

RECENT CARTEL ENFORCEMENT IN THE EU AND UK

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CARTEL ENFORCEMENT IN THE EU AND UK

STRUCTURE OF PRESENTATION

- ◉ STATISTICS
- ◉ RECENT NOTABLE EU CASES
 - COMMISSION DECISIONS
 - COURT JUDGMENTS
- ◉ RECENT NOTABLE UK CASES
- ◉ PARTICULAR ISSUES
- ◉ DAMAGES CLAIMS

CARTEL ENFORCEMENT IN THE EU AND UK

STATISTICS

- FINES IMPOSED BY THE EUROPEAN COMMISSION
IN CARTEL CASES IN THE PERIOD 2015-2019
 - 2015 € 349,571,000
 - 2016 € 3,726,976,000
 - 2017 € 1,945,656,000
 - 2018 € 800,748,000
 - 2019 € 1,484,877,000 (AS AT 27 SEPTEMBER 2019)
- TOTAL € 8,307,828,000 (€ 8,238,204,000
FOLLOWING REDUCTIONS ON APPEAL)

CARTEL ENFORCEMENT IN THE EU AND UK

STATISTICS

- NUMBER OF DECISIONS ADDRESSED TO
INDIVIDUAL UNDERTAKINGS IN THE PERIOD
2015-2019

- 2015 21
- 2016 16
- 2017 31
- 2018 20
- 2019 20

- TOTAL 108

CARTEL ENFORCEMENT IN THE EU AND UK

STATISTICS

- NUMBER OF CARTEL CASES DECIDED IN THE PERIOD 2015-2019

- 2015 5
- 2016 6
- 2017 7
- 2018 4
- 2019 5

- TOTAL 27

CARTEL ENFORCEMENT IN THE EU AND UK

RECENT NOTABLE EU CASES: COMMISSION

◎ 2015

- *YEN INTEREST RATE DERIVATIVES*: € 14.9 FINE ON ICAP FOR FACILITATING THE MANIPULATION OF THE YEN LIBOR - FIVE BANKS AND A BROKER HAD BEEN FINED SIGNIFICANT AMOUNTS IN AN EARLIER SETTLEMENT CASE IN 2013 ('HYBRID SETTLEMENT')
- *PARKING HEATERS*: € 68 MILLION - CAR PARTS CASE
- *RETAIL FOOD PACKAGING*: € 115 MILLION
- *BLOCKTRAINS*: € 49 MILLION
- *OPTICAL DISC DRIVES*: € 116 MILLION

CARTEL ENFORCEMENT IN THE EU AND UK

RECENT NOTABLE EU CASES: COMMISSION

◎ 2016

- *ALTERNATORS AND STARTERS*: € 137,000,000 - CAR PARTS CASE
- *CANNED MUSHROOMS*: € 5.2 MILLION - STAGGERED HYBRID SETTLEMENT
- *STEEL ABRASIVES*: € 6.2 MILLION - STAGGERED HYBRID SETTLEMENT
- *TRUCKS*: € 2.93 BILLION - STAGGERED HYBRID SETTLEMENT
- *EURO INTEREST RATE DERIVATIVES*: € 485 MILLION
- *RECHARGEABLE BATTERIES*: € 166 MILLION

CARTEL ENFORCEMENT IN THE EU AND UK

RECENT NOTABLE EU CASES: COMMISSION

◎ 2017

- *CAR BATTERY RECYCLING*: € 67 MILLION
- *THERMAL SYSTEMS*: € 155 MILLION - CAR PARTS CASE
- *AIR FREIGHT*: € 776 MILLION (READOPTED DECISION)
- *PAPER ENVELOPES*: € 4.7 MILLION
- *CAR LIGHTING SYSTEMS*: € 27 MILLION - CAR PARTS CASE
- *TRUCKS*: € 880 MILLION - STAGGERED HYBRID SETTLEMENT
- *OCCUPANT SAFETY SYSTEMS*: € 34 MILLION - CAR PARTS

CARTEL ENFORCEMENT IN THE EU AND UK

RECENT NOTABLE EU CASES: COMMISSION

◎ 2018

- *SPARK PLUGS*: € 76 MILLION - CAR PARTS CASE
- *MARITIME CAR CARRIERS*: € 395 MILLION
- *BRAKING SYSTEMS*: € 75 MILLION - CAR PARTS CASE
- *ELECTROLYTIC CAPACITORS*: € 254 MILLION

CARTEL ENFORCEMENT IN THE EU AND UK

RECENT NOTABLE EU CASES: COMMISSION

◎ 2019

- *FOREX BENCHMARK MANIPULATION: € 1.07 BILLION*
- *CANNED VEGETABLES: € 31.6 MILLION*

◎ NOTE: THE COMMISSION HAS MANY ONGOING INVESTIGATIONS, NOTABLY:

