



# Enterprise Act 2002

## 2002 CHAPTER 40

### PART 6

#### CARTEL OFFENCE

##### *Cartel offence*

#### **188 Cartel offence**

- (1) An individual is guilty of an offence if he dishonestly agrees with one or more other persons to make or implement, or to cause to be made or implemented, arrangements of the following kind relating to at least two undertakings (A and B).
- (2) The arrangements must be ones which, if operating as the parties to the agreement intend, would—
  - (a) directly or indirectly fix a price for the supply by A in the United Kingdom (otherwise than to B) of a product or service,
  - (b) limit or prevent supply by A in the United Kingdom of a product or service,
  - (c) limit or prevent production by A in the United Kingdom of a product,
  - (d) divide between A and B the supply in the United Kingdom of a product or service to a customer or customers,
  - (e) divide between A and B customers for the supply in the United Kingdom of a product or service, or
  - (f) be bid-rigging arrangements.
- (3) Unless subsection (2)(d), (e) or (f) applies, the arrangements must also be ones which, if operating as the parties to the agreement intend, would—
  - (a) directly or indirectly fix a price for the supply by B in the United Kingdom (otherwise than to A) of a product or service,
  - (b) limit or prevent supply by B in the United Kingdom of a product or service, or
  - (c) limit or prevent production by B in the United Kingdom of a product.

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*Status: This is the original version (as it was originally enacted).*

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- (4) In subsections (2)(a) to (d) and (3), references to supply or production are to supply or production in the appropriate circumstances (for which see section 189).
- (5) “Bid-rigging arrangements” are arrangements under which, in response to a request for bids for the supply of a product or service in the United Kingdom, or for the production of a product in the United Kingdom—
  - (a) A but not B may make a bid, or
  - (b) A and B may each make a bid but, in one case or both, only a bid arrived at in accordance with the arrangements.
- (6) But arrangements are not bid-rigging arrangements if, under them, the person requesting bids would be informed of them at or before the time when a bid is made.
- (7) “Undertaking” has the same meaning as in Part 1 of the 1998 Act.

### **189 Cartel offence: supplementary**

- (1) For section 188(2)(a), the appropriate circumstances are that A’s supply of the product or service would be at a level in the supply chain at which the product or service would at the same time be supplied by B in the United Kingdom.
- (2) For section 188(2)(b), the appropriate circumstances are that A’s supply of the product or service would be at a level in the supply chain—
  - (a) at which the product or service would at the same time be supplied by B in the United Kingdom, or
  - (b) at which supply by B in the United Kingdom of the product or service would be limited or prevented by the arrangements.
- (3) For section 188(2)(c), the appropriate circumstances are that A’s production of the product would be at a level in the production chain—
  - (a) at which the product would at the same time be produced by B in the United Kingdom, or
  - (b) at which production by B in the United Kingdom of the product would be limited or prevented by the arrangements.
- (4) For section 188(2)(d), the appropriate circumstances are that A’s supply of the product or service would be at the same level in the supply chain as B’s.
- (5) For section 188(3)(a), the appropriate circumstances are that B’s supply of the product or service would be at a level in the supply chain at which the product or service would at the same time be supplied by A in the United Kingdom.
- (6) For section 188(3)(b), the appropriate circumstances are that B’s supply of the product or service would be at a level in the supply chain—
  - (a) at which the product or service would at the same time be supplied by A in the United Kingdom, or
  - (b) at which supply by A in the United Kingdom of the product or service would be limited or prevented by the arrangements.
- (7) For section 188(3)(c), the appropriate circumstances are that B’s production of the product would be at a level in the production chain—
  - (a) at which the product would at the same time be produced by A in the United Kingdom, or

- (b) at which production by A in the United Kingdom of the product would be limited or prevented by the arrangements.

## **190 Cartel offence: penalty and prosecution**

- (1) A person guilty of an offence under section 188 is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.
- (2) In England and Wales and Northern Ireland, proceedings for an offence under section 188 may be instituted only—
  - (a) by the Director of the Serious Fraud Office, or
  - (b) by or with the consent of the OFT.
- (3) No proceedings may be brought for an offence under section 188 in respect of an agreement outside the United Kingdom, unless it has been implemented in whole or in part in the United Kingdom.
- (4) Where, for the purpose of the investigation or prosecution of offences under section 188, the OFT gives a person written notice under this subsection, no proceedings for an offence under section 188 that falls within a description specified in the notice may be brought against that person in England and Wales or Northern Ireland except in circumstances specified in the notice.

## **191 Extradition**

The offences to which an Order in Council under section 2 of the Extradition Act [1870 \(c. 52\)](#) (arrangements with foreign states) can apply include—

- (a) an offence under section 188,
- (b) conspiracy to commit such an offence, and
- (c) attempt to commit such an offence.