



**International
Competition
Network**

ANTI-CARTEL ENFORCEMENT TEMPLATE

**CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques**

**Competition and Markets Authority
October 2016**

ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning (hardcore) cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

1. Information on the law relating to cartels

A. Law(s) covering cartels:

Cartels between undertakings are prohibited by Chapter I of the Competition Act 1998 (CA98) (<http://www.legislation.gov.uk/ukpga/1998/41/contents>) and Article 101 of the Treaty on the Functioning of the European Union of the EC Treaty (TFEU) (<http://eur-lex.europa.eu/collection/eu-law/treaties.html>).

It is also a criminal offence under section 188 of the Enterprise Act 2002 (<http://www.legislation.gov.uk/ukpga/2002/40/contents>) for an individual to take part in the most serious types of cartels, which involve price-fixing, market sharing, limiting production or supply or bid rigging. The criminal cartel offence was amended with effect from 1 April 2014 to remove the requirement for an individual to have acted dishonestly in order to be guilty of an offence. The dishonesty requirement still applies, however, for conducting pre-dating 1 April 2014.

B. Implementing regulation(s) (if any):	
C. Interpretative guideline(s) (if any):	<p>The CMA's guidance on cartels can be found at: https://www.gov.uk/topic/competition/competition-act-cartels</p> <p>Guidance on the CMA's CA98 procedures are set out in Competition Act 1998: Guidance on the CMA's investigation procedures (CMA8).</p> <p>Cartel Offence Prosecution Guidance: https://www.gov.uk/government/publications/cartel-offence-prosecution-guidance</p> <p>The CMA's leniency policy for undertakings is set out in 'Guidance as to the appropriate amount of a penalty' (OFT423) available at: https://www.gov.uk/government/publications/appropriate-ca98-penalty-calculation (OFT423).</p> <p>Detailed guidance on the CMA's leniency policy for both undertakings and individuals can be found in: '<i>Applications for leniency and no-action in cartel cases – detailed guidance on the principles and process (OFT1495)</i>', available at: https://www.gov.uk/guidance/cartels-confess-and-apply-for-leniency.</p>
D. Other relevant materials (if any):	<p>Website (English): www.gov.uk/government/organisations/competition-and-markets-authority</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”?</p> <p>If not, please indicate the term you use instead</p>	<p>The CA98 does not define the term ‘cartel’. However cartel activity is defined for the purposes of the CMA’s leniency policy as agreements and/or concerted practices which infringe Article 101 of the TFEU and/or the CA98 Chapter I prohibition and involve price-fixing (including resale price maintenance), bid-rigging (collusive tendering), the establishment of output restrictions or quotas and/or market sharing or market-dividing.</p> <p>It is also a criminal offence under the Enterprise Act 2002 for an individual to take part in the most serious types of cartels, which are defined under the offence as arrangements involving price-fixing, market sharing, limiting production or supply or bid rigging.</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or</p>	<p>The Chapter I prohibition and Article 101 TFEU distinguish between agreements and concerted practices which have the ‘object’ of restricting competition and those which have the ‘effect’ of restricting competition. Cartels will typically be regarded as ‘object’ restrictions.</p> <p>It is also a criminal offence under the Enterprise Act 2002 for</p>

<p>sales quotas¹⁾ and other types of “cartels”?</p>	<p>an individual to take part in the most serious types of cartels, which are defined under the offence as arrangements involving price-fixing, market sharing, limiting production or supply or bid rigging.</p>
<p>C. Scope of the prohibition of hardcore cartels:</p>	<p>There are various exclusions set out in Schedule 3 CA98.</p> <p>There are various exclusions and defences to the criminal cartel offence set out in sections 188A and 188B EA02. Further information about these exclusions and defences can be found in the CMA’s Cartel Offence Prosecution Guidance: https://www.gov.uk/government/publications/cartel-offence-prosecution-guidance.</p>
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>²⁾?</p>	<p>Cartels are typically regarded as ‘object’ restrictions. This means that they are deemed to infringe the Chapter I prohibition and/or Article 101 TFEU without the need to demonstrate anti-competitive effects.</p> <p>In principle, cartels are capable of exemption on efficiency grounds under s.9 CA98 and/or Article 101(3) TFEU. However, the criteria for exemption are unlikely to be satisfied in practice.</p> <p>Section 188 of the Enterprise Act 2002 provides that an individual is guilty of a criminal offence if he or she agrees with another that undertakings will engage in certain cartel activity provided that the exclusions from the offence in section 188A and the defences to the offence in section 188B do not apply.</p>
<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p>	<p>Cartel behaviour by undertakings infringing Article 101 of the TFEU and/or the CA98 Chapter I prohibition is a civil/administrative matter. Participation by individuals in cartel arrangements infringing section 188 EA02 is a criminal offence.</p>

3. Investigating institution(s)

<p>A. Name of the agency, which investigates cartels:</p>	<p>The CMA is the UK’s leading competition regulator responsible for investigating and reaching any administrative decisions in respect of cartel activity by undertakings prohibited under the CA98 and Article 101 of the TFEU. A number of sectoral regulators also have concurrent powers to take enforcement action. Further information can be found in CMA guidance: https://www.gov.uk/government/publications/guidance-on-concurrent-application-of-competition-law-to-regulated-industries.</p>
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¹ In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

² For the purposes of this template the notion of ‘per se’ covers both ‘per se’ and ‘by object’, as these terms are synonyms used in different jurisdictions.

