

Decision of the Competition and Markets Authority

**Galvanised steel tanks for water storage
main cartel infringement**

Case CE/9691/12

19 December 2016

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Confidential information in the original version of this Decision has been redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [X].

The names of individuals mentioned in the description of the infringement in the original version of this Decision have been removed from the published version on the public register. Names have been replaced by a general descriptor of the individual's role.

Contents

	Page
1. Introduction and executive summary	4
2. Factual background	7
A. Industry overview.....	7
B. The relevant market.....	12
C. Parties	21
D. The CMA's investigation.....	32
3. Conduct of the Parties	36
A. Introduction.....	36
B. Origins of the main cartel activity.....	36
C. Customer allocation.....	40
D. Price-fixing.....	48
E. Implementation of the main cartel arrangements	56
F. Balmoral Tanks' entry as a new competitor for the supply of CGSTs.....	72
G. Meeting on 11 July 2012	74
H. Contact between the Parties between July and November 2012	77
4. Legal Assessment.....	81
5. The CMA's action.....	93
A. The CMA's decision.....	93
B. Directions	93
C. Financial penalties.....	93
Annex A – Defined Terms	112
Annex B – Schedule of cartel meetings.....	114

1. Introduction and executive summary

1.1 By this decision, of which Annexes A and B form an integral part, (the ‘Main Cartel Decision’) the Competition and Markets Authority (CMA) has concluded that the following undertakings (each ‘a Party’, together ‘the Parties’) participated in an agreement and/or concerted practice which infringed the prohibition imposed by section 2(1) (the ‘Chapter I prohibition’) of the Competition Act 1998 (‘the Act’) and Article 101 of the Treaty on the Functioning of the European Union (‘Article 101 TFEU’):¹

- CST Industries (UK) Limited (‘CST UK’) and its parent CST Industries Inc. (‘CST Inc.’) (together, ‘CST’),²
- Franklin Hodge Industries Limited (‘Franklin Hodge’) and its parent Carter Thermal Industries Limited (‘Carter Thermal’) (together, ‘FHI’),³
- Galglass Limited, in liquidation (‘Galglass’) and its parents Kernoff Limited (‘Kernoff’) and Irish Industrial Tanks Limited (‘IIT’), and
- KW Supplies Limited (‘KW Supplies’), as economic successor to Kondea Water Supplies Limited now in liquidation (‘Kondea’).

1.2 Specifically, the CMA has concluded that, between 29 April 2005 and 27 November 2012, and in the case of CST between 29 April 2005 and 2 May 2012, the Parties participated in an agreement and/or concerted practice which had as its object the prevention, restriction or distortion of competition in relation to the supply of cylindrical galvanised steel tanks for water storage (‘CGSTs’) in the UK.

1.3 This infringement (the ‘main cartel infringement’) took the form of price-fixing, bid-rigging and market sharing by way of customer allocation, with the Parties involved agreeing which customers ‘belonged’ to which Party and agreeing benchmark prices for a range of tanks, which were used to calculate the maximum discount on price which would be offered to

¹ The basis for attributing liability for the infringement is explained in paragraphs 2.45 to 2.100 below.

² CST reported the conduct to the CMA’s predecessor organisation, the Office of Fair Trading (the ‘OFT’) and was granted a marker for Type A immunity under the OFT’s leniency policy on 2 May 2012.

³ FHI approached the CMA’s predecessor organisation, the Office of Fair Trading (the ‘OFT’) on 26 April 2013 and was granted a marker for Type C leniency under the OFT’s leniency policy on 3 May 2013.

customers ‘belonging’ to another Party to the arrangement. These arrangements were agreed and reinforced in regular meetings attended by representatives of the Parties involved, as well as in bilateral exchanges concerning particular bids.

- 1.4 By way of a separate decision issued on 19 December 2016 (the ‘Information Exchange Decision’), the CMA has also found that FHI, Galglass, Kernoff, IIT and KW Supplies, together with Balmoral Tanks Limited (‘Balmoral Tanks’) and its parent Balmoral Group Holdings Limited (‘Balmoral Group’) (together, ‘Balmoral’), participated in a concerted practice which had as its object the prevention, restriction or distortion of competition in relation to the supply of CGSTs in the UK and thereby infringed the Chapter I prohibition of the Act and Article 101 TFEU. That infringement (the ‘information exchange infringement’) took the form of an exchange of commercially sensitive information regarding current pricing and future pricing intentions which took place at a meeting on 11 July 2012 (or, in the case of Galglass, following that meeting). While the main cartel infringement provides the background against which the information exchange infringement took place, the CMA has concluded that Balmoral was not a party to the main cartel infringement.
- 1.5 On 17 March 2016, the CMA settled the case with FHI, Galglass, Kernoff, IIT and KW Supplies (‘the Settling Parties’) in respect of both the main cartel infringement and the information exchange infringement, as announced by the CMA on 21 March 2016.⁴
- 1.6 The CMA has imposed a financial penalty on each of the Settling Parties in respect of their participation in the main cartel infringement in accordance with the terms of the settlement. The CMA has not imposed an additional penalty on the Settling Parties in respect of their participation in the information exchange infringement taking into account the particular circumstances of the case. CST was granted full immunity from financial penalties under the CMA’s leniency policy on 17 March 2016.⁵ Provided that CST continues to comply with the conditions

⁴ See the CMA’s case page at <https://www.gov.uk/cma-cases/investigation-into-the-supply-of-galvanised-steel-tanks-for-water-storage>.

⁵ *Applications for leniency and no-action in cartel cases* (OFT1495, July 2013), adopted by the CMA Board (the ‘CMA leniency guidance’).

of the CMA's leniency policy, no financial penalty will be imposed on CST.

- 1.7 For ease of reference, Annex A includes a table of defined terms used in this decision.

2. Factual background

A. Industry overview

- 2.1 The main cartel infringement concerns the supply of CGSTs for water storage used primarily for the purposes of fire suppression, serving sprinkler systems in buildings in the UK. CGSTs supply water to sprinkler systems and are replenished from the mains water supply. This section provides a brief overview of the requirements imposed on water storage tanks used in fire suppression systems, considers the types of storage tanks produced by the Parties and their end uses, the route to market, production method and different types of galvanised steel tanks ('GSTs').
- 2.2 Sprinkler systems are typically installed at large commercial and some public-sector premises such as those of retailers, warehouse operators, office buildings and schools.⁶ The demand for these systems is driven by such factors as the requirements of the insurance industry, the advice and/or expectations of the Fire and Rescue Service, the Government, and property owners and by demand in the construction industry for commercial and industrial property.⁷
- 2.3 GSTs are made from flat sheets of galvanised steel and assembled on-site on foundations (usually concrete) and are lined to prevent corrosion. Peripherals connect them to the sprinkler system and control water flow. They can be cylindrical or rectangular in shape, with the shape generally being determined by the location of the tank. Broadly speaking, CGSTs are generally preferred for outdoor locations, and are cheaper to produce, especially in larger sizes. Rectangular GSTs are normally provided to sites where ground area is at a premium, for example where the tank might have to fit inside a building.⁸ Rectangular GSTs tend to be more expensive to produce as they need to be reinforced by using

⁶ [Armstrong Priestley senior employee] witness statement, 30 October 2013, paragraph 4 [URN 4936].

⁷ Hughes, K (ed) *Market Report 2012 – Fire Protection Report*, Key Note January 2012, pages 1, 29, 46 and 64.

⁸ [Franklin Hodge senior employee 2] witness statement, 4 February 2014, paragraph 27 [URN 4963]; [Franklin Hodge employee 4] witness statement, 11 November 2013, paragraph 14 [URN 4962]; [Galglass senior employee 2] witness statement, 5 September 2013, paragraph 15 [URN 4949]. [CST UK senior employee 2] witness statement, 22 August 2013, page 11 [URN 4958] also mentions that CST UK's CGSTs take three or four weeks to manufacture compared with four to five weeks for rectangular GSTs.

thicker steel or internal bracing which is not required for CGSTs.⁹ Several sources indicate that the vast majority of GSTs sold are cylindrical.¹⁰

- 2.4 GSTs used in sprinkler systems also need to be fitted with a device known as a vortex inhibitor. A vortex inhibitor stops the fire sprinkler tank pump within the tank from drawing in air if the water level gets too low and allows a safer and more efficient operation of the tank.¹¹
- 2.5 GSTs are built to order to fit the requirements of the customer's specific needs, but typical volumes for CGSTs are 27-30m³ (often used for schools) and 135m³ (often used for supermarkets).¹² Fire suppression contractors ('FS contractors') will generally request bids from a number of GST suppliers in relation to each tank.¹³ The supplier who wins the bid will then build the tank on-site, generally under the supervision of the FS contractor.¹⁴
- 2.6 With the exception of Kondea, the Parties supplied GSTs as part of a range of tanks made from other materials. Kondea supplied only GSTs. Set out below is the range of tanks each Party supplied and a short description of their primary end uses.

Tanks manufactured/supplied by the Parties

- 2.7 A range of tanks were manufactured or supplied by the Parties during the period March 2005 to November 2012:

⁹ [Franklin Hodge senior employee 3] witness statement, 5 February 2014, paragraph 28 [URN 4966].

¹⁰ For CST UK, [CST UK senior employee 1] witness statement, 9 May 2013, page 13 [URN 2448]: '98% of all tanks supplied were cylindrical.' [Franklin Hodge senior employee 3] [§<] For Galglass, [Galglass senior employee 2] witness statement, 5 September 2013, paragraph 15 [URN 4949]: 'The vast majority of sprinkler tanks we build are round...'; [Argus Fire Protection senior employee] live testimony, Livenote transcript [criminal trial], 12 June 2015, page 5, lines 18-25 and page 6, lines 1-5 [URN 6616].

¹¹ [Building Research Establishment senior employee] witness statement, 15 April 2013, page 3 [URN 2418].

¹² [CST UK senior employee 1] witness statement, 20 February 2013, pages 4-5 [URN 0689]; [Compco employee] witness statement, 2 July 2013, paragraph 14 [URN 2460]; [Customer 1 senior employee] witness statement, 12 November 2013, paragraphs 4 and 14 [URN 4938].

¹³ See customer witness statements, for example, [Automatic Fire Control Ltd senior employee] witness statement, 3 July 2013, paragraph 2 [URN 2468]; [Compco employee] witness statement, 2 July 2013, paragraph 2 [URN 2460]; [Customer 1 senior employee] witness statement, 12 November 2013, paragraph 6 [URN 4938].

¹⁴ [Automatic Fire Control Ltd senior employee] witness statement, 3 July 2013, paragraph 3 [URN 2468].

- CST UK's range of tanks included CGSTs and rectangular GSTs, glass enamel coated steel tanks and epoxy coated steel tanks,¹⁵
- Galglass' range included CGSTs and rectangular GSTs, glass enamel coated steel tanks, epoxy-coated steel tanks and concrete tanks,¹⁶
- Franklin Hodge supplied CGSTs and rectangular GSTs and cylindrical and rectangular aluminium tanks,¹⁷
- Kondea supplied CGSTs and rectangular GSTs manufactured by CST UK.¹⁸

2.8 In addition to tanks manufactured or supplied by the Parties, Balmoral Tanks also supplied an extensive range of tanks, which included but was not limited to, glass reinforced plastic tanks ('GRPs'), hot pressed steel tanks and from January 2012 CGSTs.¹⁹

2.9 By way of background, the primary end uses for the above categories of tanks can be summarised as follows:

- cylindrical and rectangular GSTs: storage of water for use in fire suppression systems, irrigation systems²⁰ and agricultural water storage,²¹
- glass enamel and epoxy coated steel tanks: storage of water, waste water, slurry, bioenergy digestion, general liquids and dry bulk materials,²²
- concrete tanks: civil engineering projects,²³

¹⁵ CST's response dated 30 July 2015 to the CMA's request for information dated 16 July 2015, paragraph 1.a [URN 6117].

¹⁶ [Galglass senior employee 2] witness statement, 5 September 2013, paragraph 14 [URN 4949].

¹⁷ FHI's response dated 18 August 2015 to the CMA's request for information dated 16 July 2015, paragraph 1.1 [URN 6830].

¹⁸ [CST UK senior employee 1] witness statement, 20 February 2013, pages 7-8 [URN 0689]; [CST UK senior employee 2] witness statement, 22 August 2013, pages 2, 3 and 12 [URN 4958]; [Kondea senior employee] interview transcript, 27 November 2012, page 40 [URN 0690].

¹⁹ Balmoral's response dated 24 July 2015 to the CMA's request for information dated 16 July 2015, paragraph 1 [URN 6101]. In 2014 Balmoral further extended the range of tanks it produces by acquiring Galglass' industrial tanks and concrete tanks business.

²⁰ [CST UK senior employee 2] witness statement, 22 August 2013, page 2 [URN 4958] and CST's response dated 30 July 2015 to the CMA's request for information dated 16 July 2015, paragraph 1.c [URN 6117]; Balmoral's response dated 24 July 2015 to the CMA's s26 notice dated 16 July 2015, paragraph 1 [URN 6101].

²¹ [CST UK senior employee 1] witness statement, 20 February 2013, page 4 [URN 0689]; [CST UK senior employee 2] witness statement, 22 August 2013, page 2 [URN 4958].

²² [Galglass senior employee 2] witness statement, 5 September 2013, paragraph 14 [URN 4949]; CST's response dated 30 July 2015 to the CMA's request for information dated 16 July 2015, paragraph 1.c [URN 6117].

²³ [Galglass senior employee 2] witness statement, 5 September 2013, paragraph 14 [URN 4949].

- aluminium tanks: potable or process water storage and storage of non-potable water for use in fire suppression,²⁴
- GRPs: storage of potable water and storage of non-potable water for use in fire suppression,²⁵
- hot press steel tanks: water and waste water storage.²⁶

2.10 Evidence demonstrates that between 2005 and 2012 the majority of GSTs sold in the UK were for use in fire suppression systems.²⁷ CST UK sometimes also supplied GSTs for use in irrigation systems, for example for golf courses, but witnesses from CST UK suggest that this accounted for 5% or less of CST UK's total GST sales.²⁸

2.11 The immediate customers of GST suppliers are usually FS contractors appointed by end-users to design, supply and install sprinkler systems, with the FS contractor deciding which tank to use as one of many inputs needed to complete a contract.²⁹ Major FS contractors include Tyco, Compco and Hall & Kay. Occasionally, end-users buy tanks directly from

²⁴ FHI's response dated 18 August 2015 to the CMA's request for information dated 16 July 2015, paragraph 1.2 [URN 6830].

²⁵ Balmoral's response dated 24 July 2015 to the CMA's request for information dated 16 July 2015, paragraph 1 [URN 6101] refers to 'cold water storage'; [Balmoral Tanks senior employee 1] witness statement, 27 February 2014, paragraphs 23–24 [URN 5007]; note of OFT meeting with Balmoral 21 January 2013 [URN1576]. Customer evidence supports that GRPs are sometimes used in sprinkler systems. Further detail is set out below.

²⁶ Balmoral's response dated 24 July 2015 to the CMA's request for information dated 16 July 2015, paragraph 1 [URN 6101]; [Balmoral Tanks senior employee 1] witness statement, 27 February 2014, paragraph 23 [URN 5007]; note of OFT meeting with Balmoral 21 January 2013 [URN 1576].

²⁷ For CST UK: [CST UK senior employee 1] witness statement, 20 February 2013, page 4 [URN 0689]; [CST UK senior employee 2] witness statement, 22 August 2013, page 2 [URN 4958]; For Franklin Hodge: [Franklin Hodge senior employee 1] stated that: 'Franklin Hodge's business can be divided approximately as follows: [X]. [Franklin Hodge senior employee 1] prepared statement, 23 May 2013, paragraph 34 [URN 6527]; [Galglass senior employee 2] witness statement, 5 September 2013, paragraph 14 [URN 4949] states that Galglass manufactured galvanised steel tanks 'predominantly' for the fire sprinkler market; Balmoral listed fire sprinkler as the only end use application for its GSTs in its response dated 24 July 2015 to the CMA's s26 notice dated 16 July 2015, paragraph 1 [URN 6101].

²⁸ [CST UK senior employee 1] witness statement, 20 February 2013, page 4 [URN 0689]; [CST UK senior employee 2] witness statement, 22 August 2013, page 2 [URN 4958].

²⁹ Witnesses mainly mention dealing with FS contractors and only rarely with end-users directly. For example, [CST UK senior employee 1] witness statement, 20 February 2013, page 15 [URN 0689] discusses the customers targeted by the cartel. [Franklin Hodge senior employee 1] prepared statement, 23 May 2013, paragraph 65 [URN 6527] notes that Franklin Hodge sold predominantly to FS contractors, [X]. The witness statements of several FS contractors' state that they contract with end-users before buying inputs such as sprinkler tanks from suppliers, dealing with the parties' salespeople for tanks. [Automatic Fire Control Ltd senior employee]'s account is typical: 'The system we work is that a client comes to us for a sprinkler system to be manufactured and fitted into their premises... We go to the suppliers in the industry to obtain costs for the various components of the sprinkler system and then work out a profit margin... We tend to get two quotes for the tank but it depends how quickly we need it, sometimes we go straight to one Tank Company for a price.' [Automatic Fire Control Ltd senior employee] witness statement, 3 July 2013, paragraph 2 [URN 2468].

tank suppliers before having FS contractors install systems,³⁰ or put requirements into contracts as to which tank to use.³¹

Certification of GSTs

- 2.12 End-users' insurers typically require the use of certified products for fire suppression, so for most contracts for the supply of tanks used in fire suppression systems the tanks have to meet certain industry standards.³² In the UK, the Loss Prevention Certification Board ('LPCB')³³ adopted the LPS 1276 standard in 2009 which implements the EU's EN 12845 standard.³⁴ It replaces the slightly less stringent LPS 1254.³⁵ Manufacturers whose tanks have received LPCB approval are listed in the LPCB's Red Book of approved products. The other standard manufacturers may need to meet is the Factory Mutual Approvals Standard.³⁶
- 2.13 LPS 1276 imposes requirements on tank design³⁷ but does not require tanks to be of a particular material or shape. However, it does state that current industry experience shows that the following materials may be suitable: galvanised steel, glass enamel coated steel, glass-reinforced plastic or concrete (with minimum standards for each type, such as the required amount of galvanising and type of lining for GSTs).³⁸

³⁰ [Customer 1 senior employee] witness statement, 12 November 2013, paragraph 7 [URN 4938]: [3<];

[Franklin Hodge senior employee 2] witness statement, 4 February 2014, paragraph 73 [URN 4963] [3<].

³¹ For example, some schools specify GRPs of a size common among schools.

³² Confirmed by [Building Research Establishment senior employee] witness statement, 15 April 2013, page 1 [URN 2418].

³³ The LPCB has existed for over 100 years and is now operated by BRE (formerly the government's Buildings Research Establishment, now privatised). It also certifies FS contractors to standard LPS 1048.

³⁴ http://www.redbooklive.com/download/pdf/LPS1276-1.1_SPNL.pdf.

³⁵ <http://www.redbooklive.com/download/pdf/LPS1254.pdf>. The CMA did not find evidence of the standard change affecting the types of sprinkler tank supplied, or the suppliers active, in the UK.

³⁶ See, for example, [CST UK senior employee 1] witness statement, 9 May 2013, page 13 [URN 2448] noting that most GSTs are covered by both LPCB and FM. A minority of UK clients may demand FM tanks explicitly: [CST UK senior employee 1] witness statement, 9 May 2013, page 10 [URN 2448]. See [FM Approvals senior employee] witness statement, 8 January 2014, page 4 [URN 4940]: Franklin Hodge, CST UK, Galglass and Balmoral Tanks were all accredited to manufacture tanks to FM Approvals Standard 4020.

³⁷ For example, tanks must have access for inspection, heating to prevent freezing in winter, certain drainage features and vortex inhibitors to prevent supply problems when the water volume is low.

³⁸ LPS 1276: issue 1.2 – Requirements for the LPCB certification and listing of above ground suction tanks for sprinkler systems, para 3.2.2, guidance on superior supply tanks.

- 2.14 As CGSTs are built to the same standards, they are a commoditised product for which the predominant parameter of competition is price, though customer service and after-care can also be factors.³⁹
- 2.15 Until Balmoral Tanks' entry into the GST market in early 2012, CST UK, Galglass and Franklin Hodge were the only UK-based LPCB approved manufacturers of GSTs and (together with Tyco Fire Products Manufacturing Limited) vortex inhibitors.⁴⁰

B. The relevant market

Purpose of assessing the relevant market

- 2.16 When applying the Chapter I prohibition or Article 101 TFEU, the CMA is not obliged to define the relevant market, unless it is impossible, without such a definition, to determine whether the agreement and/or concerted practice under investigation had as its object or effect the appreciable prevention, restriction or distortion of competition.⁴¹ No such obligation arises in this case.
- 2.17 However, the CMA will still form a view of the relevant market in order to calculate the Parties' 'relevant turnover' in the market affected by the infringement, for the purposes of establishing the level of any financial penalties that may be imposed on each Party.⁴²
- 2.18 In this respect, the Competition Appeal Tribunal (the 'CAT') and the Court of Appeal have accepted that it is not necessary to carry out a

³⁹ [Franklin Hodge senior employee 1] prepared statement, 23 May 2013, paragraph 35 [URN 6527]. Confirmed by customers, see: [Argus Fire Protection senior employee] witness statement, dated 21 May 2013, page 2 [URN 2450]; [Armstrong Priestley senior employee] witness statement, dated 30 October 2013, paragraph 14, [URN 4936]; [Compco employee] witness statement, dated 2 April 2013, paragraph 2 [URN 2460]; [Tyco senior employee] witness statement, 21 March 2013, paragraph 6 [URN 2413].

⁴⁰ [Building Research Establishment senior employee] witness statement, 15 April 2013, pages 8 to 11 [URN 2418] and exhibits [3<] to [3<] [URN 2431 to URN 2442]; Balmoral Tanks obtained LPCB certification for CGSTs for sprinkler systems on 16 December 2011 and for vortex inhibitors on 24 May 2012. See exhibit [3<] [URN 5010] and [3<] [URN 5011].

⁴¹ Judgment of 6 July 2000, *Volkswagen AG v Commission*, T-62/98, EU:T:2000:180, paragraph 230 and judgment of 21 February 1995, *SPO and Others v Commission*, T-29/92, EU:T:1995:34, paragraph 74. This principle has also more recently been applied by the CAT in *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, in which the CAT stated at [176] that '[i]n Chapter I cases, unlike Chapter II cases, determination of the relevant market is neither intrinsic to, nor normally necessary for, a finding of infringement'.

⁴² *Guidance as to the appropriate amount of a penalty* (OFT423; September 2012), adopted by the CMA Board, paragraphs 2.1 and 2.3 to 2.11.

formal analysis of the relevant product market in order to assess the appropriate level of the penalty. Rather, the CMA must be 'satisfied, on a reasonable and properly reasoned basis, of what is the relevant product market affected by the infringement.'⁴³ As the Court of Appeal has stated:

'... the market which is taken for calculation of the turnover relevant for Step 1 on a penalty assessment may properly be assessed on a broad view of the particular trade which has been affected by the proved infringement, rather than by a relatively exact application of principles that would be relevant for a formal analysis, such as substitutability or, on the other hand, by limiting the turnover in question to sales of the very products or services which were the direct subject of the price-fixing arrangement or other anti-competitive practice.'

- 2.19 The CMA is also not bound by market definitions adopted in previous cases, although earlier definitions can, on occasion, be informative when considering the appropriate market definition. Equally, although previous cases can provide useful information, the relevant market must be identified according to the particular facts of the case in hand.

Framework for assessing the relevant market

- 2.20 The analysis below first considers what products and/or services are part of the relevant market in this case (the relevant product market) and the geographic scope of the relevant market (the relevant geographic market). Finally, it sets out the CMA's findings on the relevant market in this case (conclusion on the relevant market).

Relevant product market

- 2.21 In this case, the focal product of the infringement is CGSTs for use in fire suppression systems. This section examines whether other types of

⁴³ *Argos and Littlewoods v OFT and JJB Sports v OFT* [2006] ECWA Civ 1318 ('Argos, Littlewoods and JJB'), paragraphs 169 to 173 and 189 and CAT judgment on penalty, *Argos and Littlewoods v OFT* [2005] CAT 13, paragraph 178.

tanks may be substitutes for GSTs in this application, and whether there is substitutability between the different sizes and shapes of GSTs.

Substitutability between GSTs and other types of tank

- 2.22 From a demand-side perspective, the evidence indicates that FS contractors do not consider tanks made from other materials to be viable substitutes for GSTs in sprinkler systems as GSTs are less expensive to purchase, which is in part a reflection of the fact that they are cheaper to produce.⁴⁴ The only possible exception to this are GRPs which, as explained below, may be a substitute for GSTs in certain circumstances.
- 2.23 Most notably, it is clear from the witness evidence provided by FS contractors that even when prices of GSTs increased significantly during the period the cartel was in operation, FS contractors did not switch to tanks made from other materials.⁴⁵
- 2.24 With respect to the substitutability between GSTs and GRPs, the evidence suggests that GRPs may in certain circumstances act as a substitute for GSTs in fire suppression applications. Balmoral estimated that 85% of GRPs are used for the storage of potable water, but the evidence in the case also suggests that there is an overlap between GRPs and GSTs for use in fire sprinkler systems with low water volume requirements.⁴⁶ The evidence further indicates that rectangular GSTs face more competition from GRPs sold by a number of manufacturers.⁴⁷

⁴⁴ CST's response dated 30 July 2015 to the CMA's request for information dated 16 July 2015, paragraph 1.c [URN 6117] states that GSTs are the least expensive tank option. [CST UK senior employee 1] stated in his live evidence:

'Q. Are these glass tanks -- they are much more expensive to purchase; isn't that right?

A. Yes, correct, yes.

Q. I mean, a little earlier you were saying that a cylindrical steel tank might be in the order of £20,000, whereas a glass tank would be in the order of £100,000 or more; is that right?

A. Yes, depending on the size but they were significantly more expensive, yes.' [CST UK senior employee 1] live testimony, Livenote transcript [criminal trial], 8 June 2015, page 68, lines 7-15 [URN 6613].

⁴⁵ Customers that submitted evidence mentioned only Franklin Hodge, CST UK, Galglass, Kondea and Balmoral Tanks, as supplying them with sprinkler tanks during the period 2005 to 2012. [Argus Fire Protection senior employee] mentioned Braithwaite (a producer of sectional hot-pressed steel tanks) as another potential supplier of sprinkler tanks [3<]. See [Argus Fire Protection senior employee] witness statement, 21 May 2013, page 2 [URN 2450].

⁴⁶ Note of OFT meeting with Balmoral, 21 January 2013, page 5 [URN 1576].

⁴⁷ [Franklin Hodge senior employee 1] prepared statement, 23 May 2013, paragraph 24 [URN 6527]; Franklin Hodge summary report dated 21 July 2010 [URN 1990]; [Kondea senior employee] interview transcript, 27 November 2012, page 40 [URN 0690]: 'CST manufacture a galvanised rectangular tank and then the

- 2.25 According to [Balmoral Tanks senior employee 1], ‘The GRPs are cuboid in shape and are usually supplied to and installed on behalf of mechanical and engineering contractors as a part of a larger building project. GRPs can only be constructed to a more limited height than GSTs. There is an overlap in the uses to which each type of tank can be deployed, and each is often used for fire protection sprinkler systems.’⁴⁸ This is also supported by customer witness evidence, for example, from [Armstrong Priestley senior employee], who commented: ‘Schools, commercial buildings and residential often have either no tank or either a GRP or steel tank can be considered.’⁴⁹
- 2.26 However, the evidence also suggests that GRPs represented only a small proportion of all sprinkler tanks sold. FS contractors that provided data on their purchases mainly bought GSTs. For example, Tyco (the largest contractor) bought only one Balmoral GRP tank (and 14 Balmoral GSTs) out of over 150 orders between 2009 and 2012.⁵⁰ Moreover, it does not appear from the customer witness evidence that FS contractors switched to GRPs when the price of GSTs rose. Instead, it may be that there are submarkets for GRPs in particular uses. For example, where end customers require partitioned dual-use tanks to store both drinking water and sprinkler water, a feature which GSTs do not offer; or for smaller sizes of GRP that have low water volume requirements, for example for use in sprinkler systems in schools,⁵¹ where there is some overlap between GRPs and GSTs.
- 2.27 From a supply side perspective, the evidence indicates that manufacturers of other types of tanks cannot easily switch to making

competition for that is numerous...More than just, you know, the four, if you like, steel cylindrical tank manufacturers then there’s more because you can get those tanks in glass reinforced plastic.’

⁴⁸ [Balmoral Tanks senior employee 1] witness statement, 27 February 2014, paragraph 24 [URN 5007].

⁴⁹ [Armstrong Priestley senior employee] witness statement, 30 October 2013, paragraph 4 [URN 4936]; [Argus Fire Protection senior employee] provided copies of quotations for tank jobs which include bids by GST and GRP manufacturers for the installation of a school tank, see [Argus Fire Protection senior employee] witness statement, 21 May 2013, page 4 [URN 2450] and exhibit [§<] [URN 2454]; [Customer 2 senior employee] witness statement, 24 September 2013, paragraph 5 [URN 4925] refers to Galglass and Franklin Hodge quoting for a tank to be fitted in a school.

⁵⁰ [Tyco senior employee] witness statement, 21 March 2013 [URN 2413] and exhibit [§<] [URN 2414].

⁵¹ [Franklin Hodge senior employee 1] prepared statement 23 May 2013, paragraph 66 [URN 6527]; Note of OFT meeting with Balmoral, 21 January 2013, page 5 [URN 1576]; [Armstrong Priestley senior employee] witness statement, 30 October 2013, paragraph 4 [URN 4936]; [Balmoral Tanks senior employee 1] witness statement, 27 February 2014, paragraphs 24 and 38 [URN 5007]; [Balmoral Group senior employee 1] witness statement, 9 December 2013, paragraph 28 [URN 4951]. Among UK GST suppliers, only Balmoral also supplies GRPs.

GSTs due to the significant costs of setting up production. Balmoral, an already experienced manufacturer of GRPs, had to acquire dedicated machinery and personnel and obtain accreditation of tanks and components in order to start producing GSTs. The costs for the steel sheets punching machine alone was estimated by one Balmoral witness to cost between [£300,000 and £1,500,000].⁵²

Substitutability between different sizes and shapes of GSTs

- 2.28 The evidence suggests that the size and shape of GST used for any particular project is determined by the end-user's specific requirements.⁵³ Therefore, from a demand-side perspective, there may be few or no substitutes to the particular shape and/or size of GST installed, given the requirements of the sprinkler system.
- 2.29 From a supply-side perspective, the evidence reveals that all sizes of GSTs are manufactured using identical machinery and processes.⁵⁴ In his prepared statement [Franklin Hodge senior employee 1] stated that: 'All galvanised steel tanks are manufactured identically, and as such, the choice of which galvanised steel tanks a customer chooses to buy will be influenced by price.'⁵⁵ Therefore, any manufacturer supplying one size of GST accredited to LPS 1276 could in principle switch production between the various sizes of GSTs.
- 2.30 However, the evidence on the degree in practice of supply-side substitutability between the different shapes of GSTs is mixed. The fact that rectangular shaped GSTs and cylindrical shaped GSTs are manufactured using the same machinery⁵⁶ would tend to suggest a degree of supply-side substitutability between them. In addition, most

⁵² [Balmoral Group senior employee 1] witness statement, 9 December 2013, paragraph 29 [URN 4951] (actual figure replaced with a range to protect confidential information).

⁵³ [CST UK senior employee 1] witness statement, 20 February 2013, pages 4-5 [URN 0689]; [CST UK senior employee 2] witness statement, 22 August 2013, page 11 [URN 4958]; [Franklin Hodge senior employee 2] witness statement, 4 February 2014, paragraph 29 [URN 4963]; [Franklin Hodge employee 4] witness statement, paragraph 15 [URN 4962].

⁵⁴ FHI's response dated 18 August 2015 to the CMA's request for information dated 16 July 2015, paragraph 1.5 [URN 6830].

⁵⁵ [Franklin Hodge senior employee 1] prepared witness statement, 23 May 2013, paragraph 37 [URN 6527].

⁵⁶ FHI's response dated 18 August 2015 to the CMA's request for information dated 16 July 2015, paragraph 1.6 [URN 6830].

GST manufacturers produce both cylindrical and rectangular tanks.⁵⁷ The evidence as to whether suppliers could profitably switch to making rectangular GSTs in response to a price rise relative to CGSTs is inconclusive, however. Rectangular tanks require thicker steel and more internal bracing to be strong enough to meet LPS 1276 and tend to take longer to make and install, which makes them more expensive.⁵⁸ Moreover, whereas cylindrical tanks are made from common size sheets of metal and are sold in a range of standard sizes, rectangular tanks are always bespoke to the design requirements specified by the customer and can be designed in almost any type of configuration that has straight walls.⁵⁹ This suggests that manufacturers may incur additional costs in switching production between rectangular GSTs and CGSTs.

