

Competition Act 1998

Decision of the Director General of Fair Trading

No. CA98/12/2002

Price Fixing Agreements involving John Bruce (UK) Limited, Fleet Parts Limited and Truck and Trailer Components

13 May 2002

(Case CP/0717/01)

SUMMARY

The Director General of Fair Trading has concluded that John Bruce (UK) Limited, Fleet Parts Limited and Truck and Trailer Components (a subsidiary of the Unipart Group of Companies) have infringed the Competition Act 1998 by entering into price fixing agreements. All of the above-named undertakings were engaged in the supply of the MEI brand of automatic slack adjuster. Slack adjusters are safety devices fitted to the braking systems of trailers, trucks and buses.

The Director takes the view that these agreements had, as their object, the appreciable prevention, restriction or distortion of competition in the supply of automatic slack adjusters in the UK and were in breach of the Chapter I prohibition imposed by section 2 of the Act.

Financial penalties have been imposed. John Bruce UK Limited has been fined £[...] (3 percent of its relevant turnover), Fleet Parts Limited £[...] (5.6 percent of its relevant turnover) and EW (Holdings) Limited, which trades as Truck and Trailer Components, £[...] (24 percent of its relevant turnover).

I THE FACTS

A Background

The decision relates to an agreement between John Bruce (UK) Limited (John Bruce) and Fleet Parts Limited (Fleet Parts) to fix the selling prices, to their respective customers, of automatic slack adjusters manufactured by Madras Engineering Industries Limited, India (MEI) and to an agreement between John Bruce and EW (Holdings) Limited trading as Truck and Trailer Components (TTC) to maintain resale prices for the supply of MEI slack adjusters.

- 2 On 20 April 2001, Fleet Parts, wrote to the Office of Fair Trading (the Office) to submit a complaint. It supplied, in support of that complaint, a number of documents which contained evidence of the existence of a price-fixing agreement between John Bruce and Fleet Parts from at least November 1999.
- 3 On 10 July 2001, the Office sent notices under section 26 of the Competition Act 1998 (the Act) to both John Bruce and Fleet Parts requiring them to produce specified documents and provide specified information. John Bruce's response of 28 August 2001 indicated that it had imposed resale price maintenance (RPM) as a condition of supply to its dealers.
- 4 Further notices under section 26 of the Act were sent on 10 October 2001 to both John Bruce and Fleet Parts requiring them to provide additional specified information. John Bruce's reply of 5 November 2001 stated that it had written to all of its dealers on 30 August 2001 indicating that they were free to determine resale prices.
- 5 Three dealers suspected of having accepted RPM were selected by the Office to verify the nature of their supply agreements with John Bruce. On 10 October 2001, the Office sent a notice under section 26 of the Act to the dealers requiring them to produce specified documents and provide specified information.
- 6 Partco Limited (Partco) a subsidiary of Partco Group Limited which is a member of the Unipart Group of Companies - UGC Limited (Unipart) provided evidence in its response of 9 November 2001 which indicated that John Bruce's RPM policy for MEI slack adjusters had been accepted and implemented by Unipart through its subsidiary TTC since September 2000. Partco also supplied a copy of a letter dated 30 August 2001, from John Bruce to TTC (and other dealers), which effectively ended RPM. There was no evidence that RPM had been implemented by the other two dealers who had been approached by the Office.

- 7 A notice was issued to John Bruce, Fleet Parts and TTC in accordance with rule 14 of the Director's procedural rules (the Director's rules) on 7 January 2002.¹ This notice set out the Director's proposal to make a decision that a price fixing agreement between John Bruce and Fleet Parts - to fix the selling prices for automatic slack adjusters manufactured by MEI - infringed the prohibition imposed by section 2 of the Act (the Chapter I prohibition). It also set out the Director's proposal to make a decision that an agreement between John Bruce and TTC, to maintain minimum reselling prices for MEI automatic slack adjusters, infringed the Chapter I prohibition. In both cases, the Director based his proposed decision on evidence supplied to him by the parties to the agreements.
- 8 John Bruce submitted written representations to the Office on 14 February 2002 and it made oral representations on 6 March 2002. Fleet Parts submitted written representations on 12 February 2002 and oral representations were made on 28 February 2002. TTC submitted written representations on 19 February 2002 and did not request to make oral representations.
- 9 This decision is issued under the Act in accordance with rule 15 of the Director's rules. It states the facts on which the Director bases his decision and his reasons for making it.²

B The products

- 10 Automatic slack adjusters (sometimes called automatic brake adjusters) are safety devices fitted to the braking systems of trailers, trucks and buses. It is difficult to keep the brakes found on most commercial vehicles adjusted appropriately. These brakes have only a small tolerance range before becoming out of adjustment. Automatic adjustment of slack in the brakes therefore facilitates maintenance and safety.
- 11 The automatic slack adjusters which were the subject of the agreements were 'Haldex' type automatic slack adjusters manufactured by MEI. Haldex is a major brand of slack adjuster established by Haldex of Sweden in the 1960s. Until six years ago the company had patent rights over the design. The MEI adjusters were a new product which had been developed by John Bruce with MEI during 1998-1999 with the intention of putting them on the market during 2000. John Bruce had introduced the MEI brand to the UK market in order to compete with Haldex and other Haldex type automatic slack adjusters.

¹ The Competition Act 1998 (Director's rules) Order 2000 SI 2000/293. This is available on the Office of Fair Trading's web site www.offt.gov.uk.

² Rule 15(1) of the Director's rules.

C The parties

JOHN BRUCE

- 12 John Bruce of Sheffield is the only UK based importer of MEI automatic slack adjusters. The company was formed in 1998 specifically to develop and sell the adjusters. Until 31 August 2000 John Bruce also acted as a distributor of MEI automatic slack adjusters. In addition, the company supplies in the UK the ATM brand of automatic slack adjuster [...].
- 13 John Bruce's overall UK turnover, in the financial year from 1 September 1999 to 31 August 2000, was £[...], of which the turnover for MEI automatic slack adjusters was £[...] and £[...] in respect of other brands. John Bruce had been supplying MEI automatic slack adjusters to customers in the UK from October 1999. Its total sales in respect of these slack adjusters until 5 November 2001 had been £[...] The registered address of John Bruce is The Dower House, Green Lane, Chesterfield, S42 7AR.

FLEET PARTS

- 14 Fleet Parts of Warrington is a distributor of automotive parts. Its overall UK turnover for the financial year ending 30 April 2001 was £[...], of which the turnover for MEI automatic slack adjusters was £[...]. Its turnover for other brands of automatic slack adjusters was £[...]. Fleet Parts received its first supply of MEI automatic slack adjusters, for resale, from John Bruce in November 1999. From that date to 13 October 2001 its total sales in respect of the slack adjusters was £[...]. The registered address of Fleet Parts is New Cut Industrial Estate, New Cut Lane, Woolston, WA1 4AG.

