

October 2018

## CMA's Tough Message... ...'Stop cartels'

On Monday, 22 October 2018, the Competition & Markets Authority ("**CMA**") launched a nationwide campaign called "Stop Cartels" to educate businesses about illegal competition practices and encourage whistle-blowers to expose cartels if they suspect a business has been involved in cartel activity, such as price fixing or bid-rigging.

Howard Cartlidge, Senior Director of Cartels at the CMA, urged businesses to do the right thing by reporting illegal activity stating that: "*Businesses that fix prices or rig contracts are breaking the law and ripping people off. The victims are customers and other businesses, who are getting cheated out of a fair deal*".

### ICM research...ignorance will be no excuse

This campaign has been prompted by new research by the ICM<sup>1</sup> which the CMA commissioned, which reveals that a large number of UK companies still have little knowledge about competition law related offences.

Out of the 1,200 businesses surveyed:

- Only 57% knew that **price fixing** was illegal;
- Only 35% knew that **dividing up customers with rivals** was illegal;
- Only 34% knew that **setting prices at which others resell their products** is illegal; and
- Only 25% knew that **discussing prospective bids** with competing bidders is illegal.

In addition, only 6% of businesses have run a training course on competition law in the last year and only 18% have had senior-level discussions on the topic.

The CMA notes that previous public awareness campaigns have resulted in a 30% uptick in the number of tip-offs it receives, and with the launch of its latest campaign, the CMA has made it clear that pleading ignorance of the rules will not be enough to enable a business to escape sanctions.

The consequences of breaching competition law can be very serious – fines for an infringement can amount up to 10% of the business's annual global turnover, whilst an individual may face directorship disqualification or imprisonment of up to five years. The CMA has issued more than £155m in fines since 2015 and is currently investigating a further 15 cases, including in construction services, roofing materials and estate agency. Third party damages actions may also be brought against the offending companies for loss suffered.

However, companies which discover that they have breached competition rules and report their anti-competitive conduct to the CMA can have certain of the penalties, in particular, fines, reduced or even cancelled if they are the first to confess the cartel activity to the CMA under the UK's leniency regime. In addition, individual whistle-blowers can receive a reward of up to £100,000 for reporting a cartel.

### What to expect?

Specific industries being targeted by the CMA's campaign include construction, manufacturing, recruitment, estate agents and property management. These are all sectors which the CMA has identified as being particularly susceptible to cartels on the basis of its recent caseload.

What is more, the CMA is expecting a significant rise in the number of cartel investigations it will undertake post-Brexit as it will soon be responsible for investigating cases which would otherwise have fallen under the remit of the European Commission ("**EC**"). Consequently, the CMA is increasing the number of staff it employs in its Cartels and Antitrust Division in

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<sup>1</sup> [https://www.icmunlimited.com/wp-content/uploads/2018/10/icm\\_unlimited\\_cma\\_competition\\_law\\_research\\_2018.pdf](https://www.icmunlimited.com/wp-content/uploads/2018/10/icm_unlimited_cma_competition_law_research_2018.pdf)

preparation as cases get transferred to London from Brussels.

Indeed, the CMA also announced on 22 October 2018 that it would soon be commencing an antitrust investigation into companies in the financial services sector, a sector which has, to date, been the repeated focus of the EC. The CMA is currently in discussions about the investigation with the Financial Conduct Authority ("**FCA**"), which has concurrent competition law enforcement powers in respect of financial services, and notes that the FCA is "*very supportive*" of the CMA's action. Part of the CMA's rationale for taking on the case is to "*build up [its] expertise in the sector*" before Brexit. It is not yet known which companies will fall within the scope of this new CMA or FCA investigation.

### Be safe, not sorry...

Now more than ever, in preparation for Brexit, it is key that companies are fully aware of the implications of breaching UK and EU competition law for their businesses. We regularly help companies get their 'house in order'. We can assist with:

- Providing training and guidance on what companies are permitted to do and not do in their day-to-day operations (especially in respect of "information exchange");
- Preparing, delivering and rolling out competition law compliance programmes and training across organisations;
- Advising companies if they have any concerns over past behaviour - even at the fringes - including on seeking 'immunity' from the CMA and EC's fining powers or reduced fines under the UK and/or EC's 'leniency' programmes; and
- Advising companies especially in a dawn raid scenario if the competition authorities call on them. It is imperative to have in place dawn raid guidelines and know who to call in the event of such an eventuality and the steps involved in an investigation by a regulator.

If you have concerns over any competition law issues, please feel free to contact Stephenson Harwood's Competition Team. We have significant experience defending companies and individuals involved in cartels before the UK and EC competition authorities.

### Examples of previous CMA cartels include:

- *Coal Suppliers* – Two of the biggest suppliers of charcoal and coal for households in the UK were fined £3.4 million for taking part in a market sharing cartel.
- *Water Tanks* – Water tank firms were fined over £2.6 million after they formed a cartel to divide up customers, fix minimum prices, rig bids and share commercially sensitive information for tanks used in large construction projects (such as schools and hospitals) over a period of seven years.
- *Estate Agents* – Somerset estate agents were fined over £370,000 for secretly fixing minimum commission rates for residential property, appointing a "policeman" to ensure they all kept to the arrangement. Local home owners had been denied a fair deal when selling their property. The CMA also secured the disqualification of two company directors.
- *Amazon Marketplace* – An Amazon Marketplace seller was fined over £160,000 and its director disqualified from running a company after agreeing to fix the prices of popular posters and frames with a competitor.

### Key contacts



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