Conclusion on the relevant product market

- 2.31 As set out above, the focal product of this investigation is CGSTs. The CMA has examined the constraints that this product faces and considers that the evidence indicates that (with the possible exception of GRPs), tanks made from other materials are unlikely to be considered demand or supply side substitutes for GSTs for fire suppression systems. There is some limited evidence that GRPs can be used as a substitute for GSTs for small-size fire sprinkler tanks, but it is not clear that GRPs actually constrained the pricing of GSTs.
- 2.32 For the purpose of calculating the penalty in this case, the CMA has therefore adopted a conservative approach, and considers that the relevant market concerns GSTs only.
- 2.33 Having examined whether there is substitutability between different sizes and shapes of GSTs, the CMA considers that the evidence suggests that from a supply-side perspective all sizes of GSTs are likely to be in the same market, but the evidence on whether cylindrical and rectangular GSTs may be substitutable is more mixed. Demand-side substitutability

⁵⁷ Between 2005 and 2012 Franklin Hodge, CST UK and Galglass produced both cylindrical and rectangular GSTs, while Balmoral Tanks (which only entered the market in early 2012) produced only CGSTs.

⁵⁸ [CST UK senior employee 2] witness statement, 22 August 2013, page 11 [URN 4958]; [Franklin Hodge senior employee 3] witness statement, 5 February 2014, paragraph 28 [URN 4966].

⁵⁹ FHI's response dated 18 August 2015 to the CMA's request for information dated 16 July 2015, paragraph 1.3 [URN 6830]; FHI letter dated 20 January 2016, paragraph 2.3, [URN 7770]; CST's response dated 30 July 2015 to the CMA's request for information dated 16 July 2015, paragraph 1.b [URN 6117].

is very limited. Notwithstanding the fact that the same machinery and processes are used to produce both cylindrical and rectangular GSTs, the evidence in this case as to the supply-side substitutability between CGSTs and rectangular GSTs is inconclusive. In light of this, the CMA adopts a conservative approach and defines the relevant product market as the supply of CGSTs for water storage used in sprinkler systems.

Relevant geographic market

2.34 The evidence suggests that UK tank suppliers serve the whole UK.⁶⁰ There are some indications of geographic focus of sales effort, namely on the Southern part of England.⁶¹ However, customer witness statements and Top 20 customer lists provided by the Parties show that customers are based across the UK.⁶² This includes in particular customers from Northern Ireland, which also appear to have been included in the customer allocation arrangements which formed part of the main cartel.⁶³ In addition, [CST UK senior employee 1]'s witness evidence refers to a list of contractors that pre-dates the cartel in August 2004 which included customers based in the Republic of Ireland and Northern Ireland as potential sales targets for [Kondea senior employee]'s (then) new company:

'The minutes identify [Kondea senior employee] as our proposed sole distributor for all Vulcan's galvanised steel tank products, cylindrical and rectangular used in the sprinkler industry. The contractors [Kondea senior employee] would sell to was also discussed and listed on the attached sheet. Lists of

⁶⁰ Sales staff were assigned sales areas for which they had responsibility. For Balmoral Tanks: [Balmoral Group senior employee 1] witness statement, 9 December 2013, paragraph 20 [URN 4951]; For Franklin Hodge, [Franklin Hodge senior employee 4] witness statement, 4 February 2014, paragraphs 12, 20-21 [URN 4965]. CST made all its UK sales of GSTs for use in fire suppression systems through Kondea, which operated from an office in Staleybridge and [redacted] during the period 2005 to 2012. [CST UK senior employee 1] witness statement, 20 February 2013, pages 8 and 12-13 [URN 689]; [CST UK senior employee 2] witness statement, 22 August 2013, page 4 [URN 4958].

⁶¹ [Balmoral Group senior employee 1] witness statement, 9 December 2013, paragraph 20 [URN 4951].

⁶² For example, Argus Fire Protection Company is based in Stourbridge, West Midlands, Armstrong Priestley in Leeds, Automatic Fire Control in Swindon, Wiltshire, [Customer 1] in Devon, [Customer 2] in Scotland and Compco has offices in Worcester, Hemel Hempstead, Leeds, East Kilbride and Newcastle; Top 20 customer lists: CST UK [URN 0222], Franklin Hodge [URN 0216], Galglass [URN 0570].

⁶³ Examples of customer allocation lists that contain customers based in Northern Ireland and/or the Republic of Ireland allocated to Galglass and Franklin Hodge; [URN 0078], [URN 0110], [URN 1688], [URN 1724], [URN 1805], [URN 4675], [URN 4687].

contractors are named and represent those who [Kondea senior employee] felt he had the best chance of getting business from and with whom he had a better relationship. At the time of making this list the galvanised steel tank market was a competitive one therefore personal contacts were very important to sustaining business in that particular market place. At the bottom of the typed list is a handwritten list of contractors based outside of mainland UK, all Ireland and Northern Ireland. I added this list. I cannot recall why I added these additional items other than their names could only have come from [Kondea senior employee] himself.⁶⁴

This would also suggest that in a competitive market customers based in Northern Ireland and customers in mainland GB may be considered to be part of the same geographic market.

- 2.35 The evidence on whether suppliers from the Republic of Ireland constrained the suppliers within the UK is mixed. As with Northern Ireland, Top 20 customer lists provided by the Parties include customers based in the Republic of Ireland, and customers in the Republic of Ireland also appear to have been included in the customer allocation arrangements which formed part of the main cartel.⁶⁵ Furthermore, it would appear that IIT, based in the Republic of Ireland, did supply customers in Northern Ireland.⁶⁶
- 2.36 There is also evidence that UK tank suppliers exported sprinkler tanks to other countries in Europe, including to the Republic of Ireland, and beyond.⁶⁷ By contrast, the CMA has not seen evidence that suppliers based outside the UK made sales of GSTs for sprinkler systems into the UK (with the possible exception of IIT as outlined above). Only one GST

⁶⁴ [CST UK senior employee 1] witness statement, dated 9 May 2013, pages 5 and 6 [URN 2448].

⁶⁵ Examples of customer allocation lists that contain customers based in Northern Ireland and/or the Republic of Ireland allocated to Galglass and Franklin Hodge; [URN 0078], [URN 0110], [URN 1688], [URN 1724], [URN 1805], [URN 4675], [URN 4687].

⁶⁶ Website IIT (www.iit.ie/tank-supply-and-installation.html); email from [CST UK employee] to [Galglass senior employee 1] dated 8 September 2005 [URN 3650]; email [CST UK senior employee 2] to [Galglass senior employee 1] dated 13 October 2005 [URN 3925].

⁶⁷ CST's response dated 30 July 2015 to the CMA's request for information dated 16 July 2015, paragraph 2 [URN 6117]; FHI's response dated 18 August 2015 to the CMA's request for information dated 16 July 2015, paragraph 2.2 [URN 6830]; [Galglass senior employee 2] witness statement, 5 September 2013, paragraph 39 [URN 4949] mentions Galglass exporting sprinkler tanks to the Netherlands and Germany.

manufacturer based outside the UK, Avasco Tanks and Silos, has ever obtained LPCB accreditation and been listed in the LPCB Red Book with GSTs meeting LPS 1254 and 1276, but it has never sold GSTs into the UK.⁶⁸

- 2.37 Customer evidence also suggests that the Parties supplied sprinkler tanks throughout the UK,⁶⁹ but that GST suppliers based outside the UK may not have exerted any competitive pressure on GST prices in the UK because of high transport costs. For example, in his witness evidence [Hall & Kay senior employee] states that ‘I have been asked if I know of or use any companies in mainland Europe for galvanised steel tanks, particularly Belgium. We do not use any companies other than the ones I have previously mentioned.⁷⁰ I do not know any manufacturers outside the UK and would not use any as the associated transport costs would mean they would be prohibitively expensive.’⁷¹

Conclusion on the relevant geographic market

- 2.38 For the reasons set out above, the evidence indicates that the geographic scope of the market is at least the whole of the UK. There is some evidence that it may include the Republic of Ireland.⁷² However, given that no foreign-based supplier (with the possible exception of IIT making sales into Northern Ireland) made sales into the UK, the CMA considers that the geographical scope is not likely to be wider than the UK and the Republic of Ireland.
- 2.39 On the basis that the evidence on whether GST suppliers based in the Republic of Ireland constrained prices of GSTs in the UK is inconclusive and, adopting a conservative approach for the purpose of determining

⁶⁸ Avasco, formerly Stokota, based in Belgium, was listed in the Red Book between 2002 and 2013. See [Building Research Establishment senior employee] witness statement, dated 15 April 2013, pages 8 to 11 [URN 2418] and [Avasco Tanks and Silos senior employee] witness statement, dated 20 November 2013, pages 2 and 4 [URN 4939]: [§<].

⁶⁹ [Hall & Kay senior employee] witness statement, 2 October 2013, pages 1-2 [URN 4928]: ‘I would say that the split of orders between Franklin Hodge and Vulcan is approximately 80/40 and in general there is nothing geographical about the split, i.e. where the companies are based in relation to the location of the build.’

⁷⁰ In his witness statement [Hall & Kay senior employee] named Franklin Hodge and CST UK as Hall & Kay’s preferred suppliers.

⁷¹ [Hall & Kay senior employee] witness statement, 2 October 2013, page 2 [URN 4928].

⁷² There are clear examples of documented customer allocation lists and price lists which apply to customers based outside the UK (specifically, in the Republic of Ireland), but there is very little evidence that suppliers based in the Republic of Ireland constrained prices of GSTs in the UK.

the ‘relevant turnover’ of the Parties having regard to the CMA’s guidance as to the appropriate amount of a penalty,⁷³ the CMA defines the relevant geographic market in this case as the UK.

Conclusions on the relevant market

- 2.40 In summary, in light of the evidence considered above, for the purposes of calculating the financial penalties in this investigation, the CMA finds the relevant market to be the supply of CGSTs for water storage used in sprinkler systems in the UK.
- 2.41 The CMA has defined the relevant market in this case for the sole purpose of determining the level of financial penalty. It has reached the conclusion set out above without prejudice to its discretion to adopt a different product market definition in any subsequent case in the light of the relevant facts of that case.

C. Parties

Legal background: undertakings and the attribution of liability

- 2.42 The Chapter I prohibition and Article 101 TFEU apply to agreements and concerted practices between ‘undertakings’ as well as to decisions by ‘associations of undertakings’.

Undertakings

- 2.43 The term ‘undertaking’ has been defined by the Court of Justice (CJ) to cover ‘...every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed...’.⁷⁴
- 2.44 The concept also covers an economic unit, even if in law that unit consists of several natural or legal persons.⁷⁵

⁷³ OFT423, September 2012, originally published by the Office of Fair Trading and adopted by the CMA Board.

⁷⁴ Judgment in *Klaus Höfner and Fritz Elser v Macrotron GmbH*, C-41/90, EU:C:1991:161, paragraph 21.

⁷⁵ Judgment in *P Akzo Nobel NV v Commission*, C-97/08, EU:C:2009:536, paragraph 55.

Attribution of liability

Parental liability

2.45 Companies belonging to the same corporate group will often constitute a single undertaking within the meaning of the Chapter I prohibition/Article 101 TFEU.

2.46 The fact that a subsidiary company has separate legal personality as such does not prevent legal responsibility for its conduct being attributed to its parent company.

2.47 A parent company can be held jointly and severally liable for an infringement committed by a subsidiary company where, at the time of the infringement, that parent company:

- is able to exercise 'decisive influence' over the conduct of the subsidiary, and
- does in fact exercise decisive influence,

such that the two entities can be regarded as a single economic unit and thus jointly and severally liable.⁷⁶

2.48 In the case of a wholly owned subsidiary, the CJ has held that there is a rebuttable presumption that the parent company exerts decisive influence over the subsidiary company's conduct and that the parent and subsidiary company constitute a single undertaking.⁷⁷ It is for the parent company in question to rebut the presumption by adducing sufficient evidence to demonstrate that the subsidiary company acts independently on the market.⁷⁸

⁷⁶ Judgment in *P Akzo Nobel NV v. Commission*, EU:C:2009:536, at paragraph 58.

⁷⁷ Judgment of 15 June 2005, *Tokai Carbon v Commission*, T-71/03, EU:T:2005:220, paragraphs 59 to 60; judgment of 15 September 2005, *Daimler Chrysler v Commission*, T-325/01, EU:T:2005:322, paragraphs 218 to 221; judgment of 30 September 2003, *Michelin v Commission*, T-203/01, EU:T:2003:250, paragraph 290.

⁷⁸ Judgment in *Akzo Nobel NV v. Commission*, EU:C:2009:536, at paragraph 61.

Economic Succession

- 2.49 The general principle is that liability for an infringement of the EU and UK competition rules rests with the person(s) responsible for the operation of the undertaking that committed the infringement at the time the infringement was committed (the ‘personal responsibility’ principle).⁷⁹ However, in certain circumstances, an exception is made to the personal responsibility principle where responsibility for the operation of the undertaking has changed following the commission of the infringement (the ‘economic successor’ principle).
- 2.50 Exceptions to the personal responsibility principle have been made, in particular, in the following circumstances:
- where the person in control of the undertaking at the time the infringement was committed no longer exists⁸⁰ or is no longer economically active⁸¹, and/or
 - where there are ‘structural links’ (economic and organisational) between the original person responsible for the undertaking that committed the infringement and the economic successor.⁸²
- 2.51 In order to establish whether a person may be regarded as an economic successor, it is necessary to identify the ‘combination of physical and human elements [i.e. the assets and personnel] which contributed to the commission of the infringement and then to identify the person who has become responsible for their operation.’⁸³
- 2.52 It is not necessary that the economic successor has taken over all of the assets and personnel of the relevant undertaking that committed the infringement. It is sufficient that the successor has taken over ‘the main part of those physical and human elements that were employed in [the

⁷⁹ Judgment of 17 December 1991, *Enichem Anic SpA v. European Commission*, T-6/89, EU:T:1991:74, paragraph 236.

⁸⁰ Judgment in *Suiker Unie v. Commission*, C-40/73, EU:C:1975:174; judgment in *Compagnie Royale Asturienne des Mines and Rheinzink GmbH v. Commission*, EU:C:1984:130; judgment in *Enichem Anic SpA v. European Commission*, EU:T:1991:74.

⁸¹ Judgment in *NMH Stahlwerke GmbH v. Commission*, EU:T:1999:44; judgment in *Autorita Garante Della Concorrenza e del Mercato v Ente Tabacchi Italiani – ETI SpA*, C-280/06, EU:C:2007:775.

⁸² Judgment in *Aalborg Portland A/S v. Commission*, C-204/00 P, EU:C:2004:6.

⁸³ Judgment in *Enichem Anic SpA v. European Commission*, EU:T:1991:74, paragraph 237.

relevant business] and therefore contributed to the commission of the infringement in question.’⁸⁴

CST

CST Industries (UK) Limited (CST UK)

- 2.53 CST UK is a limited liability company registered in England and Wales, with company number 02212454. CST UK’s registered address is Cotes Park Lane Cotes Park, Industrial Estate, Alfreton, Derbyshire, DE55 4NJ.⁸⁵
- 2.54 CST UK was incorporated on 21 January 1988 under the name of Vulcan Tanks Limited. It was acquired by CST Inc. in 2002 and changed its name to CST Industries (UK) Limited on 1 May 2012.⁸⁶
- 2.55 CST UK’s principal activity is the manufacture and sale of GSTs for water storage and related products. It also acts as a distributor for CST Inc. of other non-galvanised tank products such as glass coated steel sheets and epoxy coated tanks.⁸⁷
- 2.56 As described further below, all of CST UK’s sales of GSTs in the UK during April 2005 to November 2012 were made by its exclusive distributor and installer, Kondea.⁸⁸
- 2.57 [CST UK senior employee 1] was [§<].⁸⁹ He reported to [CST Inc. senior employee 2], and to [CST Inc. senior employee 4].⁹⁰

⁸⁴ Judgment of 11 March 1999, *NMH Stahlwerke GmbH v. Commission*, T-134/94, EU:T:1999:44, paragraph 130.

⁸⁵ CST UK’s annual return dated 31 December 2015.

⁸⁶ Certificate of incorporation on change of name dated 1 May 2012.

⁸⁷ CST UK financial statements for the year ending 31 December 2014 and CST’s response dated 30 July 2015 to the CMA’s request for information dated 16 July 2015 [URN 6117].

⁸⁸ [CST UK senior employee 2] witness statement, 22 August 2013, page 3 [URN 4958]; [Kondea senior employee] interview transcript, 27 November 2012, pages 13 and 33 [URN 0690].

⁸⁹ [CST UK senior employee 1] witness statement, 20 February 2009, page 1 [URN 0689].

⁹⁰ [CST UK senior employee 1] witness statement, 20 February 2009, pages 4, 5 and 7 [URN 0689]. [CST Inc. senior employee 4] sold his shares in CST Inc. to Sterling Group LP [§<] in December 2006, though he remains [§<].

- 2.58 [CST UK senior employee 2] succeeded [CST UK senior employee 1] in [REDACTED] and remained in this role until [REDACTED].⁹¹ [CST UK senior employee 2] reported to [CST Inc. senior employee 2] until [REDACTED] when [CST Inc. senior employee 2] was replaced by [CST Inc. senior employee 1].⁹²
- 2.59 The current directors of CST UK are [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].⁹³
- 2.60 CST UK was (and continues to be) 100% owned by CST Inc. during the period April 2005 to November 2012.⁹⁴

CST Industries Inc. (CST Inc.)

- 2.61 CST Inc. is a manufacturer of factory coated metal storage tanks, aluminium domes, speciality covers and reclaimer systems. It is based in Kansas, USA and privately owned by a small group of investors in the US of which the majority shareholder is a private equity investment fund operated by The Sterling Group LP.⁹⁵

Liability

- 2.62 The CMA finds that CST UK was directly involved in, and is therefore liable for, the main cartel infringement for the period until 2 May 2012.
- 2.63 The CMA finds that CST Inc. is jointly and severally liable with CST UK for the main cartel infringement. This is on the basis that CST Inc. held a 100% shareholding in CST UK at the time of the main cartel infringement and therefore there is a rebuttable presumption that CST Inc. formed part of the same undertaking as CST UK.
- 2.64 The Main Cartel Decision is therefore addressed to CST Inc. and CST UK (together CST).

⁹¹ [CST UK senior employee 2] witness statement, 22 August 2013, page 1 [URN 4958].

⁹² [CST Inc. senior employee 1] resigned in [REDACTED] and his role was taken over by [CST Inc. senior employee 3] – see [CST UK senior employee 2] witness statement, 22 August 2013, page 15 [URN 4958].

⁹³ CST UK's annual return dated 8 January 2016.

⁹⁴ CST Industries, Inc. & subsidiaries financial statements for the years ended December 31, 2014 and 2013 [URN 6117].

⁹⁵ CST Industries, Inc. & subsidiaries financial statements for the years ended December 31, 2014 and 2013 [URN 6117].

Kondea / KW Supplies

Kondea Water Supplies Limited (Kondea)

- 2.65 Kondea is a limited liability company registered in England and Wales, with company number 05248121. Kondea's registered address is Booth & Co, Coopers House, Intake Lane, Ossett, WF5 0RG.⁹⁶
- 2.66 Kondea was incorporated on 1 October 2004. It was wholly owned by [X], [X] and [X]. [X] were on the board of directors, [X].⁹⁷ [X].⁹⁸
- 2.67 [X]. CST UK and Kondea subsequently entered into a number of agreements through which Kondea supplied and installed CST UK's cylindrical and rectangular GSTs to customers.⁹⁹
- 2.68 Kondea was put into voluntary liquidation by its creditors on 19 December 2013. [X] of PR Booth & Co was appointed as the liquidator.¹⁰⁰

KW Supplies Limited (KW Supplies)

- 2.69 KW Supplies is a limited liability company registered in England and Wales, with company number 08237260. KW Supplies' registered address is 3 Llys Owen, Gronant Prestatyn, Flintshire, LL19 9TJ.¹⁰¹
- 2.70 KW Supplies was incorporated on 2 October 2012 under the name of Kondea Water Services Limited. [X].¹⁰² [X].¹⁰³ On 5 July 2016 [Kondea senior employee] and [X] were [X] of KW Supplies.¹⁰⁴ All shares in KW

⁹⁶ AD01 Change of registered address, 20 March 2015.

⁹⁷ Kondea Annual Returns for period 2005-2013.

⁹⁸ [CST UK senior employee 2] witness statement, 22 August 2013, page 4 [URN 4958]; [Kondea senior employee] interview transcript, 27 November 2012, page 56 [URN 0690].

⁹⁹ [CST UK senior employee 1] witness statement, 20 February 2013, pages 7 and 8 [URN 0689]; [CST UK senior employee 1] live testimony, Livenote transcript [criminal trial], 8 June 2015, page 13, lines 4 – 25 [URN 6613]; [Kondea senior employee] interview transcript, 27 November 2012, pages 55-56 [URN 0690].

¹⁰⁰ Notice of appointment of liquidator, dated 24 December 2013.

¹⁰¹ KW Supplies annual return dated 2 October 2015.

¹⁰² Certificate of incorporation dated 2 October 2012. Kondea Water Services Limited changed its name to KW Supplies Limited on 24 October 2013 – see Certificate of incorporation on change of name, dated 24 October 2013.

¹⁰³ [X].

¹⁰⁴ [X].

Supplies are currently held by [X] with [Kondea senior employee] holding 40%.¹⁰⁵

- 2.71 On 19 September 2013, CST UK appointed KW Supplies as its non-exclusive agent to sell GSTs on its behalf in England, Scotland and Wales to certain named customers, so terminating the previous agreement with Kondea.¹⁰⁶

Liability

- 2.72 The CMA finds that Kondea was directly involved in the main cartel infringement.
- 2.73 The CMA considers that there is functional and economic continuity between Kondea and KW Supplies and, therefore, KW Supplies is the economic successor of Kondea for the purposes of the Chapter I prohibition and Article 101 TFEU. This is for the following reasons:
- At KW Supplies' incorporation [Kondea senior employee] had a [X] shareholding in KW Supplies. This was subsequently diluted to mirror the shareholding of Kondea during the period 2005 to 2012 with all shares being held by [X].¹⁰⁷
 - [X] of Kondea was also the sole director of KW Supplies from its incorporation on 2 October 2012 until his resignation on [X].
 - The company secretary of Kondea was appointed the sole director of KW Supplies on [X].¹⁰⁸
 - All former employees of Kondea are employed by KW Supplies.¹⁰⁹

¹⁰⁵ KW Supplies annual return dated 2 October 2015 states that [Kondea senior employee] has a 40% shareholding in KW Supplies with the remaining shares being held by [X].

¹⁰⁶ Emails from [Pinsent Masons (for CST)] to [OFT] dated 14 and 15 October 2013 [URN 4564] attaching a copy of the agreement between CST and Kondea Water Services Ltd (now KW Supplies) dated 19 September 2013.

¹⁰⁷ Kondea annual returns for the financial years 2005 to 2012 and KW Supplies annual returns for the financial years 2012 to 2015.

¹⁰⁸ KW Supplies Notice of appointment of director dated [X].

¹⁰⁹ For Kondea: [Kondea senior employee] interview transcript, dated 27 November 2012, page 56 [URN 0690]; [CST UK senior employee 2] witness statement, 22 August 2013, page 4 [URN 4958]; for KW Supplies' employees, see KW Supplies response dated 14 December 2015 to the CMA's request for information dated 17 November 2015 [URN 7507].

- The former directors of Kondea are now the current directors of KW Supplies.
- Both companies shared the same registered office until that of Kondea was moved on 12 December 2013 following its entry into liquidation.
- Though Kondea has now ceased economic activity, that activity was largely the same as the economic activity now carried out by KW Supplies.
- KW Supplies has a similar distribution arrangement with CST UK as Kondea had, although this is on a non-exclusive basis, whereas Kondea was CST UK's exclusive distributor.¹¹⁰
- KW Supplies has acquired relevant assets from Kondea.¹¹¹

2.74 On this basis, the CMA finds KW Supplies liable for the main cartel infringement.

2.75 The Main Cartel Decision is therefore addressed to KW Supplies.

FHI

Franklin Hodge Industries Limited (Franklin Hodge)

2.76 Franklin Hodge is a limited liability company registered in England and Wales, with company number 05005341. Franklin Hodge's registered address is Redhill Road, Hay Mills, Birmingham, B25 8EY.¹¹²

2.77 Franklin Hodge was incorporated on 5 January 2004 under the name of GW146 Limited. It changed its name to Franklin Hodge Limited on 4 February 2004 and then to Franklin Hodge Industries Limited on 24 February 2004.¹¹³

¹¹⁰ See footnote 88.

¹¹¹ KW Supplies' response dated 14 December 2015 to the CMA's request for information dated 17 November 2015 [URN 7507]; letter of the Kondea liquidator dated 22 May 2014 and annexes [URN 4982 and URN 4985].

¹¹² Franklin Hodge's annual return dated 08 January 2016.

¹¹³ Certificate of incorporation on change of name dated 04 February 2004 and 24 February 2004.

- 2.78 Franklin Hodge designs, manufactures and installs a range of site assembled tanks for the storage of water for fire sprinklers, industrial processes and drinking water.¹¹⁴ Franklin Hodge's liquid storage tanks are made from steel or aluminium tanks, in a cylindrical or rectangular shape. Its main business is the sale of CGSTs and rectangular GSTs for fire sprinkler systems.¹¹⁵
- 2.79 During the period April 2005 to November 2012, [Franklin Hodge senior employee 1] was [X].¹¹⁶ He resigned [X] on [X].¹¹⁷
- 2.80 The current directors of Franklin Hodge are [X], [X], [X] and [X].¹¹⁸
- 2.81 Since 2005, Franklin Hodge has been 100% owned by Carter Thermal.¹¹⁹

Carter Thermal Industries Ltd (Carter Thermal)

- 2.82 Carter Thermal is a limited liability company registered in England and Wales, with company number 00402454. Its registered address is Redhill Road, Yardley, Birmingham, West Midlands, B25 8EY.¹²⁰
- 2.83 Carter Thermal is a privately owned engineering group, mainly providing refrigeration and building services.¹²¹

Liability

- 2.84 The CMA finds that Franklin Hodge was directly involved in, and is therefore liable for, the main cartel infringement.
- 2.85 The CMA finds that Carter Thermal is jointly and severally liable with Franklin Hodge for the main cartel infringement. This is on the basis that Carter Thermal held a 100% shareholding in Franklin Hodge at the time of the main cartel infringement and therefore there is a rebuttable

¹¹⁴ Franklin Hodge annual accounts for the financial year ending on 31 December 2014.

¹¹⁵ [Franklin Hodge senior employee 1] prepared statement, 23 May 2013, paragraph 34 [URN 6527].

¹¹⁶ [Franklin Hodge senior employee 1] was appointed as [X].

¹¹⁷ [X].

¹¹⁸ Franklin Hodge's annual return dated 08 January 2016 and termination of appointment of a director dated 29 February 2016.

¹¹⁹ Franklin Hodge annual returns 2005-2016.

¹²⁰ Carter Thermal annual return dated 24 July 2015.

¹²¹ Carter Thermal financial statements for year ending 31 December 2014.

presumption that Carter Thermal formed part of the same undertaking as Franklin Hodge.

- 2.86 The Main Cartel Decision is therefore addressed to Franklin Hodge and Carter Thermal (together FHI).

Galglass / Kernoff / IIT

Galglass Limited (Galglass)

- 2.87 Galglass is a limited liability company registered in England and Wales, with company number 01455434. Galglass' registered address is c/o Duff & Phelps Ltd, The Chancery, 58 Spring Gardens, Manchester M2 1EW.¹²²
- 2.88 On 12 June 2014, joint administrators were appointed to Galglass and on 25 March 2015, Galglass moved from administration into creditors' voluntary liquidation.¹²³
- 2.89 The sole business of Galglass was the manufacture and/or supply of liquid storage tanks including cylindrical and rectangular GSTs, concrete tanks, glass and epoxy coated tanks and stainless steel tanks.¹²⁴
- 2.90 During the period March 2005 to November 2012, [Galglass senior employee 1] was [X].¹²⁵ He resigned on [X].¹²⁶
- 2.91 Since 2004, Galglass has been 100% owned by Kernoff.¹²⁷

¹²² AD01 Change of address form, dated 19 November 2015.

¹²³ Notice of administrator's appointment, dated 12 June 2014; Notice of move from administration to creditors' voluntary liquidation, date 13 March 2015. [X] and [X] of Duff & Phelps Ltd and [X] of The P&A Partnership, are currently acting as joint liquidators for Galglass.

¹²⁴ Galglass financial statements for the year ending 31 December 2012.

¹²⁵ [X].

¹²⁶ [X].

¹²⁷ Galglass Annual Returns dated 3 August 2004, 3 August 2005, 13 March 2006, 13 March 2007, 13 March 2008, 13 March 2009, 13 March 2010, 13 March 2011, 13 March 2012, 13 March 2013 and 9 February 2014.

Kernoff Limited (Kernoff)

- 2.92 Kernoff is a limited liability company registered in England and Wales, with company number 05094552. Kernoff's registered address is Staverton Court, Staverton, Cheltenham, Gloucestershire GL51 0UX.¹²⁸
- 2.93 Kernoff's principal activity is that of an investment company whose subsidiaries are involved in the manufacture and supply of tanks. It has one other wholly-owned French subsidiary, Apro Industrie.¹²⁹
- 2.94 During the period April 2005 to November 2012, Kernoff was 100% owned by IIT, which has held 100% of the ordinary voting shares in Kernoff since 2005.¹³⁰ In 2013, B class shares (which do not carry any voting rights or right to capital) were also allocated to Moygannon Limited.¹³¹ Kernoff's sole current director is [X].¹³²

Irish Industrial Tanks Limited (IIT)

- 2.95 IIT is a limited liability company registered in Walkinstown, Dublin, the Republic of Ireland, with company number 35350. IIT's registered address is Unit C1, Ballymount Drive, Walkinstown, Dublin 12, Co Dublin.
- 2.96 IIT's principal business is the manufacture, sale and installation of liquid storage tanks in Ireland. IIT is 85% owned by Smyce Holdings Limited ('Smyce'), a holding company registered in the Republic of Ireland and ultimately owned by [X].¹³³ The remaining 15% of shares in IIT are owned by [X].¹³⁴
- 2.97 IIT's current directors are: [X], [X] and [X].¹³⁵

¹²⁸ Kernoff annual return dated 10 August 2015.

¹²⁹ Kernoff financial statements for the financial year ending 31 December 2014.

¹³⁰ Kernoff annual returns dated 5 April 2005, 5 April 2006, 5 April 2007, 5 April 2008, 5 April 2009, 5 April 2010, 5 April 2011, 5 April 2012, and 5 April 2013.

¹³¹ See Kernoff allotment of shares form dated 19 December 2013 and Kernoff's annual return dated 5 April 2016.

¹³² Notice of appointment of director, dated 02 May 2014.

¹³³ IIT abridged accounts for the financial year ending 31 December 2014.

¹³⁴ IIT Fame report, dated 14 September 2015.

¹³⁵ IIT abridged accounts for the financial year ending 31 December 2014 and IIT Fame report, dated 24 May 2016.

Liability

- 2.98 The CMA finds that Galglass was directly involved in, and is therefore liable for, the main cartel infringement.
- 2.99 The CMA finds that Kernoff and IIT are jointly and severally liable with Galglass for the main cartel infringement. This is on the basis that Kernoff and IIT held (directly or indirectly) a 100% shareholding in Galglass at the time of the main cartel infringement and therefore there is a rebuttable presumption that Kernoff and IIT formed part of the same undertaking as Galglass.¹³⁶
- 2.100 The Main Cartel Decision is therefore addressed to Galglass, Kernoff and IIT.

D. The CMA's investigation

Leniency applications

- 2.101 On 2 May 2012, CST approached the OFT with an application for Type A immunity under the OFT's leniency policy (which has been adopted by the CMA). CST was granted a marker on this date. The CMA signed an immunity agreement with CST on 17 March 2016.
- 2.102 On 26 April 2013, Franklin Hodge approached the OFT for Type C leniency under the OFT's leniency policy, and the OFT granted a Type C leniency marker on 3 May 2013. The CMA entered into a leniency agreement with Franklin Hodge on 17 February 2016.

Parallel criminal investigation

- 2.103 The CMA opened an investigation under the Act into the conduct covered by the main cartel infringement and the information exchange infringement on 12 September 2012, in parallel with a related criminal investigation into whether certain individual employees of Franklin

¹³⁶ See shareholder details in Galglass' annual returns dated 3 August 2004, 3 August 2005, 13 March 2006, 13 March 2007, 13 March 2008, 13 March 2009, 13 March 2010, 13 March 2011, 13 March 2012 and 13 March 2013 and Kernoff's annual returns dated 5 April 2005, 5 April 2006, 5 April 2007, 5 April 2008, 5 April 2009, 5 April 2010, 5 April 2011, 5 April 2012, and 5 April 2013.

Hodge, Galglass and Kondea committed the cartel offence contrary to section 188 EA02.