TTC

- 15 TTC of Cowley is a distributor of commercial vehicle spare parts. It is a subsidiary of Unipart Group Limited. Its ultimate parent company is Unipart. TTC makes intra-group sales to Partco (also a subsidiary of Unipart) which sells on items via its trading subsidiary 'Serck Intertruck' a branch network with 102 outlets in the UK. Unipart's overall UK turnover in the financial year 1 January 2000 to 31 December 2000 was £[...]. TTC's turnover in MEI automatic slack adjusters was £[...] in the financial year ending 31 December 2000. Its turnover for all other brands of automatic slack adjusters was £[...]. The total value of MEI slack adjusters supplied by John Bruce to TTC from 19 September 2000 to 6 November 2001 was £[...]. The registered address of EW (Holdings) Limited, trading as TTC, is Chiltern House, Garsington Road, Cowley, OX4 2PG.

D Agreement between John Bruce and Fleet Parts

- 16 Copies of documents, supplied to the Office by Fleet Parts under covering letters dated 20 April and 30 July 2001, contained the extracts highlighted below.

CORRESPONDENCE FROM COLIN ROTHWELL, MANAGING DIRECTOR OF FLEET PARTS, TO JOHN BRUCE, MANAGING DIRECTOR OF JOHN BRUCE

- (a) *from a letter dated 7 March 2000 marked 'private and confidential' which contained a reference to a memorandum in (b) below*

'I advised and faxed you a draft memo I intended distributing to our sales staff. You advised your agreement to the memo detail and said you would advise your sales staff similarly.³ This has now been distributed'.

- (b) *from a 'private and confidential' memorandum dated 2 March 2000 issued by Mr Rothwell to his staff and mentioned in the letter at (a) above*

'For distribution to all Sales Representatives and Tele-Sales staff

As you are aware, we have been appointed jointly with John Bruce (UK) Ltd to distribute the MEI Automatic Slack Adjuster'.

'The slack adjusters have been very competitively priced and both Fleet Parts and John Bruce (UK) Ltd have agreed to adopt a common pricing policy to our customers. Price as follows:-

All MEI auto trailer adjusters	£[...]
All MEI auto truck adjusters	£[...]
All MEI auto bus adjusters	£[...]

There are no surcharges being applied.

As Fleet Parts and John Bruce (UK) Ltd customer base overlap, it is important that we adhere to the agreed prices. Any exceptions to the above will be notified to you in writing. Under no circumstances will Fleet Parts deviate from the agreed pricing policy until we have obtained proof positive that MEI automatic slack adjusters are being offered at prices lower than those agreed above, and contacted John Bruce in writing (fax or 'E'- Mail) to inform him of same'.

³ Reference to a telephone conversation of 6 March 2000 between Mr Bruce and Mr Rothwell.

CORRESPONDENCE FROM MR BRUCE TO MR ROTHWELL

- (a) *from an E-mail dated 9 March 2000 which refers to a memorandum at (b) below*

'Thanks for confirming that your staff now have the memo I saw in draft. My own sales staff have had the same points hammered home to them both verbally and in writing on many occasions, but at your prompting I have written the attached memo to summarise the position'.

- (b) *from a memorandum (referred to in (a) above) dated 9 March 2000 from Mr Bruce to all sales staff*

'As you are aware, the agreed price structure for Automatic Slack Adjusters is as follows:

UK Main Land	£[...] for all Trailer references £[...] for all Truck and Bus references
Northern Ireland	£[...] for all Trailer references £[...]for all Truck and Bus references
Southern Ireland	£[...] for all Trailer references £[...] for all Truck and Bus references

and there are to be no exceptions to these prices.

Fleet Parts Limited, who are also distributing the same product range, are selling at the same prices. Our customers will try to get us to compete with Fleet Parts on price by telling us that they can get better prices from Fleet Parts. Such stories will not be true and we can ignore them'.

E Agreement between John Bruce and TTC

- 17 Copies of documents supplied to the Office by Partco under a covering letter dated 9 November 2001, contained the extracts highlighted below.

FROM INSTRUCTIONS/GUIDANCE CIRCULATED TO TTC SALES STAFF IN THE COURSE OF A PRESENTATION GIVEN TO THEM BY MR BRUCE ON 28 SEPTEMBER 2000

'Price structure

A good product with good margin, which must not be spoilt by distributors competing among themselves on price

Therefore:

	<u>To Factors</u>		<u>Minimum to End User</u>	
	Ireland	UK	Ireland	UK
Trailer	[...]	[...]	[...]	[...]
Truck & Bus	[...]	[...]	[...]	[...]

[...]

Understanding that if these prices are broken without agreement supplies will stop. 'Lead time lengthen'.

End user prices are minimums. Higher prices usually achievable, i.e. £[...] for trailer and £[...] for truck and bus.

No special offers.

No quantity discounts.

Exceptions to meet special circumstances are to be discussed with JBUK, agreed and recorded. ie [...].

INTERNAL COMMUNICATIONS AMONG TTC/UNIPART PERSONNEL

- (a) *from an E-mail dated 6 October 2000 from Darren Miller (Commercial Manager at TTC) to several TTC/Unipart personnel including Andy Knox (Product Manager at TTC)*

'Subject: MEI Special Prices

All

Please find in the attached file special prices which were set up by John Bruce UK.

Please remember any other special deals this needs to be controlled through marketing so John can be kept in the loop on the reasons for the request and whether he wants to agree to it.

Andy

Can you please ensure these accounts are set up with these prices as specials, [...]

- (b) *from an E-mail dated 9 October 2000 from Mr Miller to Mr Knox*

'Subject: MEI Special Prices

All Irish accounts north and south need to be set up @ the following prices. This is so we do not end up with invoice issues with customers [...]

- (c) *from a letter dated 30 August 2001 from John Bruce to TTC*

'It has been brought to our attention that some of our previous correspondence on the subject of the resale prices of the MEI automatic slack adjuster could be interpreted as an attempt to fix the price of the product in the UK market.

We would like to make it clear that any suggested price structures are recommendations only....

As a distributor of the MEI brand you are, of course, free to determine a resale price that is appropriate to the circumstances you find in the market’.

(d) *from an E-mail dated 26 September 2001 from Peter Shufflebotham (Regional Sales Manager at TTC) to Mr Knox*

‘Subject: Urgent – [...] 4W1000 MEI pricing activity

[...] have been on to me about [...] pricing on the above adjuster. [...], having agreed specials with JBUK pay £[...] for 4W1000.

They are selling this part number to a fleet, [...], for either £[...] or £[...] (conflicting amounts coming from 2 different people at [...]). Either amount contravenes the JBUK pricing policy.

[...] would normally sell this adjuster at £[...], however they are obviously losing business to [...].