	In England, Wales and Northern Ireland, prosecutions against individuals for the criminal cartel offence may only be brought by the CMA or the Serious Fraud Office (SFO), or with the consent of the CMA. In Scotland, prosecutions can only be brought by the Crown Office and Procurator Fiscal Service.
B. Contact details of the agency:	<p>Cartels and Criminal Group Competition and Markets Authority Victoria House Southampton Row London WC1B 4AD</p> <p>Email: cartelshotline@cma.gsi.gov.uk T: +44(0)20 3738 6888</p> <p>Leniency telephone number: +44(0)20 3738 6833</p> <p>Website (English): www.gov.uk/government/organisations/competition-and-markets-authority</p>
C. Information point for potential complainants:	<p>Email: cartelshotline@cma.gsi.gov.uk T: +44(0)20 3738 6888</p>
D. Contact point where complaints can be lodged:	<p>Email: cartelshotline@cma.gsi.gov.uk T: +44(0)20 3738 6888</p>
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	N/A

4. Decision-making institution(s)³ [to be filled in only if this is different from the investigating agency]

A. Name of the agency making decisions in cartel cases:	N/A
B. Contact details of the agency:	N/A
C. Contact point for questions and consultations:	N/A

³ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	N/A
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	N/A

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases:	CMA receives information from a variety of sources including businesses (whether complainants or leniency applicants), individuals and other agencies.
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?	Complaints about suspected cartels should be made by calling the CMA's Hotline on +44(0)20 3738 6888 or by emailing the CMA at cartelshotline@cma.gsi.gov.uk . There is no specific format. Information on cartel activity can be provided to the CMA in writing, by post or email, or by phone. (Leniency applications must be made to the CMA's dedicated Leniency Enquiry Line on +44(0)20 3738 6833 (see below)).
C. Legal requirements for lodging a complaint against a cartel:	There is no legal requirement.
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?	The CMA is not obliged to take action on each complaint. The CMA decides which cases to investigate based on its published prioritisation principles. These can be found at: https://www.gov.uk/government/publications/cma-prioritisation-principles
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	The CMA is not obliged to inform the complainant of its reasons for not pursuing a complaint.
F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?	There is no set time limit for decisions in relation to cartel investigations.

6. Leniency policy⁴

<p>A. What is the official name of your leniency policy (if any)?</p>	<p>The CMA's leniency policy for undertakings is set out in '<i>Guidance as to the appropriate amount of a penalty</i>' (OFT423) available at: https://www.gov.uk/government/publications/appropriate-ca98-penalty-calculation (OFT423).</p> <p>Detailed guidance on the CMA's leniency policy for both undertakings and individuals can be found in: '<i>Applications for leniency and no-action in cartel cases – detailed guidance on the principles and process</i> (OFT1495)', available at: https://www.gov.uk/guidance/cartels-confess-and-apply-for-leniency</p>
<p>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</p>	<p>Yes.</p>
<p>C. Who is eligible for full leniency?</p>	<p>Undertakings which meet the conditions and are the first to inform the CMA of cartel activity that it was not previously investigating are entitled to receive immunity from financial penalties and criminal immunity for all cooperating current and former employees and directors – known as 'Type A' leniency.</p> <p>Where the CMA already has a pre-existing investigation, the first undertaking to approach the CMA and offer information adding significant value to the investigation, may receive discretionary immunity from financial penalties or reductions in penalty of anything up to 100 per cent and discretionary criminal immunity for cooperating current and former employees – known as 'Type B' leniency.</p> <p>Undertakings which are not the first to apply but satisfy the same conditions may receive discretionary leniency from financial penalties of up to 50% and discretionary criminal immunity for specific individuals – known as 'Type C' leniency.</p>
<p>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</p> <p>In this context, is the date (the moment) at which participants in the cartel come forward with</p>	<p>See above.</p>

⁴ For the purposes of this template the notion of 'leniency' covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like 'leniency' 'amnesty' and 'immunity' are considered as synonyms.

