

Decision to launch a review of the Electrical Contracting (London Exhibition Halls) Order 1995

Introduction

1. The Competition and Markets Authority (CMA) has decided to conduct a review of the Electrical Contracting (London Exhibition Halls) Order 1995 (the Electrical Contracting Order or the Order).¹ The Order, which came into force in 1996, followed an inquiry by the Monopolies and Mergers Commission (MMC) in 1989-1990. The Order was designed to implement MMC recommendations that sought to address competition concerns arising from the provision of electrical contracting services to large exhibition halls in London.
2. The CMA has a statutory duty to keep under review undertakings made under the Fair Trading Act 1973 and the Enterprise Act 2002.² The CMA must from time to time consider whether, by reason of any change of circumstances:
 - (a) undertakings are no longer appropriate and need to be varied, superseded or released; or
 - (b) an order is no longer appropriate and needs to be varied or revoked.
3. In 2015, the Electrical Contracting Order was part of a CMA invitation to comment on 13 sets of market and monopoly remedies. In its 2016/17 and 2017/18 Annual Plans, the CMA noted its intention to continue its work in this area through either pro-active or reactive remedy reviews. The CMA has sought preliminary information from representatives of relevant venues, organisers, electrical contractors and exhibitors to understand the nature of any changes in this sector since the Order came into force. The CMA has used information provided by these stakeholders, as well as its own research to inform the decision to launch this review.

¹ SI 1995 No,3299

² Sections 88(4) and 88 (5) of the Fair Trading Act 1973, as preserved in Schedule 24 to the Enterprise Act 2002, provide details of the duty to keep under review undertakings and orders. The Electrical Contracting (London Exhibition Halls) Order 1995 was made under the Fair Trading Act 1973 and was subsequently transferred to the Enterprise Act by SI 2004, No.2181.

The MMC investigation and findings

4. The Director General of Fair Trading (DGFT) referred the supply in Greater London of electrical contracting services at large exhibition halls to the MMC in May 1989.
5. The MMC's report³ was published on 12 April 1990. The MMC defined electrical contracting services as 'the services provided by electrical contractors, in their capacity as such, other than the service of connecting electrical equipment to electrical mains'.⁴ The relevant venues were defined as having 'an exhibition floor area exceeding 2,500 square metres' (the Reference Halls).
6. The MMC noted that electrical contracting services were a crucial element in mounting exhibitions, albeit a very small part of cost of mounting an exhibition. The exhibitions industry itself was found to be increasingly important, and was characterised, particularly in London, by a shortage of space, and particularly of large venues.
7. The MMC found that the three largest contractors accounted for approximately half of the electrical contracting work at exhibitions in the UK⁵. It also found that a complex monopoly existed in favour of five electrical contractors which were tied to certain large exhibition halls in London⁶ and that certain practices of those electrical contractors operated against the public interest. In particular:

³ *Electrical Contracting at Exhibition Halls in London: A report on the supply in Greater London of electrical contracting services at large exhibition halls (Cm 995)* (the MMC Report).

⁴ MMC Report, paragraph 2.1. Although the MMC does not specify in detail exactly what activity this entails, it does note that the electrical contractor may 'wire up' stands to the specification of the exhibitor and may also arrange for the venue mains supply to be provided to a block of stands through junction boxes. Wiring up' of stands appears to comprise primarily supply and connection of light fittings and mains sockets. This can be deduced by reference to the price surveys carried out by the MMC which specify two typical combinations of light fittings and sockets (see MMC Report, paragraph 3.28). No reference is made to electrical equipment beyond light fittings and sockets, e.g. IT, AV, printing or telephone equipment.

⁵ Ecando Systems Ltd, Melville Group plc and Giltspur International Ltd (MMC Report, paragraph 2.15)

⁶ These were:

- Business Design Centre Ltd – in-house tie to Business Design Centre;
- Ecando Systems Ltd (dissolved in 2009), owned at the time by Earls Court and Olympia Ltd. Tied to Earl's Court (no longer operating), Olympia and Olympia 2 (both now Olympia London);
- Johnson Smith & Company Ltd (dissolved in 2005), owned at the time by Melville Group plc. Tied to the Wembley Centre (demolished in 2006);
- Lightpower Exhibitions Ltd (dissolved in 2005), also owned at the time by Melville Group plc. Tied to Alexandra Palace, Novotel London and Westminster Exhibition Centre (the latter now Royal Horticultural Halls and Conference Centre); and
- S Seymour (Electrics) Ltd (dissolved in 2013). Tied to the Wembley Centre (demolished in 2006).