- 2.104 On 27 November 2012, the OFT executed warrants to carry out unannounced searches at the premises of Franklin Hodge, Galglass, Kondea and Balmoral Tanks, using its powers under section 194 EA02.
- 2.105 During these searches, the OFT used its powers under the Criminal Justice and Police Act 2001 to seize and subsequently sift images of electronic devices (desktop and laptop hard drives, server folders, mobile phones) at or accessible from these premises.¹³⁷
- 2.106 Witness interviews of individuals, including individuals suspected of the criminal cartel offence under section 188 EA02,¹³⁸ employees of the Parties and third parties (for example, sprinkler contractors purchasing CGSTs and representatives from relevant industry bodies) were conducted as part of the CMA's criminal investigation.
- 2.107 In accordance with the case opening notices which were provided to the Parties, material gathered by the criminal investigation team (including documents seized pursuant to the EA02 warrants, interview transcripts and witness statements) which the CMA considered relevant to its civil investigation under the Act has been made available for the purposes of the CMA's civil investigation under the Act.
- 2.108 The criminal investigation resulted in the conviction of one individual, [X], who pleaded guilty to the criminal cartel offence, and in the acquittals of [X] and [X], following a trial which concluded at the end of June 2015. On 14 September 2015, [X]'s sentencing concluded the criminal proceedings.¹³⁹

¹³⁷ Section 50 of the Criminal Justice and Policy Act 2001 empowers the CMA (and empowered the OFT before it) to seize electronic material from premises and to sift through such material at a later date, in circumstances where it believes that the electronic material contains data relevant to an investigation, and either it is not reasonably practicable to determine on the premises the extent to which that is the case and/or it is not reasonably practicable to separate out the relevant data on the premises without compromising its evidential value.

¹³⁸ Interviews with individuals suspected of the criminal cartel offence were carried out under caution using the procedures set out under the Police and Criminal Evidence Act 1984 ('PACE').

¹³⁹ [X].

2.109 The CMA's civil investigation team has also considered material referred to during the criminal trial which took place in June 2015. This includes an audio-visual recording of a meeting of [§<] Kondea, Franklin Hodge and Balmoral Tanks which took place on 11 July 2012 and a transcript of that recording (as included in the jury bundle presented at trial).¹⁴⁰

2.110 Following representations from the non-settling party to the information exchange infringement regarding the accuracy of the transcript of the meeting of 11 July 2012, and following a further careful review, the CMA produced an amended version of the transcript. A copy of this final version of the transcript was provided to the Parties on 2 December 2016, which is the version referred to in both this decision and the Information Exchange Decision.¹⁴¹

Civil investigation

2.111 On 27 November 2012, the OFT's civil investigation team:

- issued case opening notices and sent information requests under section 26 of the Act to CST UK, Franklin Hodge, Kondea, Galglass, Balmoral Tanks and Balmoral Industrial Tanks Limited (previously known as Balmoral Sectional Tanks Limited),¹⁴² and
- with the consent of CST, carried out an inspection of CST UK's premises for hard-copy documents that were responsive to the information request under section 26 of the Act.

2.112 A number of further information requests under section 26 of the Act were made to the Parties as follows:

- on 13 May 2013 the OFT issued an information request to Kondea for copies of correspondence with customers relating to contracts or jobs won by Kondea during the period 1 September 2009 to 30 June 2010,¹⁴³ and

¹⁴⁰ Original version of the transcript of the 11 July 2012 meeting [URN 4998], as referred to in the criminal trial and in the Statement of Objections.

¹⁴¹ Final version of the transcript of the 11 July 2012 meeting [URN 8745].

¹⁴² [URN 0228]; [URN 0229]; [URN 0230]; [URN 0231]; and [URN 0232].

¹⁴³ [URN 5115].

- on 16 July 2015 the CMA issued information requests to Galglass and Kondea with regard to turnover information.¹⁴⁴

2.113 In the course of its investigation, the CMA obtained material from both CST and Franklin Hodge as part of their duty to cooperate under the CMA's leniency policy. The non-lenieny parties also provided material voluntarily in response to letters and emails requesting documents and information without recourse to the CMA's formal powers.

2.114 Following the conclusion of the criminal proceedings, the CMA informed the Parties that it had decided to continue its civil investigation under the Act, and that it would address two separate alleged infringements, one in relation to the main cartel infringement (which was the subject of the criminal proceedings and which did not include Balmoral Tanks) and one in respect of the information exchange infringement. These are the subject of this decision and the Information Exchange Decision respectively.

2.115 During the civil investigation, the CMA held State of Play meetings with each of the Parties in October 2015 and November 2015.

Settlement

2.116 As noted above, on 21 March 2016, the CMA announced that it had settled the main cartel infringement and the information exchange infringement with the Settling Parties. As part of the settlement, the Settling Parties admitted their involvement in, and liability for, the main cartel infringement and the information exchange infringement, and agreed that a streamlined administrative procedure would apply to them for the remainder of the investigation.

2.117 On 26 May 2016, the CMA issued a Statement of Objections covering both the main cartel infringement and the information exchange infringement to the Parties and Balmoral (the 'Statement of Objections').

2.118 The Parties made no representations on the Statement of Objections.

¹⁴⁴ See [URN 6070]; [URN 6074] and [URN 6072].

3. Conduct of the Parties

A. Introduction

- 3.1 CST UK, Franklin Hodge, Kondea and Galglass, the companies directly involved in the main cartel ('the parties to the main cartel'), allocated customers for CGSTs between them and agreed to fix the prices of and rig bids for CGSTs, attending regular meetings over the period from April 2005 to November 2012, as well as engaging in bilateral communications (including emails and texts messages) with regard to the arrangements and in relation to specific bids. This is supported by a significant body of witness evidence from those directly involved and their colleagues, corroborated by contemporaneous documents throughout this period such as customer allocation lists and price lists, emails and text messages.

B. Origins of the main cartel activity

- 3.2 In June 2004, the LPCB was reviewing its certification standard (LPS 1254) with the aim of developing a new certification standard (LPS 1276) for CGSTs that implemented the EU's EN 12845 standard. The LPCB formed a working group with key industry stakeholders including CGST manufacturers which included the parties to the main cartel and other interested parties.
- 3.3 The working group met for the first time on 15 June 2004, and was attended by representatives from CST UK ([CST UK senior employee 1], and [Kondea senior employee], who at that time was still employed by CST UK, prior to setting up his own company Kondea in late 2004) and [Galglass senior employee 1], amongst others.¹⁴⁵ A second LPCB working group meeting took place on 1 March 2005, attended by [CST UK senior employee 1], [Franklin Hodge senior employee 1], [Galglass senior employee 1] and [Kondea senior employee].¹⁴⁶
- 3.4 At this time, competition between the parties to the main cartel was particularly strong, with customers playing the suppliers off against each

¹⁴⁵ See minutes of the LPS 1254 working group meeting held on the 15 June 2004 [URN 2425].

¹⁴⁶ See LPCB draft minutes of meeting dated 1 March 2005 [URN 1685].

other on quotes tendered, putting pressure on the competing manufacturers to lower prices for CGSTs in order to retain business. [Franklin Hodge senior employee 1] described the situation as follows:

‘At this time the market for fire water sprinkler tanks had been particularly fierce, with manufacturers cutting each other's throats on price to win work with the various contractors...

... A contractor would send out a bid request for a specific contract to two or more manufacturers. Once the bids had been received the contractor would then play one manufacturer off against the other forcing the bid price down to a level where one of the manufacturers pulled out leaving the lowest bidder to take the work. This meant in our case that for a manufacturer to win a contract their sales margins would be down in single figures

...¹⁴⁷

- 3.5 Having begun to meet at LPCB meetings held for legitimate purposes, the parties to the main cartel went on to hold meetings between themselves at which the state of the market and how to rectify it was discussed. The LPCB meeting on 1 March 2005 was followed by a separate meeting of the parties to the main cartel, represented by the same individuals, on 11 March 2005 at the Belfry Golf Club, where the challenges of this highly competitive state of the market were discussed.¹⁴⁸

- 3.6 [Franklin Hodge senior employee 1] explains that:

‘During the first meeting we had our first discussion about what should be done. [Kondea senior employee] explained what was happening and that certain Project Engineers from certain sprinkler companies used a particular supplier, but would nonetheless try and drive prices down by playing competitors off against each other ... We discussed that we could not make any money in the current market, discussed issues to do with the

¹⁴⁷ [Franklin Hodge senior employee 1] witness statement, 6 June 2014, paragraphs 58 and 60 [URN 6526].

¹⁴⁸ See Annex B.

new standard and had discussions on the steel prices increasing rapidly.’¹⁴⁹

- 3.7 Although witness recollections differ slightly as to who initiated the arrangements (with [Franklin Hodge senior employee 1] recalling that it was CST UK,¹⁵⁰ and [CST UK senior employee 1] recalling that discussions originated with a telephone call from Galglass),¹⁵¹ it is clear that they led to an arrangement between the parties to the main cartel to coordinate their conduct on the market. [Franklin Hodge senior employee 1] explains:

‘I believe it was at just such a meeting of the manufacturers, essentially arranged to discuss LPCB standards, attended by [CST UK senior employee 1], [Galglass senior employee 1] and [Kondea senior employee], that the idea or suggestion was made that we should stop cutting each other’s throats on prices and that a sensible pricing policy for the tanks should be restored ... We agreed that we all supplied fairly identical products and therefore should be able to charge a respectable price without the necessity to fight each other for each and every contract, simply because the contractors forced us to drop our prices in order to win their work.’¹⁵²

- 3.8 [Galglass senior employee 1], also confirmed that the LPCB discussions led to a discussion about pricing, although he suggests that these were linked to changes to the LPCB standards:

‘In the course of the early meetings, the discussion about raising standards inevitably led to a discussion about pricing. Given that the raising of standards and service levels would lead to an increase in costs, pricing was a necessary factor to discuss in the raising of standards and service levels. In the spirit of transparency and effective discussion, we discussed the

¹⁴⁹ [Franklin Hodge senior employee 1] prepared statement, 23 May 2013, paragraphs 141-142 [URN 6527].

¹⁵⁰ [Franklin Hodge senior employee 1] prepared statement, 23 May 2013, paragraph 131 [URN 6527]; [Franklin Hodge senior employee 1] witness statement, 6 June 2014, paragraph 72 [URN 6526]. At the [criminal trial], [CST UK senior employee 1] recalled that he had not arranged the first meeting at the Belfry: [CST UK senior employee 1] live testimony, Livenote transcript [criminal trial], 8 June 2015, page 31, line 21 [URN 6613].

¹⁵¹ [CST UK senior employee 1] witness statement, 20 February 2013, page 13 [URN 0689].

¹⁵² [Franklin Hodge senior employee 1] witness statement, 6 June 2014, paragraphs 72 and 73 [URN 6526].

Galglass benchmarking information. This led to the creation of a further list of sprinkler tank benchmark information setting out the different industry standard sizes and the price at which it would be sustainable to supply. This was updated based on changes in the market. No one was bound by it, nor were they forced to abide by it.¹⁵³

3.9 The LPCB introduced the new tank standard LPS 1276 in April 2009,¹⁵⁴ but the meetings between competitors continued beyond this time.

3.10 In addition to witness evidence from those attending the meetings from CST UK and Franklin Hodge, there is a large body of documentary evidence demonstrating that the [X] parties to the main cartel attended regular meetings from March 2005 to July 2012 (although the attendees at particular meetings varied during that period).¹⁵⁵ A schedule of the dates, locations and attendees of the meetings between CST UK, Kondea, Franklin Hodge and Galglass, together with supporting evidence (including emails and text messages between attendees arranging the meetings, expense claims, diary entries, confirmation of meeting room bookings, meeting room invoices and third party witness evidence that the meetings took place), is set out in **Annex B**.

3.11 While the parties to the main cartel were also in discussions and met for legitimate commercial purposes, such as the development of the new LPCB tank standard and ongoing commercial supply relationships,¹⁵⁶ it is clear from the witness and documentary evidence (as discussed more fully below) that one of the main purposes of these meetings was to discuss and agree on the allocation of customers between them and to discuss and agree on the prices of CGSTs, so that each undertaking would win bids from the customers allocated to it and lose bids from customers allocated to its competitors. The objective of the main cartel

¹⁵³ See [Galglass senior employee 1] prepared statement, paragraph 9 [URN 1639] as read in interview on 29 May 2013, interview transcript page 124 [URN 1678].

¹⁵⁴ See confirmation from the LPCB in an email chain from [Franklin Hodge senior employee 1] to [Kondea senior employee] and [CST UK senior employee 1] dated 2 July 2009 [URN 1884].

¹⁵⁵ [CST UK senior employee 1] left CST UK in [X] and did not attend the meetings after this time. [CST UK senior employee 2], [CST UK senior employee 1]'s successor [X], attended one meeting on 19 March 2010. However, CST UK were kept informed of what was discussed at the meetings by Kondea (CST UK's distributor of CGSTs) and [CST UK senior employee 2] was involved in the implementation of decisions made by the 'club', in particular when Kondea lost orders that it should have won. See [CST UK senior employee 2] witness statement, 22 August 2013, pages 26 – 27 [URN 4958].

¹⁵⁶ For example, in relation to the supply of glass-coated steel panels by CST UK to Galglass.

arrangements was to avoid customers being able to 'play' the competitors off against each other and to improve the profit margins on CGSTs.

C. Customer allocation

- 3.12 Evidence from [X] CST UK and Franklin Hodge (respectively, [CST UK senior employee 1] and [Franklin Hodge senior employee 1]) confirms that they attended meetings with [X] Galglass ([Galglass senior employee 1]) and Kondea ([Kondea senior employee]), at which they agreed to allocate customers from as early as April 2005, in such a way that each undertaking would end up with an approximately equal share of CGST sales in the UK.
- 3.13 [CST UK senior employee 1] and [Franklin Hodge senior employee 1] also confirm that the mechanism used to ensure that a customer allocated to a particular undertaking contracted with that undertaking was to quote a different price depending on whether a customer was 'preferred' (where they were allocated to that undertaking) or 'non-preferred' (where they were allocated to another undertaking).¹⁵⁷ If a customer was allocated to a particular undertaking, that undertaking would quote a lower price and the other undertakings would quote a higher price for a job. As customers were very price driven given the standard nature of the product, in the vast majority of cases they would contract with the lowest priced supplier.
- 3.14 At a meeting at the Belfry on 29 April 2005, there was a general discussion about the size of the market and customer spend. [CST UK senior employee 1] explains in his witness statement that the ultimate objective was to divide the market so that each manufacturer had an equal share of the market and to achieve this the parties to the main cartel first identified how much the CGST sector was worth, looking at

¹⁵⁷ A customer could be allocated to more than one undertaking where it operated in a number of regions, as explained by [Franklin Hodge senior employee 1]: 'Also, a single Project Engineer could be a gold customer for several competitors. For example, Hall & Kay Fire Engineering UK is a Franklin Hodge gold customer, but it is also a gold customer for Kondea. This customer operates in several UK regions, and we split the regional offices down into gold and silver...' [Franklin Hodge senior employee 1] prepared statement, 23 May 2013, paragraph 93 [URN 6527]. (As explained further in paragraphs 3.53 to 3.61 below, Franklin Hodge used the terminology 'gold' for preferred customers and 'silver' for non-preferred customers).

the market, turnover, and who each customer most favoured, so as to divide the market accordingly:

'I cannot recall by whom, but it was suggested during the meeting that we could try to arrange prices in the marketplace by way of sharing customers; however this could only be achieved if we all agreed to share the information on our various customers.

It was agreed that we would individually produce a "customer list". We were to produce a list of all the sprinkler contractors we knew and did business with together with their average spend; I think there were about 60 contractors around at that time. By sharing the information from each other's list we could determine the size of the market and attempt to work out an equal share of contractors for each manufacturer.

We were all aware that certain manufacturers had their favourite manufacturer....It was therefore agreed that the first way the contractors were to be shared out was with regard to the previous good working relationship with a particular manufacturer, the one they normally dealt with. After this list had been agreed, the remaining customers were shared out between the manufacturers so there was roughly an equal share of the market for each manufacturer. The list also took into account the amount of business each contractor could generate, this was important in ensuring each manufacturer ended up with as near as possible an equal share of the overall market. There were also certain areas that the manufacturers chose not supply to, for example Kondea would not deal with contractors in Scotland as it cost them too much to send erectors to Scotland. Galglass had Ireland as they had a sister company based in Southern Ireland.

At the end of the meeting it was agreed that the customers would be split three ways. I think it was marked as A, B, C to reference each manufacturer...'¹⁵⁸

Thus, at least by 29 April 2005 if not before, the parties to the main cartel had reached an agreement to allocate customers between them.

- 3.15 [Franklin Hodge senior employee 1]'s recollection was that an initial 'ABC list' of customers was produced by [Kondea senior employee], which was then used as a basis for discussions to ensure an equal split between the competitors.¹⁵⁹ He also confirms that during the meetings, the customer allocation lists would be refined with the object of 'equalling out the yearly spend against the division of contractors, so that each of us received roughly 33% (value) of the known market in the UK for galvanised steel tanks'.¹⁶⁰
- 3.16 Although neither [Franklin Hodge senior employee 1] nor [CST UK senior employee 1] recalled the exact date that the customer allocation lists began to be circulated between the parties to the main cartel, there is documentary evidence that by at least the beginning of May 2005 lists of 'preferred' and 'non-preferred' customers were being circulated within the parties to the main cartel.¹⁶¹
- 3.17 Customer allocation was implemented through these 'ABC' lists which allocated customers according to their preferred undertaking. [Franklin Hodge senior employee 1] explained that:

¹⁵⁸ [CST UK senior employee 1] witness statement, 20 February 2013, page 15 [URN 0689]. This is also corroborated by the oral testimony of [Franklin Hodge senior employee 1] at the [criminal trial], who stated that the purpose of the list was to 'provide a market split for dividing up the customers in terms of preference as to who should get better prices or who we should favour with discounts and who we should leave in terms of discounting.' [Franklin Hodge senior employee 1] live testimony, Livenote transcript [criminal trial], page 48, lines 9-12 [URN 6610].

¹⁵⁹ See [Franklin Hodge senior employee 1] witness statement, 6 June 2014, paragraphs 100-102 [URN 6526] and [Franklin Hodge senior employee 1] interview transcript, 29 May 2013, page 55 [URN 1680]. [Franklin Hodge senior employee 1] also confirms that he recognises [URN 0110] (found at CST UK's offices in a file marked 'Kondea') as the original ABC list produced by [Kondea senior employee] to assist discussions as to how to divide the CGST customer base in the UK.

¹⁶⁰ [Franklin Hodge senior employee 1] witness statement, 6 June 2014, paragraph 105 [URN 6526].

¹⁶¹ See an email dated 3 May 2005 from [Galglass senior employee 1] to Galglass staff circulating a list [URN 2608], as explained by [Galglass employee 6] of Galglass (referred to as exhibit [3<]): See [Galglass employee 6] witness statement, 5 September 2013, pages 7, 8 and 11 [URN 4944].

'What it would do is put us in a better position when we first quote a particular contractor as against our competitors. And if they are working off a similar list then that would make – again they would look – as a sort of mirror image, they would be less competitive with our customers. It was a way of dividing up the marketplace'.¹⁶²

[CST UK senior employee 1] explained that the objective of pricing in such a manner was to give the impression that there was competition between the three companies in the marketplace, whereas in reality '[the customer] was getting a fixed price'.¹⁶³

- 3.18 The evidence from [Franklin Hodge senior employee 1] and [CST UK senior employee 1] is corroborated by contemporaneous documentary evidence in the form of customer allocation lists obtained from each of the parties to the main cartel which show how the customers were allocated.¹⁶⁴

¹⁶² [Franklin Hodge senior employee 1] live testimony, Livenote transcript [criminal trial], 3 June 2015, page 52, line 16-22 [URN 6610].

¹⁶³ Livenote transcript [criminal trial], 8 June 2015, page 58, line 22

¹⁶⁴ See ABC lists obtained from CST UK [URNs 0078, 0110, 0114, 0128, 0130, 6602, 7187, 7188 – all undated]; an ABC list obtained from Kondea [URN 2684] (undated); ABC lists (and 'Gold/Silver' customer allocation lists) obtained from Franklin Hodge - [URN 1688] (dated October 2007), [URN 1715] (undated), [URN 1716] (undated), [URN 1718] (undated), [URN 1719] (undated), [URN 1720] (undated), [URN 1721] (19 May 2005), [URN 1722] (6 June 2005), [URN 1724] (dated 7 June 2005), [URN 1726] (dated 8 July 2005), [URN 1798] (dated February 2007), [URN 1801] (dated June 2007), [URN 1805] (dated October 2007), [URN 1806] (dated October 2007), [URN 1807] (dated October 2007), [URN 1813] (dated October 2007), [URN 1814] (dated October 2007), [URN 1858] (undated), [URN 1859] (undated), [URN 1879] (undated), [URN 1881] (undated), [URN 1883] (undated), [URN 4634] (undated), [URN 4636] (undated), [URN 4637] (undated), [URN 4638] (undated), [URN 4639] (undated), [URN 4640] (undated), [URN 4641] (undated), [URN 4642] (undated), [URN 4676] (dated February 2007), [URN 4677] (dated June 2007), [URN 4678] (dated October 2007), [URN 4679] (dated October 2007), [URN 4680] (dated October 2007), [URN 4681] (dated October 2007), [URN 4682] (dated October 2007), [URN 4683] (dated June 2009), [URN 4684] (dated October 2007), [URN 4685] (dated June 2009), [URN 4686] (dated June 2009), [URN 4687] (dated June 2009); customer allocation lists obtained from Galglass: [URN 2608] (dated May 2005), [URN 2596] (dated March 2008), [URN 2603] (dated May 2006), [URN 7190] (undated), [URN 0408] (undated). Dates for Franklin Hodge documents are taken from dates appearing in the document title as saved on the Franklin Hodge system. For example, 'Marketing Strategy Market Split Rev 4 6 Jun 05.xls' [URN 1722]. The CMA understands that the date appearing in the bottom left hand corner on some of these Franklin Hodge documents is an automatic date stamp showing the date when the information was retrieved from the Franklin Hodge system, rather than the date of the document itself.

- 3.19 Although a large number of the customer allocation lists are undated, those which are dated range from at least 3 May 2005¹⁶⁵ to June 2009.¹⁶⁶
- 3.20 There is some variation in the format and layout of the customer allocation lists (which appears to reflect the way in which each of CST UK, Kondea, Franklin Hodge and Galglass have adopted them for use within their respective teams, as discussed further below). However, all set out the names of fire sprinkler contractors and the agreed allocation.
- 3.21 The existence of the customer allocation agreement was also disclosed at a meeting on 11 July 2012, where [Franklin Hodge senior employee 1] reflects on the solution to the issue presented when customers were playing off the suppliers against each other on price before the main cartel arrangements began:
- ‘So it’s going to be, the conclusion we came to last time between ourselves we had this conversation was that we ended up divvying up the customers, gold and silver customers’.¹⁶⁷
- 3.22 When interviewed, [Galglass senior employee 1] did not accept that deliberate allocation of customers had taken place, asserting that the customer lists were simply a reflection of customer preferences, although he did accept that the lists were used to implement the agreements on pricing strategies.¹⁶⁸ The CMA has considered this suggestion, but is satisfied that the substantial amount of witness and other documentary evidence supports a finding that there was an agreement to allocate customers between the parties to the main cartel.

¹⁶⁵ See an email dated 3 May 2005 from [Galglass senior employee 1] to Galglass staff [URN 4945] circulating a list [URN 2608].

¹⁶⁶ See: [URN 4683], [URN 4685], [URN 4686] and [URN 4687] which were saved on the Franklin Hodge system with the document title ‘Customer & Margin Guide June 09 Rev 0.xls’.

¹⁶⁷ Transcript of 11 July 2012 meeting, page 21 [URN 8745].

¹⁶⁸ See [Galglass senior employee 1] interview transcript, reading of prepared statement, 30 June 2014, page 195 [URN 6587]. See also [Galglass senior employee 1] interview transcript, 27 November 2012, pages 36-37 [URN 1316] where [Galglass senior employee 1] suggests that it remained open for other manufacturers to approach all customers.

3.23 In particular, [Galglass senior employee 1]'s assertion is inconsistent with the evidence of a number of witnesses from the Galglass sales team. For example, [Galglass employee 6] recalled:

‘on occasion a sale was going to be won from a non-favoured contractor. On these occasions, when [Galglass senior employee 1] got to hear, the file would disappear with him and when it returned we had lost the work. I don’t know what [Galglass senior employee 1] did in the short time he had the file but whatever it was our quotation was suddenly not low enough to win the contract.’¹⁶⁹

3.24 A similar account of this practice is given by [Galglass senior employee 2].¹⁷⁰ [Galglass employee 4], another Galglass salesman, also recalled an occasion where, having become frustrated with the impact the arrangements were having on his ability to pursue sales, he deliberately provided a quote to a customer (Armstrong Priestley) that was not one of Galglass’ ‘preferred’ customers according to the arrangements. [Galglass employee 4] explains:

‘...when this came to the attention of [Galglass senior employee 1] he called me in and we had a heated conversation; the result being I was ordered to re-contact the customer Armstrong Priestley and tell them that I had miscalculated the quotation and to make some excuse to raise our price to a sufficient level that we then lost the order. The only explanation [Galglass senior employee 1] gave me was that the contractor was on the list of another manufacturer.’¹⁷¹

Re-allocation of customers over time

3.25 There is evidence that the allocation of some customers was changed over time in order to ensure that the market was shared equally between the parties to the main cartel. [Franklin Hodge senior employee 1] explains:

¹⁶⁹ [Galglass employee 6] witness statement, 5 September 2013, page 9 [URN 4944].

¹⁷⁰ [Galglass senior employee 2] witness statement, 9 November 2013, paragraph 64 [URN 4949].

¹⁷¹ [Galglass employee 4] witness statement, 1 November 2013, paragraphs 60-61 [URN 4950].

'The list was subject to slight movement of contractors between manufacturers over time. Sometimes a contractor would generate more business one year than another so we needed a mechanism to take account of these fluctuations, this normally resulted in a smaller contractor being moved from one list to another; in order to balance the market share equally between us.'¹⁷²

3.26 The movement of allocated customers between the undertakings can also be seen from the customer allocation lists on the CMA's file. For example:

- a CST UK customer allocation list shows Central Fire Ware allocated as 'ABC' with the note 'A until October 2005', Hall & Kay Scotland being allocated 'ABC' but 'A until December 2005' and Armstrong Priestley being allocated 'B' but 'A until December 2005'.¹⁷³
- a Galglass list from May 2005,¹⁷⁴ lists Armstrong Priestley as being allocated to Galglass. However, by July 2005 Armstrong Priestley has been allocated to Franklin Hodge.¹⁷⁵ Similarly, in the May 2005 list Compco is listed under Galglass, Franklin Hodge and CST UK, but by July 2005 it has moved to being allocated to Franklin Hodge and CST UK, and by May 2006 it is allocated solely to Franklin Hodge.¹⁷⁶

3.27 Reallocation of customers also appears to have taken place as staff within the customers moved employers, taking their own supplier preferences to their new role. There were occasions where the undertakings would come to an arrangement whereby they would swap a preferred customer each.¹⁷⁷

¹⁷² [Franklin Hodge senior employee 1] witness statement, 6 June 2014, paragraph 106 [URN 6526].

¹⁷³ See [URN 6602] (the reference to 'ABC' suggests that some customers were to be shared by all parties to the main cartel).

¹⁷⁴ See [URN 2608] which was attached to an internal Galglass email at [URN 4945] and referenced at: [Galglass employee 6] live testimony, Livenote transcript [criminal trial], 5 June 2015, page 98, lines 1 to 8 [URN 6612].

¹⁷⁵ See [URN 2609].

¹⁷⁶ See [URN 2608], [URN 2609 and [URN 2603].

¹⁷⁷ See [Franklin Hodge senior employee 1] live testimony, Livenote transcript [criminal trial], 3 June 2015, page 79, lines 13-25 [URN 6610].

- 3.28 There are also examples of ad hoc re-allocation of customers to ‘compensate’ a party to the main cartel where one of its customers contracted with a competitor, contrary to the agreed allocation. In these situations action was taken by a Party to compensate the losing Party by reallocating another customer for a specific contract.
- 3.29 For example, [Franklin Hodge senior employee 2], recalled an occasion where Franklin Hodge had won a contract that was not on its ‘gold’ list of preferred customers and the sales team then received an instruction from [Franklin Hodge senior employee 1] that they needed to lose a contract for one of their ‘gold’ customers.¹⁷⁸
- 3.30 This is also supported by evidence from other members of the Franklin Hodge sales team, including [Franklin Hodge senior employee 3]¹⁷⁹ [Franklin Hodge employee 4]¹⁸⁰ and [Franklin Hodge senior employee 4].¹⁸¹ [Franklin Hodge employee 4] recalls that [Franklin Hodge senior employee 1] would query why the sales team had won contracts from customers on Franklin Hodge’s ‘silver’ (non-preferred) list and explained that they would then be told to ‘step back’ from a later order from one of their ‘gold’ (preferred) customers:

‘If Franklin Hodge won a contract that should have gone to a competitor, we would be told to step back from a later order from a gold customer, by way of putting in a higher quote, or not offering a large discount if requested ... By “balancing” I mean that if Franklin Hodge won an order from a silver list customer it would then be necessary to undertake a balancing exercise with our competitors to “compensate” them for the loss of a customer.’¹⁸²

¹⁷⁸ [Franklin Hodge senior employee 2] witness statement, 4 April 2014, paragraph 67 [URN 4963] and [Franklin Hodge senior employee 2] live testimony, Livenote transcript [criminal trial], 4 June 2015, page 101, lines 9–14 [URN 6611].

¹⁷⁹ [Franklin Hodge senior employee 3] witness statement, 5 February 2014, page 10 [URN 4966] and [Franklin Hodge senior employee 3] interview transcript, 14 November 2013, pages 42, 60, 61 and 99 [URN 6497].

¹⁸⁰ [Franklin Hodge employee 4] witness statement, 11 November 2013, paragraph 60 [URN 4962] and [Franklin Hodge employee 4] interview transcript, 12 September 2013, pages 39-41, 43, 46-47 and 113 [URN 6506].

¹⁸¹ [Franklin Hodge senior employee 4] witness statement, 4 February 2014, paragraphs 50 and 51 [URN 4965].

¹⁸² [Franklin Hodge employee 4] witness statement, 11 November 2013, paragraph 60 [URN 4962]. [Franklin Hodge senior employee 4] received similar instructions in relation to a particular contract with Compco (a Franklin Hodge ‘gold’ customer), which was ultimately won by Kondea after [Kondea senior employee]

- 3.31 [CST UK senior employee 2] [X] also recalled a discussion between [X] Franklin Hodge and Kondea at the 19 March 2010 meeting which he attended, where [Kondea senior employee] admonished [Franklin Hodge senior employee 1] for taking a CST UK customer, with [Franklin Hodge senior employee 1] offering Kondea the next job with one of Franklin Hodge's customers in return.¹⁸³
- 3.32 Although [Galglass senior employee 1] did not accept that such re-allocation by way of 'compensation' took place at Galglass specifically, he did accept in interview that it took place between parties to the main cartel, explaining: 'Sometimes, it was more a precedent between the others than myself really but it was more a question of, "Well, we'll take the next one" or "We'll, we'll we'll work with that customer, one of your customers."' ¹⁸⁴

D. Price-fixing

- 3.33 Around the same time as the customer allocation arrangements described above were forming, the parties to the main cartel also entered into arrangements to fix the prices for the supply of CGSTs, with a view to pushing them up to the levels from a few years earlier before competition became particularly strong.
- 3.34 The recollection of [CST UK senior employee 1], was that after the customer allocation list had been agreed the focus turned to fixing prices:

telephoned [Franklin Hodge senior employee 1] asking Franklin Hodge not to quote to win on that contract. [Franklin Hodge senior employee 4] witness statement, 4 February 2014, paragraphs 50 and 51 [URN 4965]).

¹⁸³ [CST UK senior employee 2] witness statement, 22 August 2013, page 24 and 25 [URN 4958]. [CST UK senior employee 1] [X] also recalled this practice taking place when giving evidence at the trial: [CST UK senior employee 1] live testimony, Livenote transcript 8 June 2015, page 58, lines 7 -14 [URN 6613].

¹⁸⁴ [Galglass senior employee 1] interview transcript, 27 November 2012, page 105 [URN 1316]. [Galglass senior employee 1] confirms that there were a number of incidents where a competitor contracted with one of Galglass' 'preferred' customers, but that when this happened Galglass would not demand to be given a contract with a customer belonging to another party to the main cartel, explaining that they didn't want to work with other customers: 'So, when we have lost customers, when we have lost projects with our normal customers, then I've said to – you know, I have spoken to [Franklin Hodge senior employee 1] or to [Kondea senior employee] or to [CST UK senior employee 1] and said, "You know, we've lost we've lost this one. It's supposed to be one of our customers", and he'll say, "Oh, okay, is there any chance of...? What about...? Would you like to take one?" We've said, "No. We don't want to take one from your customers because we don't work with those customers."' See [Galglass senior employee 1] interview transcript, 27 November 2012, pages 103-113 [URN 1316].

