.

28. In respect of price-fixing arrangements, section 188(2) of the EA02 provides that the arrangement must be one which fixes a price for the supply of products or services in the UK.

29. In the hypothetical scenario, if country ‘A’ represented the UK, whether component X was supplied within Country ‘A’ would be relevant in the assessment of whether the conduct fell within the scope of the cartel offence. If Countries ‘B’ or ‘C’ represented the UK, and individuals from Alpha and Beta travelled to the UK and attended meetings at which they agreed price-fixing arrangements in relation to the supply of their components into the UK, then their conduct would fall within the scope of the offence regardless of whether they actually implement those arrangements.

¹¹ See, for example, Case T-286/09 *Intel Corp., v European Commission*, Judgment of the General Court of 12 June 2014 (*Intel*), citing the judgment of the General Court in Case T-102/96 *Gencor v European Commission* [1999] ECR II-753 (*Gencor*). The *Intel* judgment of the General Court has been appealed to the Court of Justice of the European Union, including as to whether the “qualified effects” test is an appropriate basis for EU jurisdiction in that case.

¹² *Intel*, para 243, citing *Gencor*, para 90.

30. If the same individuals attend such meetings and reach such agreements outside of the UK, they can also be prosecuted provided the agreement is implemented “in whole or in part in the UK” (section 190(3) of the EA02).

31. The meaning of “implemented in whole or in part” for the purposes of section 190(3) has not yet been tested in the UK criminal courts. However the Explanatory Note to the offence (which is not legally binding but assists with understanding the offence) provides: “*agreements reached overseas may only be prosecuted if some subsequent action is taken within the UK to further the agreement. An instruction to others to implement the agreement, delivered into the UK by telephone or electronic mail, might be a sufficient action for this purpose*”.

32. In the above scenarios the individuals’ conduct falls within the scope of the cartel offence and if found guilty they may be liable to a fine and/or imprisonment irrespective of their domicile or place of residence. Individuals based outside the UK can be prosecuted and their attendance at a criminal trial in the UK secured either voluntarily or, failing that, by means of extradition depending on whether the UK has an extradition treaty with the country.¹³

33. Where a criminal cartel investigation is commenced in the UK and relevant evidence is based overseas, the CMA can seek the assistance of the relevant authorities in the country concerned via the process of Mutual Legal Assistance (commonly using a Letter of Request). That assistance can extend not only to obtaining documentary evidence of the cartel (such as a written price-fixing agreement) but also to obtaining evidence from witnesses.

34. In deciding whether or not to prosecute, the CMA will be guided by its Cartel Offence Prosecution Guidance.¹⁴ This sets out the principles to be applied in determining, in any case, whether proceedings for the criminal cartel offence should be instituted. Consistent with all other UK prosecution agencies, the CMA applies the two stage test in the Code for Crown Prosecutors, considering for each suspect first the sufficiency of the evidence; and if that test is met, whether prosecution would be in the public interest.

35. In the hypothetical scenarios, whether there is sufficient evidence may turn on, among other factors, whether important evidence relating to the cartel is based overseas (for example because the agreement was made (or implemented in part) outside the UK) and if so, whether the UK is able to obtain it via the Mutual Legal Assistance process. Public interest factors which will be taken into account when deciding whether a criminal prosecution is appropriate include the seriousness of the offence and the level of harm to the market, the level of culpability of each suspect, the impact on the community and whether prosecution is a proportionate response.

1.4 Decision whether to investigate

36. As regards civil enforcement, the CMA has the power to open a formal investigation where it has reasonable grounds to suspect that an infringement of the Chapter I prohibition or Article 101 has occurred (section 25 of the CA98). Opening a formal investigation allows the CMA to use its investigation powers.

¹³ The European Arrest Warrant applies within the Member States of the EU.

¹⁴ CMA Cartel Offence Prosecution Guidance, CMA9, March 2014.