<p>information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p>	
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>Both undertakings and individuals can apply and be the beneficiaries of the leniency policy.</p>
<p>F. What are the conditions of availability of full leniency:</p>	<p>To benefit from 'Type A' leniency, applicants must give the CMA information which provides a sufficient basis for taking forward a credible investigation and meet the conditions below.</p> <p>To benefit from 'Type B' leniency, applicants must give the CMA information which adds significant value to the CMA investigation and meet the conditions below:</p> <p>(a) Accept their participation in cartel activity (which by definition is a breach of the law).</p> <p>(b) Provide the CMA with all relevant information, documents and evidence.</p> <p>(c) Maintain continuous and complete cooperation throughout the investigation.</p> <p>(d) Refrain from further participation in the cartel activity.</p> <p>(e) Must not have coerced another to take part in the cartel.</p>
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</p>	<p>To benefit from 'Type C' leniency, applicants must give the CMA information which adds significant value to the CMA investigation and meet the conditions below:</p> <p>(a) Accept their participation in a cartel activity (which by definition is a breach of the law).</p> <p>(b) Provide the CMA with all relevant information, documents and evidence.</p> <p>(c) Maintain continuous and complete cooperation throughout the investigation.</p> <p>(d) Refrain from further participation in the cartel activity.</p>
<p>H. Obligations for the beneficiary after the leniency application has been accepted:</p>	<p>The above conditions continue to apply throughout the application process and until final determination of any prosecution, infringement decision and resulting appeal proceedings.</p>
<p>I. Are there formal requirements to make a leniency application?</p>	<p>The entire application process can be oral if requested and provided there is good reason for it.</p> <p>When applying for a leniency marker, applicants must provide the following details of the cartel, to the extent they have emerged from any internal investigation:</p> <ul style="list-style-type: none"> • Type of arrangement

	<ul style="list-style-type: none"> • Affected product market(s) • Dates of conduct • Evidence uncovered so far • Names and locations of employees involved • Names and locations of other involved undertakings and individuals • Geographic scope <p>Thereafter the applicant will need to provide an application pack setting out the above matters, in a written or oral statement and supplying all relevant documentary evidence uncovered so far and details of its provenance. The statement should also identify the names of employees/directors who may give evidence, with an outline of matters of which they have personal knowledge.</p>
<p>J. Are there distinct procedural steps within the leniency program?</p>	<p>Leniency agreements entered into with undertakings and no-action letters issued to individuals are not signed by the CMA until the later stages of its investigations. The CMA will need to be satisfied that the conditions for the grant of leniency have been met. However successful applicants will at the time of first applying secure 'markers' protecting their position.</p>
<p>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</p>	<p>See above.</p>
<p>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</p>	<p><i>Sections 38(1) and 38(1A) CA98 require the CMA to prepare and publish guidance as to the appropriate amount of a penalty and any guidance published must be approved by the Secretary of State. The CMA's leniency policy for undertakings is set out in 'Guidance as to the appropriate amount of a penalty' (OFT423) available at: https://www.gov.uk/government/publications/appropriate-ca98-penalty-calculation (OFT423).</i></p> <p>The availability of criminal immunity for individuals is established in section 190(4) of the Enterprise Act 2002.</p> <p>Written leniency agreements are entered into with undertakings and no-action letters issued to individuals.</p> <p>Applications for leniency are handled by the CMA's Cartels and Criminal Group.</p>
<p>M. Do you have a marker system? If yes, please describe it.</p>	<p>Before making a leniency application, and if the undertaking is not aware of a pre-existing investigation, undertakings may wish to ascertain whether guaranteed immunity (Type A) is available. This can be done by either a representative from the undertaking or its legal adviser telephoning the CMA's Leniency Enquiry Line. The following commitments will be sought</p> <ul style="list-style-type: none"> • Confirmation from the legal adviser that he/she has instructions to apply for Type A immunity if it is available

	<p>and that the undertaking understands that such an application will entail a commitment to cooperate with the CMA in any subsequent investigation</p> <ul style="list-style-type: none"> • Confirmation that there is a 'concrete basis' for the suspicion of cartel activity. • Confirmation that the undertaking has a 'genuine intention to confess'. This means that there must be an acceptance by the undertaking that, as a matter of fact and law, the available information suggests that it has been engaged in cartel conduct • The relevant sector, dates and broad nature of the cartel activity, or otherwise provide sufficient information to allow the CMA to determine whether there is a pre-existing civil and/or criminal investigation and/or a pre-existing leniency applicant. • The name and telephone number of the person making the enquiry. The name of the undertaking or individual that they represent does not need to be disclosed at this point. <p>The CMA officer will then make internal enquiries, and will revert to the named contact to confirm whether or not Type A immunity is in principle available.</p> <p>If Type A immunity is not available, the applicant is free to consider all the available options, including whether to submit an application for Type B or C leniency or whether to withdraw without its identity having been made known to the CMA.</p> <p>If Type A immunity is available, the applicant can obtain a preliminary marker pending consideration of the full application package if it provides the information set out in '<i>Applications for leniency and no-action in cartel cases – detailed guidance on the principles and process (OFT1495)</i>'. This will be operational from the moment the applicant's identity has been disclosed to the CMA.</p> <p>Calls to determine whether a marker is available must be made to the CMA Leniency telephone number: +44(0)20 3738 6833.</p>
<p>N. Does the system provide for any extra credit⁵ for disclosing additional violations?</p>	<p>The CMA operates a 'Leniency Plus' scheme. An undertaking co-operating with an investigation by the CMA in relation to cartel activity in one market (the first market) may also be involved in a completely separate cartel activity in another market (the second market).</p> <p>If the undertaking obtains total immunity from financial penalties (or a reduction of up to 100% in the amount of the financial penalty) because it is the Type A or Type B applicant in relation to its activities in the second market, it will also receive a reduction in the financial penalties imposed on it which is additional to the reduction which it would have received for its cooperation in the first market alone.</p>