- *CAR EMISSIONS (BMW, DAIMLER, VW)*
- *GOVERNMENT BONDS AND SSA BONDS*
- *IRISH MOTOR INSURANCE CLAIMS DATA*
- *BIOFUELS BENCHMARK MANIPULATION*

CARTEL ENFORCEMENT IN THE EU AND UK

RECENT NOTABLE EU CASES: COURTS

- ◉ CASE C-194/14 P *AC-TREUHAND V COMMISSION*,
JUDGMENT OF 22 OCTOBER 2015
 - JUDGMENT OF THE COURT OF JUSTICE
CONFIRMING THAT FACILITATORS CAN INFRINGE
ARTICLE 101
- ◉ CASE T-180/15 *ICAP PLC V COMMISSION*,
JUDGMENT OF 10 NOVEMBER 2017
 - PARTIALLY SUCCESSFUL APPEAL IN THE *LIBOR* CASE:
COMMISSION CORRECT TO FIND A RESTRICTION BY
OBJECT AND THAT ICAP WAS GUILTY OF
FACILITATION; BUT THE COMMISSION'S REASONING
ON FINES WAS INSUFFICIENT AND THE FINES WERE
ANNULLED

CARTEL ENFORCEMENT IN THE EU AND UK

RECENT NOTABLE EU CASES: COURTS

- CASE T-105/17 *HSBC HOLDINGS PLC V COMMISSION*, JUDGMENT OF 24 SEPTEMBER 2019
 - JUDGMENT UPHOLDING THE COMMISSION'S DECISION AS TO SUBSTANCE; IN PARTICULAR MANIPULATING BENCHMARKS CAN BE RESTRICTIVE OF COMPETITION BY OBJECT
 - HOWEVER ANNULING THE FINE FOR INSUFFICIENT REASONING IN THE *EURO INTEREST RATES DERIVATIVES* CASE
 - THE COMMISSION IS LIKELY TO ADOPT A FRESH FINE

CARTEL ENFORCEMENT IN THE EU AND UK

RECENT NOTABLE UK CASESS

- ◉ *CYLINDRICAL GALVANISED STEEL TANKS*, CMA DECISION OF 21 MARCH 2016: FINES OF £2.6 MILLION
 - NOTE: APPEAL DISMISSED 6 OCTOBER 2017, CASE 1277/1/12/17 *BALMORAL TANKS LTD V CMA CAT* [2017] 23
- ◉ *MODEL AGENCIES*, CMA DECISION OF 16 DECEMBER 2016: FINES OF £1.53 MILLION
- ◉ *SOMERSET ESTATE AGENTS*, CMA DECISION OF 2 MARCH 2017: FINES OF £370,000. NOTE ALSO COMPANY DIRECTOR DISQUALIFICATION (BELOW)

CARTEL ENFORCEMENT IN THE EU AND UK

RECENT NOTABLE UK CASESS

- ◉ *SPECIALIST LAUNDRY SERVICES*, CMA DECISION OF 14 DECEMBER 2017: FINES OF £1.71 MILLION FOR HORIZONTAL MARKET SHARING
- ◉ *HOUSEHOLD FUELS*, CMA DECISION OF 2 MARCH 2018: FINES OF £3.4 MILLION BID RIGGING
- ◉ *HEATHROW AIRPORT/ARORA GROUP*, CMA DECISIO OF 18 SEPTEMBERN 2018: FINE OF £1.6 MILLION FOR HORIZONTAL PRICE FIXING
- ◉ *ASSET MANAGEMENT*, FCA DECISION OF 21 FEBRUARY 2019: FINE OF £414,900 FOR INFORMATION SHARING

CARTEL ENFORCEMENT IN THE EU AND UK

RECENT NOTABLE UK CASES

- ◉ *DESIGN, CONSTRUCTION AND FIT-OUT SERVICES*, CMA DECISION OF 1 MARCH 2019: FINES OF £7 MILLION FOR COVER BIDDING
- ◉ *E (GAS AND ELECTRICITY), ECONOMY ENERGY AND DYBALL ASSOCIATES*: OFGEM DECISION OF 30 MAY 2019: FINES OF £870,000 FOR MARKET SHARING AND INFORMATION EXCHANGE
 - NOTE: DYBALL LIABLE AS A FACILITATOR

CARTEL ENFORCEMENT IN THE EU AND UK

RECENT NOTABLE UK CASES

- ◉ THE CMA IS CURRENTLY INVESTIGATING ALLEGED CARTELS IN:
 - CONCRETE DRAINAGE PRODUCTS
 - ROLLED LEAD
 - GROUNDWORK PRODUCTS
 - PHARMACEUTICALS (NB: ASPEN HAS OFFERED TO PAY A FINE OF £2.1 MILLION AND COMPENSATION TO THE NHS OF £8 MILLION - 14 AUGUST 2019)
 - ESTATE AGENTS
 - MUSICAL INSTRUMENTS