‘There was no agreement at the first meeting on setting the individual price of tanks, although there was an understanding that something had to be done in this area. I think at the time the price of the 135 cubic meter tanks was around £5,000 which was down from £7,000 from three years earlier due to the competition in the market place and the contractors being able to shop around and play one manufacturer against another. There was therefore an expectation between us all attending these meetings that the price should go back to at least that level previously attained.’¹⁸⁵

3.35 [Franklin Hodge senior employee 1]’s recollection of the cartel’s initial development differs from that of [CST UK senior employee 1]. He recalls that initial conversations centred around pricing, rather than customer allocation.¹⁸⁶

3.36 The arrangements in relation to prices started with the parties to the main cartel agreeing not to undercut each other’s prices particularly with key customers, and what [Franklin Hodge senior employee 1] described as a ‘gentleman’s agreement’ not to discount heavily to prevent customers from ‘playing’ the competitors’ quotes off against each other.¹⁸⁷

3.37 As noted at paragraph 3.8 above, [Galglass senior employee 1] confirmed in a prepared statement that the parties to the main cartel discussed prices and agreed benchmark prices with competitors, although he denied that the parties were bound to abide by the lists.¹⁸⁸ In a further prepared statement to the CMA in March 2014, [Galglass senior employee 1] confirmed:

‘I have always accepted my involvement in the meetings and discussions about pricing and also customers. I accept the

¹⁸⁵ See [CST UK senior employee 1] witness statement, 20 February 2013, page 16 [URN 0689].

¹⁸⁶ See [Franklin Hodge senior employee 1] witness statement, 6 June 2014, paragraphs 64, 72 and 73 [URN 6526].

¹⁸⁷ [Franklin Hodge senior employee 1] prepared statement, 23 May 2013, paragraph 142 [URN 6527].

¹⁸⁸ See [Galglass senior employee 1] prepared statement, paragraph 9 [URN 1639], as read in interview on 29 May 2013, interview transcript page 124 [URN 1678]. This is consistent with [Galglass senior employee 1]’s comments in an earlier interview, where he also confirmed that Galglass discussed prices with competitors at the meetings and agreed benchmark prices with the other suppliers, but denied that the parties were bound by the benchmarking lists. See [Galglass senior employee 1] interview transcript, 27 November 2012, pages 19-60 [URN 1316].

reliance on the price list and I also accept that we met relatively regularly and there was contact between us. I see how this may amount to a cartel. I don't accept that I did anything that amounted to dishonesty. We also discussed many other aspects of the market and a lot of price increases, and indeed at times decreases were based on price rises, steel price rises and the increase in standards. Nothing untoward about this. Neither do I believe that the contractors were in any way deceived nor do I accept that I acted in a secret way. Everything was very open. The contractors never raised a concern, the contractors never raised concerns with us directly, and indeed I note that [Galglass employee 4] went to work for a contractor who he could have told if he felt there was something untoward going on, and yet they also continued to use Galglass.'¹⁸⁹

Form of arrangements

- 3.38 The price-fixing aspect of the arrangement initially took the form of an agreement on permitted discounts. As discussed further below, for Franklin Hodge and Galglass, this was implemented internally by means of 'margin guides', showing the percentage mark-up to be added to a quote depending on the category of customer. For example, in early Franklin Hodge margin guides, the margin is listed as a figure next to the name of the customer, and there are further columns showing 'A list' and 'B&C List' prices, as set out in further detail in paragraphs 3.53 to 3.61. Later margin guides (then using 'Gold'/'Silver' terminology) obtained from Franklin Hodge show a lower margin for Gold customers (indicated by a further column in the spreadsheet), and a higher margin for Silver customers.¹⁹⁰ The margin guides obtained from Galglass are presented in slightly different format, with a customer allocated to one of three columns: Galglass, Franklin Hodge or Vulcan (CST UK), with a price

¹⁸⁹ [Galglass senior employee 1], interview transcript (prepared statement read during the interview) 14 March 2014, page 58, paragraph 144 [URN 6585]. [×].

¹⁹⁰ For example [URN 1714] (dated June 2004), [URN 1723] (June 2005), [URN 1725] (dated June 2005), [URN 1727] (dated August 2005), [URN 1728] (dated August 2005), [URN 1734] (dated August 2005), [URN 1731] (dated August 2005), [URN 1736] (dated August 2005), [URN 1741] (dated August 2005), [URN 1747] (dated November 2005), [URN 1751] (dated November 2005), [URN 1750] (dated November 2005), [URN 1757] (dated January 2006), [URN 1760] (dated January 2006), [URN 1768] (dated January 2006), [URN 1762] (dated January 2006), [URN 1766] (dated January 2006), [URN 1758] (dated May 2006).

mark-up which varies according to which column the customer falls into.¹⁹¹ In May 2005, for example, Galglass customers had a mark-up of 34% listed, whereas Franklin Hodge and CST UK customers had a 41% mark-up listed.

3.39 Over time, the system evolved to include an agreement on price lists.¹⁹² Differing overheads and costs at the different undertakings meant that implementing the agreement by way of applying a set margin could result in a party to the main cartel submitting a price that was not at a level which would win the customer to which it had been allocated.¹⁹³ It was therefore suggested that a price list be introduced.

3.40 [Franklin Hodge senior employee 1] explained:

‘Initially our discussions led to an agreement on how we approached discounting, based on common tank sizes. We all agreed that, whatever the pressure from the various contractors, we would only discount our prices to a maximum predetermined level. However, this initial agreement was doomed to failure as we did not know what each other’s production costs were. Therefore, although to my knowledge we kept to the agreed discount percentage, the end sales figures being quoted were different. We concluded that we had to come up with a specific price agreement. Something that harmonised prices between us all.’¹⁹⁴

3.41 [Franklin Hodge senior employee 1] also explained how the arrangements developed so that, while they were still focused on discounting, set prices were circulated to facilitate this:

‘...at the second or third meeting at the Belfry, [Kondea senior employee] gave some target pricing for standard capacities.

¹⁹¹ See [URN 2608] (dated 3 May 2005), [URN 2607] (dated 13 July 2005) and [URN 2609] (dated 13 July 2005).

¹⁹² See [Franklin Hodge employee 4] witness statement, 11 November 2013, paragraphs 36-38 [URN 4962].

¹⁹³ As explained by witnesses during the criminal trial: See [Franklin Hodge senior employee 3] live testimony, Livenote transcript, [criminal trial], 4 June 2015, page 160 line 9 – 19 [URN 6611] and [Franklin Hodge employee 4] witness statement, 11 November 2013, paragraph 43 [URN 4962].

¹⁹⁴ [Franklin Hodge senior employee 1] witness statement, 6 June 2014, paragraph 97 [URN 6526]. See also [Franklin Hodge senior employee 1] prepared statement, 23 May 2013, paragraph 85 [URN 6527].

[Kondea senior employee] showed us a printed pricelist and we agreed that our prices were pretty similar... We all started working around those prices. The main emphasis was that we should stop discounting so heavily with certain key customers.’¹⁹⁵

[Kondea senior employee] gave us the pricelist, representing what [Kondea senior employee] suggested the prices should be in the market – the target list. The printed list was handed around... It was [Kondea senior employee] who produced the list. The list set out the cylindrical diameter. There were a number of heights and capacities. There was a matrix of prices. The list was small to begin with and it eventually grew to become the target price list ...’¹⁹⁶

- 3.42 Parties to the main cartel were then able to use the price list to ensure that discounts given on quotes for CGSTs were from a known and agreed price, irrespective of individual manufacturing costs of each undertaking. [Franklin Hodge senior employee 1] explains:

‘Once agreed the new harmonised price list was the same for Franklin Hodge, Galglass and Kondea irrespective of our individual manufacturing costs. This ensured that when each of us discounted a price (as per our agreement) it was always from a known and agreed price. The form of the pricelist set out agreed prices for a spread of different sizes of tanks. Where any particular contract was for a tank in between those sizes, we as a group estimated an appropriate price using the parameters set out in the list ...’¹⁹⁷

- 3.43 [CST UK senior employee 1] explains the mechanism for fixing the price in similar terms:

‘The way we fixed the price was as follows:

¹⁹⁵ [Franklin Hodge senior employee 1] prepared statement, 23 May 2013, paragraph 143 [URN 6527].

¹⁹⁶ [Franklin Hodge senior employee 1] prepared statement, 23 May 2013, paragraph 147 [URN 6527].

¹⁹⁷ [Franklin Hodge senior employee 1] witness statement, 6 June 2014, paragraph 98 [URN 6526]. See also [CST UK senior employee 1] witness statement, 20 February 2013, page 17 [URN 0689].

One of the most popular tanks produced by all three companies was the 135 tank; so we set the price that we would each apply to that size of tank. We worked the price out on how much work, time and technical expertise went into manufacturing the tank. This would be our considered opinion of the value in real terms of the tank, and would be the price quoted to the customer on your list.

If another manufacturer e.g. Kondea, received an enquiry from a customer allocated by our agreed list to one of the other e.g. Galglass, then Kondea would quote 3 to 5% higher than the agreed value for the particular tank whilst Galglass would quote at the agreed price level.

This practice or process would then allow the contractor and Kondea to engage in negotiations and for Kondea's higher price to be negotiated down to within 3% above the price submitted by Galglass; a price previously agreed by all involved in the meetings and which Kondea were fully aware thus creating a façade of legitimacy. For example if the 135 tanks agreed price was £10,000, and Kondea received an enquiry from a Galglass customer, the price quoted by Kondea would be £10,300 to £10,500. The contractor, being unaware of this process, would then place their order with Galglass believe they were involved in a competitive tendering process when the exact opposite was the situation.¹⁹⁸

- 3.44 Once the prices were agreed amongst the [X] parties to the main cartel, these were translated into their own company-specific customised price lists that would then be provided to sales staff to use when providing quotations to customers,¹⁹⁹ as discussed further below.
- 3.45 As well as witness evidence from those directly involved in the discussions where the arrangements were agreed, the fixing of prices

¹⁹⁸ [CST UK senior employee 1] witness statement, 20 February 2013, page 17 [URN 0689].

¹⁹⁹ [Franklin Hodge senior employee 1] witness statement, 6 June 2014, paragraph 99 [URN 6526].

across a range of tanks is corroborated by members of the sales teams from the relevant undertakings.²⁰⁰

- 3.46 It does not appear that parties to the main cartel would regularly share the internal price lists they produced for circulation within their respective companies to implement the arrangements.²⁰¹ However, the CMA has found evidence that there were occasions when the parties to the main cartel did provide each other with these internal documents.²⁰² The CMA has not seen evidence that the parties to the main cartel shared information regarding their respective costs of production.

Implementation of price rises

- 3.47 Discussions took place between the parties to the main cartel as to the implementation of coordinated price increases, and to create the impression that there was still open competition for the supply of CGSTs. [Franklin Hodge senior employee 1] explains:

‘There would be discussions at the meetings about what general percentage increase we should go for and we would all stagger that increase by different percentages over a period of time. And it did mean that we might lose a job to a gold customer, it might go to somebody else, but over a period of time the prices would stabilise again. So, to answer your question, we would stagger the increased percentages amongst the three companies.’²⁰³

²⁰⁰ See, for example, [Franklin Hodge senior employee 2] witness statement, 4 February 2014, paragraphs 46–49 [URN 4963]; [Galglass employee 6] witness statement, 5 September 2013, page 8 [URN 4944]; [Galglass employee 4] witness statement, 1 November 2013, paragraphs 37–55 [URN 4950].

²⁰¹ See [Franklin Hodge senior employee 1] witness statement, 6 June 2014, paragraph 115 [URN 6526].

²⁰² A Franklin Hodge list [URN 0109] was found at CST UK premises; [Franklin Hodge senior employee 1] confirms that on one occasion he gave his price list to [Kondea senior employee], and on another occasion [Galglass senior employee 1] provided its price list to him and [Kondea senior employee]: See [Franklin Hodge senior employee 1] prepared statement, 23 May 2013, paragraphs 164–165 [URN 6527]. A fax sent by [Galglass senior employee 1] entitled ‘Sprinkler benchmarking’ and setting out prices and discounts with the comment: ‘Max discount is 2% to other customers & 5% to ours’ was also found at CST UK’s premises [URN 0122].

²⁰³ [Franklin Hodge senior employee 1] live testimony, Livenote transcript, [criminal trial], 3 June 2015, page 102, line 3 - 11 [URN 6610]. During the criminal trial, [Franklin Hodge senior employee 1] also explained that as part of the effort to create the impression of an open marketplace, parties to the main cartel would not submit identical prices to the customers. Estimators and sales staff would submit prices around the agreed ones so as to minimise the risk of raising suspicions. See [Franklin Hodge senior employee 1] live testimony, Livenote transcript, [criminal trial], 3 June 2015, page 106, line 7 -25 [URN 6610].

3.48 There is also evidence that the parties to the main cartel masked price rises behind changes in steel prices and the new LPS standard.²⁰⁴ [CST UK senior employee 1] states of the new standard: 'We also used these changes as a mask to raise the price of the tanks, the specifications made the tanks about 5% dearer, there were legitimate extra costs to the tanks that you could point to explain the increase... The price would again be increased if steel prices went up.'²⁰⁵ This is also confirmed by [Franklin Hodge senior employee 1] who explains that parties to the main cartel took advantage of external factors to explain price rises:

'Various external factors existed that assisted us in this process, particularly the increase in the price of steel, which was well known in the industry, and impacted on our contractors as well. This was used as a reason for the increase on tank prices. However unbeknown to the contractors, we took the opportunity to add a little extra on the price to increase our margins. The steel increase effectively masked our own increase, as agreed by the cartel, and over and above what was required purely to maintain the then margins.'²⁰⁶

3.49 Customers interviewed were also aware of the rises in the price of steel, and noted the rise in CGSTs prices, with some noting that rises in prices for CGSTs seemed greater than the rise in steel prices. For example, [Customer 1 senior employee] noted that:

'the steel price was rising by a fairly small percentage year on year with a few short term spikes whereas the cost of tanks seemed to be far outstripping the rise in steel costs.'²⁰⁷

²⁰⁴ [Galglass employee 6] states that [Galglass senior employee 1] used the fluctuation and rise in steel prices (which meant Galglass needed to win work at higher margins on sprinkler tanks) to explain the reason for the implementation of the new benchmark pricing lists at Galglass. See [Galglass employee 6] witness statement, 5 September 2013, page 5 [URN 4944].

²⁰⁵ [CST UK senior employee 1] witness statement, 20 February 2013, page 19 [URN 0689]. See also page 18 where [CST UK senior employee 1] explains: 'These overhead increases were the vehicle we used to increase prices and our profit margins.'

²⁰⁶ [Franklin Hodge senior employee 1] witness statement, 6 June 2014, paragraph 120 [URN 6526]. See also an email from [Galglass senior employee 1] to [CST UK senior employee 1] and [Kondea senior employee] dated 25 April 2006 referring to 'information to start to feed into the industry' and attaching a press announcement entitled 'Arcelor adjusts prices to reflect zinc costs of coated products.' [URN 3797].

²⁰⁷ [Customer 1 senior employee] witness statement, 12 November 2013, page 2 [URN 4938]. See also [Argus Fire Protection senior employee] witness statement, 21 May 2013, page 3 [URN 2450]; [Hall Fire Protection

Contemporaneous price lists

3.50 The existence of an agreement or concerted practice to fix prices is also supported by a number of price list documents obtained from CST UK,²⁰⁸ Kondea,²⁰⁹ Franklin Hodge,²¹⁰ and Galglass dating from across the period 2005 to 2012.²¹¹ These are consistent with the explanations provided by witnesses of differential pricing for ‘preferred’ and ‘non-preferred’ customers of the parties to the main cartel as discussed further below.

E. Implementation of the main cartel arrangements

3.51 Witnesses also explain how the customer allocation lists and the fixing of prices worked together in practice, with parties to the main cartel matching customers to the agreed price, depending on whether they were one of ‘their’ customers, or if they had been allocated to another undertaking. While prices for a range of CGSTs, and the allocation of customers were agreed between [X] the parties to the main cartel, they would then make arrangements for the implementation of the arrangements within their respective organisations.

3.52 [Franklin Hodge senior employee 1] explains:

employee] witness statement, 21 March 2013, paragraph 5 [URN 2415]; and [Armstrong Priestley senior employee] witness statement, 30 October 2013, page 3 [URN 4936].

²⁰⁸ [URN 0136] (dated 1 August 2005), [URN 0134] (dated 17 October 2005), [URN 0135] (dated 17 October 2005), [URN 0133] (dated 5 January 2006), [URN 0132] (dated 01 July 2006), [URN 0131] (dated 01 November 2006), [URN 0113] (dated 1 January 2007), [URN 0127] (dated 01 January 2007), [URN 0129] (dated 01 January 2007), [URN 0108] (dated 1 September 2008).] Also found at CST UK was one Franklin Hodge price list [URN 0109] (dated 09 January 2009) and one Galglass price list [URN 0122] (dated 2 December 2008).

²⁰⁹ [URN 2680], [URN 2681] and [URN 2682] contain a number of price lists of various dates ranging from 9 January 2007 to 1 February 2012). [URN 2682] also shows a preferred and non-preferred price listing mechanism.

²¹⁰ [URN 0430] (contains a number of price lists of various dates ranging from September 1999 to 01 September 2008), [URN 1778] (dated 01 June 2006), [URN 1788] (dated 01 November 2006), [URN 0109] (dated 09 January 2009)].

²¹¹ [URN 0409] (contains a number of price lists of various dates ranging from 01 August 2005 to 06 February 2012), [URN 2602] (dated 10 April 2006), [URN 4948] (dated 01 June 2006), [URN 2601] (dated 01 June 2006), [URN 2600] (dated 01 August 2006), [URN 2599] (dated 01 November 2006), [URN 2598] (dated 05 January 2007), [URN 2597] (dated 08 January 2008), [URN 2594] (dated 20 March 2008), [URN 2595] (dated 20 March 2008), [URN 2577] (contains a number of price lists with various dates ranging from 2 April 2008 to 31 August 2009), [URN 2593] (dated 30 May 2008), [URN 2592] (contains a number of price lists of various dates ranging from 9 June 2008 to 4 December 2008), [URN 2576] (valid from 14 October 2008), [URN 2574] (dated 18 May 2009), [URN 2591] (valid from 1 May 2010), [URN 2573] (dated 20 September 2010), [URN 2572] (dated 21 October 2010), [URN 2571] (dated 01 January 2011), [URN 2570] (dated 01 March 2011), [URN 2568] (dated 04 July 2011), [URN 2567] (dated 06 February 2012).

'The 'A,B,C' list was then used alongside the harmonised price guide when providing bids to contractors. The system adopted was quite simple.

Franklin Hodge was allowed to discount the price of a tank to an 'A' allocated contractor by an agreed percentage off the guide price in order to win the bid. However, any of the others who were asked to submit a bid for the same job would only provide the price as dictated by the agreed guide less a smaller percentage, giving the impression of competition. The smaller percentage was never enough to win the work. By these means, Franklin Hodge would be almost guaranteed to win all the work put out to bid from their 'A' list contractor whilst ensuring Galglass and or Kondea provided bids that would not.

The same system was, I understand, adopted by Galglass and Kondea when bidding for work for their preferred contractors. In those cases, Franklin Hodge would submit the agreed price with the smaller discount, thereby almost certainly not winning the job but providing the contractor with the impression that there existed competition in the market, when the opposite was the case.

The system depended on the cooperation of each individual concerned in the arrangements: [Galglass senior employee 1] for Galglass; [Kondea senior employee] for Kondea, [CST UK senior employee 1] for CST/Vulcan and myself for Franklin Hodge.'²¹²

Franklin Hodge

- 3.53 At Franklin Hodge, the original ABC customer allocation lists were converted into contractor lists, eventually identifying customers as 'Gold' (allocated to Franklin Hodge) and 'Silver' (allocated to other members of the cartel), reflecting a system which was already in use by the sales and

²¹² [Franklin Hodge senior employee 1] witness statement, 6 June 2014, paragraphs 107–110 [URN 6526].

estimating team.²¹³ Earlier lists created by [Franklin Hodge senior employee 1] set out CGST customers alongside the estimated spend of each customer and a code A, B or C. They also include a key which makes clear that A = Franklin Hodge, B = Galglass and C = Vulcan (CST UK).²¹⁴

3.54 A large number of these customer lists and price lists²¹⁵ were obtained from Franklin Hodge and are consistent with the explanations provided by witnesses of how the cartel was implemented as set out below.

3.55 [Franklin Hodge senior employee 1] explains:

‘I took the “A,B,C” list back to the office and changed it into a “Gold” and “Silver” contractor list. Gold representing the contractors previously allocated under “A” and “Silver” to all other contractors. This reflected a system already in place at Franklin Hodge to divide the discounts on prices we would offer to our regular and other customers. The existence of that system allowed me to incorporate the cartel arrangement without fundamentally changing the way in which Franklin Hodge worked.

The new Gold and Silver list was then provided to my estimators, together with the harmonised price list. Both documents allowed the estimators to provide bids to all contractors in line with my agreement. The use of “Gold” and “Silver” diverted attention away from identifying the origin of the document as it did not make any reference to the other manufacturers and their share of the market. The new list did not make any reference to our competitors, or any customers being allocated to our competitors.’²¹⁶

²¹³ See [Franklin Hodge senior employee 1] witness statement, 6 June 2014, paragraphs 113-114 [URN 6526]. See also [Franklin Hodge senior employee 1] live testimony, Livenote transcript [criminal trial], 3 June 2015, page 60, lines 5-10 [URN 6610].

²¹⁴ For example [URN 1715], [URN 1716], [URN 1718], [URN 1720], [URN 1724], [URN 1726], [URN 1722] and [URN 4642].

²¹⁵ Excluding duplicates, 47 in total. See paragraph 3.50 and footnote 211 above.

²¹⁶ [Franklin Hodge senior employee 1] witness statement, 6 June 2014, paragraphs 113-114 [URN 6526]. See, for example, Franklin Hodge Customer & Margin Guide October 2007 Rev 2 [URN 1688].

- 3.56 Members of the Franklin Hodge sales team confirm that for the same product, there would therefore be one price for ‘gold’ customers and a higher price for ‘silver’ customers²¹⁷ and that Franklin Hodge would generally only win orders from contractors who appeared on the ‘gold’ list.²¹⁸
- 3.57 A Franklin Hodge customer list from October 2007 includes ‘Notes’ which explain:
- “‘Gold’ customers are those with whom we have a special commercial relationship based upon volume of orders and payment arrangements. ‘Silver’ customers are those with whom we do not have a special relationship. Pricing for each project is based upon this basis. This is for cylindrical Firestore tanks only.”²¹⁹
- 3.58 Alongside the customer lists, margin guides were produced by [Franklin Hodge senior employee 1] for Franklin Hodge’s internal use. The margin guides ensured that Franklin Hodge’s quotes corresponded with the price levels agreed by the cartel. These typically list customers alongside a column headed ‘main player’ (marked A, B, C or a combination) and a percentage margin level. The earliest margin guide seen by the CMA shows the varying margins to be applied from March 2005.²²⁰
- 3.59 Members of the Franklin Hodge sales team explain that margin guides were originally used to add a particular margin onto the cost price calculated as part of an estimate (depending on whether it was for a Franklin Hodge ‘preferred’ customer), but that over time these margin guides evolved into price lists, with columns showing different prices for gold and silver customers for each size of tank.²²¹ Price lists for Firestore tanks (the CGSTs sold by Franklin Hodge) were introduced at Franklin

²¹⁷ See, for example, [Franklin Hodge senior employee 2] witness statement, 4 February 2014, paragraphs 43-51 and 94 [URN 4963], referring to [URN 1788] (referred to as [3&]).

²¹⁸ [Franklin Hodge employee 4] witness statement, 11 November 2013, paragraph 39-40 [URN 4962].

²¹⁹ [URN 1688]. Firestore tanks are the brand of GSTs sold by Franklin Hodge.

²²⁰ See Margin Guide by Market, pages 4-6 [URN 1717] which has the comment ‘New Guide Mar 05’ in the footer. (The CMA understands that the date of 14/08/2013 appearing in the bottom left hand corner of the document is an automatic date stamp from when the information was retrieved from the Franklin Hodge system, rather than the date of the document itself. This also applies to other Franklin Hodge margin guides).

²²¹ See [Franklin Hodge employee 4] witness statement, 11 November 2013, paragraphs 36-38 [URN 4962]; and [Franklin Hodge senior employee 2] witness statement, 4 February 2014, paragraph 52-57 [URN 4963].

Hodge from at least 2006,²²² and set out the different prices to be applied for different sizes and standards (e.g. FM or LPCB) of tanks, depending on whether the 'Gold' or 'Silver' price applied.

- 3.60 A number of Franklin Hodge employees appear to have been made aware of the main cartel agreement by [Franklin Hodge senior employee 1].²²³ For example, [Franklin Hodge senior employee 4] (a member of the Franklin Hodge sales team, and from July 2009 [X]) confirmed that [Franklin Hodge senior employee 1] told him that he had been in contact with a competitor, Kondea, over a bid for a contract with Compco. He explains:

'I recall an occasion when [Franklin Hodge senior employee 1] told me that he had had contact with [Kondea senior employee] over a job we had or were about to quote for Compco Worchester. [Kondea senior employee] had apparently phoned [Franklin Hodge senior employee 1] and asked him not to quote to win a particular contract which he ([Kondea senior employee]) had done a lot of preliminary work on. [Franklin Hodge senior employee 1] told me that I was only allowed to drop to a specific price in order that [Kondea senior employee] could win the contract...I believe that [Kondea senior employee] won the Compco business. I know we didn't.'²²⁴

- 3.61 There is also evidence that [Franklin Hodge senior employee 1] kept at least some of his staff informed of the arrangements following the meeting on 11 July 2012. After the meeting ends, [Franklin Hodge senior

²²² See Firestore price lists valid from 1 June 2006 [URN 1778] and [URN 4700]. This also accords with [Franklin Hodge senior employee 1]'s testimony, who said that the switch from margins to price lists was in 2006 – see [Franklin Hodge senior employee 1] live testimony, Livenote transcript, [criminal trial], 3 June 2015, page 64, lines 11-18 [URN 6610].

²²³ See, for example, [Franklin Hodge senior employee 2] witness statement, 4 February 2014, paragraphs 43-50 [URN 4963]; [Franklin Hodge employee 4] witness statement, 11 November 2013, paragraphs 50-53 [URN 4962]; and [Franklin Hodge senior employee 3] witness statement, 5 February 2014, page 9, paragraphs 47 and 51-55 [URN 4966]. All confirm that they were aware that meetings with competitors were taking place and were updated by [Franklin Hodge senior employee 1] on the outcome of the meetings.

²²⁴ [Franklin Hodge senior employee 4] witness statement, 4 February 2014, paragraph 49 -52 [URN 4965]. See also [Franklin Hodge senior employee 4] live testimony, Livenote transcript, [criminal trial], 11 June 2015, page 153, lines 3-23 [URN 6615].

employee 1] telephones three of his colleagues to update them on the outcome of the meeting.²²⁵

Galglass

- 3.62 Prior to the main cartel arrangements, quotes for CGSTs by Galglass had been prepared using a computer-based costing programme to calculate a cost price figure for a particular tank, and a percentage mark-up would then be added to arrive at the total cost figure which would be provided in a customer quotation.²²⁶ In 2005, this changed to a set of strict parameters with customer lists and benchmark price lists provided by [Galglass senior employee 1],²²⁷ in accordance with the agreement reached with the other parties to the main cartel.
- 3.63 Following meetings with competitors, [Galglass senior employee 1] instigated a new pricing system at Galglass (a 'price list' system, later known within Galglass as 'benchmarking'). By email on 3 May 2005, he circulated a new 'price list', with set prices for certain sizes of sprinklers and setting the discounts permitted for preferred Galglass customers and non-preferred customers.²²⁸ The email explains the differential approach to discounting: 'on the 41 per cent mark ups when getting closer to orders you can discount by 2 per cent. On our mark ups don't go more than 1 per cent.' The price list attached provided for a lower mark-up of 34% for Galglass customers, and a higher mark-up of 41% for Franklin Hodge and CST UK customers, in accordance with the agreement reached regarding discounting with the other members to the main cartel.
- 3.64 A number of witnesses from the Galglass sales team describe the introduction of the price lists and 'benchmarking', and how the pricing

²²⁵ See transcript of recording of 11 July 2012 meeting, pages 55-77 [URN 8745].

²²⁶ See [Galglass employee 4] witness statement, 1 November 2013, paragraphs 24-26 [URN4950]; and [Galglass employee 6] witness statement, 5 September 2013, page 3 [URN 4944].

²²⁷ [Galglass senior employee 2] witness statement, 5 September 2013, paragraph 19 [URN 4949]; [Galglass employee 6] witness statement, 5 September 2013, page 4 [URN 4944]; [Galglass employee 3] witness statement, 10 March 2015, paragraphs 16-20 [URN 6572]; and [Galglass employee 4] witness statement, 1 November 2013, paragraph 37 [URN 4950].

²²⁸ Email from [Galglass senior employee 1] to [Galglass employee 6], [Galglass employee 4] and [Galglass senior employee 2] dated 3 May 2005 [URN 4945], with attachment.

arrangements were implemented at Galglass.²²⁹ A large number of benchmark price lists and customer allocation lists also evidence how customers were allocated and the pricing arrangements implemented at Galglass over the period of the main cartel. These demonstrate an evolution from the use of customer lists with a differential mark-up, to a more sophisticated benchmark pricing list to be used with separate customer allocation lists, consistent with the explanation given by witnesses from Galglass.²³⁰

3.65 [Galglass employee 4] described the introduction of the lists, and the mechanism introduced in 2005 as follows:

‘The “benchmark” price effectively fixed the end price “to be quoted” of any given size sprinkler tank. It removed the necessity to add a margin figure previously provided by either [Galglass senior employee 2] or [Galglass senior employee 1] as a percentage of the cost price obtained from the computerised costing programme.

The computerised costing programme was still to be used to determine the basic cost of manufacture, supply and installation of a given sprinkler tank size and for any additional costs to be calculated, such as transportation etc; however the profit margin was no longer calculated as a percentage of that cost figure but was predetermined by the price as shown on the ‘benchmarking’ sheet.

²²⁹ See [Galglass employee 4] witness statement, 1 November 2013, paragraphs 40-43 and 46-50 [URN 4950]; [Galglass employee 6] witness statement, 5 September 2013, pages 4-9 [URN 4944]; [Galglass senior employee 2] witness statement, 5 September 2013, paragraphs 40-55 [URN 4949]; [Galglass employee 3] witness statement, 10 March 2015, paragraphs 16-19 [URN 6572].

²³⁰ See for example customer allocation lists [URN 2608] (dated 3 May 2005), [URN 4946] (dated 3 May 2005) [URN 2609] (dated 13 July 2005 – valid to 31 July 2005), [URN 2607] (dated 13 July 2005 – valid from 1 August 2005), [URN 2603] (dated 30 May 2006) and [URN 2596] (dated 26 March 2008)], [URN 7190] (undated); ‘preferred’/‘non-preferred’ benchmark price lists [URN 2606] (dated 1 August 2005), [URN 0409] (dated 17 October 2005), [URN 2604] (dated 5 January 2006), [URN 2602] (dated 10 April 2006), [URN 2601] (dated 1 June 2006), [URN 2600] (dated 1 August 2006), [URN 2599] (dated 1 November 2006), [URN 2598] (dated 5 January 2007), [URN 2597] (dated 8 January 2008), [URN 2594] (dated 20 March 2008), [URN 2595] (valid from 20 March 2008), [URN 2593] (dated 30 May 2008); ‘Sprinkler benchmarking’ lists [URN 4948] (dated 01 June 2006), [URN 2592] (dated 9 June 2008), [URN 2592] (dated 4 July 2008-31 August 2008), [URN 2592] (dated 1 October 2008-31 December 2008), [URN 2592] (dated 4 December 2008 – 31 December 2008), [URN 2574] (dated 1 May 2010), [URN 2574] (dated 18 May 2010), [URN 2591] (dated 2 July 2010), [URN 2573] (dated 20 September 2010), [URN 2572] (dated 21 October 2010), [URN 2571] (dated 1 January 2011), [URN 2570] (dated 1 March 2011), [URN 2569] (dated 3 June 2011), [URN 2568] (dated 4 July 2011), [URN 2567] (dated 6 Feb 2012).

The effect of the 'benchmark price' was to immediately increase the profit margin dramatically. This margin suddenly and dramatically increased, initially from the previous 8 to 12% to a figure of around 20% to 25%; at a time when we had early been fighting for a business in a volatile market place for margins as low as 8%. I recall that at its height the 'benchmark price' increased our margin to a level of 40% to 45% above cost.