Given that [...] spend £[...] per year with TTC and [...] next to nothing – should we either:

1. Inform JBUK of [...] activity – would it actually prevent them selling the adjuster at this price to this customer?
2. Give [...] a special nett on 4W1000 at the same price as [...], and let the pair of them fight it out on a level playing field.

Option 2 may also help prevent some of the [...] branches buying the [...] product from [...].

My understanding was that even with a JBUK special price, the account should still adhere to the general pricing policy of £[...]’.

F Responses from the parties

JOHN BRUCE

- 18 John Bruce, in its letter of 28 August 2001, argued that it had to persuade distributors to stock and promote the MEI brand alongside the Haldex brand. It said that it 'wanted to achieve the widest possible distribution for our brand but needed the co-operation and commitment of a number of distributors. We therefore adopted a policy of giving distribution to any and all legitimate candidates in the market but asked them to maintain resale prices at a level substantially below Haldex (by 20 to 25 percent) yet sufficient to motivate and reward the efforts, to stock and promote, of those distributors who took the risk to do so'.
- 19 In addition it argued that 'There was also a secondary reason for our interest in maintaining resale prices: ... Quality and perceived quality are therefore of primary concern. ... We believed that to maintain credibility, the MEI ASA needed to be competitive with Haldex but should not be seen to compete on price with [...]'.
- 20 In a subsequent letter, 5 November 2001, John Bruce indicated that when it decided to enter the UK market for automatic slack adjusters 'Haldex had a virtual monopoly'. Previous attempts by others to enter the market had failed because there was 'a perception on the part of dealers that it was unlikely to be worthwhile to promote an alternative brand [...]'.
- 21 John Bruce argued that its plan was to 'maintain prices [for MEI products] at levels which were significantly lower than those of Haldex but still sufficient to allow dealers a reasonable margin, [...]'. It also claimed that its strategy was successful because it had 'achieved wide distribution and an [...] percent share of the UK market'.
- 22 John Bruce believed that 'its conduct could not be in breach of any competition law since it was developing competition where next to none had previously existed'. It submitted that 'in these unusual circumstances, price restrictions in agreements between JBL [John Bruce] and distributors did not in fact prevent, restrict or distort competition to an appreciable extent'. Furthermore, if there was an infringement it submitted that the agreements 'meet the criteria for exemption under section 9 of the Competition Act 1998 ... and article 81(3) of the Treaty of Rome ...'.
- 23 In its written representations of 14 February 2002 John Bruce explained that it had contemplated the use of recommended resale prices but potential

distributors indicated they were unwilling to stock MEI products unless given exclusive territories or an assurance that resale prices would not be undercut. John Bruce considered that a system of exclusive distributor territories would not be likely to achieve a rapid foothold for MEI products in the market. He therefore adopted the policy of fixing the prices at which the MEI products should be sold on to customers.

- 24 However, John Bruce claimed that although distributors insisted on these assurances on prices, RPM was not implemented. For example, the memo dated 9 March 2000 to sales staff (highlighted in Section D above) was not actually sent. Also, supplies were not stopped on the grounds that a customer was not adhering to the price structure.
- 25 John Bruce also pointed out that, in August 2000, it transferred its MEI wholesaling operation to TTC. Since then, it had operated solely as the importer of the MEI brand, selling only to wholesalers. Thus any horizontal element of price fixing was limited.
- 26 In oral representations made on 6 March 2002 Mr Bruce indicated that both Fleet Parts and TTC had accepted RPM in respect of MEI automatic slack adjusters. He confirmed RPM was a 'major feature' in his first discussions with Fleet Parts and with TTC. Mr Bruce also recalled being contacted over the telephone by TTC personnel, including Mr Miller, concerning MEI prices. He recalled they would say, for instance, that a certain customer could buy a genuine Haldex at a discounted price, and they wanted to compete with that. Mr Bruce stated he would say in reply 'just get on with it'.

Arguments for the inapplicability of the Chapter I prohibition

- 27 John Bruce argued in its letter of 5 November 2001 that, as in the case of *Volk v Vervaecke*⁴, 'even a 'hard-core' restriction may escape the prohibition if it has an insignificant effect on the market, taking into account the weak position of the parties'.
- 28 John Bruce claimed it had 'an exceptionally weak position' because 'Not only was it a new entrant, but it was entering a market in competition with a near monopoly which had successfully defeated a series of previous attempts at entry'. Also it 'was lacking in its own downstream outlets' and 'It was dependent on take-up by independent distributors'.

⁴ *Volk v Vervaecke* (5/69) [1969] ECR 295 [1969] CMLR 273. Under section 60 of the Act, in the application of the Chapter I prohibition, the Director is required to ensure that there is no inconsistency with either the principles laid down by the EC Treaty and the European Court or any relevant decision of the European Court. The Director must also have regard to any relevant decision or statement of the European Commission.

- 29 It argued that its weakness was further demonstrated by the fact that it 'had to prepare to terminate supplies to a valued customer, Fleet Parts, at the request of a large potential customer, [...]'.
30 In other respects 'the effect of any restrictions [on competition] had been pro-competitive'.
31 In its written representations of 14 February 2002 John Bruce argued that account should be taken of whether an agreement actually prevented, restricted or distorted competition. John Bruce argued that it was necessary to consider what would have been the state of competition in the absence of the restrictive terms. It claimed that the effects of the price restrictions were pro-competitive in that they enabled serious competition, including on price, with the market leader Haldex. Thus, restrictions on conduct which were necessary terms of pro-competitive operations did not prevent, restrict or distort competition within the meaning of Chapter I.
32 John Bruce also argued that only a partial assessment of its market power had been made. No account had been taken of the weak position in the market of MEI automatic slack adjusters at the time of their entry in 1999 when they were in competition with the products of an established monopolist. John Bruce pointed out that the [...] percent share of the market for MEI slack adjusters had been achieved only by September 2001 and that in September 2000 the share was much less and estimated to be about [...] percent.

Arguments for a possible exemption under section 9 of the Act

- 33 In respect of an exemption John Bruce argued (in its letter of 5 November 2001) that 'By enabling the successful launch of a new product in competition with a virtual monopoly, the agreements contributed to improving distribution and production and promoting economic progress. Consumers were allowed a fair share of the resulting benefits: the prices of JBL's MEI slack adjusters were about 25 percent lower than those of Haldex'.
34 John Bruce also argued the agreements did not impose restrictions which were indispensable to the attainment of its objectives. It stated that 'Resale price maintenance was necessary: (a) to ensure that dealers had a sufficient margin to encourage them to invest in promoting the brand, despite the history of failed alternatives to Haldex and the risk of losing their Haldex distributorship; and (b) to differentiate the brand from [...] third-party products'. John Bruce claimed that exclusive territories for dealers (as an alternative to resale price maintenance) 'would have led to reduced market penetration, since each dealer only sells to at most 40 percent of customers in its area' and 'it was essential

for JBL to maximise initial market penetration to establish a credible alternative to the dominant Haldex brand’.