CARTEL ENFORCEMENT IN THE EU AND UK

PARTICULAR ISSUES

- ◉ NEARLY ALL OF THE CARTEL INVESTIGATIONS IN THIS PRESENTATION BEGAN WITH A LENIENCY APPLICATION
- ◉ FURTHERMORE, MANY OF THESE CASES WERE SETTLED (REDUCTION OF FINES IN RETURN FOR ADMISSION OF LIABILITY)
 - NOTE HOWEVER THE HYBRID SETTLEMENTS (EG *ICAP*, *TRUCKS*, *CANNED MUSHROOMS*)
 - AND ALSO SOME FULLY CONTESTED CARTELS SUCH AS *OPTICAL DISC DRIVES* AND *ELECTROLYTIC CAPACITORS*

CARTEL ENFORCEMENT IN THE EU AND UK

PARTICULAR ISSUES

- SEVERAL OF THE CARTELS INVESTIGATED BY THE COMMISSION WERE ALSO SUBJECT TO COMPETITION LAWS ELSEWHERE:
 - *THE LIBOR CASES*
 - *FOREX*
 - *MARITIME CAR CARRIERS*
 - *CAR PARTS*
 - *OPTICAL DISC DRIVES*
- NOTE THAT IN SEVERAL CASES FACILITATORS WERE FINED
 - *TREUHAND, ICAP, DYBALL*

CARTEL ENFORCEMENT IN THE EU AND UK

PARTICULAR ISSUES

- ◉ NOTE THAT THE CMA IS REGULARLY SEEKING COMPANY DIRECTOR DISQUALIFICATION:
 - IT HAS APPLIED TO COURT FOR DISQUALIFICATION OF TWO ESTATE AGENTS: 27 FEBRUARY 2019
 - TWO DIRECTORS OF A SUPPLIER OF CONCRETE DRAINAGE PRODUCTS HAVE GIVEN UNDERTAKINGS IN LIEU OF A CDO FOR 7½ AND 6½ YEARS: 26 APRIL 2019
 - THREE DIRECTORS OF OFFICE FIT-OUT FIRMS HAVE GIVEN UNDERTAKINGS IN LIEU OF A CDO FOR 5, 2½ AND 2 YEARS: 10 MAY 2019. THREE MORE UNDERTAKINGS GIVEN 31 JULY 2019

CARTEL ENFORCEMENT IN THE EU AND UK

DAMAGES

- ◉ NOTE THAT ALL MAJOR CARTEL DECISIONS IN THE EU ARE NOW FOLLOWED BY DAMAGES CLAIMS
 - SEE EG *TRUCKS*; *FOREX*; *CATHODE RAY TUBES* AND *LIQUID DISPLAY PANELS*; *POWER CABLES*; *MASTERCARD* AND *VISA*
- ◉ THIS UNDOUBTEDLY AFFECTS THE DECISION WHETHER TO APPLY FOR LENIENCY: THE EXPOSURE TO DAMAGES MAY BE CONSIDERABLY GREATER THAN THE FEAR OF THE FINE

RECENT CASES ON BID RIGGING IN THE EU

- BID RIGGING APPEARS TO BE VERY COMMON THROUGHOUT THE EU
- MANY OF THE EUROPEAN COMMISSION'S DECISIONS IN RELATION TO CAR PARTS INVOLVED BID RIGGING, EG
 - *WIRE HARNESSES*, COMMISSION DECISION OF 10 JULY 2013
 - *PARKING HEATERS*, COMMISSION DECISION OF 17 JUNE 2015
 - *ALTERNATORS AND STARTERS*, COMMISSION DECISION OF 27 JANUARY 2016

RECENT CASES ON BID RIGGING IN THE EU

- IN *CANNED VEGETABLES* (27 SEPTEMBER 2019)
ONE OF THE INFRINGEMENTS WAS
COORDINATED REPLIES TO TENDERS
- IN THE UK SEE IN RECENT YEARS:
 - *FURNITURE*, 27 MARCH 2017: FINES OF £2.8 MILLION
(TWO DECISIONS)
 - *HOUSEHOLD FUELS*, 2 MARCH 2018: FINES OF £3.4
MILLION FOR BID RIGGING
 - *DESIGN, CONSTRUCTION AND FIT-OUT SERVICES*, 1
MARCH 2019: FINES OF £7 MILLION FOR COVER
BIDDING

RECENT CASES ON BID RIGGING IN THE EU

○ IN OTHER MEMBER STATES SEE:

- **DENMARK** *DANISH DEMOLITION COMPANIES*, 22 AUGUST 2019: FINES OF 6.8 MILLION DANISH KRONER. SETTLEMENT
- **FRANCE** *REMOVAL SERVICES FOR ARMY PERSONNEL IN THE FRENCH OVERSEAS TERRITORY OF GUADELOUPE*, 9 SEPTEMBER 2019: FINES OF € 22,300
- **ROMANIA** *ROAD CONSTRUCTION COMPANIES*, 19 SEPTEMBER 2019: FINES OF 5,000,000 LEI
- **POLAND** *POLISH POST OFFICE/POSTAL AND COURIER SERVICE SUB-CONTRACTORS*, 27 SEPTEMBER 13,000 ZLOTY

RECENT CASES ON BID RIGGING IN THE EU

- ◉ **ITALIAN AGCM: *ITALIAN FOOTBALL RIGHTS*,
DECISION OF 20 MAY 2019**
 - FINES OF € 67 MILLION ON MEDIA PARTNERS AND SILVA, IMG AND B4 CAPITAL FOR RIGGING TENDERS FOR THE INTERNATIONAL MEDIA RIGHTS (NON-ITALIAN) FOR SERIE A AND B SOCCER GAMES
 - THE AGCM SAYS THAT THE COLLUSIVE TENDERING DRIVE DOWN THE VALUE OF THE RIGHTS, TO THE DISADVANTAGE OF THE ITALIAN FOOTBALL LEAGUE AND, ULTIMATELY, THE FOOTBALL CLUBS OF ITALY
 - NB: DAMAGES CLAIMS ARE NOW BEING BROUGHT BY, EG, AC CHIEVO, ACF FLORENTINA AND AC TORINO

RECENT CASES ON BID RIGGING IN THE EU

PARTICULAR ISSUES

- ◉ WHEN IS JOINT BIDDING A VIOLATION OF COMPETITION LAW?
 - X, A HOSPITAL, GOES OUT TO COMPETITIVE TENDER FOR THE PROVISION OF TAXI SERVICES FOR PATIENTS TO BE TAKEN TO AND FROM HOSPITAL
 - A AND B BID JOINTLY FOR THE CONTRACT
 - A AND B ALREADY COOPERATE WITH ONE ANOTHER EG ON THE CALL CENTRE, OTHER BACK-OFFICE FUNCTIONS
 - A AND B EACH HAVE FLEETS OF TAXIS AND DRIVERS
 - A AND B DO NOT CONCEAL THEIR COOPERATION FROM X

RECENT CASES ON BID RIGGING IN THE EU

PARTICULAR ISSUES

- ◉ OSLO TAXIS: CASE E-3/16 *SKI TAXI SA V KONKURRANSETILSYNET*, JUDGMENT OF THE EFTA COURT OF 22 DECEMBER 2016 FINDING THIS TO BE CAPABLE OF BEING A RESTRICTION OF COMPETITION BETWEEN ACTUAL OR POTENTIAL COMPETITORS THAT COULD BE A RESTRICTION OF COMPETITION BY OBJECT
- ◉ FINAL JUDGMENT OF THE NORWEGIAN SUPREME COURT OF 22 JUNE 2017 CONFIRMING THIS TO BE A RESTRICTION OF COMPETITION BY OBJECT

RECENT CASES ON BID RIGGING IN THE EU

PARTICULAR ISSUES

- ◉ WHEN IS A RESPONSE TO A TENDER A SINGLE INFRINGEMENT, AND WHEN IS IT PART OF A SINGLE, CONTINUOUS INFRINGEMENT?
 - THE EXISTENCE OF AN OVERALL PLAN PURSUING A COMMON OBJECTIVE
 - THE INTENTIONAL CONTRIBUTION OF THE UNDERTAKING TO THAT PLAN
 - AWARENESS (PROVED OR PRESUMED) OF THE OFFENDING CONDUCT OF THE OTHER PARTICIPANTS
- ◉ THIS HAS IMPORTANT IMPLICATIONS FOR LENIENCY APPLICATIONS AND FOR THE AMOUNT OF ANY FINES

RECENT CASES ON BID RIGGING IN THE EU

PARTICULAR ISSUES

- ◉ WHAT IS THE RELATIONSHIP BETWEEN COMPETITION LAW AND, EG, ANTI-BRIBERY AND ANTI-CORRUPTION LAWS?
- ◉ THE NEED FOR COOPERATION BETWEEN COMPETITION AUTHORITIES AND OTHER PROSECUTING AGENCIES
- ◉ TENSION BETWEEN CRIMINAL AND CIVIL/ADMINISTRATIVE MODELS OF ENFORCEMENT OF LAW

THE YEAR IN REVIEW

THANK YOU FOR YOUR ATTENTION!