- a) their failure to show reference prices⁷ separately to hall charges for electricity and mains connections⁸ impeded comparison of prices;
 - b) their payment of commission to hall owners and / or exhibition organisers, who held market power, distorted competition to the detriment of exhibitors; and
 - c) their tie to exhibition halls:
 - (i) restricted competition for work at those halls;
 - (ii) discouraged new entry into electrical contracting at those halls; and
 - (iii) inhibited the growth of potential competition in the supply of electrical contracting.
8. The MMC recommended that electrical contractors should publish their prices in order to increase transparency and exhibitors' ability to shop around or assess whether they were obtaining value for money. The MMC also recommended that contractors distinguish prices for contractors' services from other associated charges. It also recommended that the payment of commission should be prohibited.
9. The MMC also recommended that the practice of hall owners requiring their tied electrical contractors to be employed either wholly or partly for the supply of electrical contracting services at large exhibition halls in Greater London should not be allowed.

The remedy: the Electrical Contracting Order

10. The Electrical Contracting Order came into force in 1996⁹ and applies to the Reference Halls. It prohibits hall owners and exhibition organisers from appointing fewer than two electrical contractors for exhibitors to choose from and requires constraints on appointing contractors to be objectively justified. It also requires electrical contractors to be appointed on a competitive basis.

⁷ i.e. the price for the service and/or equipment provided by the contractor.

⁸ i.e. prices determined by the hall, which would be the same regardless of contractors' pricing.

⁹ It appears that the MMC's findings of 1990 were subject to a legal challenge. In addition, the existence of the Order suggests that the Director General of Fair Trading was not successful in obtaining undertakings from relevant stakeholders following the MMC's recommendations (see House of Commons Hansard Debate, 25 March 1993).

11. In relation to electrical contractors, the Order contains a requirement that they notify exhibitors of their prices for the services they supply in writing before they enter into a binding written contract.

12. The explanatory note for the Order summarises its purpose as follows:

'This Order provides that the owners of exhibition halls may not impose restrictions on who may provide electrical contracting services to exhibitors at exhibitions organised by persons unconnected with the hall owner except on objectively justified grounds. Where an exhibition organiser and the hall owner are connected, then the exhibition organiser may only require the use of a particular electrical contractor if that contract has been competitively chosen. In such cases, the contractor must notify the exhibitors of its prices before the exhibitors enter into a contract to exhibit at the particular exhibition.'

'Hall owners may not receive any valuable benefits from contactors in return for requiring or promoting the use of their services.'

Change of Circumstances

13. In considering whether to launch a review, the CMA has assessed whether, or not, there is a realistic prospect of finding a change of circumstances such that the Order may no longer be required or may need to be varied or superseded.

14. In assessing whether there may have been a change of circumstances, the CMA has conducted preliminary research including seeking information from representatives of relevant venues, electrical contractors and exhibitors as well as considering publicly available information.

15. We set out below some of the main changes identified in relation to, suppliers (contractors), and customers' (exhibitors') requirements.

Suppliers' ability to enter and expand business

16. Our research indicates that the ability of competing electrical contractors to enter the market and expand their businesses has improved. This may be a result of the effect of the Order in regulating the market. It may also flow from natural changes to the structure of the market as incumbents cease to operate and their place in the market is taken by newcomers who have not been party to the practices which were of concern to the MMC.

Changes in choice of electrical contractors

17. The MMC found a complex monopoly situation to exist comprising the five largest electrical contractors to the Reference Halls. However, preliminary research shows that four of those contractors are no longer operating. Whilst the Order is a market-wide remedy and applies to any businesses falling within its definitions, it is clear that the exit of four out of five of the 'complex monopolists' whose conduct was found by the MMC to be problematic is a relevant change of circumstances.
18. There have also been a number of new entrants to the exhibition contracting sector, many of whom may carry out electrical contracting services. There is now a greater diversity of contractors and sub-contractors and we have been told that exhibitors are now free to choose between the partners of the organiser or their own contractors.