- 35 On the possibility of eliminating competition in respect of a substantial part of the products in question John Bruce pointed out that ‘the parties are in competition with Haldex and its distributors, as well as [...]’.
- 36 More generally John Bruce suggested that the European Commission had jurisdiction ‘since, if the agreements had appreciable effects on competition and trade, they had such effects on trade between Sweden and the UK, namely imports into the UK of Haldex products’.

FLEET PARTS

- 37 In its written representations of 12 February 2002 Fleet Parts argued that, for the MEI brand to be launched successfully on the UK market, it needed to be differentiated from [...] brands of slack adjuster and, at the same time, pitched at a price below that of the leading competitor Haldex. Fleet Parts claimed that this aim could have been achieved by recommending resale prices. But, Fleet Parts believed it would not have been appointed a distributor if it had not agreed to John Bruce’s requirement for fixed minimum resale prices for MEI products.
- 38 Fleet Parts accepted that there was a price fixing agreement between itself and John Bruce but claimed that, nevertheless, the prices of the MEI products were set at competitive levels, profit margins were not excessive and that, in fact, both Fleet Parts and John Bruce sold MEI automatic slack adjusters at below the fixed price levels.
- 39 In oral representations made on 28 February Mr Rothwell was questioned about an invoice dated 18 August 2001, highlighted in the written representations of Fleet Parts, which suggested that Fleet Parts had not adhered to the fixed price levels agreed with John Bruce. In response, Mr Rothwell indicated that he had discussed and agreed with John Bruce the lowering of the price to the customer on the invoice.

TTC

- 40 Partco in a letter to the Office dated 9 November 2001 (which identifies TTC as the Unipart subsidiary concerned in the agreements) stated that ‘On 31st August 2000, TTC completed a sale and purchase agreement with John Bruce (UK) Limited in relation to the business conducted under the ‘John Bruce’ name (principally air suspension, shock absorbers and components for commercial vehicles)’ but ‘Excluded from the scope of the sale was the supply of the MEI

range of slack adjusters which continued to be conducted by the vendor'. Nevertheless, 'Following TTC's appointment as a distributor arrangements were made with John Bruce (UK) Limited to enable TTC to operate that part of the John Bruce (UK) Limited distribution business where John Bruce had customers in common with TTC'. Partco indicated that 'TTC understood the vendor's intention to be a managed exit from the distribution level of the supply chain for the MEI product and to continue to merely [act] as the interface between the manufacturer and a UK network of distributors'.

41 Partco also stated that 'No responses have been made to the instructions/guidance [received from John Bruce in the presentation 28 September 2000 or the letter of 30 August 2001] indicating acceptance'.

42 In its written representations of 19 February 2002 TTC denied that there had been any price fixing agreement between TTC and John Bruce. TTC explained that when, in August 2000, it was appointed a non-exclusive wholesaler of MEI automatic slack adjusters and John Bruce ceased to act as a wholesaler, it acquired from John Bruce its customer lists, details of its wholesale pricing structure for MEI automatic slack adjusters and special prices which had been given to particular customers. However, at no time did TTC agree with John Bruce, or any third party, that it would sell MEI automatic slack adjusters at any particular agreed set price. TTC stated that, in accordance with its own pricing procedures (Appendix 7 of its written representations), the price data obtained from John Bruce was used solely as information and that the prices which TTC then charged its customers for MEI automatic slack adjusters, as a result of its cost analysis (Appendix 10 of its written representations), were therefore its own.

43 Once a product was launched on the market TTC monitored the price to see if it was too high or too low, and adjusted it accordingly. TTC had routinely reviewed its prices for MEI slack adjusters since the launch. [...], it had concluded that its original price structure (agreed by Mr Knox and Mr Miller in September 2000) was about right. [...].

On meetings between John Bruce and TTC and, in particular on instructions/guidance circulated to TTC sales staff in the course of a presentation given to them by Mr Bruce on 28 September 2000

44 In its written representations of 19 February 2002 TTC indicated that prior to its launch of the MEI product range a meeting took place on 13 September 2000 attended by Mr Bruce, Mr Miller and Mr Knox. Mr Knox, in his statement at Appendix 3 of TTC's written representations, stated that although MEI prices were discussed at the meeting, neither Mr Miller nor Mr Knox indicated what

TTC's intentions were as to selling prices. Mr Miller, in Appendix 1 of TTC's written representations, stated that after the meeting he and Mr Knox set about measuring John Bruce's MEI prices against the standard TTC pricing criteria. They concluded that they would price MEI automatic slack adjusters at the level set by John Bruce and so maintain a good margin within TTC's pricing parameters.

- 45 Mr Bruce's presentation to TTC sales personnel on 28 September 2000 (mentioned in Section E above) was attended by Wendy Williamson (TTC General Manager), Mr Knox and Mr Miller. Mr Miller stated (in Appendix 1 of TTC's representations) that he did not recall Mr Bruce stating that TTC had to resell at prices specified by John Bruce. Ms Williamson's statement, Appendix 2 of TTC's representations, supports this. Nevertheless, TTC recognised that the wording of the presentation material could lead to an assumption that an instruction was given to and accepted by TTC but it denied that that assumption was correct.

On the e-mail of 6 October 2000 from Mr Miller to other TTC/Unipart personnel including Mr Knox

- 46 In its written representations of 19 February TTC agreed that the phrase used by Mr Miller in the e-mail of 6 October 2000 'please find in the attached file special prices which were set up by John Bruce UK' was factually correct, in that John Bruce provided TTC with details of its MEI automatic slack adjuster pricing structure. However, TTC argued that TTC decided internally, and independently of John Bruce, that these prices were at the right level.
- 47 TTC and Mr Miller (in his statement at Appendix 1 of TTC's representations) also recognised that the wording 'please remember any other special deals this needs to be controlled through marketing so John can be kept in the loop on the reasons for the request and whether he wants to agree to it' suggested that there was a price fixing agreement between TTC and John Bruce but denied that this was, in fact, the case.
- 48 Mr Miller argued that the instruction to Mr Knox was 'misleading' and it did not reflect his understanding then and now. He stated that, at no time, did he seek Mr Bruce's approval for any price proposal he received from Mr Knox, and he did not, in fact, keep Mr Bruce 'in the loop'.
- 49 Mr Knox, as a recipient of the e-mail, stated (at Appendix 3 in TTC's representations) that he regarded it as an instruction from Mr Miller to him, indicating that Mr Miller, rather than Mr Bruce, was in control of pricing. Mr

Knox also stated that he never spoke to Mr Bruce to consult him on whether TTC could set new prices.

On the E-mail dated 9 October 2000 from Mr Miller to Mr Knox

- 50 With regard to 'MEI special prices' for sales in Northern Ireland and Eire referred to in an e-mail of 9 October 2000, Mr Miller (in Appendix 1 to TTC's representations) explained that the e-mail was intended [...].