37. As for the cartel offence, the CMA may conduct an investigation if there are reasonable grounds for suspecting that a cartel offence has been committed (section 192 of the EA02). For conduct before 1 April 2014 (see footnote 1 above), the prime consideration in deciding whether or not to open an investigation will be the extent to which there is likely to be evidence that one or more individuals behaved “dishonestly”.¹⁵ In cartel cases which have had an impact on a number of EU Member States, it may be that unless there is a significant relative impact on the UK and/or the evidence for, or organisation of, the cartel is relatively concentrated in the UK, that the CMA will conclude that action by the European Commission under Article 101 alone would be more appropriate. However, each case will turn on its own facts.¹⁶

38. In deciding whether or not to open an investigation (civil or criminal), the CMA considers whether the case falls within its administrative priorities as set out in the CMA’s Prioritisation Principles.¹⁷

39. The Prioritisation Principles require the CMA to consider the impact, strategic significance, risk and resource implications of taking forward an investigation. The prioritisation assessment is a balancing exercise, weighing the impact and strategic significance against the risk and resources of opening an investigation.

40. The following might be relevant considerations in the CMA’s prioritisation assessment of the hypothetical scenario:

41. **Impact** – what would be the likely direct effect on consumer welfare (price, quality, range) in the market where the CMA intervention takes place? The CMA would, for example, consider the size of the market affected by the price-fixing cartel and the significance of Alpha and Beta on the market, as well as whether the customers affected by the agreement might be vulnerable (and therefore potentially less well served by the markets). The expected impact to indirect consumer welfare would also be a relevant consideration. This includes the level of (and the enforceability of – see further below) a potential civil penalty as well as the likely deterrent effect of CMA intervention. The deterrent effect of intervention might exist if similar issues are present in different markets, for example, in relation to other high-tech hardware components used in electronic products, or “intermediate goods” more generally. The prospect of a CDO would have an additional deterrent impact.

42. **Strategic significance** – the CMA would consider the impact on the CMA’s ongoing portfolio of work. Effective cartel enforcement is currently a particular strategic priority for the CMA, and an area in which it has made investments in capacity and capability to increase the number and speed of cartel cases it can pursue. Emerging sectors and, in particular the effects of technological development, are (amongst others) currently considered to be of particular strategic significance for prioritisation purposes. If a case has the potential to enhance the CMA’s capacity, for example, by way of clarifying the law (which might be relevant for the issues raised in the hypothetical scenario), this would also be taken into account. The CMA also considers whether any work is best carried out by the CMA, or whether another authority would be better placed to act. The CMA works in partnership with competition authorities in other countries, including the European Commission and national competition authorities around the world. The likelihood of private enforcement would also be considered.

¹⁵ Applications for leniency and no-action letters in cartel cases, OFT’s detailed guidance on the principles and process (“**CMA Leniency Guidance**”), OFT1495, July 2013, para 2.46. This guidance, which was originally published by the CMA’s predecessor, the OFT, has been adopted by the CMA Board.

¹⁶ CMA Leniency Guidance, para 2.47.

¹⁷ Prioritisation principles for the CMA, CMA16, April 2014. Where appropriate, the CMA also takes into account other relevant factors, including, the current CMA Annual Plan, the CMA Strategic Assessment, and Vision, Values and Strategy for the CMA, all available at www.gov.uk/cma.

43. **Risk** – The CMA takes into account the likelihood of a successful outcome. Uncertainty about whether the CMA has jurisdiction to bring enforcement action might be a reason not to proceed with the case if the risk is sufficiently high. Conversely, the CMA may take on a case despite there being a small likelihood of success because it will provide clarity on the law. Evidential and procedural risks would also be taken into account, including any procedural risks from the use of tools for gathering evidence abroad.¹⁸

44. **Resource** - The CMA takes into account resource implications of taking on a new project (in the light of the possible financial benefits to consumers of that work), as well as the resource availability of its enforcement partners. An international cartel that raises complex legal and practical issues might be resource intensive.