At the same time a second list was introduced by [Galglass senior employee 1] which basically provided a list of all the UK fire industry's main contractors and placed them all into one of three columns, headed Galglass, Franklin Hodge and Vulcan. Some contractors appeared in more than one column but the majority were a single entry under one of the stated manufacturers. It was noticeable that in respect of Galglass the contractors listed below were in the main, those we had previously done business with; however some others that would have previously fell into that category were now to be found under the name of one of our competitors.

...

I was instructed by [Galglass senior employee 1] that the two lists provided by him should be used in conjunction with each other. I was instructed to follow the following procedure –

If I received a request for a quotation from a contractor I would first take all the details as previously stated and enter the details into the cost programme in order to establish the basic cost for the manufacture, supply and installation for that particular size of tank. This was the same as pre-2005 but without the addition of a margin percentage. I would then refer to the "benchmark price" to establish what the fixed price was for that particular size of tank.

I would then check the contractor's name against the contractors list to establish under which manufacturer they appeared. If the contractor appeared under Galglass then that contractor would be eligible for a pre-set percentage discount off the fixed benchmark price. I believe that discount was in the region of 5%. If the

contractor appeared on the list under the name of either Franklin Hodge or Vulcan Tanks then they would only qualify for a discount off the fixed “benchmark price” of 2%.

Having completed the calculations the price was then sent out.²³¹

- 3.66 Customer allocation lists obtained from Galglass do not contain an A, B, C allocation but simply refer to ‘GG’, ‘FH’ and ‘VT’²³² or ‘Galglass’, ‘Franklin Hodge’ and ‘Vulcan’,²³³ and set out a percentage mark-up to be applied to each of the customers depending on whether they are allocated to Galglass, Franklin Hodge or CST UK.²³⁴ One of the customer lists also contains handwritten notes at the bottom in which the names of contractors are written beside the word ‘ours’ or ‘others’.²³⁵
- 3.67 The price lists obtained from Galglass support witnesses’ accounts of a system of ‘benchmarking’ in place at Galglass. The lists are typically titled ‘Sprinkler Benchmarking’ and have a series of columns for LPCB and FM standards and Ireland, and rows demarcating different sizes of tanks. At the bottom the lists contain an instruction for the maximum discount to be applied, depending on whether a customer is ‘ours’ or ‘other customers’.²³⁶
- 3.68 [Galglass employee 4] explains that the use of the lists effectively meant that Galglass was only going to win orders from contractors, who at that particular time, appeared under Galglass’ name on the customer list.²³⁷
- 3.69 Galglass witnesses also explain that adherence to the arrangements was monitored, and that [Galglass senior employee 1] would step in if it

²³¹ [Galglass employee 4] witness statement, 1 November 2013, paragraphs 40-43 and 46–50 [URN 4950]. This is consistent with accounts provided by other members of the Galglass sales team: See [Galglass employee 6] witness statement, 5 September 2013, pages 4-9 [URN4944]; [Galglass senior employee 2] witness statement, 5 September 2013, paragraphs 40-55 [URN 4949]; and [Galglass employee 3] witness statement, 10 March 2015, paragraphs 16-19 [URN 6572].

²³² For example [URN 0408] (undated).

²³³ For example [URN 2603] (dated 30 May 2006).

²³⁴ For example [URN 2608] (dated 3 May 2005); [URN 2607] (dated 13 July 2005); and [URN 2609] (dated 13 July 2005).

²³⁵ [URN 0408] (undated).

²³⁶ See, for example, [URN 0409] (dated 21 October 2010); and [URN 2568] (dated 04 July 2011). See paragraph 3.64 above for the full list of price lists obtained from Galglass.

²³⁷ [Galglass employee 4] witness statement, 1 November 2013, paragraph 54 [URN 4950].

looked like a sale was going to be won from a ‘non-preferred’ customer (allocated to a competitor under the arrangements).²³⁸

- 3.70 The CMA has not seen evidence that the cartel arrangements were widely known about by staff at Galglass other than [Galglass senior employee 1], and witnesses have explained that he did not inform his staff that there was an agreement to fix prices, or that he was meeting with other manufacturers, although they did have suspicions, particularly as price changes would often take place the week after [Galglass senior employee 1] was absent from the office on a Friday.²³⁹ However, other Galglass employees recalled seeing a customer list with the names of competitors up on the back of an office door, and to comments being made about it being ‘price fix Friday’ when [Galglass senior employee 1] was absent from the office.²⁴⁰

CST UK

- 3.71 Customer allocation lists obtained from CST UK are in the form of ABC lists, with contractors listed out by name, and then allocated a letter A, B or C, or occasionally allocated to more than one of A,B,C.²⁴¹ One of the customer allocation lists also has a hand written note which appears to explain the code used for the different competitors, with A representing

²³⁸ See [Galglass employee 6] witness statement, 5 September 2009, page 9 [URN 4944]; [Galglass employee 4] witness statement, 1 November 2013, paragraph 57-61 [URN 4950]; [Galglass senior employee 2] witness statement, 5 September 2013, paragraph 62-64 [URN 4949]. See also [Galglass employee 6] live testimony, Livenote transcript, [criminal trial], 5 June 2015, page 112 line 1 - 4 [URN 6612] and [Galglass employee 4] live testimony, Livenote transcript, [criminal trial], 9 June 2015, page 63 line 9 – page 64, line 22 [URN 6614].

²³⁹ See [Galglass employee 6] witness statement, 5 September 2013, page 9 [URN 4944]; [Galglass senior employee 2] witness statement, 5 September 2013, paragraph 56-58 [URN 4949]; [Galglass employee 4] witness statement, 1 November 2013, paragraph 55-61 and 71 [URN 4950]. See also [Galglass employee 6] live testimony, Livenote transcript, [criminal trial], 5 June 2015, page 108, line 14–17 [URN 6612]; [Galglass employee 4] live testimony, Livenote transcript, [criminal trial], 9 June 2015, page 74, line 22–24 [URN 6614]; [Galglass senior employee 2] live testimony, Livenote transcript, [criminal trial], 9 June 2015, page 31, line 8 – page 32, line 6 [URN 6614]. This is supported by contemporaneous documentary evidence, with a number of Galglass pricelists issued shortly after a cartel meeting as identified in Annex B. For example, price list issued on 17 October 2005 [URN 7180] following the cartel meeting on 14 October 2005; pricelist issued on 4 December 2008 [URN 2592] following the meeting on 28 November 2008; pricelist issued on 18 May 2009 [URN 7155], following the meeting on 15 May 2009; pricelist issued on 2 July 2010 [URN 2591], following the meeting on the same day; pricelist issued on 1 January 2011 [URN 2571], following the meeting on 17 December 2010; pricelist issued on 4 July 2011 [URN 2568], following the meeting on 1 July 2011; and pricelist issued on 6 February 2012 [URN 2567], following the meeting on 3 February 2012.

²⁴⁰ See, for example, [Galglass employee 2] witness statement, 1 April 2015, paragraphs 18 and 20 [URN 6577]; and [Galglass employee 5] witness statement, 11 March 2015, paragraph 38 [URN 6571].

²⁴¹ [URN 0078] (undated), [URN 0110] (undated), [URN 0114] (undated), [URN 0128] (undated), [URN 0130] (undated), [URN 6602] (undated), [URN 7187] (undated), [URN 7188] (undated).

Franklin Hodge, B representing Galglass and C representing CST UK (Vulcan).²⁴²

- 3.72 When asked about other customer lists obtained from CST UK,²⁴³ [CST UK senior employee 1] confirmed that these were lists he produced at an early stage of the cartel when allocation of contractors and the splitting of the UK market was discussed:

‘For all four documents, although slightly different I do recognise the type face and the layout.

I recognise these documents as something I believe I produced during the early beginning of the cartel when we discussed contractor allocation and the splitting of the total UK market business in galvanised steel tanks between the cartel memberships thus ensuring we all gained an equal share of the business.’²⁴⁴

- 3.73 The price lists found at CST UK corroborate the narrative of the mechanics of the cartel described by the witnesses in sections C and D above. Typically the lists used at CST UK had columns for LPCB design, LPCB Ireland, FM Ireland, and FM greater than 1000m3. Alongside these is a column marked ‘non-preferred’ (with CST UK referring to customers allocated to Galglass or Franklin Hodge as ‘non-preferred’, according to the agreed allocation).²⁴⁵

- 3.74 For example, a price list marked as valid from 1 January 2007 shows the higher prices to be quoted for non-preferred customers as compared with prices for CST UK customers, for the same size and specification CGST.²⁴⁶ [CST UK senior employee 1] explains that this document was the type of spreadsheet which would have been provided by CST UK to Kondea, and that the numbers in the pricing column would have been provided by [Kondea senior employee]. He also explains that documents

²⁴² [URN 0078] – with the handwritten key ‘A FH’, ‘B G’, ‘C V’. When asked about this document, [CST UK senior employee 1] believed the writing to be that of [Kondea senior employee]. See [CST UK senior employee 1] witness statement, 9 May 2013, page 7 [URN 2448].

²⁴³ [URN 0110], [URN 0114], [URN 0128] (duplicate of 0114), and [URN 0130].

²⁴⁴ See [CST UK senior employee 1] witness statement, 9 May 2013, page 8 (referred to as [3<]) [URN 2448].

²⁴⁵ [CST UK senior employee 1] witness statement, 9 May 2013, page 9 [URN 2448].

²⁴⁶ [URN 0113].

of this type would have been used at meetings of the cartel when price variations were discussed and confirms that the 'non-preferred' refers to a price that CST UK would quote to a Galglass or Franklin Hodge allocated customer.²⁴⁷

- 3.75 Taking the example of a 8 x 4 LPCB design tank, for a CST UK contractor the price quoted would have been £12,103, but for a Galglass or Franklin Hodge allocated customer it would have been £12,950, approximately 7% higher, with a maximum discount of 2% as noted at the bottom of the price list.²⁴⁸
- 3.76 An earlier pricelist from October 2005 found at CST UK contains handwritten notes stating that the split of profits needs be agreed with Kondea, and also refers to 'Next mtg 6th Jan', suggesting that this document was used as a basis for discussion at a cartel meeting, consistent with [CST UK senior employee 1]'s recollection.²⁴⁹
- 3.77 [CST UK senior employee 1] explains that he did not inform his staff when he was attending the cartel meetings.²⁵⁰ However he does appear to have told at least some of the sales team of the arrangements, and talked about the meetings in sales management meetings.²⁵¹ There is also some evidence that more senior management at CST UK were aware of the arrangements, at least to some degree.²⁵²
- 3.78 After [CST UK senior employee 1]'s exit from CST UK, [Kondea senior employee] kept [CST UK senior employee 2] at CST UK informed of when meetings were taking place.²⁵³ [CST UK senior employee 2] also

²⁴⁷ See [CST UK senior employee 1] witness statement, 9 May 2013, page 9 [URN 2448].

²⁴⁸ [CST UK senior employee 1] also confirms that if the contractor was allocated to CST UK there would be no need to offer any discount 'as we already knew what Galglass and Franklin Hodge were going to quote'. See [CST UK senior employee 1] witness statement, 9 May 2013, page 10 [URN 2448].

²⁴⁹ [URN 0134].

²⁵⁰ [CST UK senior employee 1] witness statement, 20 February 2013, page 20 [URN 0689].

²⁵¹ [CST UK senior employee 1] witness statement, 20 February 2013, pages 22-23 [URN 0689]. He confirmed in a later statement that he would not report back directly on what had been discussed at the meetings, but mentioned to members of the sales team that if they received an enquiry from contractors in the sprinkler industry [Kondea senior employee] at Kondea should be contacted. See [CST UK senior employee 1] witness statement, 9 May 2013, page 3 [URN 2448].

²⁵² See [CST UK senior employee 2] witness statement, 22 August 2013, pages 22-23 [URN 4958] and [CST Inc. senior employee 2] witness statement, 26 March 2013, pages 10-11 [URN 1389]; [CST Inc. senior employee 2] live testimony, Livenote transcript, [criminal trial], 16 June 2015, page 11, line 4 – page 12, line 3 [URN 6618].

²⁵³ For example [URN 0079] is an email from [Kondea senior employee] to [CST UK senior employee 2] in which [Kondea senior employee] tells [CST UK senior employee 2] 'Our next meeting with our "friends" is on the

confirms that CST UK acted on the information provided by [Kondea senior employee]²⁵⁴ and that he was still involved in the implementation of some of the 'club's' decisions, in particular when Kondea lost orders it should have won.²⁵⁵ Although [CST UK senior employee 2] says that he never instructed [Kondea senior employee] to attend the meetings and that as far as he was concerned [Kondea senior employee] was only representing Kondea, not CST, [CST UK senior employee 2] also states that he did occasionally give [Kondea senior employee] topics to bring up at the meeting, for example to determine what the other parties' views were on joining the ATCM.²⁵⁶ [CST UK senior employee 2] also notes:

'I could have stopped CST UK/Vulcan's involvement in the 'Club' by instructing [Kondea senior employee] not to attend, but it wasn't really in CST UK's interest to do that. The margins in the UK market were good and the UK business took very little management from me.'²⁵⁷

Kondea

- 3.79 The undated customer list found at the premises of Kondea takes the form of a list of contractor names, next to each of which is a letter A, B, C or a combination thereof. This document also contains the private email addresses of [Franklin Hodge senior employee 1] and [Galglass senior employee 1] who also attended cartel meetings.²⁵⁸
- 3.80 As discussed above, witnesses recalled that the original customer allocation lists and price lists agreed by the parties to the main cartel were created and circulated by [Kondea senior employee].²⁵⁹

18th August, usual place and usual time (8am).’ [CST UK senior employee 2] also confirms that [Kondea senior employee] kept him informed of what had been discussed at the meetings (see [CST UK senior employee 2] witness statement, 22 August 2013, page 27 [URN 4958]).

²⁵⁴ [CST UK senior employee 2] witness statement, 22 August 2013, page 42 [URN 4958].

²⁵⁵ [CST UK senior employee 2] witness statement, 22 August 2013, page 26 [URN 4958].

²⁵⁶ [CST UK senior employee 2] witness statement, 22 August 2013, page 42 [URN 4958].

²⁵⁷ [CST UK senior employee 2] witness statement, 22 August 2013, page 43 [URN 4958].

²⁵⁸ [URN 2684], [CST UK senior employee 1] believed the handwriting on this document (referred to as exhibit [3<]) to be that of [Kondea senior employee]: [CST UK senior employee 1] witness statement, 9 May 2013, pages 8-9 [URN 2448].

²⁵⁹ See paragraph 3.15 above.

- 3.81 This is supported by an email exchange on 3 and 4 January 2006 showing [CST UK senior employee 1] and [Kondea senior employee] discussing issues to be raised at the next cartel meeting (which took place on 6 January 2006) and attaching lists of contractors and prices.²⁶⁰
- 3.82 On 3 January 2006, [CST UK senior employee 1] emails [Kondea senior employee]: 'Attached is the latest list I have of the contractors and the pricing. Can you confirm that it is up to date. If not can you send me the most up to date list so that we have it ready for Friday's meeting. What are the main issues you want to discuss?' He goes on to mention 'Contractor Listing / Split (ABC)', 'Turnover by contractor (might be difficult)', 'Pricing and increase timing'. In his response on 4 January 2006, [Kondea senior employee] confirms 'My issues are the same as yours' and attaches 'the latest contractors list and prices.'²⁶¹

Bilateral contacts between the parties to the main cartel infringement

- 3.83 In addition to the regular meetings which took place over the period of the main cartel between 2005 and 2012 as set out with supporting evidence in Annex B there is also evidence of bilateral contacts between the parties to the main cartel to discuss specific bids and to further the arrangements. [Franklin Hodge senior employee 1] explains that initially the parties to the main cartel would phone each other frequently to check the prices they were quoting.²⁶² Through this they provided each other with comfort that they were all keeping to the agreement. [CST UK senior employee 1] of CST UK also described phone calls after a bid 'for example if the quoting arrangement wasn't adhered to and the contract went to the wrong manufacturer. This may have been sorted out over the phone...'²⁶³

²⁶⁰ [URN 0143].

²⁶¹ See email chain between [CST UK senior employee 1] and [Kondea senior employee] dated 3 and 4 January 2006 [URN 0143].

²⁶² [Franklin Hodge senior employee 3] also confirms that in the early years of the cartel he was asked by [Franklin Hodge senior employee 1] to contact Kondea ([Kondea senior employee]) to let him know the prices that Franklin Hodge was quoting. See [Franklin Hodge senior employee 3] witness statement, 5 February 2014, paragraph 69 [URN 4966].

²⁶³ [CST UK senior employee 1] witness statement, 20 February 2013, page 19 [URN 0689].

3.84 Further evidence of bilateral contact between the parties implementing the main cartel agreement by email and text is set out below:

- An email from [Galglass senior employee 1] to [Kondea senior employee] dated 23 September 2011 forwarding a bid from a contractor with an indication of the price for two CGSTs.²⁶⁴
- Text messages from [Kondea senior employee] to [Galglass senior employee 1]:

On 21 December 2011: 'Its a tank for [X], we are the cheapest but the buyer is trying to screw us down. Can you please hold you [sic] price or at the worst no lower than 29,500. Meeting [Balmoral Tanks senior employee 1] on the 6th Jan. Cheers.' [Galglass senior employee 1] replies: 'We haven't quoted this one.'²⁶⁵

On 9 May 2012: 'Hi [Galglass senior employee 1], can you please call me asap, re Ariba bid. Cheers.'²⁶⁶

On 15 May 2012: 'Hi [Galglass senior employee 1], Give me a call when you can re ASDA. Cheers.'²⁶⁷

On 19 May 2012: ([Kondea senior employee]) 'Hi [Galglass senior employee 1] from my point of view the answer is no! Yesterday they quoted an 13 x 8 and were at least 5k below me after i had discounted by 7%.' ([Galglass senior employee 1]) 'Hi [Kondea senior employee], does [Balmoral Tanks senior employee 1] know that? I will text him tomorrow again. I am thinking an emergency meeting?' ([Kondea senior employee]) 'Hi [Galglass senior employee 1], no he doesn't know, it happened late yesterday. I assume you didn't get a reply to your earlier text. Yes an emergency meeting is

²⁶⁴ [URN 4478].

²⁶⁵ See list of non-live text messages between [Galglass senior employee 1] and [Kondea senior employee] from [Galglass senior employee 1] Blackberry Torch 9800 mobile device [URN 6451] and extract from [Kondea senior employee]'s phone bills and statements for period between January 2012 and June 2012 [URN 6428A].

²⁶⁶ [URN 1366] page 4; [URN 6428B]; [URN 6461].

²⁶⁷ [URN 1366] page 4; [URN 6428B]; [URN 6461].

needed.’ ([Galglass senior employee 1]) ‘No not yet, I will send it again tomorrow and let u know.’²⁶⁸

On 23 May 2012: ‘Hi [Galglass senior employee 1], just had a thought that we can’t do this on school tanks and 135 tanks where the prices are artificialy [sic] low. I spoke with [Franklin Hodge senior employee 1] and he agrees that for non preferred [sic] customers we should discount by 2% only. I know that you are seeing [CST UK senior employee 2] in the morning so a little back up would be appreciated. Cheers.’²⁶⁹

14 June 2012: ‘Hi [Galglass senior employee 1], the job is “Interserve Eagle Recovery” and the tank is 12 round, 105 tall, we are at £47,889. Cheers.’ [Galglass senior employee 1] then replies with: ‘Hi mate, I am told the order has been placed on us for 46k. Let me know as early as u can for next one.’²⁷⁰

On 29 June 2012: ‘[Galglass senior employee 1], i’m still struggling for orders and there are 3 Morrisons (135m) up for grabs from Tyco. Can I [go] in for them? They are asking for a quotation for 3.30pm today. Cheers.’²⁷¹

On 4 October 2012: ‘Hi [Galglass senior employee 1], can you please give me a call. I’ve just been told by Hall & Kay in M/cr that you have undercut me on a big tank in Ashington. Thanks.’²⁷²

On 12 November 2012: ‘Hi [Galglass senior employee 1], another good win for the reds. I’m just about to go into a meeting but do need

²⁶⁸ [URN 1366] page 4; [URN 6428C]; [URN 6461].

²⁶⁹ [URN 1366] page 4; [URN 6428C]; [URN 6461].

²⁷⁰ [URN 1366] page 4; [URN 6428D]; [URN 6461].

²⁷¹ [URN 1366] page 4; [URN 6429A]; [URN 6461]. In a meeting on 11 July 2012, [Kondea senior employee] mentions that he has spoken to [Galglass senior employee 1] about a particular Tyco bid, asking if Kondea could bid for it and stating the price he was going to put in: ‘But when I saw that one come up on the Arriva, I phoned [Galglass senior employee 1] and if I’m totally honest, I would work for this and I phoned [Galglass senior employee 1] and I said you know I’m struggling for work I’ve seen these 3 Morrisons come up, can I have a go for them? So he said, yeah, yeah, you can. I said right well I’m going to be quoting just short of 16000 pound which to our prices that we all know, that’s where it should have been...’ See transcript of 11 July 2012 meeting, page 16 [URN 8745].

²⁷² [URN 1366] page 4; [URN 6429D]; [URN 6475] page 2.

to speak with you later regarding H&K and the job in Ashington.
Could give me a call after 5 o'clock. Cheers.'²⁷³

- Text messages from [Franklin Hodge senior employee 1] of Franklin Hodge to [Galglass senior employee 1] of Galglass:

On 11 July 2012: 'Need 2 talk before u bid Welsh jobs!'²⁷⁴

On 17 October 2012: 'Hi. We are going for Jag project W'hampton Tyco. Project eng is ur mate [Hall & Kay employee]. Balm' [X] & [Balmoral Tanks senior employee 2] meeting Tyco next week. Think they are offering deal for all work in rtn for guaranteeing 2 beat any price offad [sic]. They doing this at Compco. Cheers, [Franklin Hodge senior employee 1]'²⁷⁵

F. Balmoral Tanks' entry as a new competitor for the supply of CGSTs

- 3.85 In late 2011, Balmoral Tanks entered the market as a new competitor for the supply of CGSTs. Prior to entering the CGST sector, Balmoral was already active in manufacturing and supplying other tank sectors. The main type of tank produced by Balmoral were GRPs, which Balmoral supplied to largely the same customers as were active in the CGST sector.²⁷⁶ Although Balmoral had considered entering the CGST sector on previous occasions,²⁷⁷ it was not until 2011 that it began quoting for the supply of CGSTs to expand its offering to customers.²⁷⁸ It obtained

²⁷³ [URN 1366] page 4; [URN 6429F]; [URN 6475] page 2.

²⁷⁴ [URN 1366] page 2; [URN 6479]; [URN 2642A].

²⁷⁵ [URN 1366] page 2; [URN 6479].

²⁷⁶ [Balmoral Tanks senior employee 1] witness statement, 27 February 2014, paragraph 24 [URN 5007]. See section 2.A above in relation to the different types of tanks supplied by the Parties.

²⁷⁷ As explained in [Balmoral Tanks senior employee 1]'s witness statement, 27 February 2014, paragraph 25 [URN 5007]. See also [Balmoral Group senior employee 1] witness statement, 9 December 2013, paragraphs 25-26 [URN 4951].

²⁷⁸ [Balmoral Tanks senior employee 1] confirms that Balmoral Tanks began to quote for the supply of CGSTs with Balmoral Tanks' long established customers as early as October 2011, with the first certified tank delivered in February 2012. See [Balmoral Tanks senior employee 1] witness statement, 27 February 2014, paragraphs 35 and 48 [URN 5007].

LPCB approval for its CGST by the end of 2011²⁷⁹ and delivered its first certified CGST in February 2012.²⁸⁰

3.86 Balmoral Tanks' entry raised concerns with the parties to the main cartel and led to discussion about how they should respond to the introduction of competition. [Galglass senior employee 1] explained that he was concerned about 'irrationally low prices' from Balmoral Tanks and that 'CST, Vulcan, Kondea, Franklin Hodge and myself were therefore wary of Balmoral Tanks' entry into the market which had the potential to cause things to revert to the pre-LPS 1276 levels. Lowering of standards based on aggressive anti-competitive reductions in price was not a good way forward...'²⁸¹

3.87 [CST UK senior employee 1] explains: 'These discussions led the "Club" to recognise there was no point fighting Balmoral Tanks and that it would be better trying to encourage them to attend the meetings and become members.'²⁸²

3.88 Rather than abandoning the main cartel and allowing the return of competition, Franklin Hodge, Galglass, and Kondea instead decided to attempt to persuade Balmoral Tanks to join the long-standing cartel arrangements. [Franklin Hodge senior employee 1] explained the strategy for getting Balmoral Tanks to join:

'It was with this trend in mind that [Galglass senior employee 1], [Kondea senior employee] and I decided we should attempt to get [Balmoral Tanks senior employee 1] along to one of our meetings and to persuade him that it would be beneficial for Balmoral to join us. The idea was to try and convince [Balmoral Tanks senior employee 1] that Balmoral should raise its prices to meet ours in exchange for an equal share of the steel tank market. This way, each would have to accept a limit on their proportion of the market, but in the knowledge that they would

²⁷⁹ See Balmoral Tanks LPCB certificate, dated 16 December 2011 [URN 5010], as exhibited to [Balmoral Tanks senior employee 1] witness statement, 27 February 2014 (referred to as [3<]) [URN 5007].

²⁸⁰ See [Balmoral Tanks senior employee 1] witness statement, 27 February 2014, paragraph 48 [URN 5007].

²⁸¹ [Galglass senior employee 1], interview transcript (prepared statement read during the interview) 14 March 2014, page 58, paragraph 152 [URN 6585].

²⁸² [CST UK senior employee 2] witness statement, 22 August 2013, page 30 [URN 4958].

operate with a far greater profit margin. In other words, for Balmoral, they would make greater profits, but on a smaller output.²⁸³

3.89 [Balmoral Tanks senior employee 1] describes the ‘numerous and persistent’ attempts made by [Franklin Hodge senior employee 1], [Galglass senior employee 1] and [Kondea senior employee] to persuade him to attend meetings with them, although [Balmoral Tanks senior employee 1] explains that the real purpose of these meetings was not apparent to him until later.²⁸⁴ He describes how these events culminated in the meeting of 11 July 2012, where he was informed that agreements existed which effectively divided the market between the parties to the main cartel. The meeting on 11 July 2012 is discussed further in section G below.²⁸⁵

3.90 In this context, [Franklin Hodge senior employee 1], [Galglass senior employee 1] and [Kondea senior employee] met Balmoral Tanks on a number of occasions in 2012, individually and in larger group meetings, to try to encourage Balmoral Tanks to raise its prices in line with those of the ‘club’.²⁸⁶

G. Meeting on 11 July 2012

3.91 On 11 July 2012, a meeting at the Appleby Magna Best Western Hotel in Tamworth was attended by [Franklin Hodge senior employee 1], [Kondea senior employee] and [Balmoral Tanks senior employee 1]. [Galglass senior employee 1] had been due to attend and had been

²⁸³ [Franklin Hodge senior employee 1] witness statement, 6 June 2014, paragraph 150 [URN 6526]. [Galglass senior employee 1] supports this, stating at interview: ‘Yes we’ve discussed that at meetings, and said, “well obviously Balmoral are going to come in, they’re going to take market share. They’re going to need to take the market share. Don’t want them to kill the price; let them take some – let them take some work”’, [Galglass senior employee 1] interview transcript, 27 November 2012, page 49 [URN 1316].

²⁸⁴ See [Balmoral Tanks senior employee 1] witness statement, 27 February 2014, paragraphs 19 and 54 [URN 5007].

²⁸⁵ [Balmoral Tanks senior employee 1] witness statement, 27 February 2014, paragraph 20 [URN 5007].

²⁸⁶ [CST UK senior employee 2] explains that through these meetings the parties to the main cartel were ‘trying to encourage Balmoral to raise their prices in line with the “Club” members; [Kondea senior employee] described it as “stepping stones” to get Balmoral to join the “Club”.’ See [CST UK senior employee 2] witness statement, 22 August 2013, page 30 [URN 4958]. Evidence of these meetings is set out at Annex B.

involved in its organisation, but did not attend as he was unwell.²⁸⁷ This meeting was filmed, providing evidence of what was discussed both by the parties in the meeting, and also by [Franklin Hodge senior employee 1] who remained in the room after the meeting had concluded and made a number of telephone calls to members of his staff at Franklin Hodge reporting back on the information obtained during the meeting.²⁸⁸

3.92 [Franklin Hodge senior employee 1] explains that for Franklin Hodge, Galglass and Kondea the purpose of the meeting was ‘an opportunity to persuade [Balmoral Tanks senior employee 1] to join our cartel. That was our agreed agenda for the meeting booked for 11th July 2012. First and foremost, to try and get [Balmoral Tanks senior employee 1] and Balmoral on board with some form of the arrangement.’²⁸⁹

3.93 Prior to the meeting, [Franklin Hodge senior employee 1], [Galglass senior employee 1] and [Kondea senior employee] had discussed a strategy for trying to bring Balmoral Tanks into the long-standing customer allocation and price-fixing cartel arrangements. [Franklin Hodge senior employee 1] explains:

‘Having discussed Balmoral’s entry between us (the manufacturers), we agreed on a particular approach. In essence, as I’ve described above, the approach centred on seeking to explain to [Balmoral Tanks senior employee 1] that protecting the price of GST’s [sic], having a sensible price, would mean that each manufacturer could operate within the market with healthy profit margins, rather than fighting to obtain a high volume of sales but with a low profit margin. We saw this as an appeal to his business sense ...

... En-route to the meeting, I spoke to [Kondea senior employee] on the mobile. We discussed our joint expectation for the meeting and confirmed our agenda. We briefly discussed the

²⁸⁷ The afternoon prior to the meeting, [Galglass senior employee 1] texts [Kondea senior employee], [Franklin Hodge senior employee 1] and [Balmoral Tanks senior employee 1] to say he is unwell and therefore unable to attend, but that he supports the objectives of the meeting. See [URN 1366], [URN 6474] and [URN 6475].

²⁸⁸ See transcript of 11 July 2012 meeting [URN 8745], transcribing the content of the audio-visual recording [URNs 4998A and 4998B].

²⁸⁹ [Franklin Hodge senior employee 1] witness statement, 6 June 2014, paragraph 159 [URN 6526].

possible outcome of the meeting and what we thought [Balmoral Tanks senior employee 1] might do or say.

[Kondea senior employee] had been pushing for us to have this meeting and to seek to bring [Balmoral Tanks senior employee 1] and Balmoral on board. In my view, [Kondea senior employee] had the most to lose if the arrangement fell apart. Although “desperate” would be too strong a word, he was very keen that the meeting with [Balmoral Tanks senior employee 1] went ahead.’²⁹⁰

- 3.94 Evidence from Balmoral Tanks’ witnesses is that Balmoral Tanks’ intention in attending the meeting was to make it clear that Balmoral Tanks would be competing for business in the CGST sector and to put an end to attempts to involve Balmoral Tanks in any anti-competitive conduct. [Balmoral Tanks senior employee 1] explains: ‘Although by the time of this meeting Balmoral had received accreditation to manufacture vortex inhibitors, as I have stated I wanted to end the contact, I wanted to make sure they saw Balmoral as a credible competitor and I didn’t want to kill off all legitimate contact with them.’²⁹¹
- 3.95 [Balmoral Group senior employee 1] recalls: ‘T (sic) the time we had received the inhibitor certificate. I recall that the competitors organised a meeting with [Balmoral Tanks senior employee 1]. I recall [Balmoral Tanks senior employee 1] stating to me that he had had enough of calls with the competitors and that he intended to go to a meeting he’d been invited to in order to make it clear that the calls had to stop.’²⁹²
- 3.96 During the meeting, [Franklin Hodge senior employee 1] confirms the existence of a pre-existing customer allocation agreement: ‘So it’s going to be, I mean, the conclusion we came to last time between ourselves we had this conversation was that we ended up divvying up the

²⁹⁰ [Franklin Hodge senior employee 1] witness statement, 6 June 2014, paragraphs 160, 162 and 163 [URN 6526].

²⁹¹ [Balmoral Tanks senior employee 1] witness statement, 27 February 2014, paragraph 88 [URN 5007]; see also paragraph 86 [URN 5007]. Having an LPCB standard certified CGST required the tank to be fitted with a device known as a vortex inhibitor, which facilitates the flow of water from the tank. Balmoral Tanks received LPCB approval for its own design of vortex inhibitor in May 2012, prior to the meeting on 11 July 2012. In the interim Balmoral Tanks purchased LPCB approved vortex inhibitors from CST UK. See also paragraphs 2.4 and 2.15.

²⁹² [Balmoral Group senior employee 1] witness statement, 9 December 2013, paragraph 47 [URN 4951].

customers, gold and silver customers'.²⁹³ He also acknowledges that Balmoral Tanks does not agree to allocate customers:

'Obviously it's going to be difficult to arrange that with you guys now, given you're saying you don't want to go down that road so it's going to be a complicated picture and it's going to continue to be a complicated picture.'