⁵ Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

	<p>The undertaking does not need to be in receipt of leniency in respect of the first market to receive this reduction - it is sufficient for the undertaking to be receiving a reduction, by way of mitigation, for cooperation.</p>
<p>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p>	<p>The CMA recognises the importance of confidentiality for leniency applicants. Accordingly, the fact that an undertaking has applied for leniency will not normally be revealed to other undertakings until any statement of objections has been issued.</p> <p>However, in the course of the CMA's civil investigation it may be necessary, directly or indirectly, to disclose information provided by a leniency applicant to third party witnesses or to those suspected of direct involvement in the cartel. Consequently, there remains a risk that parties will conclude that the information has been supplied by a leniency applicant, which may in turn reveal the identity of the applicant.</p> <p>Where there are particular sensitivities about the possibility of a leniency applicant's identity being revealed in the course of the investigation, these should be discussed with the CMA at the start of the application process.</p> <p>If a criminal cartel prosecution is commenced, full disclosure of evidence relied on and relevant 'unused' material that might undermine the prosecution or assist the defence must be made to defendants, to comply with disclosure requirements under UK criminal law. This will inevitably include material provided by the leniency applicant, and would typically include application statements (whether written or transcripts of oral statements), where such statements are capable of having an impact on issues arising in the criminal case.</p> <p>See paras 7.1-7.31 of <i>'Applications for leniency and no-action in cartel cases – detailed guidance on the principles and process (OFT1495)</i> for further information on the disclosure of leniency information during a civil or criminal investigation.</p>
<p>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</p>	<p>The avenues for challenge to the CMA's decisions with respect to leniency applications are those which apply to its decisions in CA98 and EA02 cases more generally.</p>
<p>Q. Contact point where a leniency application can be lodged:</p>	<p>CMA Leniency telephone number: +44 (0)203 738 6833. Leniency enquiries should be made during office hours.</p>
<p>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</p>	<p>As noted above, the CMA does not sign leniency agreements and issue no-action letters until the later stages of its investigations when it must continue to be satisfied that the conditions for leniency have been met. Thereafter the CMA still has the power to revoke the grant of leniency and immunity from prosecution.</p> <p>Before any revocation the CMA will give written notice to the applicant of the nature of the alleged non-compliance and that the CMA is considering revoking the grant to the applicant of leniency/immunity. The applicant will be given an opportunity to respond to the notice and, if the CMA considers it possible and appropriate, to remedy any breach within a reasonable period of time from the service of the notice.</p>

<p>S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?</p>	<p>The CMA’s guidance does not deal with the issue of affirmative leniency. However, the CMA may choose to bring its leniency policy to the attention of undertakings.</p>
<p>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate.</p>	<p>See paras 7.1-7.31 of ‘<i>Applications for leniency and no-action in cartel cases – detailed guidance on the principles and process</i>’ (OFT1495) for further information on the disclosure of leniency information.</p>

7. Settlement

<p>A. Does your competition regime allow settlement?</p>	<p>Yes. The CMA has statutory power to settle investigations (Rule 9 CA98 (Competition and Markets’ Authority’s Rules) order 2014N. 458).</p> <p>Chapter 14 of the guidance below describes the settlement procedure: Competition Act 1998: Guidance on the CMA’s investigation procedures (CMA8).</p>
<p>B. Which types of restrictive agreements are eligible for settlement?</p>	<p>The CMA may consider settlement for any CA98 case (e.g. hardcore (secret) cartels, other types of cartels and vertical agreements, etc.), provided the required evidential standard for giving notice of its proposed infringement decision is met.</p>
<p>C. What is the reward of the settlement for the parties?</p>	<p>A reduced penalty. The discount for settlement will be capped at 20% of the potential amount of the fine for pre-Statement of Objections (‘SO’) settlement and at 10% of the potential amount of the fine for post-SO settlement.</p>
<p>D. May a reduction for settling be cumulated with a leniency reward?</p>	<p>A reduction for settling can be cumulated with a leniency reduction.</p>
<p>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</p>	<p>The CMA has a broad discretion to determine which cases to settle. The CMA will not proceed with settlement discussions unless it considers that the evidential standard for giving notice of its proposed infringement decision is met.</p> <p>The CMA will also consider a number of other factors when determining whether to settle, such as the likely procedural efficiencies and resource savings that can be achieved. When assessing the likelihood of resource savings the CMA will take into account factors such as the stage in the case in which settlement is reached, whether it would result in a shortening of the case timetable and a reduction in case team resources, the number of businesses involved, the number of those potentially interested in settlement, and the number of alleged infringements. Also the prospect of reaching settlement in a reasonable timeframe.</p>