Changes in choice of venues within Greater London

19. Preliminary research reveals that some of the Reference Halls listed by the MMC have closed or been demolished, and new ones have opened (this being most relevant to the hall-tie problem identified by the MMC). The MMC Report lists 12 venues which meet its definition of 'Reference Halls' (i.e. venues in Greater London with a floor area for exhibitions of over 2,500 square metres). Of these, three are no longer operating¹⁰, four of the remainder have changed ownership, and at least one now has an exhibition space which would not meet the MMC's criteria.
20. In addition, a brief internet search returns a further four potential venues which may now meet the MMC's size criteria.¹¹ There is now more choice of venues and we have been informed that the opening of ExCeL has had a big impact in terms of providing an alternative venue to the incumbents described by the MMC. In addition, we have been told that recent years have seen the emergence of 'pop-up' venues in spaces such as dormant breweries.

Changes in relative power of event organisers and venues

21. There is now less scope for venues to wield undue influence to tie particular electrical contractors and decrease customer choice. Whereas at the time of

¹⁰ Earls Court, London Arena and Wembley Centre.

¹¹ London Transport Museum, Royal Airforce Museum, ExCeL London and Wembley Stadium (Search on www.venuefinder.com, carried out in November 2017. Criteria: London (15 mile radius), exhibition venues, largest room area 2500m²).

the MMC report venues such as Earls Court & Olympia were very powerful, were vertically integrated¹² or tied with¹³ other parts of the supply chain, and used that power to their own advantage, we have been informed that typically, organisers are now more influential than venues. We intend to explore the reasons for this in greater detail. In addition, we have been told that no venue now has a tied organising operation.

Customers' ability to compare prices

Changes in exhibitors' requirements

22. In the 1980s, exhibition stalls were comparatively unsophisticated and hence the services considered by the MMC comprised largely installation of light fittings, power sockets and connection to the mains. Now, however, exhibition stalls can feature an array of technology. We will explore this change in requirements to establish the extent to which i) the electrical contractor is involved in competition with other contractors, and ii) the ability of exhibitors to effectively assess and compare contractors' pricing has changed as a result of the different options open to them now.

Other changes – regulation

23. The MMC considered that health and safety issues were relevant to its inquiry, although not a focus for its recommendations¹⁴ and we believe that there has been changes in regulation in this area. For example, we have been told that the industry recently negotiated a specific set of technical regulations to apply to exhibition stands due to their temporary nature.

Prioritisation principles

24. In order to make the best use of its resources, the CMA needs to ensure that it makes appropriate decisions about which projects and programmes of work are undertaken across all areas of responsibility. The CMA has assessed the information available in relation to the Order in reaching its decision in the light of its published [prioritisation principles](#). [These principles are impact, strategic significance, risk and resources](#). We consider each of these in turn.
25. **Strategic significance:** The CMA has committed in its Annual Plan, for 2017/18 to continue to consider reviews of remedies where appropriate. Over

¹² i.e part of the same company or corporate group.

¹³ E.g. customers are required to use the tied contractor or organiser if they wish to use the venue.

¹⁴ MMC Report, paragraphs 6.23 – 6.25, 6.48 and 6.50.

the course of 2015-2017, the CMA has made significant progress in its programme of reviews in relation to merger remedies in particular. In the course of ongoing review of its priorities, the CMA has decided that a review of the Order, a market remedy, would now meet with the strategic significance criteria of its prioritisation principles.¹⁵ In particular, given its age, this Order is a good candidate for review in the context of the CMA's general duty to review old remedies.

