



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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- (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.”

(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.

48 Extension of power to issue warrants to CAT

- (1) Section 194 of the 2002 Act (power to enter premises under a warrant) is amended as follows.
- (2) In subsection (1), for the words from the beginning to “if he is satisfied” substitute “On an application made to it by the CMA or, in Scotland, the procurator fiscal, the appropriate body may issue a warrant if it is satisfied”.
- (3) After subsection (1) insert—

“(1A) In subsection (1), “appropriate body” means—

 - (a) in England and Wales and Northern Ireland, the High Court or the Competition Appeal Tribunal;
 - (b) in Scotland, the sheriff.”
- (4) After subsection (4) insert—

“(4A) An application for a warrant under this section must be made—

 - (a) in the case of an application to the High Court or the sheriff, in accordance with rules of court;
 - (b) in the case of an application to the Competition Appeal Tribunal, in accordance with rules made under section 15.”
- (5) In Schedule 4 to that Act, before paragraph 11, but after the cross-heading immediately preceding it, insert—

“10A (1) Tribunal rules may make provision as to proceedings on an application for a warrant under section 194 of this Act or section 28, 28A, 62, 62A, 63, 65G or 65H of the 1998 Act, including provision—

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- (a) for the Tribunal dealing with the proceedings to consist only of the President or a member of the panel of chairmen;
 - (b) as to the manner in which the proceedings are to be conducted, including provision—
 - (i) for such applications to be determined without a hearing;
 - (ii) in cases where there is a hearing, for it to be held in private if the Tribunal considers it appropriate because it is considering information of a kind mentioned in paragraph 1(2);
 - (c) as to the persons entitled to be heard in such proceedings (where there is a hearing);
 - (d) for requiring persons to attend to give evidence and produce documents, and for authorising the administration of oaths to witnesses;
 - (e) as to the evidence which may be required or admitted and the extent to which it should be oral or written;
 - (f) allowing the Tribunal to fix time-limits with respect to any aspect of the proceedings and to extend any time-limit (before or after its expiry).
- (2) Paragraphs 2 to 8, and 11 to 17, of this Schedule do not apply in relation to the institution or conduct of proceedings for a warrant mentioned in sub-paragraph (1).”
- (6) In section 14 of that Act (constitution of Tribunal for particular proceedings and its decisions), in subsection (5), for “paragraph 18” substitute “paragraphs 10A(1)(a) and 18”.