On the e-mail dated 26 September 2001 from Mr Shufflebotham to Mr Knox

- 51 Mr Shufflebotham, in his statement at Appendix 4 to TTC's representations, explained that, in the e-mail of 26 September 2001, one TTC customer, [...], found it could not compete with another (former John Bruce customer), [...], which enjoyed a special discounted price for MEI automatic slack adjusters. Mr Shufflebotham stated that the purpose of the e-mail was to persuade TTC Marketing to give [...] the same discounts as [...] so that it could compete with that company. He claimed that his comment 'either amount contravenes the JBUK pricing policy' was an 'overstatement' and argued that this comment was intended as background information to support his request for a special price for his customer, [...].

II LEGAL AND ECONOMIC ASSESSMENT

A Introduction

- 52 Section 2(1) of the Act sets out the Chapter I prohibition of agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade within the UK and have as their object or effect the prevention, restriction or distortion of competition within the UK.⁵ Such agreements, decisions or concerted practices are prohibited unless they are excluded or exempted in accordance with the provisions of Part 1 of the Act.

B The relevant market

- 53 There is only an obligation on the Director to define the market where it is impossible, without such a definition, to determine whether the agreement is liable to affect trade in the UK and has as its object or effect the prevention,

⁵ Under section 2(3) of the Act, subsection (1) applies only if the agreement, decision or practice is, or is intended to be, implemented in the UK.

restriction or distortion of competition.⁶ Nevertheless, market definition is the first step in the process of assessing penalties.⁷

THE RELEVANT PRODUCT MARKET

- 54 The relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the product's characteristics, their prices and their intended use.⁸
- 55 The MEI brand of automatic slack adjusters competes in the UK with several other brands of automatic slack adjuster such as ATM [...], Baltec, BPW, Crewson Brunner, Ecksil, Fermi, Haldex, Knorr-Bremse [...], Martec, Meritor, Sabex, SBT and Truck Technik. According to John Bruce (letter of 28 August 2001) Haldex have [...] percent of the market, MEI [...] percent, Martec and Truck Technik [...] percent each and the rest less than [...] percent each.
- 56 Although the different brands perform the same function, in practice they are not all substitutes for one another. In general they fall into two categories: Haldex type or non-Haldex type. Haldex of Sweden introduced slack adjusters to the European market in the 1960s and the patent on its design expired some 6 years ago. Haldex produces two basic types of automatic slack adjusters but, because there are a large number of different makes of commercial vehicles and different models for each make, it produces almost 800 variations. Haldex adjusters are available for virtually all commercial vehicles – but other manufacturers of Haldex type adjusters do not appear to cater for as wide a range as Haldex (MEI caters for 350 variations). Non-Haldex type adjusters (BPW, Crewson Brunner, Fermi, Martec, Meritor and SBT) are made for a very much more limited range of vehicles. Because slack adjusters for each model within the range of makes are not demand side substitutes for each other there may be multiple markets for slack adjusters. Also, the degree of interchangeability between different brands of Haldex type and non-Haldex type adjuster varies depending upon the make and model. There appears to be complete interchangeability for only the most popular vehicles.
- 57 It is likely that supply side substitutability between different variants of the same basic type of automatic slack adjuster make it appropriate to include all automatic slack adjusters for all models of commercial vehicles within the definition of the relevant product market. Existing suppliers could cater for a greater range of vehicle models, if prices for automatic slack adjusters for a

⁶ Case T-62/98 Volkswagen v Commission [2000] 5 CMLR 853.

⁷ The Director General of Fair Trading's Guidance as to the Appropriate Amount of a Penalty, March 2000, OFT 423, paragraph 2.3.

⁸ Paragraph 7 of the Commission Notice on the Definition of the Relevant Market for the purposes of Community Competition Law, OJ 1997 C372/5, [1998] 4 CMLR 177.

particular vehicle model rose significantly, because differences between each variation are relatively minor.

- 58 There is also a range of manual slack adjusters. For example, Haldex produces both manual and automatic adjusters. Manual slack adjusters and automatic slack adjusters are mechanically interchangeable. However, the manual versions are less convenient although much cheaper than automatic slack adjusters (a Haldex automatic slack adjuster is priced typically around 300 EUR and a manual around 40 EUR). Because of this they are unlikely to be regarded as reasonably interchangeable with automatic slack adjusters. Therefore the Director considers that the relevant product market does not include manual slack adjusters.
- 59 Given the possibility of supply side substitution from producers of Haldex and non-Haldex type automatic slack adjusters, the Director has based his analysis on the market for all automatic slack adjusters of both Haldex and non-Haldex type. This is reinforced by the fact that the agreements involving the parties do not distinguish between different types of MEI automatic slack adjuster in respect of different models of vehicle.

THE RELEVANT GEOGRAPHIC MARKET

- 60 The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas.⁹
- 61 John Bruce, is the sole importer of MEI automatic slack adjusters to the UK. The agreement between Fleet Parts and John Bruce concerned the distribution of these products in the UK. TTC is a national distributor of automotive parts. Competition with other suppliers of automatic slack adjusters takes place on a nationwide basis. The Director has concluded, therefore, that the relevant geographic market is at least as wide as the whole of the UK.
- 62 It is possible that customers outside the UK, in particular those in the Republic of Ireland (Southern Ireland is mentioned in the correspondence quoted in Part I, Section D), might have been supplied by the parties or by other suppliers of automatic slack adjusters within the UK. The geographic market could, therefore, include the Republic of Ireland as well as the UK. As this issue does not affect the Director's decision he has not found it necessary to reach a conclusion on it.

⁹ Paragraph 8 of the Commission Notice on the Definition of the Relevant Market for the purposes of Community Competition Law, OJ 1997 C372/5, [1998] 4 CMLR 177.

C The Chapter I prohibition

AGREEMENTS BETWEEN UNDERTAKINGS, DECISIONS BY ASSOCIATIONS OF UNDERTAKINGS AND CONCERTED PRACTICES

Agreement between John Bruce and Fleet Parts

- 63 John Bruce and Fleet Parts are undertakings for the purposes of section 2 of the Act.
- 64 In the correspondence between John Bruce and Fleet Parts (see Part I, Section D above), the letter dated 7 March 2000 from Fleet Parts stated that 'You advised your agreement to the memo detail' and the memorandum to all sales staff, 2 March 2000, stated that 'both Fleet Parts and John Bruce (UK) Ltd have agreed to adopt a common pricing policy to our customers...' and that 'As Fleet Parts and John Bruce (UK) Ltd customer base overlap, it is important that we adhere to the agreed prices'. Also, the memorandum from John Bruce to all sales staff, 9 March 2000, stated that 'Fleet Parts Limited, who are also distributing the same product range, are selling at the same prices. Our customers will try to get us to compete with Fleet Parts on price by telling us that they can get better prices from Fleet Parts. Such stories will not be true and we can ignore them'. The Director believes that these extracts clearly indicate that an agreement existed between John Bruce and Fleet Parts to fix prices for the sale of MEI automatic slack adjusters.