<p>F. Describe briefly the system.</p>	<p>The CMA or the parties may initiate settlement discussions. The CMA has broad discretion in determining which cases to settle, including whether to continue or withdraw from settlement discussions and whether to settle at all. Similarly, there is no obligation on businesses to enter into settlement discussions or to settle.</p> <p>Settlement discussions can be initiated either before or after the SO is issued. If the settlement discussions take place pre-SO, each business that enters into such discussions will be presented with a Summary Statement of Facts and will be provided with access to the key documents on which the CMA is relying as well as a list of documents on the CMA's file. The business will be given an opportunity to provide limited representations on manifest factual inaccuracies.</p> <p>Where a business is settling post-SO, the admission will be made by reference to the infringement as set out in the SO and the business will be given the opportunity to indicate any manifest factual inaccuracies.</p> <p>Each business considering settlement will also be presented with a draft penalty calculation, on which the business can make limited representations.</p> <p>An infringement decision will be issued in every settlement case unless the CMA decides not to make an infringement finding against the settling business.</p> <p>Further detail on the CMA's settlement process can be found in paras 14.1-14.33 of Competition Act 1998: Guidance on the CMA's investigation procedures (CMA8).</p>
<p>F. Describe the procedural efficiencies of your settlement system.</p>	<p>Settlement allows the CMA to achieve procedural efficiencies through the adoption of a streamlined administrative procedure (including streamlined access to file arrangements, no written representations on the SO (beyond identifying any manifest factual inaccuracies), no oral hearings, no separate draft penalty statement resulting in earlier adoption of any infringement decision and/or resource savings).</p>
<p>G. Does a settlement necessitate that the parties acknowledge their liability for the violation?</p>	<p>Settling parties have to make a clear and unequivocal admission of liability in relation to the nature, scope and duration of the infringement, including the material facts of the infringement and its legal characterisation. Where appropriate, the admission will also include the facts of any actual implementation of the infringement.</p>
<p>H. Is there a possibility for settled parties to appeal a settlement decision at court?</p>	<p>The settled parties have the right to appeal a settlement decision at court but in that case they would lose the settlement discount. In addition, the CMA will remain free to use the admissions made by the settling party and any documents, information or witness evidence provided by the settling business in any appeal.</p>

8. Commitment

<p>A. Does your competition regime allow the possibility of</p>	<p>Yes, UK competition law allows for the possibility of commitments (section 31A of the CA98).</p>
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<p>commitment?</p> <p>If yes, please indicate its public availability.</p>	<p>CMA guidance on commitments is set out in Chapter 10 (paragraphs 10.15 – 10.23) of Competition Act 1998: Guidance on the CMA's investigation procedures (CMA8). Further information on the CMA's approach to commitments is also contained in the OFT guideline (now adopted by the CMA Board) <i>Enforcement</i> (OFT407) Enforcement (OFT 407).</p>
<p>B. Which types of restrictive agreements are eligible for commitment?</p> <p>Are there commitments which are excluded from the commitment possibility?</p>	<p>The CMA is very unlikely to accept commitments in cases involving secret cartels between competitors.</p>
<p>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</p>	<p>The CMA is likely to consider it appropriate to accept commitments only in cases where the competition concerns are readily identifiable, will be fully addressed by the commitments offered, and the commitments offered can be implemented effectively and, if necessary, within a short period of time.</p>
<p>D. Describe, which types of commitments are available under your competition law.</p>	<p>Commitments may be structural or behavioural or a combination of both.</p>
<p>E. Describe briefly the system</p>	<p>A business under investigation can offer commitments at any time during the course of an investigation, until an infringement decision is made. However, the CMA is unlikely to consider it appropriate to accept commitments at a very late stage, such as after the CMA has considered representations on the SO.</p> <p>If, following contact by the party, the CMA thinks commitments may be appropriate, the CMA will send a summary of its competition concerns to the business. If the CMA proposes to accept the commitments offered, the CMA will consult those who are likely to be affected by them and interested third parties and give them an opportunity to give their views within a time limit of at least 11 working days. After receipt of the responses to this consultation, the CMA will hold a meeting with each business that offered commitments to inform them of the general nature of the responses received and to indicate whether the CMA considers that changes are required to the commitments before the CMA would consider accepting them. If significant changes are required, further consultation will take place.</p> <p>Once accepted, the CMA will publish the commitments on www.gov.uk/cma.</p>
<p>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</p>	<p>No. A decision by the CMA accepting binding commitments will terminate the investigation (into the aspects of the alleged infringements addressed by the commitments) and state that the commitments offered by the undertaking meet the CMA's competition concerns, but will <u>not</u> include any statement as to the legality or otherwise of the agreement or conduct either prior to the acceptance of the commitments or once the commitments are in place.</p>
<p>J. Describe how your authority monitors the parties' compliance to the</p>	<p>The CMA can monitor the parties' compliance to commitments in several ways, such as: ex officio monitoring, monitoring based on information and/or complaints, regular reporting by</p>