3.97 [Balmoral Tanks senior employee 1] made it clear during the meeting that Balmoral was not prepared to take part in the pre-existing customer allocation arrangements; that Balmoral was keen to be seen as a competitor in the sector and would be competing with the other suppliers to win bids for CGSTs. The CMA has concluded that Balmoral was not a party to the main cartel infringement, refusing to join the cartel despite facing significant pressure from the other parties to do so.

3.98 Further detail of the 11 July 2012 meeting, as relevant to the information exchange infringement, is set out in the Information Exchange Decision.

H. Contact between the Parties between July and November 2012

3.99 The evidence is mixed as to the cartel's operation following the meeting on 11 July 2012.

3.100 The recorded evidence from the meeting on 11 July 2012 shows that, despite Balmoral Tanks' refusal to join, the main cartel continued to operate as between its members up until the OFT's inspections in November 2012.

3.101 [Franklin Hodge senior employee 1] reported back to one of his colleagues after the 11 July 2012 meeting, explaining:

'Basically [Franklin Hodge employee 4], there's going to be no more divvying up of customers and gold and silver, sorry amongst the 3 older members, we've made a gentleman's agreement we're not going to go after each other's gold customers, but [Balmoral Tanks senior employee 1] doesn't want

²⁹³ Transcript of 11 July 2012 meeting, page 21 [URN 8745].

to divvy up to that level, he said he's not interested. But he's happy for us to play, it's going to be very complicated to do it, but we're going to have to play it by ear job by job, customer by customer but try and you know, we're going to have to make a judgment on it every time. But I've clearly told him on this occasion, with Compco, we're going to go in keen, we're going to go in grab the work cos we need the, we need the work also because we've got to gain credibility with Compco again, because as I said, its maybe our own fault [Balmoral Tanks senior employee 1], maybe we went in too high on prices at the beginning of the year I don't know ...'²⁹⁴

- 3.102 That the arrangement continued to be implemented, albeit in a slightly different form as regards the levels of pricing, is supported by [Franklin Hodge senior employee 2], who explains that the gold and silver lists and the price list (albeit with reduced margins) remained in operation, and that [Franklin Hodge senior employee 1] informed him of the way which the parties to the main cartel would respond if they were bidding against Balmoral Tanks:

'The gold and silver contractors list and a reduced price list remained. I am aware through [Franklin Hodge senior employee 1] that Galglass and Kondea would prepare quotations still using the same agreed method and fixed price however, if the contractor was on their gold list and if competing against Balmoral, would drop their prices to whatever level they thought realistic to win the contact. If the contractor was on their silver list then they would only discount to the previously agreed level.

This arrangement meant that only one of our number competed against Balmoral for any one contract. If more than one of our number were approached, then the other would effectively provide a high quote and remain on the sidelines.'²⁹⁵

²⁹⁴ Transcript of 11 July 2012 meeting, page 65-66 [URN 8745]. This is also confirmed in [Franklin Hodge senior employee 1]'s later call to [Franklin Hodge senior employee 3] (see transcript of 11 July 2012 meeting, page 57 [URN 8745]).

²⁹⁵ [Franklin Hodge senior employee 2] witness statement, 4 February 2014, paragraphs 82-83 [URN 4963].

3.103 This is also consistent with the perception of [Balmoral Tanks senior employee 1], who observed ‘when Balmoral were in conflict over the price of a job, it was only against one of our competitors. I can’t remember a time when we were bidding against more than one competitor.’²⁹⁶

3.104 There is also some evidence from customers that prices appear to have decreased following the entry of Balmoral Tanks and they decreased again following the OFT inspections. For example, one customer noted that once Balmoral Tanks began to supply CGSTs:

‘Vulcan did bring their prices down to match as did Franklin Hodge and the market stabilised through 2012.

From January [2013] I have noticed that quotes are coming in lower and when an order is being placed there is more competition between the companies. Prior to this the competing companies would lower their prices to a level but always Vulcan went below that level. Now they are back to aggressively undercutting each other to get orders similar to the situation in 2004 and 2005.’²⁹⁷

3.105 However, in his prepared statement, [Franklin Hodge senior employee 1] states that after the 11 July 2012 meeting the main cartel infringement ‘fizzled out’ and that after the 11 July 2012 meeting ‘we effectively went back to the way things were before the agreement.’²⁹⁸ [Franklin Hodge employee 2] also recalls that Franklin Hodge stopped using the gold and silver customer lists and price lists about six months before the OFT’s inspections in November 2012, and dropped to a set margin of around ‘20 – 25% on all sprinkler tanks.’²⁹⁹ However, this is contradicted by an internal Franklin Hodge email sent shortly after the 11 July 2012 meeting, which confirms that the gold/silver pricing was still in place.³⁰⁰

²⁹⁶ [Balmoral Tanks senior employee 1] witness statement, 27 February 2014, paragraph 102 [URN 5007].

²⁹⁷ [Hall Fire Protection employee] witness statement, 21 March 2013, paragraphs 13-14 [URN 2415]. See also [Armstrong Priestley senior employee] witness statement, 30 October 2013, page 3 [URN 4936].

²⁹⁸ [Franklin Hodge senior employee 1] Prepared Statement, 23 May 2013, paragraph 183 [URN 6527].

²⁹⁹ [Franklin Hodge employee 2] witness statement, 10 February 2014, paragraphs 32–34 [URN 4975].

³⁰⁰ See internal Franklin Hodge email from [Franklin Hodge senior employee 2] dated 19 July 2012 [URN 2640], which was addressed to [Franklin Hodge employee 2] and others on the Franklin Hodge sales team.

- 3.106 The evidence at paragraphs 3.100 to 3.105 above constitutes a consistent body of evidence from a variety of sources (including accounts given by witnesses from a number of the Parties, third party customers and the recording of the 11 July 2012 meeting) that the main cartel continued to operate after Balmoral's refusal to join in July 2012. This is also corroborated by text messages demonstrating that the parties to the main cartel continued to discuss specific bids (see evidence referred to in paragraph 3.84 above).³⁰¹
- 3.107 The CMA therefore finds the main cartel infringement started at least as early as 29 April 2005 and continued until 27 November 2012, when the OFT inspections took place.

³⁰¹ Referring to text exchanges between Kondea and Galglass on 4 October 2012 and 12 November 2012 and FHI and Galglass on 11 July 2012 and 17 October 2012.

4. Legal Assessment

- 4.1 This section sets out the CMA's legal assessment of the Parties' conduct in light of the evidence set out at section 3.
- 4.2 The CMA finds that between 29 April 2005 and 27 November 2012, and in the case of CST UK between 29 April 2005 and 2 May 2012, CST UK, Franklin Hodge, Kondea and Galglass participated in bid-rigging, price-fixing and market-sharing in relation to the supply of CGSTs in the UK.³⁰² This took the form of an ongoing arrangement for the allocation of specific customers between them and not competing for business from customers allocated to another party. This was combined with an arrangement concerning benchmark levels of pricing and the maximum discounts to be offered to 'preferred' and 'non-preferred' customers, with the intention that each undertaking would win bids from those customers allocated to it and lose bids from customers allocated to its competitors, giving the appearance of competition where there was none.
- 4.3 For the reasons set out below, the CMA finds that these arrangements constitute an agreement or concerted practice which had as its object the prevention, restriction or distortion of competition in relation to the supply of CGSTs in breach of the Chapter I prohibition and Article 101 TFEU.

Agreement or concerted practice

Key legal principles

- 4.1 The Chapter I prohibition and Article 101 TFEU apply to 'agreements' and 'concerted practices' and 'decisions by associations of undertakings'.³⁰³
- 4.2 It is not necessary for the purpose of finding an infringement to distinguish between them or to characterise conduct exclusively as an

³⁰² As noted at paragraph 1.2 above, the CMA finds that CST's infringing conduct came to an end on the 2 May 2012, being the date it applied to the OFT for immunity. The basis for attributing liability for the infringement is explained in section 2.C above.

³⁰³ Section 2(1) of the Act and Article 101(1) TFEU.

agreement or as a concerted practice.³⁰⁴ The concepts of agreement and concerted practice are not mutually exclusive and there is no rigid dividing line between the two. On the contrary, they are intended '*to catch forms of collusion having the same nature which are distinguishable from each other only by their intensity and the forms in which they manifest themselves*'.³⁰⁵

Agreements

- 4.3 The Chapter I prohibition and Article 101 TFEU are intended to catch a wide range of agreements, including oral agreements and 'gentlemen's agreements'.³⁰⁶ An agreement may be express or implied by the parties, and there is no requirement for it to be formal or legally binding, nor for it to contain any enforcement mechanisms.³⁰⁷ An agreement may also consist of either an isolated act or a series of acts or a course of conduct.³⁰⁸ As held by the General Court (GC):

'...it is sufficient that the undertakings in question should have expressed their joint intention to conduct themselves on the market in a specific way...'.³⁰⁹

- 4.4 The key question is whether there has been 'a concurrence of wills between at least two parties, the form in which it is manifested being unimportant, so long as it constitutes the faithful expression of the parties' intention'.³¹⁰

³⁰⁴ *Argos Limited and Littlewoods Limited v OFT and JJB Sports plc v OFT* [2006] EWCA Civ 1318, at paragraph 21. See also judgment in *Hercules Chemicals v European Commission*, T-7/89, EU:T:1991:75, paragraph 264; judgment in *Rhone Poulenc v European Commission*, T-1/89, EU:T:1991:56, paragraph 127; judgment in *Commission v Anic Participazioni*, C-49/92 P, EU:C:1999:356, paragraphs 131 and 132 and also case IV/31.371 (*Roofing Felt*) in which the conduct of the undertakings was found to be an agreement as well as a decision of an association.

³⁰⁵ Judgment in *T-Mobile Netherlands BV and others v NMa*, EU:C:2009:343, paragraph 23 (citing judgment in *Commission v Anic Participazioni*, EU:C:1999:356, paragraph 131). See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, at paragraph 206(ii).

³⁰⁶ Judgment in *ACF Chemiefarma NV v European Commission*, C-41/69, EU:C:1970:71 (in particular, at paragraphs 106 to 114).

³⁰⁷ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24, at paragraph 658; *Greek Ferries*, 1999/271/EC, OJ L 109/24 at paragraph 141 (upheld on appeal).

³⁰⁸ Judgment in *Commission v Anic Participazioni*, C-49/92 P, EU:C:1999:356, at paragraph 81.

³⁰⁹ Judgment in *Hercules Chemicals v European Commission*, EU:T:1991:75, at paragraph 256.

³¹⁰ Judgment in *Bayer v Commission*, T-41/96, EU:T:2000:242, at paragraph 69 (upheld in appeal in Joined cases *BAI Commission v Bayer*, C-2/01 P and C-3/01 P, EU:C:2004:2, paragraphs 96 and 97).

- 4.5 Although it is sufficient to show the existence of a joint intention to act on the market in a specific way in accordance with the terms of the agreement, the CMA is not required to establish a joint intention to pursue an anti-competitive aim.³¹¹

Concerted practices

- 4.6 A concerted practice is ‘a form of coordination between undertakings which, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical cooperation between them for the risks of competition’.³¹²
- 4.7 The concept of a concerted practice must be understood in light of the principle whereby each economic operator must determine its policy on the market independently.³¹³ Although the requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing and anticipated conduct of their competitors, it does preclude ‘any direct or indirect contact between such operators, the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market, where the object or effect of such contact is to create conditions of competition which do not correspond to the normal conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings and the volume of the said market’.³¹⁴

³¹¹ Judgment in *GlaxoSmithKline Services Unlimited v. Commission*, T-168/01, EU:T:2006:265, paragraph 77 (upheld on appeal in *GlaxoSmithKline Unlimited v Commission*, C-501/06 P, EU:C:2009:610).

³¹² Judgment in *ICI Ltd v Commission*, C-48/69, EU:C:1972:70, paragraph 64. See also judgment in *T-Mobile Netherlands and Others v NMa*, EU:C:2009:343, paragraph 26 and *JJB Sports plc v Office of Fair Trading* [2004] CAT 17, at paragraph 151 to 153.

³¹³ Judgment in *Suiker Unie v. Commission*, EU:C:1975:174, paragraph 173; Followed in Judgment in *Commission of the European Communities v Anic Partecipazioni SpA*, C-49/92 p, EU:C:1999:356, paragraph 116 and *Hüls AG v Commission of the European Communities*, EU:C:1999:358, paragraph 159. See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraphs 198 and 206(iv) (followed in *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, paragraphs 102 and 103(iv)).

³¹⁴ Judgment in *Commission v Anic Partecipazioni*, EU:C:1999:356, paragraph 117 (followed in *Hüls AG v Commission of the European Communities*, EU:C:1999:358, paragraphs 159 to 160 and judgment in *HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft mbH & Co KG and Others v Commission*, T-9/99, EU:T:2002:70, paragraph 212). See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraphs 198 and 206(v) (followed in *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, paragraphs 102 and 103(v)).

Assessment

- 4.8 The CMA considers that the evidence set out at paragraphs 3.12 to 3.32 above demonstrates that there was a concurrence of wills between CST UK, Franklin Hodge, Kondea and Galglass, as well as a joint intention, to allocate specific customers between them and not to compete for business from customers that had been allocated to another party. There was also a concurrence of wills, as well as a shared intention, that this would be achieved by quoting customers different prices depending on whether they had been allocated to that party ('preferred customers') or to another party ('non-preferred customers'), giving the impression of competition where there was none. This is shown by the fact that they agreed benchmark prices and permitted discounts as described in paragraphs 3.36 to 3.46.
- 4.9 As set out at above, in particular at paragraphs 3.10, 3.17, 3.33, 3.51 and 3.83 to 3.84, the arrangements between the parties to the main cartel were deliberate, organised and took place over a significant period of time by way of regular meetings attended by [senior personnel] and bilateral communications between the parties to the main cartel concerning specific bids. This is supported by a significant body of witness evidence and contemporaneous documents, including customer allocation lists³¹⁵ and price lists,³¹⁶ emails and text messages,³¹⁷ as well as a recording of a meeting on 11 July 2012 where the long-running cartel arrangements were discussed as parties to the main cartel tried to persuade a new competitor to join.³¹⁸ The CMA considers that this is clear evidence that the arrangements gave rise to an anti-competitive agreement.
- 4.10 In the alternative, the CMA considers that the arrangements constituted at the very least a concerted practice, on the basis that the parties substituted practical cooperation for the risks of competition. However, as noted above, it is not necessary, for the purpose of finding an infringement, to characterise conduct exclusively as an agreement or concerted practice.

³¹⁵ See paragraphs 3.18, 3.53, 3.71 and 3.79, footnotes 163, 189, 229, 242.

³¹⁶ See paragraphs 3.38, 3.50 and footnotes 221, 229, 245 and 248.

³¹⁷ See Annex B.

³¹⁸ [URN 8745].

Single continuous infringement

Key legal principles

- 4.11 Where it is established that a set of individual agreements, concerted practices or decisions by associations of undertakings are interlinked in terms of pursuing a single anti-competitive aim, they can be characterised as constituting a single continuous infringement.³¹⁹
- 4.12 In order to be held liable for a single overall infringement it is necessary to show that an undertaking:
- '... intended to contribute by its own conduct to the common objectives pursued by all the participants and that it was aware of the actual conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and that it was prepared to take the risk'.³²⁰

Assessment

- 4.13 The CMA considers that the main cartel constituted a single and continuous infringement. The Settling Parties participated in the main cartel infringement from 29 April 2005 to 27 November 2012 and CST participated in the main cartel infringement from 29 April 2005 to 2 May 2012.
- 4.14 The arrangements pursued a common overall objective, which was to maintain or increase pricing levels for the supply of CGSTs, with the aim of eliminating competition between the parties to the main cartel. The Settling Parties and CST each contributed by their own conduct to this overall objective and were aware of the conduct planned or put into effect by the others in pursuit of the same objective.

³¹⁹ Judgment in *Commission v Anic Partecipazioni*, EU:C:1999:356, paragraph 113. See also judgment in *BASF v Commission*, T-101/05 & 111/05, EU:T:2007:380, paragraph 159; and in relation to vertical agreements, the European Commission's decision in Video Games, Nintendo Distribution and Omega-Nintendo OJ 2003 L255/33, paragraphs 261 and following.

³²⁰ Judgment in *Commission v Anic Partecipazioni*, EU:C:1999:356, paragraph 87.

Restriction of competition by object

Key legal principles

- 4.15 The Chapter I prohibition and Article 101 TFEU prohibit agreements between undertakings or concerted practices which '*have as their object or effect the prevention, restriction or distortion of competition*'.
- 4.16 Object infringements are those forms of coordination between undertakings that can be regarded, by their very nature, as being harmful to the proper functioning of normal competition.³²¹ It is settled case law, at both UK and EU levels, that if an agreement has as its object the prevention, restriction or distortion of competition, it is not necessary to prove that the agreement has had, or would have, any anti-competitive effects in order to establish an infringement.³²²
- 4.17 In order to determine whether an agreement has the object of restricting competition, regard must be had to the content of its provisions, its objectives and the legal and economic context.³²³ When determining that context, it is also necessary to take into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question.³²⁴

³²¹ Judgment in *Dole Food Co. v Commission (Bananas)*, EU:C:2015:184, paragraph 114; judgment in *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 50; and judgment in *Allianz Hungária Biztosító Zrt and Others*, C-32/11, EU:C:2013:160, paragraph 35.

³²² See, for example: judgment in *Consten and Grundig v Commission*, C - 56/64 & 58/64, EU:C:1966:41 page 342; judgment in *Portland A/S and Others v Commission*, C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraph 261; judgment in *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission*, C-105/04 P, EU:C:2008:8, paragraph 125; judgment in *Competition Authority v Beef Industry Development Society Ltd*, C-209/07, EU:C:2008:643, paragraph 16; judgment in *Expedia Inc v Autorité de la concurrence and Others* EU:C:2012:795, paragraph 36; judgment in *Groupement des Cartes Bancaires v Commission*, C-67/13 P, EU:C:2014:2204, paragraph 51; and judgment in *Dole Food Co. v Commission (Bananas)*, C-286/13 P, EU:C:2015:184, paragraph 115.

³²³ Judgment in *Dole Food Co. v Commission (Bananas)*, EU:C:2015:184, paragraph 117; judgment in *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 53; judgment in *Allianz Hungária Biztosító Zrt and Others*, EU:C:2013:160, paragraph 36. See also judgment in *GlaxoSmithKline Unlimited v Commission*, EU:C:2009:610 at paragraph 58, judgment in *Competition Authority v Beef Industry Development Society Ltd*, EU:C:2008:643, paragraphs 16 and 21 and judgment in *Football Association Premier League and Others*, C-403/08, EU:C:2011:631 at paragraph 136.

³²⁴ Judgment in *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 53 and judgment in *Allianz Hungária Biztosító Zrt and Others*, EU:C:2013:160, paragraph 36.

- 4.18 Anti-competitive subjective intentions on the part of the parties can also be taken into account in the assessment, but they are not a necessary factor for a finding that there is an anti-competitive restrictive object.³²⁵
- 4.19 An agreement, decision or concerted practice may be regarded as having a restrictive object even if it does not have the restriction of competition as its sole aim but also pursues other legitimate objectives.³²⁶

Market sharing, bid rigging and price-fixing

- 4.20 Section 2(2) of the Act and Article 101 TFEU contains a non-exhaustive, illustrative list of the types of agreement and/or concerted practice which may amount to infringing behaviour and is thus prohibited.
- 4.21 Section 2(2)(c) of the Act provides that the Chapter I prohibition applies to agreements and/or concerted practices which ‘*share markets or sources of supply*’. The same prohibition can be found at Article 101(1)(c) TFEU.
- 4.22 The CJ has held that market-sharing agreements constitute particularly serious breaches of the competition rules and that such agreements have, in themselves, an object restrictive of competition.³²⁷ Moreover, such an objective cannot be justified by an analysis of the economic context of the anti-competitive conduct concerned.³²⁸
- 4.23 Businesses may agree to share markets in a number of different ways. For example, it may occur through the allocation of customers, such as on the basis of existing commercial relationships.³²⁹

³²⁵ Judgment in *Allianz Hungária Biztosító Zrt and Others*, EU:C:2013:160, paragraph 37; judgment in *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 54.

³²⁶ Judgment in *General Motors BV v Commission*, C-551/03, EU:C:2006:229, paragraph 64.

³²⁷ Judgment in *Toshiba Corporation v Commission*, C-373/14 P, EU:C:2016:26, paragraph 28.

³²⁸ Judgment in *Toshiba Corporation v Commission*, C-373/14 P, EU:C:2016:26, paragraph 28.

³²⁹ Commission Decision 83/546/EEC of 17 October 1983 relating to a proceeding under Article 85 of the EEC Treaty (IV/30.064 – *Cast iron and steel rolls*) [1984] 11 CMLR 694; Commission Decision 86/399/EEC of 10 July 1986 relating to a proceeding under Article 85 of the EEC Treaty (IV/31.371 – *Roofing Felt*) (OJ 1991 L 232/15), upheld on appeal in *SC Belasco and others v Commission*, C-246/86, EU:C:1989:301, and Commission Decision 2002/759/EC of 5 December 2001 relating to a proceeding under Article 81 of the EC

- 4.24 In the *Pre-Insulated Pipe* case,³³⁰ suppliers agreed to respect each other's 'existing' customer relationships. For each supply contract, the existing supplier would inform other participants in the arrangement what price they intended to quote, and the other suppliers would quote higher prices to ensure the maintenance of the existing customer relationship. The mechanism whereby participants quote elevated prices so as to avoid drawing customers away from agreed supply relationships is a common method of market sharing by customer allocation.³³¹
- 4.25 The illustrative list contained in section 2(2) of the Act also refers to those agreements which '*directly or indirectly fix purchase or selling prices or any other trading conditions*'.³³² The same prohibition can be found at Article 101(1)(a) TFEU.
- 4.26 In this regard, the case law is clear that both the Chapter I prohibition and Article 101 TFEU prohibition will apply to any form of agreement which might restrict or dampen price competition, either directly or indirectly. This will include, for example, an agreement to adhere to published price lists or not to quote a price without consulting potential competitors,³³³ or not to charge less than any other price in the market.³³⁴ An agreement may restrict price competition even if it does not eliminate it entirely.³³⁵

Treaty (Case COMP/37.800/F3 – *Luxembourg Brewers*) (OJ 2002 L 253/21), upheld on appeal in *Brasserie Nationale v Commission*, T- 49/02 to T-51/02, EU:T:2005:298.

³³⁰ Commission Decision 1999/60/EC of 21 October 1998 relating to a proceeding under Article 85 of the EC Treaty (Case No IV/35.691/E-4 – *Pre-Insulated Pipe Cartel*) (OJ 1999 L 24/1), upheld on appeal in *Dansk Rørindustri A/S v. Commission*, C-189/02P, EU:C:2005:408.

³³¹ Commission Decision 2005/566/EC of 9 December 2004 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case No C.37.533 – *Choline Chloride*) (OJ 2005 L 190/22) , upheld on appeal in *Akzo Nobel NV v Commission*, EU:C:2009:536.

³³² See for example judgment in *Bureau national interprofessionnel du cognac v Guy Clair*, C-123/83, EU:C:1985:33, paragraph 22 and judgment in *SPRL Louis Erauw-Jacquery v La Hesbignonne*, C-27/87, EU:C:1988:183, paragraph 15. See also judgment in *Montedipe v Commission*, T-14/89, EU:T:1992:36, paragraphs 246 and 265 and judgment in *Tréfilunion v Commission*, T- 148/89, EU:T:1995:68, paragraphs 101 and 109.

³³³ Commission Decision 83/546/EEC of 17 October 1983 relating to a proceeding under Article 85 pf the EEC Treaty (IV/30.064 – *Cast iron and steel rolls*) [1984] 11 CMLR 694.

³³⁴ See for example on recommended prices in judgment in *Vereeniging van Cementhandelaren v Commission*, C-8/72, EU:C:1972:84; and see on collective resale price maintenance in judgment in *Vereeniging ter Bevordering van het Vlaamse Boekwezen and Vereeniging ter Bevordering van de Belangen des Boekhandels v Commission*, EU:C:1984:9.

³³⁵ See paragraph 3.6 *Agreements and Concerted Practices* (OFT401, December 2004, adopted by the CMA Board).

Assessment

- 4.27 The CMA considers that, having regard to its content, objectives and legal and economic context, the agreement or concerted practice had the object of preventing, restricting or distorting competition.
- 4.28 As noted above, the agreement or concerted practice involved bid rigging, price-fixing and market sharing through customer allocation, which are by their very nature harmful to the proper functioning of normal competition. The CMA finds that the overall objective of the agreement or concerted practice was to maintain or increase pricing levels for the supply of CGSTs, with the aim of eliminating or at the very least reducing competition between the parties to the main cartel. Until Balmoral Tanks' entry in late 2011, the parties were the only suppliers of CGSTs for use in sprinkler systems in the UK. As set out in paragraph 3.4, prior to the parties entering into the main cartel arrangements, competition between the parties was particularly strong.

Appreciability

Key legal principles

- 4.29 An agreement, concerted practice or decision by an associations of undertakings will not infringe Article 101(1) TFEU or the Chapter I prohibition if its impact on competition is not appreciable.³³⁶
- 4.30 However, the CJ has held that an agreement which has the object of preventing, restricting or distorting competition constitutes, by its nature and independently of any concrete effect that it may have, an appreciable restriction of competition.³³⁷ The CMA considers that, pursuant to section 60(2) of the Act³³⁸, this principle also applies when assessing appreciability under the Chapter I prohibition.

³³⁶ Judgment in Case 5/69 *Völk v Vervaecke*, C-5/69, EU:C:1969:35 [1969] ECR 295, paragraph 7. See also *North Midland Construction plc v. Office of Fair Trading* [2011] CAT 14 [45], [52ff].

³³⁷ Judgment in *Expedia Inc v Autorité de la concurrence and Others* EU:C:2012:795, paragraph 37; and *Notice on Agreements of Minor Importance* at paragraphs 2 and 13.

³³⁸ Section 60(2) of the Act provides that, when determining a question in relation to the application of Part 1 of the Act (which includes the Chapter I prohibition), the court (and the CMA) must act with a view to securing that there is no inconsistency with any relevant decision of the Court of Justice of the European Union in respect of any corresponding question arising in EU law.

Assessment

- 4.31 Given that the overall agreement and/or concerted practice between the parties to the main cartel had as its object the prevention, restriction or distortion of competition, it is considered by the CMA to have had by its nature an appreciable effect on competition for the purposes of Article 101 TFEU and the Chapter I prohibition.

Effect on trade between Member States

Key legal principles

- 4.32 Article 101 TFEU applies to agreements and/or concerted practices which may affect trade between EU Member States. Such an effect on trade must be appreciable.³³⁹
- 4.33 An effect on trade means that the agreement, decision or concerted practice may have an influence, direct or indirect, actual or potential, on the pattern of trade between EU Member States.³⁴⁰
- 4.34 For the purposes of assessing whether an agreement, decision or concerted practice may affect trade between EU Member States the CMA follows the approach set out in the Commission's published guidance.³⁴¹
- 4.35 According to this guidance, horizontal cartels covering a whole Member State are normally capable of affecting trade between EU Member States, provided the product covered by the agreement or concerted practice is susceptible to imports.³⁴²

Assessment

- 4.36 The main cartel infringement covered the whole of the UK and was, therefore, by its nature capable of having an appreciable effect on trade between Member States within the meaning of Article 101 TFEU.

³³⁹ Judgment in *Béguélin Import Co. v S.A.G.L. Import Export*, EU:C:1971:113, paragraph 16.

³⁴⁰ Judgment in *Société Technique Minière v Maschinenbau Ulm GmbH*, EU:C:1966:38,

³⁴¹ Commission *Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty* (2004/C 101/07).

³⁴² Commission Notice 2004/C101/07, OJ C101/81, at paragraphs 78 to 80 and footnotes thereto.

- 4.37 Moreover, as set out at paragraph 2.35 above, the CMA notes that the Parties, except for Kondea, exported CGSTs to other countries in Europe, including the Republic of Ireland, and beyond.
- 4.38 There is also some evidence that customers in the Republic of Ireland may have been included in the customer allocation arrangements which formed part of the cartel, as set out at paragraph 2.34 above.

Effect on trade within the UK

Key legal principles

- 4.39 By virtue of Section 2(1)(a) of the Act, the Chapter I prohibition applies to agreements which '*...may affect trade within the United Kingdom*'.
- 4.40 The CAT has held that effect on trade within the UK is a purely jurisdictional test to demarcate the boundary line between the application of EU competition law and national competition law and that there is no requirement that the effect on trade within the UK should be appreciable.³⁴³

Assessment

- 4.41 Until the entry onto the market of Balmoral, the Parties were the only suppliers of CGSTs for use in sprinkler systems in the UK and the price-fixing, bid rigging and market sharing arrangements covered the whole of the UK, reducing competition for CGSTs and altering the pattern of trade within the UK. The CMA therefore considers that the requirement, within the meaning of the Chapter I prohibition, that an agreement and/or concerted practice may affect trade with the UK is satisfied in this case and that, insofar as required, such effect is appreciable.

³⁴³ *Aberdeen Journals v Director General of Fair Trading* [2003] CAT 11, at paragraphs 459 and 460. The CAT considered this point also in *North Midland Construction plc v. Office Of Fair Trading* [2011] CAT 14, at paragraphs 48 to 51 and 62 but considered that it was '*not necessary [...] to reach a conclusion*'.

Exclusion or exemption

Key legal principles

- 4.42 Agreements or concerted practices which satisfy the criteria set out in Article 101(3) TFEU benefit from an exemption to Article 101(1) TFEU. Similarly, those which satisfy the criteria set out in section 9 of the Act benefit from exemption from the Chapter I prohibition.
- 4.43 It is for the parties wishing to rely on these provisions to adduce evidence that the exemption criteria are satisfied.³⁴⁴ The CMA will consider this evidence against the likely impact of the restrictive agreement on competition when assessing whether the criteria in section 9 of the Act and in Article 101(3) TFEU are satisfied.

Assessment

- 4.44 No Party has sought to argue that the arrangements entered into by them are exempted from the Chapter I prohibition by operation of section 9 of the Act, or from Article 101(1) TFEU by the operation of Article 101(3) TFEU. Notwithstanding that it is for the Parties to provide evidence that the conditions for exemption are satisfied, the CMA considers it most unlikely that the conditions would be met in this case. In particular, it is hard to see how the fixing of the Parties' prices, rigging of bids and allocation of customers in relation to the supply of CGSTs could be said to have contributed to improving the production or distribution of goods, or promoting technical or economic progress, or how consumers could be said to have benefitted.
- 4.45 There is also no block exemption order under section 6 of the Act that would exempt the conduct of the Parties from the Chapter I prohibition. Nor is there any applicable EU Council or Commission Regulation by virtue of which the conduct of the Parties would be exempt from Article 101 TFEU or would benefit from a parallel exemption from the Chapter I prohibition under section 10 of the Act.
- 4.46 Finally, none of the exclusions from the Chapter I prohibition provided for by section 3 of the Act applies in this case.

³⁴⁴ Section 9(2) of the Act.

5. The CMA's action

A. The CMA's decision

- 5.1 In light of the above, the CMA has made a decision that, between 29 April 2005 and 27 November 2012, and in the case of CST between 29 April 2005 and 2 May 2012, the Parties participated in an agreement and/or concerted practice which had as its object the prevention, restriction or distortion of competition in relation to the supply of CGSTs in the UK, and thereby infringed the Chapter I prohibition and/or Article 101 TFEU.
- 5.2 The Parties have admitted their involvement in, and liability for, both the main cartel infringement and the information exchange infringement.
- 5.3 The CMA considers that it is appropriate for a financial penalty to be imposed on the Settling Parties in respect of their participation in the main cartel infringement in accordance with the terms of the settlement. As set out in paragraph 1.6 above, CST has been granted full immunity from financial penalties under the CMA's leniency policy.

B. Directions

- 5.4 Section 32(1) of the Act provides that if the CMA has made a decision that an agreement infringes the Chapter I prohibition or Article 101 TFEU, it may give to such person or persons as it considers appropriate such directions as it considers appropriate to bring the infringement to an end. The CMA has decided not to impose any directions on the Parties in the circumstances of this case as the main cartel infringement is no longer continuing.

C. Financial penalties

General points

- 5.5 Section 36(1) of the Act provides that on making a decision that an agreement has infringed the Chapter I prohibition, the CMA may require an undertaking which is party to the agreement concerned to pay the CMA a penalty in respect of the infringement. In accordance with section 38(8) of the Act, the CMA must have regard to the guidance on penalties

in force at the time when setting the amount of the penalty (the 'Penalties Guidance').³⁴⁵

- 5.6 The CMA has found that it is appropriate in the circumstances of this case to exercise its discretion under section 36(1) of the Act to impose a financial penalty on each of the Settling Parties for the main cartel infringement given the serious nature of the infringement and in order to deter similar conduct in the future. Each of the Settling Parties has admitted their involvement in, and liability for, the main cartel infringement and has agreed as part of settlement to pay a penalty as set out in the terms of settlement.
- 5.7 CST has been granted full immunity from financial penalties under the CMA's leniency policy. Provided CST continues to comply with the conditions of the CMA's leniency policy, as set out in the immunity agreement between CST and the CMA dated 17 March 2016, no financial penalty will be imposed on it. Consequently, the CMA has not calculated the level of any financial penalty that would be applied to CST if immunity had not been granted.