Agreement between John Bruce and TTC

- 65 TTC is an undertaking for the purposes of section 2 of the Act.
- 66 The instructions which John Bruce circulated to TTC sales staff, on 28 September 2000 and identified in section E of Part I above, stated, with regard to the MEI slack adjuster, that 'A good product with a good margin, which must not be spoilt by distributors competing among themselves on price'. They also stated that 'Understanding that if these prices are broken without agreement supplies will stop. 'Lead time lengthen''. The two internal TTC E-mails (see Part 1, Section E (a) and (d)) contain evidence of TTC's agreement to this condition, since they stress that distributors whom TTC supplied should adhere to those minimum resale prices required by John Bruce. The E-mail dated 6 October 2000 from Darren Miller to other TTC personnel states that 'please find in the attached file special prices which were set up by John Bruce UK' and 'please remember any other special deals this needs to be controlled through marketing

so John [Bruce] can be kept in the loop on the reasons for the request and whether he wants to agree to it'. This evidence indicates that TTC was actively implementing the RPM policy of John Bruce. Moreover, the E-mail dated 26 September 2001 (Part 1, Section E (d)), suggests that Unipart and TTC were still concerned about contravening John Bruce's pricing policy after John Bruce had sent around his letter of 30 August 2001 (Part 1, Section E (c)).

67 Separately, John Bruce has admitted, in its letter of 28 August 2001 to the Office (see Part 1, Section F), that it 'adopted a policy of giving distribution to any and all legitimate candidates in the market but asked them to maintain resale prices'. Given the admission of RPM by John Bruce, in its letters of 28 August and 5 November 2001, and evidence suggesting its active implementation by TTC, the Director is of the view that an RPM agreement existed between John Bruce and TTC for MEI automatic slack adjusters, notwithstanding TTC's arguments to the contrary in its response to the Office's notice of 7 January 2002. This view was reinforced by John Bruce's written and oral representations.

THE OBJECT OR EFFECT OF PREVENTING, RESTRICTING OR DISTORTING COMPETITION WITHIN THE UK

68 The Director has considered whether the agreements have as their object or effect the prevention, restriction or distortion of competition within the UK for the purposes of the Chapter I prohibition. The Director's view is that if an anti-competitive object has been shown there is no need to consider its effects. This follows the European Court which has stated '... there is no need to take account of the concrete effects of an agreement once it has as its object the prevention, restriction or distortion of competition'.¹⁰

69 The object of an agreement for the purposes of this analysis is to be found by the objective assessment of aims of the agreement.¹¹ If the nature of the agreement is to prevent, restrict or distort competition that is its object for the purposes of section 2 of the Act.

70 Although John Bruce has argued that 'its conduct could not be in breach of any competition law since it was developing competition where next to none had previously existed' (in its letter of 5 November 2001), an agreement to 'adopt a common pricing policy' to 'adhere to the agreed prices' and to engage in 'selling at the same prices' (see Part I, Section D) has as its object the direct fixing of selling prices as set out in the illustrative list of agreements to which the Chapter I prohibition may apply in section 2(2)(a) of the Act. This is reinforced by John

¹⁰ Cases 56 and 58/64 Consten and Grundig v Commission [1966] ECR 299, 342 [1966] CMLR 418, 473.

¹¹ Cases 29 & 30/83 CRAM & Rheinzink v Commission [1984] ECR 1679 [1985] 1 CMLR 688.

Bruce's admission, (in its letter of 28 August 2001) that it was 'adopting a policy of giving distribution to any and all legitimate candidates in the market but asked them to maintain resale prices'.

- 71 TTC's internal policy on special price deals which were 'controlled through marketing so John [Bruce] can be kept in the loop on the reasons for the request and whether he wants to agree to it' (see Part 1, Section E (a) above) suggested that the object of TTC's agreement with John Bruce on the resale of MEI slack adjusters was to adhere to John Bruce's fixed prices and not deviate from them unless John Bruce agreed.
- 72 For the reasons set out above the Director has concluded that the agreements between John Bruce and Fleet Parts and between John Bruce and TTC had the object of preventing, restricting or distorting competition within the UK.

APPRECIABILITY

- 73 The Director believes that agreements which explicitly and directly fix prices, or the resale prices of any product or service have appreciable effects on competition.¹² The Director does not accept the argument based on *Volk v Vervaecke*, advanced by John Bruce, that the agreements have only an insignificant effect on competition and fall outside the Chapter I prohibition.
- 74 In *Volk v Vervaecke*, Volk manufactured 0.2 percent of washing machines in Germany. It gave absolute territorial protection to its distributor in Belgium and Luxembourg but this covered only 0.6 percent of total sales in that territory. It was on this basis that the Court of Justice found that there was only an insignificant effect on competition and the agreements fell outside the scope of Article 85(1) (now Article 81(1)). However, the MEI automatic slack adjusters sold by the parties has been estimated by John Bruce to represent approximately [...] percent of the UK market for automatic slack adjusters in September 2001 and [...] percent in September 2000. These market shares are significantly greater than in *Volk v Vervaecke*. Because of this the Director does not consider that the agreements produced only insignificant effects on the market.
- 75 The Director therefore takes the view that both agreements had as their object an appreciable prevention, restriction or distortion of competition and have infringed the Chapter I prohibition.

¹² See OFT Guideline 401 'The Chapter I prohibition' (March 1999), paragraph 3.5.

EFFECT ON TRADE WITHIN THE UK

- 76 The agreements between the parties were implemented in the UK.¹³ They may affect trade within the UK within the meaning of section 2 of the Act. The fact that the agreements may also affect trade within other EU Member States or between Member States, as claimed by John Bruce, does not affect the Director's jurisdiction under the Act.

EXCLUSIONS

- 77 There are vertical as well as horizontal elements to the price fixing agreement between John Bruce and Fleet Parts because John Bruce acted as the importer of MEI automatic slack adjusters as well as having acted as a distributor of the adjusters up until 31 August 2000. The supply agreement between John Bruce and TTC was vertical in nature. The vertical supply of the products by John Bruce to Fleet Parts and the vertical supply of the products to TTC may therefore fall within the scope of the Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000 (the Exclusion Order) and, as a result, could benefit from an exclusion.¹⁴
- 78 However, the Exclusion Order does not apply to price fixing agreements.¹⁵ As the object of the agreement between John Bruce and Fleet Parts was price fixing the vertical part of this agreement did not benefit from the exclusion from the Chapter I prohibition. Similarly, as the object of the agreement between John Bruce and TTC was price fixing, it too did not benefit from the Exclusion Order.
- 79 There are no other relevant exclusions from which these agreements could benefit.