2. Penalties

2.1 Civil cases

45. Section 36(1) of the CA98 provides that a penalty may be imposed for an infringement of the Chapter I prohibition or Article 101. In fixing the level of the financial penalty, the CMA is required to have regard to the seriousness of the infringement concerned and the desirability of deterring the parties to the agreement and others from anti-competitive conduct (section 37(7A) of the CA98). Penalties may not exceed 10 per cent of the undertaking's worldwide turnover in the business year preceding the CMA's decision.¹⁹

46. The CMA Guidance as to the appropriate amount of penalty ("**CMA Guidance on Penalties**")²⁰ provides for a six-step approach for determining the penalty, which consists of:

- **Step 1 (starting point)** – as a starting point, the CMA applies the percentage of the "relevant turnover" of the undertaking to be fined according to the seriousness of the infringement. The "relevant turnover" for this purpose means the turnover in the relevant product and geographic markets affected by the infringement in the undertaking's last business year prior to the infringement. The starting point cannot exceed 30% of the undertaking's relevant turnover. Price-fixing agreements are among the most serious infringements of competition law and are likely to attract starting points at the upper end of the range. In cases concerning infringements of Article 101, the CMA's assessment of relevant turnover may take into account the effects in another EU Member State if the relevant geographic market is wider than the UK and the relevant Member State expressly gives its consent.²¹
- **Step 2 (adjustment for duration)** – the CMA may increase or, exceptionally, decrease the starting point amount to take account of the duration of the agreement. Where the infringement lasts more than one year, the penalty cannot be increased by more than the number of years of the infringement.

¹⁸ Including requests for Mutual Legal Assistance in criminal cartel investigations – see paras 33 and 35 above.

¹⁹ Section 36(8) of the CA98 and the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (as amended).

²⁰ OFT's Guidance as to the appropriate amount of a penalty, OFT423, September 2012, which has been adopted by the CMA Board.

²¹ CMA Guidance on Penalties, para 2.10.

- **Step 3 (adjustment for aggravating and mitigating factors)** – the CMA will consider whether there are any aggravating or mitigating factors. Aggravating factors include: persistent and repeated unreasonable behaviour by the undertakings that delays the enforcement action, role of the undertaking as the leader or instigator of the cartel, involvement of directors or senior management, recidivism, retaliatory or other coercive measures taken against other undertakings, continuing the infringement after the start of investigation, intentional rather than negligent infringement, and/or retaliation against a leniency applicant. Mitigating factors include: the role of the undertaking (for example, where it is acting under severe duress or pressure), genuine uncertainty on the part of the undertaking as to whether the agreement infringed competition law, adequate steps having been taken to ensure compliance with competition law, termination of the agreement as soon as the CMA intervenes, and/or cooperation which enables the CMA’s enforcement process to be concluded more effectively and/or speedily.
- **Step 4 (adjustment for specific deterrence and proportionality)** – the CMA will consider whether any adjustments to the penalty should be made for the purposes of specific deterrence and proportionality, having regard to each undertaking’s size and financial position as well as any other relevant circumstances. Increases for specific deterrence are generally limited to cases in which an undertaking generates a significant proportion of its turnover outside the relevant market or where an undertaking has made gains from its behaviour that exceed the proposed penalty. The CMA will also assess whether the penalty is appropriate “in the round”. Decreases may be made to ensure the proportionality of the fine. In cases concerning infringements of Article 101, the CMA may take into account the gain made in other product or geographic markets, including gains made in another EU Member State, if the relevant geographic market is wider than the UK and the relevant Member State expressly gives its consent.²²
- **Step 5 (adjustment to prevent the maximum penalty being exceeded and to avoid double jeopardy)** – the CMA will make any necessary adjustments to ensure that the statutory maximum penalty of 10 per cent of worldwide turnover is not exceeded. The CMA Guidance on Penalties provides that, in cases where an undertakings has committed an infringement both of Article 101 and Chapter I, the undertaking will not be fined twice for the same anti-competitive effects. If a fine has been imposed by the European Commission, or a court or a competition authority of another Member State, the CMA must take this into account when setting the amount of penalty in relation to that agreement. This obligation stems from section 38(9) of the CA98 to ensure that, where an anti-competitive agreement is subject to proceedings resulting in a penalty or a fine in another EU Member State, an undertaking will not be penalised again in the UK for same anti-competitive effects. In respect of jurisdictions outside the EU, the CMA may consider, on a case-by-case basis, whether it is appropriate to take into account fines imposed for the same infringement outside the EU.²³
- Step 6 (application of reductions under the CMA’s leniency programme and for settlement agreements) – the CMA will reduce a penalty where it grants applications for leniency and/or settlement.
- In exceptional circumstances, the CMA may also reduce a penalty for financial hardship.