The CMA's margin of appreciation in determining the appropriate penalty

- 5.8 Provided the penalties it imposes in a particular case are (i) within the range of penalties permitted by section 36(8) of the Act³⁴⁶ and the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000,³⁴⁷ and (ii) the CMA has had regard to the Penalties Guidance in accordance with section 38(8) of the Act, the CMA has a margin of appreciation when determining the appropriate amount of a penalty under the Act.³⁴⁸ The CMA is not bound by its decisions in relation to the calculation of financial penalties in previous cases.³⁴⁹ Rather, the CMA makes its assessment on a case-by-case basis³⁵⁰ having regard to all

³⁴⁵ *Guidance as to the appropriate amount of a penalty* (OFT423, September 2012), adopted by the CMA Board.

³⁴⁶ Section 36(8) is addressed at paragraphs 5.54 and 5.55 below.

³⁴⁷ SI 2000/309, as amended by the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004, SI 2004/1259.

³⁴⁸ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, at [168] and *Umbro Holdings and Manchester United and JJB Sports and Allsports v OFT* [2005] CAT 22, at [102].

³⁴⁹ See, for example, *Eden Brown and Others v OFT* [2011] CAT 8 (*Eden Brown*), at [78].

³⁵⁰ See, for example, *Kier Group and Others v OFT* [2011] CAT 3, at [116] where the CAT noted that 'other than in matters of legal principle there is limited precedent value in other decisions relating to penalties, where the

relevant circumstances and the objectives of its policy on financial penalties. Each case is specific to its own facts, and it cannot be assumed that the level of penalty appropriate for a particular party in one case (or the manner in which the Penalties Guidance has been applied) will necessarily be the same in respect of another party in another case. In line with statutory requirements and the twin objectives of its policy on financial penalties, the CMA will also have regard to the seriousness of the infringement and the desirability of deterring both the undertaking on which the penalty is imposed and other undertakings from engaging in behaviour that breaches the Chapter I prohibition (as well as other prohibitions under the Act and the TFEU as the case may be).³⁵¹

Small agreements

5.9 The CMA considers that section 39 of the Act (which provides for limited immunity from penalties in relation to the Chapter I prohibition) does not apply in the present case on the basis that:

- the main cartel infringement amounted to a ‘price-fixing agreement’ within the meaning of section 39(9) of the Act,³⁵²
- the combined applicable turnover of the Parties exceeded the relevant threshold,³⁵³ and
- section 39 does not apply in respect of infringements of Article 101 TFEU.

maxim that each case stands on its own facts is particularly pertinent. See also *Eden Brown*, at [97] where the CAT observed that ‘[d]ecisions by this Tribunal on penalty appeals are very closely related to the particular facts of the case’.

³⁵¹ Section 36(7A) of the Act and Penalties Guidance, paragraph 1.4.

³⁵² A ‘price-fixing agreement’ within the meaning of section 39(9) of the Act is ‘an agreement which has as its object or effect, or one of its objects or effects, restricting the freedom of a party to the agreement to determine the price to be charged (otherwise than as between that party and another party to the agreement) for the product, service or other matter to which the agreement relates’. By virtue of section 39(1)(b) of the Act, such an agreement is excluded from the benefit of the limited immunity from penalties provided by section 39 of the Act.

³⁵³ Regulation 3 of the Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000 provides that the category of agreements for which no penalty may be imposed under section 39 of the Act comprises ‘all agreements between undertakings the combined applicable turnover of which for the business year ending in the calendar year preceding one during which the infringement occurred does not exceed £20 million’ (SI/2000/262). The combined applicable turnover of the Parties in the business year ending in 2011 exceeded £20 million.

Intention/negligence

- 5.10 The CMA may impose a penalty on an undertaking which has infringed the Chapter I prohibition only if it is satisfied that the infringement has been committed intentionally or negligently.³⁵⁴ However, the CMA is not obliged to specify whether it considers the infringement to be intentional or merely negligent.³⁵⁵
- 5.11 The CAT has defined the terms ‘intentionally’ and ‘negligently’ as follows:
- ‘...an infringement is committed intentionally for the purposes of section 36(3) of the Act if the undertaking must have been aware, or could not have been unaware, that its conduct had the object or would have the effect of restricting competition. An infringement is committed negligently for the purposes of section 36(3) if the undertaking ought to have known that its conduct would result in a restriction or distortion of competition’.³⁵⁶
- 5.12 This is consistent with the approach taken by the CJ which has confirmed:
- ‘the question whether the infringements were committed intentionally or negligently...is satisfied where the undertaking concerned cannot be unaware of the anti-competitive nature of its conduct, whether or not it is aware that it is infringing the competition rules of the Treaty’.³⁵⁷
- 5.13 The circumstances in which the CMA might find that an infringement has been committed intentionally include the situation in which the agreement or conduct in question has as its object the restriction of competition.³⁵⁸ As explained at paragraphs 4.27 to 4.28 above, the CMA considers that the main cartel infringement had as its object the

³⁵⁴ Section 36(3) of the Act.

³⁵⁵ *Napp Pharmaceutical Holdings Ltd v Director General of Fair Trading* [2002] CAT 1, paragraphs [453] to [457]; see also *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, at [221].

³⁵⁶ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, at [221].

³⁵⁷ Case 280/08 P *Deutsche Telekom v Commission* [2010] ECR I-9555, paragraph 124.

³⁵⁸ See *OFT’s Guidance on Competition law application and enforcement* (OFT407, December 2004), adopted by the CMA Board, paragraph 5.9.

prevention, restriction or distortion of competition. Accordingly, the CMA considers that the main cartel infringement was committed intentionally.

- 5.14 Ignorance or a mistake of law does not prevent a finding of intentional infringement, even where such ignorance or mistake is based on independent legal advice.³⁵⁹
- 5.15 Further, in the light of the evidence set out at paragraphs 3.17 to 3.84 above, the CMA considers that the Parties must have been aware, or could not have been unaware that the main cartel infringement was restrictive of competition. At the very least, the CMA considers that the Parties ought to have known that their conduct would result in a restriction or distortion of competition.
- 5.16 As set out above in section 3 (Conduct of the Parties), there is evidence that the intention of the Parties was to increase prices and not to compete on price.
- 5.17 The CMA has therefore found that the Parties committed the main cartel infringement intentionally or, at the very least, negligently.

Calculation of penalty

- 5.18 As noted at paragraph 5.5 above, when setting the amount of the penalty, the CMA must have regard to the guidance on penalties in force at that time. The Penalties Guidance sets out a six-step approach for calculating the penalty.

Step 1 – starting point

- 5.19 The starting point for determining the level of financial penalty which will be imposed on an undertaking is calculated having regard to the relevant turnover of the undertaking and the seriousness of the infringement.³⁶⁰

³⁵⁹ See Case C-681/11 *Bundeswettbewerbsbehörde v Schenker & Co. AG*, EU:C:2013:404, paragraph 38. See also *Enforcement* (OFT407, December 2004), adopted by the CMA Board, paragraph 5.10.

³⁶⁰ Penalties Guidance, paragraphs 2.3 to 2.11.

Relevant turnover

- 5.20 The 'relevant turnover' is the turnover of the undertaking in the relevant market affected by the infringement in the undertaking's last business year.³⁶¹ As explained in section 2.B above, the relevant market for these purposes is the supply of CGSTs for water storage used in sprinkler systems in the UK.³⁶² The 'last business year' is the undertaking's financial year preceding the date when the infringement ended, which in this case is the financial year preceding 27 November 2012.³⁶³
- 5.21 The 'last business year' for FHI is the financial year ending 31 December 2011, when the relevant turnover was £[redacted].³⁶⁴
- 5.22 The 'last business year' for KW Supplies is the financial year ending 31 December 2011, when the relevant turnover was £[redacted].³⁶⁵
- 5.23 The joint liquidators of Galglass and its parent companies, IIT/Kernoff, were unable to provide the CMA with relevant turnover figures. The CMA therefore used Galglass' 2011 sales of GSTs to its top 20 customers (£[redacted]), as provided by Galglass.³⁶⁶ This figure has been reduced by £[redacted] to reflect turnover relating to repairs, maintenance and servicing of tanks, resulting in a figure of £[redacted].³⁶⁷

Seriousness of the infringement

- 5.24 In order to reflect adequately the seriousness of an infringement, the CMA will apply a starting point of up to 30 per cent of the undertaking's relevant turnover.³⁶⁸ The actual percentage which is applied to the relevant turnover depends, in particular, upon the nature of the

³⁶¹ Penalties Guidance, paragraph 2.7. The CMA notes the observation of the Court of Appeal in *Argos Ltd and Littlewoods Ltd v Office of Fair Trading and JJB Sports plc v Office of Fair Trading* [2006] EWCA Civ 1318, at paragraph 169 that: '[redacted] neither at the stage of the OFT investigation, nor on appeal to the Tribunal, is a formal analysis of the relevant product market necessary in order that regard can properly be had to step 1 of the Guidance in determining the appropriate penalty.' The Court of Appeal considered that it was sufficient for the OFT to 'be satisfied, on a reasonable and properly reasoned basis, of what is the relevant product market affected by the infringement' (at paragraphs 170 to 173).

³⁶² See paragraphs 2.16 to 2.41 above.

³⁶³ Penalties Guidance, paragraph 2.7.

³⁶⁴ FHI response of 18 August 2015 to a request for information dated 16 July 2015.

³⁶⁵ KW Supplies' response of 14 December 2015 to a request for information dated 17 November 2015.

³⁶⁶ Galglass' response of 11 January 2013 to Annex A of the s26 notice of 27 November 2012.

³⁶⁷ Paragraph 2(d) of the representations submitted by Smyce, Kernoff and IIT dated 29 February 2016.

³⁶⁸ Penalties Guidance, paragraph 2.5.

infringement. The more serious and widespread the infringement, the higher the likely percentage rate.³⁶⁹ When making its assessment of the seriousness of the infringement, the CMA will consider a number of factors.³⁷⁰ The CMA will use a starting point towards the upper end of the range for the most serious infringements of competition law, including hard-core cartel activity.³⁷¹ The CMA will also take into account the need to deter other undertakings from engaging in such infringements in the future. The damage caused to consumers whether directly or indirectly will also be an important consideration. The assessment is made on a case-by-case basis, taking account of all the circumstances of the case.³⁷²

5.25 In assessing the seriousness of the main cartel infringement, the conduct involved three of the most serious cartel behaviours (price fixing, bid rigging and market sharing by way of customer allocation). It also involved all the major suppliers of CGSTs in the UK (until Balmoral's entry in late 2011) and took place over a period of more than seven years. It also concerned a product (CGSTs) that was part of fire safety equipment.³⁷³

5.26 The CMA therefore considers that the starting point for the main cartel infringement should be at the highest end of the range, and in the circumstances it considers that it is appropriate to apply as a starting point 30% of the Settling Parties' relevant turnover.

Step 2 – adjustment for duration

5.27 The starting point under step 1 may be increased, or in particular circumstances decreased, to take into account the duration of an infringement. Where the total duration of an infringement is more than one year, the CMA will round up part years to the nearest quarter year,

³⁶⁹ Penalties Guidance, paragraph 2.4.

³⁷⁰ In accordance with paragraph 2.6 of the Penalties Guidance, these factors include the nature of the product, the structure of the market, the market shares of the undertakings involved in the infringement, entry conditions and the effect on competitors and third parties. The CMA may also take into account other relevant factors.

³⁷¹ Penalties Guidance, paragraph 2.5.

³⁷² Penalties Guidance, paragraph 2.6.

³⁷³ See paragraphs 2.2 and 2.12.

although the CMA may in exceptional circumstances decide to round up the part year to a full year.³⁷⁴

- 5.28 The CMA has applied a multiplier of 7.75 to the starting point to reflect the duration of the main cartel infringement from 29 April 2005 to 27 November 2012, which amounts to 7 years, 6 months and 28 days, rounded up to the nearest quarter.

Step 3 – adjustment for aggravating and mitigating factors

- 5.29 The amount of the penalty, adjusted as appropriate at step 2, may be increased where there are aggravating factors, or decreased where there are mitigating factors. A non-exhaustive list of aggravating and mitigating factors is set out in the Penalties Guidance.³⁷⁵ In the circumstances of this case, the CMA considered at step 3 the factors set out below.

Aggravating factor: [X]

- 5.30 The involvement of directors or senior management in an infringement can be an aggravating factor.³⁷⁶ The CMA considers it appropriate to increase the financial penalty at step 3 by **15%** for all Settling Parties. This is on the basis that the cartel arrangements, which were of the most serious kind of infringement, were set up and implemented by [senior management] of the Parties. The CMA considers that an uplift of 15% is appropriate in the circumstances of this case.

Aggravating factor: destruction of evidence

- 5.31 The CMA has seen evidence that an employee of Franklin Hodge destroyed diary entries relating to meetings between [Franklin Hodge senior employee 1] and his competitors, following the inspections carried out by the OFT in November 2012 and after a notice under s.26 of the

³⁷⁴ Penalties Guidance, paragraph 2.12.

³⁷⁵ Penalties Guidance, paragraphs 2.13 – 2.15.

³⁷⁶ Penalties Guidance, paragraph 2.14.

CA98 had been served on Franklin Hodge (requiring, among other things, the production of diaries/work books).

- 5.32 In this case, the CMA decided not to take further action against the individual concerned.³⁷⁷ It did, however, consider whether the facts warranted applying a significant uplift to FHI's penalty for failure to take sufficient steps to prevent the destruction of this material. Following representations from FHI regarding the clear instructions issued to its employees to preserve evidence in light of the s.26 notice, the CMA was persuaded in the particular circumstances of the case that Franklin Hodge had done all it reasonably could to prevent evidence being destroyed. The CMA has therefore not applied any uplift for the destruction of evidence in this case.

Mitigating factor: cooperation

- 5.33 The CMA may decrease the penalty at step 3 for cooperation which enables the enforcement process to be concluded more effectively and/or speedily. The Penalties Guidance provides that, for these purposes, what is expected is cooperation over and above respecting time limits specified or otherwise agreed (which will be a necessary but not sufficient criterion).³⁷⁸
- 5.34 In the particular circumstances of this case, the CMA has considered cooperation in the context of both the criminal and civil investigations. Taking the Settling Parties in turn:
- The CMA considers that it is appropriate to decrease the penalty for **Galglass** at step 3 by **10%** to reflect its cooperation in both the civil and parallel criminal investigations, in particular: (i) making witnesses available for interview, who provided witness statements and some of whom gave evidence at the criminal trial, (ii) ensuring access to separate legal representation for relevant members of staff, and (iii) following its entry into liquidation, the liquidators voluntarily facilitating the CMA's access to all digital and

³⁷⁷ It is an offence under s.43 of the CA98 to destroy or otherwise dispose of a document subject to a s.26 notice, with a maximum sentence on indictment of imprisonment for a term not exceeding two years or a fine or both: section 42(2)(b) of the Act.

³⁷⁸ Penalties Guidance, paragraph 2.15 and footnote 28.

documentary archive material held by Galglass and by third parties for the purpose of the criminal investigation.

- The CMA considers that it is appropriate to decrease the penalty for **KW Supplies** at step 3 by **5%** to reflect its cooperation in both the civil and parallel criminal investigations, which included the Kondea liquidator allowing the CMA access to archive material for the purpose of the criminal investigation.
- **FHI** has been granted Type C leniency, and is therefore required to provide complete and continuous cooperation with the CMA's investigation as part of the conditions for leniency set out in the CMA's Leniency Guidance. FHI's cooperation has therefore been reflected in the leniency discount at paragraph 5.60 below.

Mitigating factor: compliance

- 5.35 The CMA may decrease the penalty at step 3 where an undertaking can show that adequate steps have been taken to ensure compliance with competition law.³⁷⁹ To qualify, an undertaking has to show evidence of adequate steps taken to achieve a clear and unambiguous commitment to competition law compliance throughout the organisation, from the top down - together with appropriate steps relating to competition compliance risk identification, risk assessment, risk mitigation and review activities. The CMA will consider carefully whether evidence presented of an undertaking's compliance activities in a particular case merits a discount to the penalty of up to 10%.
- 5.36 **FHI** provided the CMA with representations regarding the significant steps taken since the OFT's inspections in November 2012 to ensure a culture of competition law compliance within the group and provided evidence of full and public commitment from CEO and Board level down.
- 5.37 Following the settlement in March 2016, the CMA also received evidence of the compliance activities of Galglass' parent companies, **IIT and Kernoff** and **KW Supplies**.

³⁷⁹ Penalties Guidance, paragraph 2.15 and footnote 26. See also OFT1341 *How your client's business can achieve compliance with competition law*.

- 5.38 The CMA considers that FHI, IIT and Kernoff and KW Supplies have each provided sufficient evidence of compliance activities which demonstrate a clear and unambiguous commitment to competition law compliance throughout the organisation from the top down to warrant a reduction in penalty in particular, they have engaged in appropriate steps relating to risk identification, risk assessment, risk mitigation and review activities, having regard to the circumstances of their respective businesses. The CMA has been provided with evidence that senior managers and high risk staff have received competition compliance training and that a competition manual has been prepared and is being applied. Each of these parties has also published a commitment to competition compliance on their website.
- 5.39 In light of this evidence, the CMA considers that it is appropriate to decrease the penalty by **10%** for each of the Settling Parties.
- 5.40 Taking into account the specific circumstances of this case, which include a reduction at step 5 to prevent the statutory maximum being exceeded, the CMA has decided to take account of the 10% reduction for the introduction of compliance programmes by KW Supplies and Kernoff/IIT as part of step 6 (after the application of the settlement discount). This reflects the terms of settlement and ensures that the discount for compliance for those parties is reflected in the overall level of the penalties imposed.

Step 4 – adjustment for specific deterrence and proportionality

- 5.41 The penalty may be adjusted at this step to achieve the objective of specific deterrence (namely, ensuring that the penalty imposed on the undertaking in question will deter it from engaging in anti-competitive practices in the future), or to ensure that a penalty is proportionate, having regard to appropriate indicators of the size and financial position of the undertaking as well as any other relevant circumstances of the case.³⁸⁰ At step 4, the CMA will assess whether, in its view, the overall

³⁸⁰ Penalties Guidance, paragraph 2.16. The CMA has considered a range of financial indicators in this regard, based on published accounting information and information provided by the Settling Parties as part of settlement discussions. Those financial indicators included relevant turnover, total worldwide turnover, net assets and adjusted net assets (namely, net assets in the last financial year plus three years of dividends), profit after tax and dividends. In relation to Galglass and its parents Kernoff and IIT, financial information for the

penalty is appropriate in the round.³⁸¹ Adjustment to the penalty at step 4 may result in either an increase or a decrease to the penalty.

- 5.42 Increases to the penalty at step 4 will generally be limited to situations in which an undertaking has a significant proportion of its turnover outside the relevant market, or where the CMA has evidence that the infringing undertaking has made or is likely to make an economic or financial benefit from the infringement that is above the level of the penalty reached at the end of step 3.³⁸² The assessment of the need to adjust the penalty will be made on a case-by-case basis for each individual infringing undertaking. In considering the appropriate level of uplift for specific deterrence, the CMA will ensure that the uplift does not result in a penalty that is disproportionate or excessive having regard to the infringing undertaking's size and financial position and the nature of the infringement.³⁸³
- 5.43 Conversely, where necessary, the penalty may be decreased at step 4 to ensure that the level of penalty is not disproportionate or excessive. In carrying out this assessment of whether a penalty is proportionate, the CMA will have regard to the undertaking's size and financial position, the nature of the infringement, the role of the undertaking in the infringement and the impact of the infringing activity on competition.³⁸⁴
- 5.44 As the main cartel infringement lasted for more than 7 years, the penalties after step 3 are large compared to the overall size and financial position of the respective Settling Parties. Notwithstanding the serious nature of the main cartel infringement, the CMA considers that it is appropriate to make proportionality adjustments for each of the Settling Parties as follows:

FHI

- 5.45 The CMA considers that FHI's penalty should be decreased by [~~8~~]%, to ensure that the level of penalty is not disproportionate or excessive. The

group for the years ending 31 December 2013, 2014 and 2015 is published in the consolidated accounts of Smyce.

³⁸¹ Penalties Guidance, paragraph 2.20.

³⁸² Penalties Guidance, paragraph 2.17.

³⁸³ Penalties Guidance, paragraph 2.19.

³⁸⁴ Penalties Guidance, paragraph 2.20.

CMA's view is that such a reduction is appropriate having regard to FHI's size and financial position.

5.46 The CMA notes that the adjusted figure represents approximately:

- 3% of FHI's average annual worldwide turnover (over the three year period ending 31 December 2014),
- 13% of FHI's adjusted net assets,³⁸⁵
- 217% of FHI's average annual profit after tax (over the three year period ending 31 December 2014).

5.47 Assessing the resulting penalty in the round, the CMA considers that a penalty of **£3,598,455** after step 4 is appropriate in this case for deterrence purposes without being disproportionate or excessive.

Galglass and its parents Kernoff and IIT

5.48 The CMA considers that the penalty for Galglass and its parents Kernoff and IIT after step 3 should be decreased by ~~18~~%, to ensure that the level of penalty is not disproportionate or excessive. The CMA's view is that such a reduction is appropriate having regard to the size and financial position of Galglass and its parents Kernoff and IIT.

5.49 The CMA notes that the adjusted figure represents approximately:

- 7% of average annual worldwide turnover (over the three year period ending 31 December 2015),
- 29% of adjusted net assets,³⁸⁶
- 239% of average annual profit after tax (over the three year period ending 2012).³⁸⁷

³⁸⁵ Being net assets in the financial year ending 31 December 2014, together with dividends paid out in the financial years ending 31 December 2012, 2013 and 2014.

³⁸⁶ Being net assets in the financial year ending 31 December 2014, together with dividends paid out during the financial years ending 31 December 2012, 2013 and 2014.

³⁸⁷ An earlier period was used as the financial years ending in 2013 and 2014 included exceptional losses.

- 5.50 Assessing the resulting penalty in the round, the CMA considers that a penalty of **£1,212,389** after step 4 is appropriate in this case for deterrence purposes without being disproportionate or excessive.

KW Supplies

- 5.51 The CMA considers that KW Supplies' penalty after step 3 should be decreased by [~~3~~]**2**%, to ensure that the level of penalty is not disproportionate or excessive. The CMA's view is that such a reduction is appropriate having regard to KW Supplies' size and financial position.
- 5.52 The CMA notes that this adjusted figure represents approximately:
- 43% of KW Supplies' average annual worldwide turnover (over the two year period ending 2015).
 - 1,703% of KW Supplies' net assets,
 - 213% of KW Supplies' profit after tax for the financial year ending 2014.
- 5.53 Assessing the resulting penalty in the round, the CMA considers that a penalty of **£127,342** after step 4 is appropriate in this case for deterrence purposes without being disproportionate or excessive.

Step 5 – adjustment to prevent maximum penalty from being exceeded and to avoid double jeopardy

- 5.54 The CMA may not impose a penalty for an infringement that exceeds 10 % of an undertaking's 'applicable turnover', that is the worldwide turnover of the undertaking in the business year preceding the date of the CMA's decision or, if figures are not available for that business year, the one immediately preceding it.³⁸⁸
- 5.55 The CMA has assessed the Settling Parties' penalties at step 4 against this maximum penalty threshold. This has resulted in the following penalties at step 5:

³⁸⁸ Section 36(8) of the Act and the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000, as amended. See also Penalties Guidance, paragraph 2.21.

- FHI (no adjustment necessary): £3,598,455
- Galglass and its parents Kernoff and IIT: £859,541
- KW Supplies: £30,900

Step 6 – application of reductions for leniency and settlement

Leniency

- 5.56 The CMA may reduce the undertaking's penalty where the undertaking has a leniency agreement with the CMA in accordance with the CMA's published guidance on leniency, provided always that the undertaking meets the conditions of the leniency agreement.³⁸⁹
- 5.57 CST applied to the OFT for leniency in May 2012. It was the first undertaking to do so and made its application prior to commencement of the present investigation by the OFT. CST was accordingly granted a marker for Type A immunity in accordance with section 3 of the Penalty Guidance and, as the relevant conditions set out in the immunity agreement between the CMA and CST have been met, no penalty has been imposed on CST.
- 5.58 Under the CMA's leniency policy, undertakings which provide evidence of cartel activity before a statement of objections has been issued, but are not the first to come forward, subject to other conditions, may be granted a reduction of up to 50 per cent in the amount of a financial penalty which would otherwise be imposed (Type C leniency).³⁹⁰ The grant of a reduction by the CMA in these circumstances is discretionary. The key criterion for determining the discount available will be the overall added value of the information, documents and evidence provided by the leniency applicant. This depends on such factors as the stage at which the undertaking comes forward and the information, documents and evidence already in the CMA's possession. The CMA also takes into account the overall level of cooperation provided.³⁹¹

³⁸⁹ Penalties Guidance, paragraph 2.25. See also OFT1495 *Applications for leniency and no-action in cartel cases* ('Leniency Guidance').

³⁹⁰ Penalties Guidance paragraph 3.4. See also Leniency Guidance.

³⁹¹ Leniency Guidance, paragraph 6.8.

- 5.59 FHI applied to the OFT for leniency in April 2013. It was not the first undertaking to do so and the OFT had already commenced its investigation. FHI was accordingly granted a marker for Type C leniency. The CMA had considerable evidence prior to FHI's application, such that the documentary material provided by FHI did not, in and of itself, add significant value to the investigation. However, FHI did provide significant added value in the context of both the civil and parallel criminal investigations, in particular by limiting its internal investigations, providing its employees (including [X]) with separate legal representation and support, making witnesses available for interview who provided witness statements and who also gave evidence at the criminal trial.
- 5.60 As the relevant conditions set out in the leniency agreement between FHI and the CMA have been met, the penalty which the CMA would otherwise impose on FHI has therefore been reduced by 30%.

Leniency Plus

- 5.61 The CMA has granted Galglass and its parents Kernoff and IIT a Type A immunity marker in relation to conduct reported in relation to a separate market. The CMA has therefore granted an additional reduction of 5% to the penalty for Galglass and its parents Kernoff and IIT imposed in respect of the main cartel infringement, in accordance with the CMA's leniency policy. This 'leniency plus' discount is additional to the reduction for its co-operation applied at step 3 (see paragraph 5.34 above). This is often referred to as 'leniency plus'.³⁹²

Settlement

- 5.62 The CMA will reduce an undertaking's financial penalty at step 6 where the undertaking has agreed to settle the case with the CMA. This will involve, amongst other things, the undertaking admitting its participation in an infringement.³⁹³
- 5.63 The Settling Parties have admitted the facts and allegations of the main cartel infringement as set out in the Statement of Objections, which are now reflected in this decision. In light of those admissions, and the

³⁹² Penalties Guidance paragraphs 3.21-3.23. See also Leniency Guidance paragraphs 9.1-9.4

³⁹³ Penalties Guidance paragraph 2.26.

Settling Parties' agreement to cooperate in expediting the process for concluding the investigation, the CMA has reduced their financial penalties by 20% at step 6.

Compliance discount

- 5.64 As set out at paragraph 5.40 above, the CMA has decided in the particular circumstances of the case to apply a 10% discount for compliance for Galglass and KW Supplies at the end of step 6.

Financial hardship

- 5.65 In exceptional circumstances, the CMA may reduce a penalty where the undertaking is unable to pay the penalty proposed due to its financial position. Such financial hardship adjustments will be exceptional and there can be no expectation that a penalty will be adjusted on this basis.³⁹⁴
- 5.66 The CMA considers that in the circumstances of this case, there are no exceptional circumstances such as to warrant making any financial hardship adjustment to the penalty after step 6.

Payment of penalty

- 5.67 The following table sets out the penalties the CMA requires the Settling Parties to pay:

³⁹⁴ Penalties Guidance, paragraph 2.27.

Step	Description		FHI	KW Supplies	Galglass/Kernoff/IIT
	Relevant turnover		£[X]	£[X]	£[X]
1	Starting point as a percentage of relevant turnover		30%	30%	30%
2	Adjustment for duration		x7.75	x7.75	x7.75
3	Adjustment for aggravating or mitigating factors	Aggravating: [Director or senior management involvement]	15%	15%	15%
		Mitigating: compliance	-10%	N/A	N/A
		Mitigating: cooperation	N/A	-5%	-10%
4	Adjustment for specific deterrence or proportionality		[X]%	[X]%	[X]%
5	Adjustment to take account of the statutory maximum penalty		N/A	Adjustment of the penalty to 10% of worldwide turnover	Adjustment of the penalty to 10% of worldwide turnover
	Penalty after step 5		£3,598,455	£30,900	£859,541
6	Leniency discount		-30%	N/A	-5%
	Penalty after leniency discount		£2,518,918	£30,900	£816,564
	Pre-SO Settlement discount		-20%	-20%	-20%
	Penalty after settlement discount		£2,015,135	£24,720	£653,251
	Compliance discount applied after settlement		N/A	-10%	-10%
	Final penalty payable		£2,015,135	£22,248	£587,926

5.69 The penalty will become due to the CMA on 20 February 2017³⁹⁵ and must be paid to the CMA by close of banking business on that date.³⁹⁶

SIGNED:

Stephen Blake, Senior Director - Cartels and Criminal, for and on behalf of the Competition and Markets Authority

[✂]

19 December 2016

³⁹⁵ The next working day two calendar months from the expected date of receipt of the Decision.

³⁹⁶ Details on how to pay are set out in the letter accompanying this decision.

Annex A – Defined Terms

Term	Definition
the Act	the Competition Act 1998
Article 101 TFEU	Article 101 of the Treaty on the Functioning of the European Union
Balmoral	Balmoral Tanks Limited and its parent Balmoral Group Holdings Limited
Balmoral Group	Balmoral Group Holdings Limited
Balmoral Tanks	Balmoral Tanks Limited
Carter Thermal	Carter Thermal Industries Limited
CAT	Competition Appeals Tribunal
CGST	cylindrical galvanised steel tank, as defined at paragraph 1.2
the Chapter I prohibition	the prohibition in section 2(1) of the Competition Act 1998
CJ	Court of Justice
CST	CST Industries (UK) Limited and its parent company CST Industries Inc
CST Inc.	CST Industries Inc
CST UK	CST Industries (UK) Limited
EA02	Enterprise Act 2002
FHI	Franklin Hodge Industries Limited and its parent company Carter Thermal Industries Limited
Franklin Hodge	Franklin Hodge Industries Limited
FS Contractors	fire suppression contractors
Galglass	Galglass Limited, in liquidation
GC	General Court
GRPs	glass reinforced plastic tanks

GST	galvanised steel tank, as defined at paragraph 2.1
IIT	Irish Industrial Tanks Limited, parent company of Galglass Limited and Kernoff Limited
Kernoff	Kernoff Limited, parent company of Galglass
Kondea	Kondea Water Supplies Limited, in liquidation
KW Supplies	KW Supplies Limited, economic successor to Kondea
Leniency Guidance	OFT1495 <i>Applications for leniency and no-action in cartel cases</i>
LPCB	Loss Prevention Certification Board
Parties	CST, FHI, Galglass, Kernoff, IIT and KW Supplies
Penalties Guidance	<i>Guidance as to the appropriate amount of a penalty</i> (OFT423, September 2012), adopted by the CMA Board
Settling Parties	FHI, Galglass, Kernoff, IIT and KW Supplies
TFEU	the Treaty on the Functioning of the European Union
the Information Exchange Decision	the decision of the CMA in respect of the exchange of commercially sensitive information in relation to the supply of cylindrical galvanised steel tanks for water storage in the UK dated 19 December 2016
the information exchange infringement	the infringement summarised at paragraph 1.4 concerning conduct by the Settling Parties and Balmoral
the Main Cartel Decision	this decision of the CMA in respect of price-fixing, bid rigging and market sharing by way of customer allocation in relation to the supply of cylindrical galvanised steel tanks for water storage in the UK dated 19 December 2016
the main cartel infringement	the main cartel infringement summarised at paragraph 1.3 concerning conduct by the Settling Parties and CST
the OFT	the Office of Fair Trading, the CMA's predecessor organisation
the parties to the main cartel	CST UK, Franklin Hodge, Galglass and Kondea, being the companies directly involved in the main cartel
the UK	the United Kingdom

Annex B – Schedule of cartel meetings

The CMA sets out below a list of contemporaneous evidence demonstrating the existence of cartel meetings on specific dates. Witness statements that refer to meetings on specific dates are also included below, with further references to meetings set out in the main body of the decision.³⁹⁷

Date ³⁹⁸	Source	Location ³⁹⁹
11 March 2005	<p>3763 – email chain between [CST UK senior employee 1], [Galglass senior employee 1], [Franklin Hodge senior employee 1] arranging a meeting</p> <p>3765 – email chain between [CST UK senior employee 1], [Galglass senior employee 1], [Franklin Hodge senior employee 1] and [Kondea senior employee]</p> <p>4753 – [Franklin Hodge senior employee 1] expenses claim form showing a “business meeting” at the Belfry</p>	Belfry Golf Club
29 April 2005	<p>4754 – [Franklin Hodge senior employee 1] expenses claim form showing a “[meeting]” at the Belfry</p> <p>0486B p 3 – [Franklin Hodge employee 5] personal organiser with an entry for 29/4/05 10.00-13.00 “[Franklin Hodge senior employee 1] [meeting] - Warwicks?”</p>	Belfry Golf Club

³⁹⁷ A schedule of meetings ([URN 6607]) was prepared by the CMA as part of the criminal prosecution [criminal trial] and included in the jury bundle, which included meetings highlighted in **green** in this Annex. During the trial, [X] and [X] agreed to the accuracy of that list, which formed part of the ‘agreed facts’ in the criminal proceedings. See *Livenote transcript [criminal trial]*, 18 June 2015, page 22, line 17 – 19, *reading of agreed facts* [URN 6620] and the agreed facts as set out in [URN 6605]. Meetings shown in white were not included in the schedule of meetings prepared for the purposes of the criminal prosecution.