EXEMPTION

- 80 John Bruce has argued that its agreements would qualify for an exemption under section 9 of the Act. The Director cannot reach a decision as to whether the agreements satisfy the criteria for individual exemption without formal notification. In this case he believes that price fixing does impose on the undertakings concerned restrictions which are not indispensable to the attainment of objectives relating to improving production or distribution or promoting technical or economic progress. John Bruce has not presented evidence which demonstrates that the MEI automatic slack adjusters that it

¹³ Section 2(3) of the Act.

¹⁴ The Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000, SI 2000/319.

¹⁵ Articles 3 and 4 of the Exclusion Order.

supplied would have been unable to compete with the Haldex brand in the absence of price-fixing agreements.

III DECISION

A Agreement between John Bruce and Fleet Parts

81 On the basis of the above evidence the Director has decided that the agreement between John Bruce and Fleet Parts which fixed prices for the resale of MEI automatic slack adjusters from at least March 2000 until August 2001 had infringed the Chapter I prohibition.

B Agreement between John Bruce and TTC

82 On the basis of the above evidence the Director has decided that the agreement between John Bruce and TTC which imposed RPM for MEI automatic slack adjusters from at least September 2000 until August 2001 had infringed the Chapter I prohibition.

IV ACTION

83 This section sets out the action which the Director intends to take and his reasons for it.

A Directions

84 Section 32(1) of the Act provides that if the Director has made a decision that an agreement infringes the Chapter I prohibition, he may give directions to such person or persons as he considers appropriate to bring the infringement to an end. No directions are necessary in this case as the Director is satisfied that price fixing between John Bruce and Fleet Parts and RPM between John Bruce and TTC has ceased.

B Financial Penalties

85 Section 36(1) of the Act provides that on making a decision that agreements have infringed the Chapter I prohibition, the Director may require the undertaking which is a party to an agreement to pay him a penalty in respect of the infringement. The parties to the agreements are John Bruce, Fleet Parts and TTC.

86 The Director may impose a penalty, on an undertaking which has infringed the Chapter I prohibition only if he is satisfied that the infringement has been committed intentionally or negligently.¹⁶ The Director is satisfied that John Bruce, Fleet Parts and TTC have intentionally or negligently infringed the Chapter I prohibition. The agreements clearly were intended to fix resale prices for MEI automatic slack adjusters and the parties could not have been unaware that price fixing amounted to a restriction of competition.

87 The Director intends to impose a penalty on John Bruce, Fleet Parts and TTC.

Immunity from penalties

88 Section 39(1) of the Act provides for limited immunity for small agreements where the agreement is not a price fixing agreement. The agreements between the parties in question are price fixing agreements and therefore there is no limited immunity from penalties for the Parties.

CALCULATION OF THE PENALTIES

89 In accordance with section 38(8) of the Act, the Director must have regard to the guidance on penalties issued under section 38(1) of the Act when setting the amount of the penalty.¹⁷

Step 1 - starting point

90 The starting point for determining the level of penalty is calculated by applying a percentage rate to the 'relevant turnover' of an undertaking, up to a maximum of 10 percent. The 'relevant turnover' is the turnover of the undertaking in the relevant product market and relevant geographic market affected by the infringement in the last financial year.¹⁸ To be consistent with the Competition Act 1998 (Determination of Turnover for Penalties Order) 2000¹⁹, the Director considers that the last financial year is the business year preceding the date when the infringement ended. John Bruce sent out by first class post a letter dated 30 August 2001 to terminate the infringement. On the basis of the evidence, the Director is of the view that distributors received this letter on 31 August 2001 and therefore the infringement ended, at the latest, on that day.

91 The actual percentage rate which is applied to the relevant turnover depends upon the nature of the infringement.²⁰ The more serious the infringement, the higher the likely percentage rate. When making his assessment, the Director will

¹⁶ Section 36(3) of the Act.

¹⁷ The Director General of Fair Trading's Guidance as to the Appropriate Amount of a Penalty, March 2000, OFT 423.

¹⁸ Paragraph 2.3 of OFT 423.

¹⁹ Section 36(8) of the Act and SI 2000/309.

²⁰ Paragraph 2.4 of OFT 423.

consider a number of factors, including the nature of the product, the structure of the market, the market share(s) of the undertakings(s) involved in the infringement, entry conditions and the effect on competitors and third parties.²¹ The damage caused to consumers whether directly or indirectly will also be an important consideration. An assessment of the appropriate starting point is carried out for each of the undertakings concerned, in order to take account of the real impact of the infringing activity of each undertaking on competition.²²

Step 2 - adjustment for duration

- 92 The starting point may be increased to take into account the duration of the infringement.²³

Step 3 - adjustment for other factors

- 93 The penalty figure may be adjusted as appropriate to achieve policy objectives such as deterring undertakings from engaging in anti-competitive practices.²⁴

Step 4 - adjustment for further aggravating and mitigating factors

- 94 The Director has the power to increase the penalty where there are other aggravating factors, or decrease it where there are mitigating factors.²⁵

Step 5 - adjustment to prevent the maximum penalty being exceeded and to avoid double jeopardy

- 95 No penalty which has been fixed by the Director may exceed 10 percent of the turnover of the undertaking calculated in accordance with the provisions of the Competition Act (Determination of Turnover for Penalties Order) 1998.²⁶ The section 36(8) turnover of an undertaking is not restricted to the turnover in the relevant product and relevant geographic market.²⁷

PENALTY FOR JOHN BRUCE

Step 1 - starting point

- 96 John Bruce's turnover of MEI automatic slack adjusters in the financial year preceding the termination of RPM (1 September 1999 to 31 August 2000) was

²¹ Paragraph 2.5 of OFT 423.

²² Paragraph 2.6 of OFT 423.

²³ Paragraph 2.7 of OFT 423.

²⁴ Paragraph 2.8 of OFT 423.

²⁵ Paragraph 2.10 of OFT 423.

²⁶ Section 36(8) of the Act and SI 2000/309.

²⁷ Footnote 6 of OFT 423.

£[...]. Its turnover for other slack adjusters in the relevant product and geographic market was [...]. The relevant turnover for John Bruce is therefore £[...].