²² CMA Guidance on Penalties, footnote 29.

²³ See CE/7691-06 Decision of the OFT: *Airline passenger fuel surcharges for long-haul flights: Infringement of Chapter I of the CA98 and Article 101 of the TFEU by British Airways Limited and Virgin Atlantic Airways Limited*, 19 April 2012. In setting the level of the fine, the OFT took into account the fact that BA had already been fined by the US authorities (paragraph 443).

47. The issue of how to calculate penalties in international cartels involving intermediate goods (or “transformed” or “processed” products) has recently been addressed in judgments of the European Courts which have precedential value in the UK.

48. *InnoLux v European Commission* (“**InnoLux**”)²⁴ was an appeal of the European Commission’s decision that six Korean and Taiwanese manufacturers had operated an illegal price-fixing and information sharing cartel in breach of Article 101 concerning the liquid crystal display (“**LCD**”) panels used for IT products (PC monitors and notebooks) and televisions which were incorporated into finished products outside the EU and sold in the EU.²⁵ The Court of Justice found that the Commission was entitled to take into account, in setting the fine, the sales of finished products incorporating the cartelised LCD panels, up to the value of those panels. The Court of Justice held that, even though the sales of the finished products were on a downstream market from the market for LCD panels (the cartelised product), the effects of the cartelised price of LCD panels on sales of the finished products was liable to affect competition on the market for those products in the EU. The sales of finished products were found to be related to the cartel and it was held that to exclude such sales from calculating the fine would have the effect of artificially minimising the economic significance of the infringement and would risk imposing a fine which bore no relation to the undertaking’s role in the infringement. The fact that InnoLux was a vertically integrated company and that LCD panels had been subject to internal sales outside the EU between InnoLux and its vertically integrated subsidiaries, was a relevant factor. The Court found that excluding the contested sales from the calculation of the fine would give an advantage to vertically integrated undertakings which incorporate cartelised products into finished goods outside the EU and then sell those finished goods into the EU. The Court held that the European Commission was not obliged to take account of proceedings and penalties to which the undertaking has been subject in non-EU Member States.

49. Similar issues were considered by the General Court in appeals challenging the European Commission’s decision in relation to cathode ray tubes cartels.²⁶

2.2 *Criminal cases*

50. An individual found guilty of the cartel offence will be liable to a maximum penalty of five years’ imprisonment and/or an unlimited fine for conviction of the offence on indictment. The CMA can also ask the sentencing judge to disqualify the individuals from being company directors for a period of up to fifteen years and can commence confiscation proceedings with a view to confiscating any benefit obtained by the individuals from their criminal conduct. In 2008, three individuals (who pleaded guilty) to dishonestly allocating markets and suppliers, restricting supplies, price-fixing and bid rigging in relation to the supply of marine hose and ancillary equipment in the UK were sentenced (on appeal) to 20 – 30 months’ imprisonment and 5 – 7 years’ director disqualification.²⁷ In 2015, an individual was sentenced to 6 months’ imprisonment, suspended for 12 months, and ordered to do 120 hours community service, for dishonestly agreeing with others to divide up customers, fix prices and rig bids in respect of the supply in the UK of galvanised steel tanks for water storage.

²⁴ Case C-231/14 P, Judgment of 9 July 2015.

²⁵ Cartelised LCD panels were also sold directly to another undertaking in the EU (for incorporation into finished products in the EU).

²⁶ See, for example, *LG Electronics v European Commission*, Case T-91/13 Judgment of 9 September 2015.

²⁷ *R v Whittle & Ors.* [2008] EWCA Crim 2560.