26. **Impact:** The removal of unnecessary constraints on businesses generates benefits for customers, as does ensuring that regulatory measures effectively address market problems. The Order may have had a beneficial impact on the market in the past, however it is not clear at present whether the Order continues to be invoked or enforced or whether businesses have regard to it in regulating their practices. In the event that the Order is no longer appropriate, the CMA considers that there may be benefits for consumer welfare from revoking it. Alternatively, if on investigation we identify ongoing problems in the market then there may be some beneficial impact on consumers from varying the Order.
27. **Risk:** The CMA notes that the Order is over 22 years old and that the MMC's original concerns were articulated over 28 years ago. Given the age of this remedy, it is more likely that significant changes may have taken place in the intervening years that represent a change of circumstances, such that it may no longer be appropriate. As noted above, the CMA has identified a number of changes in the nature of the services and demand, and in the market structure, that may represent changes of circumstances. The CMA acknowledges the possibility that the review does not lead to the Order being varied or revoked, however it considers that there is a realistic prospect of finding a change of circumstances in this review at this time, such that a review is merited.
28. **Resource:** The CMA considers that conducting a review of the Order would involve a modest amount of resource. Moreover, the CMA notes that the removal of remedies that are no longer appropriate allows the CMA to focus its resources on monitoring remedies that continue to generate benefit for consumers and the UK economy.

¹⁵ The CMA issued an invitation to comment in 2015 inviting views on whether reviews should take place on 13 sets of remedies, including the Order. The CMA subsequently decided not to prioritise a review of the Order in 2015 and to focus on reviewing other remedies instead.

Decision to Review the Order

29. The evidence currently available to the CMA indicates a realistic prospect of finding a change of circumstances relevant to the Electrical Contracting Order. The CMA has assessed the review of this Order against its published prioritisation criteria and found the launch of this review to be consistent with the criteria.

Stakeholder views

30. The CMA is keen to hear the views and evidence from interested parties, including electrical contractors, exhibition venues, exhibition organisers and exhibitors to help it carry out this review and reach a conclusion on whether there has been a relevant change in circumstances in this sector, such that the Order should be varied, superseded or released.
31. In particular, we would like to hear stakeholders' views on the following areas:

Market functioning

- How do exhibitors, venues, exhibition organisers, main/event contractors, electrical contractors and other contractors work together in this market?
 - Does this vary, for example by venue, organiser, type of event, size of event, size of exhibitor, etc?
 - What have been the most important changes to this in the last 5-10 years?
 - Have there been any significant changes in the relationships between exhibitors and organisers, and between organisers and venues in the last 5-10 years? What are the reasons for such changes and what, if any, impact have these changes had on the supply of electrical contracting services?
- What kind of services do electrical contractors currently provide at exhibitions and are other contractors also able to provide these services?¹⁶

¹⁶ The MMC report defined electrical contracting services as 'the services provided by electrical contractors, in their capacity as such, other than the service of connecting electrical equipment to electrical mains'. It notes that the electrical contractor may 'wire up' stands (i.e. supply and fit light fittings and mains sockets) to the specification of the exhibitor and may also arrange for the venue mains supply to be provided to a block of stands through junction boxes.

- How do exhibitors choose and engage any contractors who provide these services?
- What have been the most important changes in the last 5-10 years?
- Some of the venues identified as ‘relevant’ by the MMC (i.e. greater than 2,500m² exhibition space) no longer exist.
 - What is the current situation in terms of use of venues of this size for exhibition; is it easy to find such a venue in Greater London?
 - How have demand for and supply of exhibition venues in Greater London with a floor area for exhibitions of over 2,500 square metres, changed in the last 5-10 years?
- Are exhibitions on this scale still focussed in Greater London or are more exhibitions now held outside Greater London?

Relevance of the Order

- How relevant is the Order now?
- Are contractors, venues, exhibition organisers and exhibitors generally aware of the Order?
- How frequently is it referred to or invoked in the course of business?

Competition in electrical contracting

- How much choice can and do exhibitors exercise in which contractor to use? How easily can exhibitors compare prices for electrical contractors?
- How easily can electrical contractors compete with each other in providing services for exhibitions at large (i.e. greater than 2,500 m² exhibition space) venues in Greater London.
- How often do venues or organisers tender for electrical contractor partners? Who usually wins such contracts and why?

32. Responses should be sent to the following address and should arrive at the CMA by **5pm on Monday 12 February 2018**.

Grahame Horgan
Competition and Markets Authority
Victoria House
Southampton Row
London WC1B 4AD

Email: remedies.reviews@cma.gsi.gov.uk

33. The process the CMA follows during a review of an existing remedy is described in the [CMA's guidance on its website](#).