97 The Director considers price fixing agreements to be among the most serious infringements caught under the Chapter I prohibition.²⁸ Normally the starting point for determining the penalty for such an infringement would be likely to be at or near 10 percent of the relevant turnover. However, when making his assessment in this case the Director has taken into account the special circumstances: that John Bruce had successfully introduced a new product into a market which other suppliers of automatic slack adjusters had found difficult to penetrate, increasing inter-brand competition; that John Bruce was a small new entrant competing in a market where one supplier (Haldex) had a very large share; and that purchasers of automatic slack adjusters benefited because the prices of MEI slack adjusters were some 25 percent below that of the leading product in the market. The Director is of the view that in these circumstances the otherwise pro-competitive effects arising from John Bruce's actions and the resulting benefits for customers in this case merit special treatment in respect of penalty, notwithstanding the price-fixing nature of the infringement. The Director has therefore decided that a starting point of 5 percent of relevant turnover is appropriate for John Bruce in these special circumstances. He nevertheless considers that in most circumstances RPM is a very serious infringement of the Chapter I prohibition and a starting point at or near 10 percent is likely to be imposed.

98 The starting point for John Bruce is therefore £[...].

Step 2 - adjustment for duration

99 John Bruce had agreed to price fixing from at least March 2000 and terminated it on 31 August 2001. The Act came into force on 1 March 2000. Although the duration for the purposes of calculating a penalty was 18 months the Director has decided not to increase the penalty for duration in this case.

Step 3 - adjustment for other factors

100 The Director considers price-fixing to be a very serious infringement of the Act, due to the significant harm it may inflict on the competitive process.³⁰ However, the Director believes that in the case of John Bruce the penalty calculated in the

²⁸ Paragraph 2.4 of OFT 423.

²⁹ Paragraph 2.4 of OFT 423 singles out price-fixing as one of the most serious infringements of the Act.

earlier steps would act as an adequate deterrent. He therefore does not propose to adjust the amount of penalty for the purpose of deterrence.

Step 4 - adjustment for further aggravating and mitigating factors

- 101 There were no aggravating factors.
- 102 In recognition of John Bruce's full co-operation with the investigation the Director has reduced the amount of the penalty by 10 percent.
- 103 The Director has also reduced the amount of penalty by 10 percent for not disputing the facts.
- 104 On receipt of the Notice under section 26 of the Act, John Bruce immediately ended the policy of resale price maintenance, and issued a notice to dealers advising them they were free to determine a resale price for MEI products. In view of this swift remedial action taken by John Bruce, the Director has reduced the amount of the penalty by a further 20 percent.
- 105 The total percentage deducted for mitigating circumstances is therefore 40 percent, reducing the penalty for John Bruce to £[...] or 3 percent of its relevant turnover.

Step 5 - adjustment to prevent the maximum penalty being exceeded and to avoid double jeopardy

- 106 There are no further adjustments since the penalty does not exceed the section 36(8) turnover of John Bruce.

PENALTY FOR FLEET PARTS

Step 1 - starting point

- 107 Fleet Parts' turnover for MEI automatic slack adjusters in its financial year preceding the termination of RPM, (from 1 May 2000 to 30 April 2001) was £[...]. Its turnover for other slack adjusters in the relevant product and geographic market was £ [...]. The relevant turnover for Fleet Parts is therefore £[...].
- 108 Fleet Parts, as a distributor helped to introduce MEI automatic slack adjusters to the market. It, nevertheless, benefited from the lack of price competition between distributors of the adjusters. Because of this the Director has decided that a starting point of 8 percent would be appropriate for Fleet Parts.

109 The starting point for Fleet Parts is therefore £[...].

Step 2 - adjustment for duration

110 As with John Bruce there is no adjustment for the duration of the agreement with John Bruce.

Step 3 - adjustment for other factors

111 The Director believes that in the case of Fleet Parts the penalty calculated in the earlier steps would act as an adequate deterrent. He therefore does not propose to adjust the amount of penalty for the purpose of deterrence.

Step 4 - adjustment for further aggravating and mitigating factors

112 There were no aggravating factors.

113 In recognition of Fleet Parts' full co-operation with the investigation the Director has decided to reduce the amount of the penalty by 10 percent.

114 The Director has also reduced the amount of penalty for Fleet Parts by 10 percent for not disputing the facts.

115 On receipt of a notice under section 26 of the Act, Fleet Parts introduced a competition law audit to ensure compliance with the Act, and established a staff training programme to ensure that all company employees were aware of the requirements of the legislation. In view of this swift remedial action by Fleet Parts, the Director has reduced the penalty by a further 10 percent.

116 The total percentage deducted for mitigating circumstances is therefore 30 percent, reducing the penalty for Fleet Parts to £[...] or 5.6 percent of its relevant turnover.

Step 5 - adjustment to prevent the maximum penalty being exceeded and to avoid double jeopardy

117 There are no further adjustments since the penalty does not exceed the section 36(8) turnover of Fleet Parts.

PENALTY FOR TTC

Step 1 - starting point

118 TTC's turnover of MEI automatic slack adjusters in its financial year preceding the termination of RPM (1 January 2000 to 31 December 2000) was £[...]. Its turnover for other slack adjusters in the relevant product and geographic market was £[...]. The relevant turnover for TTC is therefore £[...].

119 As is the case with respect to Fleet Parts, the Director has decided that the starting point is 8 percent of the relevant turnover for TTC and therefore £[...].

Step 2 - adjustment for duration

120 The agreement between John Bruce and TTC was in force from at least September 2000 to 31 August 2001. Therefore, there is no adjustment for duration.

Step 3 - adjustment for other factors

121 To ensure that the penalty would act as an adequate deterrent to both TTC and Unipart as a group, whose group turnover was £[...] in the financial year preceding the termination of RPM, the Director has increased the penalty on TTC by a factor of three to £[...].

Step 4 - adjustment for further aggravating and mitigating factors

122 TTC has co-operated fully with the investigation and, in recognition of that, the Director has reduced the amount of penalty by 10 percent.

123 However, Partco Group Limited had a policy document (Annex 9 in its written representations) which required all divisions and subsidiaries reporting to it, as TTC did on the management side, to inform the solicitor of Partco Group Limited of any arrangements, such as price fixing, which were potentially in conflict with competition laws of the UK and the EU. As TTC acted in breach of this specific internal compliance policy the Director has decided to increase the penalty on TTC by 10 percent.

124 As a result, the amount of penalty remains unchanged at £[...] or 24 percent of its relevant turnover.

Step 5 - adjustment to prevent the maximum penalty being exceeded and to avoid double jeopardy

125 There are no further adjustments since the penalty does not exceed the section 36(8) turnover of Unipart.

PAYMENT OF PENALTY

- 126 The Director requires John Bruce (UK) Limited to pay him a penalty of £[...] (3 percent of its relevant turnover), Fleet Parts Limited to pay him a penalty of £[...] (5.6 percent of its relevant turnover) and in respect of TTC, EW (Holdings) Limited to pay him a penalty of £[...] (24 percent of its relevant turnover). The penalties must be paid within 3 months of the date of this decision.
- 127 If any party fails to pay the penalty within the deadline specified above, and has not brought an appeal against the imposition or amount of the penalty within the time allowed or such an appeal has been made and determined, the Director can commence proceedings to recover the required amount as a civil debt.

John Vickers
Director General of Fair Trading