commitments.	<p>the addressee/s of the commitment decision, use of external experts such as trustees or an express review clause in the commitment decision itself.</p> <p>Binding commitments are enforceable by the CMA in the same way as directions, namely the CMA may apply to court for an order requiring compliance within a specified time limit if a person fails to comply without reasonable excuse. Any person who fails to comply with an order enforcing the commitments/direction will be in contempt of court. The sanction for contempt of court is a fine or imprisonment.</p>
K. Is there a possibility for parties to appeal a commitment decision at court?	Yes. The addressee may appeal the commitment decision.

9. Investigative powers of the enforcing institution(s)⁶

A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁷, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.	<p>The CMA has a range of investigative tools available for use in civil cases against undertakings (CA98) and in criminal cases against individuals (Enterprise Act 2002 'EA02'), including:</p> <p>s.26 CA98/s193 EA02 – requests for information (no warrant required), including documents and material held electronically</p> <p>s.27 CA98 – power of inspection (no warrant required)</p> <p>ss.28 & 28ACA98/s194 EA02 – power to search premises (warrants required) including an express power of seize and sift in relation to material held electronically (under section 50 of the Criminal Justice and Police Act 2001)</p> <p>s.26A CA98/s193 EA02 – compulsory interviews</p> <p>A description of the CMA's CA98 powers of investigation can be found in paras 6.1 to 7.17 of Competition Act 1998: Guidance on the CMA's investigation procedures (CMA8).</p> <p>Further information on the CMA's powers of investigation in criminal cases is set out in the Cartel Offence Prosecution Guidance: https://www.gov.uk/government/publications/cartel-offence-prosecution-guidance</p>
B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?	The CMA may apply for a warrant to search domestic premises under s28A CA98 and s194 EA02
C. May evidence not falling under the scope of the authorisation allowing the	Save for powers of "seize and sift", which are typically used for the seizure of electronic evidence, evidence that does not relate to the investigation for which the inspection was

⁶ "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

⁷ "Searches/raids" means all types of search, raid or inspection measures.

<p>inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</p>	<p>authorised cannot generally be seized.</p> <p>However, if a search is conducted by police officers lawfully on the premises and they have a reasonable suspicion that evidence of other offences is present, this evidence can be seized under the Police and Criminal Evidence Act 1984.</p>
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>No</p>

10. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases: Please indicate the relevant legal provisions.</p>	<ul style="list-style-type: none"> • Parties' rights are safeguarded by statute and by common law. • Common law requires that an administrative procedure should be fair. What is fair in each case will depend on the circumstances of the case but will generally require the parties being notified in advance of a decision adverse to them and being given the right to make representations. • The Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014 (the CMA's Rules) provide for certain safeguards as follows: <ul style="list-style-type: none"> ○ The right by parties to be notified by the CMA of its intention to make an infringement finding (Rules 5 and 6) including: <ul style="list-style-type: none"> ▪ The right to be informed of the specific prohibition which the CMA considers has been infringed; ▪ The right to be informed of the facts on which the CMA relies, the objections of the CMA, the action the CMA proposes and its reasons for the proposed action. ▪ The right to be given notice of the CMA's intention to require an undertaking to pay a penalty (Rule 11) ○ The right by parties to make representations on the matters contained in the notice (including in the notice of proposed penalty) both in writing and at an oral hearing (Rule 6 and 7). ○ The right by parties to be given a reasonable opportunity to inspect the documents in the
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	<p>CMA's file unless that information is confidential or internal to the CMA (Rule 6).</p> <ul style="list-style-type: none"> ○ The right by parties to be given notice of the CMA's infringement decision stating the facts on which the CMA bases the infringement decision and the CMA's reasons for making the infringement decision (Rule 10). • Parties have a right to refuse disclosure to the CMA of material which is protected by legal professional privilege (section 30 of the Competition Act 1998) • The parties have the right to invoke the privilege against self-incrimination but it is not an absolute right. The CMA cannot require a party to provide answers that would require an admission that it has infringed the law, but it can ask questions about or ask for the production of any documents already in existence or information relating to facts, such as whether a given employee attended a particular meeting. • Any criminal proceedings under the EA02 cartel offence would also be conducted in such a way to respect the parties' rights of defence. These rights include the privilege against self-incrimination; access to evidence relied upon by a prosecutor; access to relevant unused material and the right to legal representation. There is also a statutory duty to pursue all reasonable lines of enquiry. • Article 6 of the European Convention on Human Rights, which guarantees the right to a fair trial, and is enforceable in the UK courts under the Human Rights Act 1998, also applies in both investigations under CA98 and in criminal proceedings under EA02.
<p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.</p>	<p>Protection is afforded to information that is provided to the CMA when it performs its functions. This covers both information provided pursuant to a compulsory request and information provided on a voluntary basis.</p> <p>Section 237 of the Enterprise Act 2002 prohibits the disclosure of information which relates to the affairs of an individual or an undertaking and which the CMA has obtained in connection with the exercise of its functions (also referred to as 'specified information').</p> <p>There are exceptions to the general prohibition on disclosure (Part 9 Enterprise Act 2002, sections 239-243, also referred to as 'information gateways'). However, when deciding whether or not to disclose, the CMA must consider certain factors including the need to exclude from disclosure so far as practicable commercial information whose disclosure might significantly harm the legitimate business interests of the undertaking to which it relates; or information relating to the private affairs of an individual whose disclosure the authority thinks might significantly harm that individual's interests (section 244 of the Enterprise Act 2002). The CMA will</p>

