



# Enterprise and Regulatory Reform Act 2013

## 2013 CHAPTER 24

### PART 4

#### COMPETITION REFORM

#### CHAPTER 4

##### CARTELS

#### **47 Cartel offence**

- (1) Section 188 of the 2002 Act (cartel offence) is amended as follows.
- (2) In subsection (1), omit “dishonestly”.
- (3) Omit subsection (6).
- (4) After subsection (7) insert—

“(8) This section is subject to section 188A.”
- (5) After that section insert—

#### **“188A Circumstances in which cartel offence not committed**

- (1) An individual does not commit an offence under section 188(1) if, under the arrangements—
  - (a) in a case where the arrangements would (operating as the parties intend) affect the supply in the United Kingdom of a product or service, customers would be given relevant information about the arrangements before they enter into agreements for the supply to them of the product or service so affected,

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*Changes to legislation:* There are currently no known outstanding effects for the Enterprise and Regulatory Reform Act 2013, Section 47. (See end of Document for details)

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- (b) in the case of bid-rigging arrangements, the person requesting bids would be given relevant information about them at or before the time when a bid is made, or
  - (c) in any case, relevant information about the arrangements would be published, before the arrangements are implemented, in the manner specified at the time of the making of the agreement in an order made by the Secretary of State.
- (2) In subsection (1), “relevant information” means—
  - (a) the names of the undertakings to which the arrangements relate,
  - (b) a description of the nature of the arrangements which is sufficient to show why they are or might be arrangements of the kind to which section 188(1) applies,
  - (c) the products or services to which they relate, and
  - (d) such other information as may be specified in an order made by the Secretary of State.
- (3) An individual does not commit an offence under section 188(1) if the agreement is made in order to comply with a legal requirement.
- (4) In subsection (3), “legal requirement” has the same meaning as in paragraph 5 of Schedule 3 to the Competition Act 1998.
- (5) A power to make an order under this section—
  - (a) is exercisable by statutory instrument,
  - (b) may be exercised so as to make different provision for different cases or different purposes, and
  - (c) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate.
- (6) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (6) After section 188A (as inserted by subsection (5) above) insert—

**“188B Defences to commission of cartel offence**

- (1) In a case where the arrangements would (operating as the parties intend) affect the supply in the United Kingdom of a product or service, it is a defence for an individual charged with an offence under section 188(1) to show that, at the time of the making of the agreement, he or she did not intend that the nature of the arrangements would be concealed from customers at all times before they enter into agreements for the supply to them of the product or service.
- (2) It is a defence for an individual charged with an offence under section 188(1) to show that, at the time of the making of the agreement, he or she did not intend that the nature of the arrangements would be concealed from the CMA.
- (3) It is a defence for an individual charged with an offence under section 188(1) to show that, before the making of the agreement, he or she took reasonable steps to ensure that the nature of the arrangements would be disclosed to professional legal advisers for the purposes of obtaining advice about them before their making or (as the case may be) their implementation.”

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(7) After section 190 of the 2002 Act insert—

**“190A Cartel offence: prosecution guidance**

- (1) The CMA must prepare and publish guidance on the principles to be applied in determining, in any case, whether proceedings for an offence under section 188(1) should be instituted.
- (2) The CMA may at any time issue revised or new guidance.
- (3) Guidance published by the CMA under this section is to be published in such manner as it considers appropriate.
- (4) In preparing guidance under this section the CMA must consult—
  - (a) the Director of the Serious Fraud Office;
  - (b) the Lord Advocate; and
  - (c) such other persons as it considers appropriate.”
- (8) The amendments made by subsections (1) to (6) apply only in relation to agreements falling within section 188(1) of the 2002 Act which—
  - (a) are made after the commencement of this section, and
  - (b) relate to arrangements made or to be made after that commencement.

**Commencement Information**

- I1** [S. 47](#) partly in force; [s. 47](#) in force for specified purposes at Royal Assent, see [s. 103\(1\)\(i\)](#)
- I2** [S. 47](#) in force at 1.4.2014 in so far as not already in force by [S.I. 2014/416](#), [art. 2\(1\)\(b\)](#) (with [Sch.](#))

**Changes to legislation:**

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