³⁹⁸ This list does not include cancelled meetings. Where meetings were rescheduled, only the day that the meeting actually took place is shown.

³⁹⁹ Where known, location has been specified. The Ramada hotel, Aspect hotel and Appleby Park hotel are all the same hotel, under different ownership throughout the period.

8 July 2005	<p>3643-3647 – email between [Franklin Hodge senior employee 1], [Galglass senior employee 1], [CST UK senior employee 1], [Kondea senior employee] organising a meeting</p> <p>4755 – [Franklin Hodge senior employee 1] expenses claim form showing a “[meeting]” at the Belfry</p> <p>0486C p3 – [Franklin Hodge employee 5] personal organiser - with an entry for 8/7/02 08:00 “[meeting] Belfry Warwicks”</p>	Belfry Golf Club
6 January 2006	<p>3776 – email chain between [Galglass senior employee 1], [CST UK senior employee 1], [Franklin Hodge senior employee 1], [Kondea senior employee] arranging a meeting</p> <p>0207 – [CST UK senior employee 1]’s expenses claim form showing expenses for “sprinkler mtg” and “mtg room hire”</p> <p>2448 p11-12 – [CST UK senior employee 1] witness statement confirms expenses were for cartel meeting on this date</p> <p>0143 – email chain between [CST UK senior employee 1] and [Kondea senior employee] discussing upcoming meeting</p> <p>4757 - [Franklin Hodge senior employee 1] expenses claim form with expenses for “[meeting]” in Tamworth</p> <p>4966 – p.16 - [Franklin Hodge senior employee 3] refers to a meeting to be attended by [Franklin Hodge senior employee 1] on 6/1/06</p> <p>4968 p2 – exhibit to [Franklin Hodge senior employee 3] witness statement, [Franklin Hodge senior employee 3] diary extract</p>	Travelodge hotel, Tamworth
28 March 2006	<p>4028 – email chain between [Galglass senior employee 1], [CST UK senior employee 1], [Franklin Hodge senior employee 1] and [Kondea senior employee] confirming that the meeting on 28 March 2006 has been booked</p>	Travelodge hotel, Tamworth

	<p>4758 – [Franklin Hodge senior employee 1] expenses claim form with expenses for “[meeting]” in Tamworth</p> <p>2624 – [Franklin Hodge senior employee 1] expenses for meeting room booked at Travelodge Tamworth for 28 March 2006</p> <p>4966 – p.16 [Franklin Hodge senior employee 3] refers to a meeting to be attended by [Franklin Hodge senior employee 1] on 28/3/06</p> <p>4968 p4 – exhibit to [Franklin Hodge senior employee 3] witness statement, [Franklin Hodge senior employee 3] diary extract</p>	
13 April 2006	<p>4029 – email between [Galglass senior employee 1], [Franklin Hodge senior employee 1] and [CST UK senior employee 1] confirming room booking at Travelodge Tamworth</p> <p>4030 – email between [Galglass senior employee 1], [Franklin Hodge senior employee 1] and [CST UK senior employee 1] rearranging time of meeting</p> <p>4759 – [Franklin Hodge senior employee 1] expenses claim form with expenses for “[meeting]” in Tamworth</p>	Tamworth
9 May 2006	<p>1045 p7 – email from [CST UK senior employee 1] to [CST Inc. senior employee 2] dated 8 May 2006 refers to meeting with [Galglass senior employee 1] “on the sprinkler business”</p> <p>4761 – [Franklin Hodge senior employee 1] expenses claim form for “lunch at [meeting]” on 9 May 2006 and travel to Tamworth for “[meeting]”</p>	Tamworth
28 June 2006	<p>0209 – [CST UK senior employee 1] expenses claim form for “meeting room” on 28 June 2006</p> <p>2448, p 12 – [CST UK senior employee 1] witness statement confirms expenses were for cartel meeting on this date</p>	Travelodge hotel, Tamworth

	4762 – [Franklin Hodge senior employee 1] expenses claim form for travel to Tamworth for “[meeting]”	
29 September 2006	<p>2939 – email chain between [Franklin Hodge senior employee 1], [CST UK senior employee 1], [Galglass senior employee 1], [Kondea senior employee] arranging meeting time</p> <p>4032 – email chain between [Franklin Hodge senior employee 1], [CST UK senior employee 1], [Galglass senior employee 1], [Kondea senior employee] confirming meeting time.</p> <p>1785 – [Franklin Hodge senior employee 1] expenses claim form for “lunch for [meeting]” and travel to Tamworth for “[meeting]”</p>	Belfry Golf Club (unable to book “usual meeting room” at Travelodge, Tamworth)
26 January 2007	<p>2948 – 2951 – email chain between [Kondea senior employee], [Galglass senior employee 1], [Franklin Hodge senior employee 1] and [CST UK senior employee 1] to arrange meeting</p> <p>4768 – [Franklin Hodge senior employee 1] expenses claim form for travel to Belfry for “[meeting]”</p>	Belfry Golf Club– Warwickshire
18 May 2007	<p>2985, 3666 – emails between [Galglass senior employee 1], [Franklin Hodge senior employee 1], [CST UK senior employee 1] and [Kondea senior employee] confirming meeting on 18 May 2007.</p> <p>4770 – [Franklin Hodge senior employee 1] expenses claim form for travel to Tamworth for “[meeting]”</p> <p>4966 – p.17 [Franklin Hodge senior employee 3] refers to a meeting to be attended by [Franklin Hodge senior employee 1] on 18/5/07</p> <p>4969 p 3 – exhibit to [Franklin Hodge senior employee 3] witness statement, extract from [Franklin Hodge senior employee 3]’s 2007 diary – 18/5/07 shows “[Franklin Hodge senior employee 1] meeting others”</p>	Tamworth

	0498A p150 - [Franklin Hodge senior employee 3] 2007 diary with entry for – 18/5/07 “[Franklin Hodge senior employee 1] meeting others”	
12 October 2007	4764 – [Franklin Hodge senior employee 1] expenses claim form for travel to Tamworth for “[meeting]”	Tamworth
21 February 2008	3030 – email chain between [CST UK senior employee 1], [Franklin Hodge senior employee 1], [Galglass senior employee 1], [Kondea senior employee] confirming booking at Ramada hotel for “LPS 1276 review meeting” 4771 – email reply from [Franklin Hodge senior employee 1] to [CST UK senior employee 1] confirming he will join the meeting 4772 – [Franklin Hodge senior employee 1] expenses claim form for travel to Tamworth for “[meeting]”	Ramada hotel, Tamworth
5 June 2008	3049 – email from [CST UK senior employee 1] to [Galglass senior employee 1] confirming booking at Ramada hotel 2738 – Confirmation of a meeting room booking at the Ramada by [CST UK senior employee 1]. The confirmation is dated 29 May 2008 and was handed to the CMA by [CST UK senior employee 2] 2448 p12 – [CST UK senior employee 1] witness statement confirms that expenses were for cartel meeting on this date 4773 – [Franklin Hodge senior employee 1] expenses claim form 2617 p1 – [Franklin Hodge senior employee 1] expenses form for “syndicate room hire [meeting]” and travel to Birmingham and Tamworth for “[meeting]” 2617 p9 – Invoice to [CST UK senior employee 1] for “syndicate room hire” and refreshments for four people	Ramada hotel, Tamworth a

28 November 2008	<p>2359 p2-3 – [Best Western employee 1] witness statement detailing room booking</p> <p>2360 – exhibit to [Best Western employee 1] witness statement – a contract for conference room booking for four people made out to [Franklin Hodge senior employee 1]</p> <p>2361 – exhibit to [Best Western employee 1] witness statement – invoice to Carter Environmental Engineers for “syndicate room hire” and refreshments for four people</p> <p>4775 – email from Ramada, Tamworth to [Franklin Hodge senior employee 1] confirming meeting room booking</p> <p>Duplicate email 2620 p1- [Franklin Hodge senior employee 1] expenses form for “seminar room for meeting October 08”, attaching Ramada room booking contract. While the expenses form states October 2008, the price matches that on Ramada contract and expense is made for the same day that Ramada contract issued (15 August 2008)</p>	Ramada hotel, Tamworth
20 February 2009	<p>2636A p2 – [Franklin Hodge senior employee 1]’s Filofax diary for 2009-2012 with entry for 20/2/09 "9.00 Tamworth"</p> <p>4966 p17 – [Franklin Hodge senior employee 3] witness statement refers to a meeting to be attended by [Franklin Hodge senior employee 1] on 20/2/09.</p> <p>4971 p2 – exhibit to [Franklin Hodge senior employee 3] witness statement, extract from [Franklin Hodge senior employee 3]’s 2009 diary – 20/2/09 states “[Franklin Hodge senior employee 1] meets others”</p> <p>0502A p3 – [Franklin Hodge senior employee 3] diary with entry for 20/2/09 “[Franklin Hodge senior employee 1] meets others”</p>	Tamworth
15 May 2009	<p>1853 – email from [Franklin Hodge senior employee 1] to [Carter Environmental Engineers employee], [Franklin Hodge employee 5] and [Franklin Hodge senior employee 2] confirming his weekly schedule, with a meeting on Fri 15 May described as “[meeting] Tamworth”</p>	Ramada hotel, Tamworth

	<p>4966 p18 - [Franklin Hodge senior employee 3] witness statement refers to a meeting to be attended by [Franklin Hodge senior employee 1] on 15/5/09</p> <p>4971 – exhibit to [Franklin Hodge senior employee 3] witness statement, extract from [Franklin Hodge senior employee 3]’s 2009 diary – 15/05/2009 states “[Franklin Hodge senior employee 1] with others”</p> <p>0502B p3 – [Franklin Hodge senior employee 3] 2009 Diary, with entry for 15 May 2009 “[Franklin Hodge senior employee 1] with others”</p>	
18 September 2009	<p>1860 – email from Ramada to [Franklin Hodge senior employee 1] confirming room booking</p> <p>1690 – Conference agreement Ramada Tamworth dated 18 May 2009 confirming booking of meeting room made out to Franklin Hodge</p> <p>1916 – SMS Message from [Galglass senior employee 1] dated 16/9/09 time 7.31 "Morning chaps, can we meet earlier on Friday s, say 8.30? Thnks"</p> <p>1917 – SMS Message from 447786920100 dated 16/9/09 time 7.39 "That’s ok with me, so it’s the Belfry at 8.30am. Yes [Kondea senior employee]. Thanks"</p> <p>1918 – SMS Message to 447786920100 dated 16/9/09 time 7.40 "Ok with me. Thanks [Franklin Hodge senior employee 1]"</p> <p>1861, 1868 – email correspondence between [Franklin Hodge senior employee 1] and Ramada Tamworth re 18/9/09 room booking attaching booking contract</p> <p>1455 – [Franklin Hodge senior employee 1]’s absences from office 1 Sept 2009 – 31 March 2009 - 18/9/09 entry for Ramada Tamworth a.m.</p>	Ramada hotel, Tamworth or Belfry
4 December 2009	<p>2359 p 3 – [Best Western employee 1] witness statement details a meeting on 4 December 2009</p> <p>2362 – exhibit to [Best Western employee 1] witness statement - contract for conference room booked by Franklin Hodge</p>	Ramada hotel, Tamworth

	<p>2363 – exhibit to [Best Western employee 1] witness statement - Invoice from Ramada hotel made to Franklin Hodge Ltd</p> <p>4791 – email from [Franklin Hodge senior employee 1] to [Best Western employee 2] changing date of room booking to Friday 4th December 2009</p> <p>4792 – [Franklin Hodge senior employee 1] expenses claim form for “Syndicate Room Tamworth for [meeting]”</p> <p>0644 p15 – [Kondea senior employee] expenses entry for 04/12/09 for Ramada for £69.60</p> <p>1447A p2 – [Franklin Hodge senior employee 1]’s diary extracts 01/01/10 – 31/03/10) with entry for 4/12/09 8am appointment at Ramada, Tamworth.</p> <p>1455 – [Franklin Hodge senior employee 1]’s absences from office 1 Sept 2009 – 31 March 2010 –with 4/12/09 entry for Ramada Tamworth a.m.</p> <p>1936 – [Franklin Hodge senior employee 1] email to [Franklin Hodge employee 3] with his Draft Schedule until Christmas Break including a 4 December 2009 “Meeting at Tamworth [3<]”</p> <p>4966 p18 – [Franklin Hodge senior employee 3] witness statement refers to a meeting to be attended by [Franklin Hodge senior employee 1] on 4/12/09</p> <p>4971 p7– exhibit to [Franklin Hodge senior employee 3] witness statement, extract from [Franklin Hodge senior employee 3] 2009 diary – 4/12/09 states “[Franklin Hodge senior employee 1] meeting with others”</p> <p>0502C p3 – [Franklin Hodge senior employee 3] 2009 diary with entry for 4/12/09 “[Franklin Hodge senior employee 1] meeting with others”</p>	
19 March 2010	3178, 3179 – emails between [CST UK senior employee 2] and [Galglass senior employee 1] on 18 march 2012 referring to meeting the following day	Ramada hotel, Tamworth

	<p>4958 p23 – [CST UK senior employee 2]’s witness statement refers to meeting on 19 March 2010</p> <p>0164A p2 – [CST UK senior employee 2]’s 2010 monthly planning guide entry refers to meeting at the Ramada</p> <p>2359 p4 – [Best Western employee 1] witness statement details meeting</p> <p>2364 – exhibit to [Best Western employee 1] witness statement - contract for conference room for 4 December 2009, made out to Kondea</p> <p>2365 – exhibit to [Best Western employee 1] witness statement – Invoice for “syndicate room hire” and refreshments for 4 people made out to [Kondea senior employee]</p> <p>4796 – [Franklin Hodge senior employee 1]’s “forward schedule 2010” confirms on Fri 19 March 2010 a “[meeting] Tamworth”</p> <p>4798 – email from [Franklin Hodge employee 1] to [Franklin Hodge senior employee 1] on 19 March 2010 stating, “I know you are in an [meeting].”</p> <p>0644 p17 – [Kondea senior employee] expenses entry for 19/3/10 for “Ramada”.</p> <p>2694 p1– [Kondea senior employee] invoice from Ramada and receipt for 19/03/10 for syndicate room hire and refreshments”</p> <p>1446A p2 – [Franklin Hodge senior employee 1]’s diary extracts 01/01/10 – 31/03/10 with entry for 19/3/10 “meeting]”</p> <p>1455 – [Franklin Hodge senior employee 1]’s absences from office 1 Sept 2009 – 31 March 2010 with 19/3/10 entry for [meeting] a.m.</p> <p>2636B p2 – [Franklin Hodge senior employee 1]’s Filofax diary for 2009-2012 with entry for 19/3/10 “[meeting]”</p>	
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	6527 p 36 – [Franklin Hodge senior employee 1]’s prepared statement refers to a meeting on 19 March 2010	
28 May 2010	<p>2359 p4 – [Best Western employee 1] witness statement referring to meeting on 28 May 2010</p> <p>2366 – exhibit to [Best Western employee 1] witness statement - email chain between Ramada and Galglass regarding room booking</p> <p>2367 – exhibit to [Best Western employee 1] witness statement - contract for room booking made out to [Galglass senior employee 1]</p> <p>2368 – exhibit to [Best Western employee 1] witness statement – invoice for “syndicate room hire” and refreshments made out to Galglass</p> <p>1974 – [Franklin Hodge senior employee 1] Forward schedule for May-August 2010 with entry for 28/5/10 “Tamworth/CEE/Union meet”</p>	Ramada hotel, Tamworth
2 July 2010	<p>4801 – contract for room booking for 2 July 2010 for 4 people made out to [Franklin Hodge senior employee 1]</p> <p>1967 p2 – [Franklin Hodge senior employee 1] Forward schedule for the March-April 2010 – with entry for 2/7/10 “[meeting] Tamworth”</p> <p>2636C p2 – [Franklin Hodge senior employee 1]’s Filofax diary for 2009-2012 with entry for 2/7/10 “Tamworth”</p>	Ramada hotel, Tamworth
18 August 2010	<p>0079 – email from [Kondea senior employee] to [CST UK senior employee 2] dated 10 June 2010 in which [Kondea senior employee] notes “Our next meeting with our “friends” is on the 18th August, usual place and usual time (8am)”</p> <p>2359 p5 – [Best Western employee 1] witness statement referring to meeting on 18 August 2010</p>	Ramada hotel, Tamworth

	<p>2369 – exhibit to [Best Western employee 1] witness statement - emails between Franklin Hodge and Ramada regarding room booking</p> <p>2370 – exhibit to [Best Western employee 1] witness statement - contract for room booking made out to [Franklin Hodge senior employee 1]</p> <p>2371 – exhibit to [Best Western employee 1] witness statement - invoice for “syndicate room hire” made out to Carter Environmental Engineers</p> <p>0644 p18 – [Kondea senior employee] expenses entry for 18/08/10 for “Ramada”</p> <p>2694, p5 – [Kondea senior employee] expenses dated 18/08/10 for overnight stay at Ramada Tamworth</p> <p>2636D p2 – [Franklin Hodge senior employee 1]’s Filofax diary for 2009-2012 – with entry for 16/08/2010 "Ramada - Name as C.E.E." and 18/08/2010 "Air Serv's Meeting 08:00 Tamworth CEE"</p> <p>1978 – Contract for room booking at Ramada on 18/8/2010 signed by [Franklin Hodge senior employee 1]</p> <p>2631 – [Franklin Hodge senior employee 1] expenses form for “seminar room for [meeting]” and attaching invoice from Ramada for “Syndicate room hire” and refreshments</p>	
17 December 2010	<p>2550 – Hotel invoice and receipt made out to [Galglass employee 1] for “Syndicate room hire” and refreshments. Paid by [Galglass senior employee 1] using bank card</p> <p>2359 p7 – [Best Western employee 1] witness statement referring to meeting on 17 December 2010</p> <p>2374 – exhibit to [Best Western employee 1] witness statement - email chain between Ramada and Galglass regarding room booking</p>	Aspect Hotel, Tamworth

	<p>2375 – exhibit to [Best Western employee 1] witness statement - contract for room booking made out to Galglass</p> <p>2376 – Invoice for “Syndicate Room Hire” and refreshments made to [Galglass employee 1] (Galglass)</p> <p>2377 – exhibit to [Best Western employee 1] witness statement -invoice for [Kondea senior employee]’s overnight stay</p> <p>0644, p 18 – [Kondea senior employee] expenses entry for Aspect Hotel on 17/12/10</p> <p>2694, p 7 – [Kondea senior employee] expenses dated 17/12/12 for overnight stay at Ramada Tamworth</p> <p>1182A p3 – [Franklin Hodge employee 3]’ 2010 diary with entry for 17/12/10 “[Franklin Hodge senior employee 1] – [meeting] Tamworth”</p> <p>2636E p2 – [Franklin Hodge senior employee 1]’s Filofax diary for 2009-2012 with entry for 17/12/10 “8:00 a.m. Tamworth”</p>	
25 March 2011	<p>2359 p8 – [Best Western employee 1] witness statement refers to meeting on this date</p> <p>2378 – exhibit to [Best Western employee 1] witness statement - email between Aspect hotel and Kondea regarding room booking</p> <p>2379 – exhibit to [Best Western employee 1] witness statement Contract for room booking made out to [Kondea senior employee]</p> <p>2380 – exhibit to [Best Western employee 1] witness statement - invoice for “syndicate room hire” and refreshments made to [Kondea senior employee]</p> <p>0644 p19 – [Kondea senior employee] expenses entry for 25/3/11 for Aspect Hotel</p> <p>2695A p2 – [Kondea senior employee] 2011 diary entry for 25/3/11 “Meeting 8AM”</p>	Aspect hotel, Tamworth

	<p>2696 p4 – [Kondea senior employee] expenses dated 25/3/11 for room hire at Ramada Tamworth</p> <p>2636F p2 - [Franklin Hodge senior employee 1]'s Filofax diary for 2009-2012 with entry for 25/3/11 "[meeting] Tamworth"</p> <p>1185A p3 – [Franklin Hodge employee 3]' 2011 diary with entry for 25/3/11 "[Franklin Hodge senior employee 1] - [meeting] Tamworth"</p>	
1 July 2011	<p>2359 p9 – [Best Western employee 1] witness statement refers to meeting on this date</p> <p>2381 – exhibit to [Best Western employee 1] witness statement - email between Aspect hotel and Franklin Hodge regarding room booking</p> <p>2382 – exhibit to [Best Western employee 1] witness statement - contract for room booking made out to Carter Environmental Engineers</p> <p>2383 – exhibit to [Best Western employee 1] witness statement - invoice for "syndicate room hire" and refreshments made to Carter Environmental Engineers</p> <p>4803 – email chain between [Franklin Hodge senior employee 1] and Aspect Hotel regarding room booking for 01/07/11</p> <p>4806– [Franklin Hodge senior employee 1] expenses claim form for "Seminar room for [meeting]"</p> <p>4808 – Franklin Hodge calendar appointment with [meeting] in Tamworth on 01/07/11</p> <p>1185B p3 – [Franklin Hodge employee 3]' 2011 diary with entry for 1/7/11 "[Franklin Hodge senior employee 1] - [meeting] Tamworth"</p> <p>2636K p2 - extracts from [Franklin Hodge senior employee 1]'s 2009, 2010, 2011 and 2012 diaries with entry for 1/7/11 "Tamworth"</p>	Aspect Hotel, Tamworth

	<p>4966 p 18 – [Franklin Hodge senior employee 3] witness statement, in which he refers to a meeting attended by [Franklin Hodge senior employee 1] on 1/7/11</p> <p>4973 p4 – exhibit to [Franklin Hodge senior employee 3] witness statement – extract from [Franklin Hodge senior employee 3]’s 2011 diary with entry for 1/7/11 “[Franklin Hodge senior employee 1]: meeting with others”</p> <p>0644 p19 – [Kondea senior employee] expenses entry for 30/6/11 for Aspect Hotel</p> <p>2695B p3 – [Kondea senior employee]’s 2011 diary with entry for 30/6/11 “RAMADA HOTEL DE12 7AP REF 82742” and entry for 1/7/11 entry “Meeting 8AM”</p>	
21 September 2011	<p>2359 p11 - [Best Western employee 1] witness statement which refers to a meeting on this date</p> <p>2387 – exhibit to [Best Western employee 1] witness statement - email chain between [Best Western employee 1] and Galglass regarding rearrangement of meeting room from 16/09/11 to 21/09/11</p> <p>2388 – exhibit to [Best Western employee 1] witness statement - contract for room booking made out to [CST UK senior employee 2]</p> <p>2389 – exhibit to [Best Western employee 1] witness statement invoice from Appleby Park Hotel made out to Galglass</p> <p>4809 – Franklin Hodge calendar appointment with [meeting] in Tamworth on 21 September 2011</p> <p>2695D p2 – [Kondea senior employee]’s 2011 Diary with entry on 21/09/11 “Meeting 1PM”</p>	Aspect hotel, Tamworth
16 December 2011	2359 p 11 - 12- [Best Western employee 1] witness statement refers to a meeting on this date	Aspect Hotel, Tamworth

	<p>2390 – exhibit to [Best Western employee 1] witness statement - emails between Aspect hotel and Kondea regarding room booking</p> <p>2391 – exhibit to [Best Western employee 1] witness statement - contract for room booking made out to Kondea Water Supplies</p> <p>2392 – exhibit to [Best Western employee 1] witness statement- invoice for “syndicate room hire”, overnight stay and refreshments, made out to [Kondea senior employee]</p> <p>4810 – Franklin Hodge calendar appointment with [meeting] in Tamworth on Fri 16 December 2011</p> <p>2695F p2 – [Kondea senior employee]’s 2011 diary with entry for 15/12/11 “ASPECT HOTEL DE12 7AP and for 16/12/11 “8AM”</p> <p>0644 p20 – [Kondea senior employee] expenses entry for 16 December 2011 for Aspect Hotel</p> <p>1185C p3 – [Franklin Hodge employee 3]’ 2011 diary with entry for 16/12/11 "[Franklin Hodge senior employee 1] [meeting]"</p>	
3 February 2012	<p>2359 p 12 – [Best Western employee 1] witness statement refers to meeting on this date</p> <p>2393 – exhibit to [Best Western employee 1] witness statement - emails between Aspect Hotel and Franklin Hodge regarding room booking and attaching the signed contract for room hire</p> <p>2394 – exhibit to [Best Western employee 1] witness statement- Invoice for “syndicate room hire” made to Carter Environmental Engineers</p> <p>2395 – exhibit to [Best Western employee 1] witness statement - Invoice for [Kondea senior employee]’s overnight stay at hotel</p>	Aspect Hotel, Tamworth

	<p>4811 – email chain between [Carter Environmental Engineers employee], Aspect Hotel and [Franklin Hodge senior employee 1] re: reserving meeting room for 3 February 2012</p> <p>4812 – email from [Franklin Hodge senior employee 1] to [Carter Environmental Engineers employee] and [Franklin Hodge employee 5] re: his weekly schedule – “Friday 3 Feb Meeting @ Aspect Hotel (seminar room) Tamworth.”</p> <p>4813 – email chain between [Best Western employee 1], [Carter Environmental Engineers employee] and [Franklin Hodge senior employee 1] confirming booking of meeting room on 3 February 2012</p> <p>4815 – email from [Franklin Hodge senior employee 1] to [Carter Environmental Engineers employee] asking her to book seminar room for 3 people on 3 February 2012</p> <p>4816 – Franklin Hodge calendar appointment with [meeting] in Tamworth on 3 February 2012</p> <p>0644 p21 – [Kondea senior employee] expenses entry for 3 February 2012 for Aspect Hotel</p> <p>2683A p 3 – [Kondea senior employee]’s 2012 diary with entry for 3 February 2012 “8AM DE12 7AP” – which is the postcode for the Aspect Hotel</p> <p>1184A p 3 – [Franklin Hodge employee 3]’ 2012 diary with entry for 3/2/12 “[Franklin Hodge senior employee 1] – [meeting]”</p> <p>2089 – email from [Franklin Hodge senior employee 1] to [Carter Environmental Engineers employee]. Subject: Seminar Room Booking - requesting [Carter Environmental Engineers employee] to book a seminar room at the Aspect Hotel, Tamworth, for 3 February 2012 for 3 people. Booking to be made for CEE</p> <p>2096 – email from [Franklin Hodge senior employee 1] to [Carter Environmental Engineers employee] and [Franklin Hodge employee 5]. Subject: Changes to Schedule - notifying</p>	
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	<p>them of changes to his working schedule - including 3/2/12 Aspect Hotel, Tamworth meeting</p> <p>2613 – [Franklin Hodge senior employee 1] expense claim for “hire of seminar room” on 3/2/12 and attaching invoice from Aspect hotel for “syndicate room hire” made out to Carter Environmental Engineers</p> <p>2636G p2 - [Franklin Hodge senior employee 1]’s Filofax 2009-2012 with entry for 3/2/12 “[meeting]”</p>	
22 March 2012	<p>4092, 4094 - 4098 – emails between [Franklin Hodge senior employee 1], [Galglass senior employee 1], [Balmoral Tanks senior employee 1] and [Kondea senior employee] re: ATCM agenda, the BSI standard project and confirming attendances at meeting</p> <p>4244-4247 – email exchange between [Kondea senior employee], [Galglass senior employee 1], [Franklin Hodge senior employee 1] and [Balmoral Tanks senior employee 1] arranging meeting before the start of the ATCM meeting</p> <p>2683B p3 – [Kondea senior employee]’s 2012 diary with an entry for 22/3/12 “ATCM Meeting 10:30 AM”</p> <p>5007 p 16 - 17– [Balmoral Tanks senior employee 1] witness statement confirms that the pre-meeting happened</p> <p>2132, 2133 – emails between [Kondea senior employee], [Galglass senior employee 1], [Franklin Hodge senior employee 1], [Balmoral Tanks senior employee 1] and [Balmoral Tanks senior employee 2] referring to meeting on 22 March 2012</p> <p>2636H p2 - [Franklin Hodge senior employee 1]’s Filofax 2009-2012 with entry for 22/3/12 “[Meeting] @ CRE”</p> <p>6526 p36 – [Franklin Hodge senior employee 1] witness statement, refers to a meeting on 22 March 2012</p>	ATCM meeting at Carter Retail Equipment offices

	6527, p24 – [Franklin Hodge senior employee 1]’s prepared statement refers to a meeting in March 2012	
2 May 2012	<p>2548 –hotel invoice made to Galglass for “syndicate room hire” and receipt.</p> <p>2359 p13-14 – [Best Western employee 1] witness statement refers to meeting on this date.</p> <p>2396 – exhibit to [Best Western employee 1] witness statement - email between Appleby Park hotel and Galglass attaching contract</p> <p>2397 – exhibit to [Best Western employee 1] witness statement - invoice for “syndicate room hire” made out to Galglass</p> <p>4819 – email chain [Franklin Hodge senior employee 1] and [Franklin Hodge employee 5] with [Franklin Hodge senior employee 1]’s weekly schedule, with reference to [meeting] in Tamworth on 2/5/12.</p> <p>0644 p21 – [Kondea senior employee]’s expenses entry for 2/5/12 for Appleby Park</p> <p>2683C p2 – [Kondea senior employee]’s 2012 diary with an entry on 1/5/12 of “HOTEL REF No £63” and on 2/5/12 “TAMWORTH 8AM”</p> <p>2693 p4 – [Kondea senior employee]’s expenses showing an invoice and receipt for overnight stay at the Aspect hotel</p> <p>5007 p 17 – 19 – [Balmoral Tanks senior employee 1] witness statement refers to a meeting on 2 May 2012</p> <p>2539A p3 – [Balmoral Tanks senior employee 1]’s notebook showing notes taken at the meeting– in his statement at 5007 (p.18), [Balmoral Tanks senior employee 1] confirmed this page to be his notes of the meeting</p>	Appleby Park/Aspect Hotel, Tamworth

	2636I p2 – [Franklin Hodge senior employee 1]’s Filofax 2009-2012 with an entry for 2/5/12 “[meeting]”	
11 July 2012	<p>1366 – [Galglass senior employee 1] texts, [Galglass senior employee 1] texts [Balmoral Tanks senior employee 1] on 6/07/12 regarding meeting details “Appleby park hotel de12 6ap. Meeting room booked for 11th at 8.00am”</p> <p>2359 p14-16 – [Best Western employee 1] witness statement refers to a meeting on this date.</p> <p>2399 – exhibit to [Best Western employee 1] witness statement - email from Galglass requesting room booking</p> <p>2400 – exhibit to [Best Western employee 1] witness statement email from Galglass attaching contract for room booking</p> <p>2401 – exhibit to [Best Western employee 1] witness statement -invoice for “syndicate room hire” and refreshments made out to Galglass</p> <p>8745 –Transcript of cartel meeting</p> <p>2683D p2 – [Kondea senior employee]’s 2012 diary with an entry for11/07/12 “8AM Meeting”</p> <p>2537A p3 – [Balmoral Tanks senior employee 1]’s notebook with notes of the 11 July 2012 meeting</p> <p>5007 p 20-24 – [Balmoral Tanks senior employee 1]’s witness statement [Balmoral Tanks senior employee 1] confirmed he attended this meeting and it was with [Franklin Hodge senior employee 1] and [Kondea senior employee], with [Galglass senior employee 1] absent because he was sick</p> <p>2611 p1 – [Franklin Hodge senior employee 1] expenses for “[meeting] room booking” on 11/7/12</p>	Appleby Park Hotel, Tamworth

	<p>2636J p2 – [Franklin Hodge senior employee 1]’s Filofax 2009-2012 with entry for 11/7/12 "[meeting]"</p> <p>6526 p 37 – 41 – [Franklin Hodge senior employee 1] witness statement, refers to a meeting on 11 July 2012</p> <p>6527 p37 – 40 – [Franklin Hodge senior employee 1]’s prepared statement, refers to a meeting in July 2012</p>	
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