	generally inform a party who has provided confidential information of the CMA's intention to disclose that information and give that party a reasonable opportunity to make representations on the proposed disclosure. However, there may be circumstances where this is not appropriate.
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11. Limitation periods and deadlines

A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation/proceedings must begin or a decision on the merits of the case must be made?	<p>In CA98 cases there are no limitation periods in legislation.</p> <p>There are no limitation periods in EA02 cases, however the courts apply case law in assessing whether criminal proceedings should be stopped on grounds of undue delay or abuse of process. Criminal proceedings will be stopped if it would be impossible to give the accused a fair trial or a trial would amount to an abuse, misuse or manipulation of the court's process.</p>
B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits?	<p>There are no deadlines in legislation. The CMA case teams publish a case-specific administrative timetable for the investigation. Initially, the timetable will cover the investigative stages up to the CMA's decision on whether to issue an SO. If the CMA issues an SO, the timetable will be updated with indicative timing of the steps to the end of the investigation.</p>
C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions? (see also 15A)	<p>The CMA's decisions on whether or not there has been an infringement and to impose a penalty can be appealed to the CAT within two months of the date on which the appellant was notified of the disputed decision, or the date that the decision was published, whichever is the earlier.</p> <p>A decision whether or not to commence an investigation, or to close an investigation on administrative priority grounds, can be challenged by way of judicial review before the Administrative Court. Such a challenge must be brought as soon as possible and in any event within 3 months following the date of the decision.</p>

12. Types of decisions

A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.	<p>The CMA and other sectoral regulators empowered to investigate infringements of Chapter I of the Competition Act 1998 (and where appropriate Article 101 TFEU) may issue an infringement decision against undertakings. Directions may be given in order to bring the infringing conduct to an end (for example requiring the termination or variation of an agreement or modification of conduct). Penalties may be imposed of up to 10% of the undertaking's worldwide turnover in the business year preceding the CMA's decision. Under the Company</p>
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	<p>Directors Disqualification Act 1986, the CMA can also apply to the court for an order disqualifying company directors for up to fifteen years when their undertakings are guilty of a competition law infringement.</p> <p>An individual found guilty of the criminal cartel offence by a jury at court will be liable to a maximum penalty of five years' imprisonment and/or an unlimited fine. 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.</p>
<p>B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).</p>	
<p>C. Can interim measures⁸ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both⁹.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p>	<p>The CMA may take interim measures during an ongoing CA98 investigation where it considers it is necessary to act urgently either to prevent significant damages to a person(s) or to protect the public interest.</p> <p>CMA guidance on interim measures is set out in Chapter 8 of Competition Act 1998: Guidance on the CMA's investigation procedures (CMA8).</p>

13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

<p>A. Grounds for the imposition of procedural sanctions / fines :</p>	<p>Administrative penalties may be imposed for failure without reasonable excuse, during a Chapter I CA98 investigation, to: answer questions; produce documents or information in response to a request; or comply with the CMA's powers to enter premises (either with or without a warrant).</p> <p>In addition, it is a criminal offence where a person during a Chapter I CA98 investigation: obstructs the CMA in the exercise of its power to</p>
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⁸ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

⁹ Only for agencies which answered "yes" to question 2.B. above

	<p>enter premises (either with or without a warrant); intentionally or recklessly destroys or otherwise disposes of, falsifies or conceals a document which they have been required to produce; or knowingly or recklessly provides false or misleading information to the CMA or another person in connection with the investigation.</p> <p>Where the CMA is carrying out a criminal cartel investigation under the Enterprise Act 2002 similar criminal offences exist. These offences are set out in section 201 of the EA02 and the relevant penalties consist of fines and terms of imprisonment.</p>
B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):	See above.
C. On whom can procedural sanctions be imposed?	Administrative penalties can be imposed on both natural and legal persons. Criminal prosecutions can be commenced against both natural and legal persons in respect of the criminal offences.
D. Criteria for determining the sanction / fine:	When assessing whether to impose an administrative penalty, and the amount, the CMA will have regard to the factors referred to in its guidance(https://www.gov.uk/government/publications/administrative-penalties-statement-of-policy-on-the-cmas-approach) including the nature and gravity of the failure, any adverse effects on the CMA's investigation, the reason for the failure and the size and administrative and financial resources available to person responsible.
E. Are there maximum and / or minimum sanctions / fines?	<p>The CMA may impose such administrative penalty as it considers appropriate, subject to the statutory maxima specified by order of the Secretary of State.</p> <p>The current maxima specified are as follows:</p> <ul style="list-style-type: none"> • £30,000 (fixed amount) • £15,000 (daily rate), and • £30,000 and £15,000 (fixed amount and daily rate together). <p>In relation to the criminal offences, depending on whether there is a summary conviction or conviction on indictment and the particular offence in question, periods of up to 5 years imprisonment and/or fines of up to an unlimited amount can be imposed by the sentencing judge.</p>

14. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal,	On the issue of a decision by the CMA that undertakings have infringed Chapter I of CA98 (and where appropriate Article 101 TFEU), it may impose penalties on undertakings. Under the Company Directors Disqualification Act 1986, the CMA can
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<p>combined):</p> <p>On whom can sanctions be imposed?</p>	<p>also apply to the court for an order disqualifying company directors when their undertakings are guilty of a competition law infringement.</p> <p>An individual found guilty of the criminal cartel offence at a criminal court will be liable to a period of imprisonment and/or a fine. The sentencing judge may also disqualify the individual from being a company director and can commence confiscation proceedings with a view to confiscating any benefit obtained by the individual from their criminal conduct.</p>
<p>B. Criteria for determining the sanction / fine:</p>	<p>When determining any penalties to be imposed on undertakings the CMA will follow its <i>Guidance as to the Appropriate amount of penalty</i> (OFT423) (https://www.gov.uk/government/publications/appropriate-ca98-penalty-calculation) including following a six step approach:</p> <ol style="list-style-type: none"> 1) calculation of the starting point having regard to the seriousness of the infringement and the relevant turnover of the undertaking; 2) adjustment for duration; 3) adjustment for aggravating or mitigating factors; 4) adjustment for specific deterrence and proportionality; 5) adjustment if the maximum penalty of 10% of the worldwide turnover of the undertaking 6) adjustment for leniency and/or settlement discounts. is exceeded and to avoid double jeopardy <p>It will be for the relevant court to determine any period of disqualification of directors and any period of imprisonment and/or the appropriate fine on conviction for the criminal cartel offence, taking into consideration the seriousness of the offence and any aggravating or mitigating factors.</p>
<p>C. Are there maximum and / or minimum sanctions / fines?</p>	<p>Penalties may be imposed by the CMA of up to 10% of the undertaking's worldwide turnover in the business year preceding the CMA's decision.</p> <p>Under the Company Directors Disqualification Act 1986, or following conviction for the cartel offence, the relevant court can make an order disqualifying company directors for up to fifteen years.</p> <p>A court can sentence an individual convicted of the criminal cartel offence to a maximum penalty of five years' imprisonment and/or an unlimited fine. The Court of Appeal's judgment in R v Whittle, Brammar and Allison [2008] EWCA Crim 2560 lists the sort of matters which the court may take into account when deciding the appropriate sentence.</p>
<p>D. Guideline(s) on calculation of fines:</p>	<p>See 14B. above</p>
<p>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the</p>	<p>An undertaking may appeal to the Competition Appeal Tribunal (CAT) against any decision by the CMA imposing a penalty on it. The appeal can challenge the infringement finding, the penalty itself and the amount of the penalty. The effect of an appeal is to suspend the decision imposing the penalty until the appeal is heard by the CAT.</p>

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15. Possibilities of appeal

<p>A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</p>	<p>Section 46 of the CA98 sets out the decisions taken by the CMA that can be appealed. These include, but are not limited to, a decision of the CMA:</p> <ul style="list-style-type: none"> a. That the prohibition in Chapter I and/or Article 101(1) has been infringed; b. That the prohibition in Chapter II and/or Article 102 has been infringed; and c. As to the imposition of any penalty or as to the amount of any penalty. <p>The CAT must determine the appeal on the merits (see paragraph 3(1) in Schedule 8 to CA98).</p> <p>In EA02 cases appeals can be made from the Magistrates' Court or the Crown Court against conviction or sentence under the the Criminal Appeal Acts of 1968 and 1995.</p>
<p>B. Before which court or agency should such a challenge be made?</p>	<p>An appeal against the CMA's decision described above are made to the CAT.</p> <p>In EA02 cases before the Magistrates' Court appeals are made to the Crown Court. Cases before the Crown Court are appealed to the Court of Appeal.</p>