



HM Government

# **Response Form: Competition Regime – Draft Secondary Legislation – Part 2**

17 September 2013



Department  
for Business  
Innovation & Skills

## Response Form: Competition Regime – Draft Secondary Legislation – Part 2

**Issued:** 17 September 2013  
**Respond by:** 11 November 2013  
**Enquiries to:**

Paul Griffiths  
Consumer and Competition Policy Directorate  
Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

Tel: 0207 215 1722  
Email: [competition.consultation@bis.gsi.gov.uk](mailto:competition.consultation@bis.gsi.gov.uk)

**This consultation is relevant to:** Businesses of all size, economic regulatory bodies, consumer organisations, legal bodies and academics.

**This information is also available on the GOV.UK website:**

**<https://www.gov.uk/government/consultations/competition-regime-cma-priorities-and-draft-secondary-legislation-part-two>**

## How to Respond

This consultation will begin on 17 September 2013 and will run for 8 weeks, closing on 11 November 2013.

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

The consultation response form is available electronically on the consultation page: [www.gov.uk/government/consultations/competition-regime-draft-secondary-legislation-part-two](http://www.gov.uk/government/consultations/competition-regime-draft-secondary-legislation-part-two) (until 11 November 2013). The form can be submitted online/by email or by letter or fax to:

Paul Griffiths  
Consumer and Competition Policy Directorate  
Department of Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

Tel: 0207 215 1722  
Fax: 0207 215 0235  
Email: [competition.consultation@bis.gsi.gov.uk](mailto:competition.consultation@bis.gsi.gov.uk)

A list of those organisations and individuals consulted is in Annex K. We would welcome suggestions of others who may wish to be involved in this consultation process.

You may make printed copies of this document without seeking permission. Other versions of the document in Braille, other languages or audio-cassette are available on request.

## ***Confidentiality & Data Protection***

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic

confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

### ***Help with queries***

Questions about the policy issues raised in the document can be addressed to Paul Griffiths at the above address.

### ***What happens next?***

Following the close of the consultation period, the Government will publish all of the responses received, unless specifically notified otherwise (see data protection section above for full details).

The response to the consultation will take the form of decisions made in light of the consultation, a summary of the views expressed and reasons given for decisions finally taken. This document will be published on the BIS website with paper copies available on request.

### ***Comments or complaints***

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

John Conway,  
BIS Consultation Co-ordinator,  
1 Victoria Street,  
London  
SW1H 0ET

Telephone John on 020 7215 6402  
or e-mail to: [john.conway@bis.gsi.gov.uk](mailto:john.conway@bis.gsi.gov.uk)

The consultation principles are in Annex J.

However if you wish to comment on the specific policy proposals you should contact the policy lead.



## Response Form

Name:

Organisation (if applicable): Baker & McKenzie I.LP

Address: 100 New Bridge Street, London EC4V 6JA

Please tick a box from the list of options below that best describes you as a respondent.

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input checked="" type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe):

### Chapter 2. Cartels: Enterprise Act 2002 (Publishing of Relevant Information under section 188A) Order 2014

*Question 1: What is your view on the proposed manner of publication of relevant information?*

Comments:

**We are not convinced that publication in the Gazette is appropriate, particularly as businesses will incur a cost of around £190 per publication. We are also concerned that there will be a delay between notification and actual publication in the Gazette. The agreement can only be finalised after publication which will lead to delays in doing business.**



*Question 2: Can you estimate the number of advertisements which might be placed in one of the Gazettes?*

Comments:

**We are not in a position to provide such an estimate.**

*Question 3: Do you have any other comments on the draft Order?*

Comments:

**The Draft Order could usefully expand upon the detail to be provided to meet the requirement to provide “relevant information” and to describe the nature of the arrangements in section 188A and 188B of the Enterprise Act 2002 as amended by the ERA13. As a matter of policy, we suggest that this requirement should be interpreted so as to shield from prosecution individuals who have provided frank disclosure in a normal business manner, without necessarily having given a formal list of the information.**

**In particular, we suggest, the requirement to provide the names of the undertakings should be satisfied by a reference to the name of the group to which the undertakings belong (so e.g. “the Alpha group” should suffice without naming Alpha (United Kingdom) Limited and Alpha Holdings (United Kingdom) Limited).**

**As regards the nature of the arrangements, indicating that named parties are making the offer to supply as a joint venture or are bidding jointly should suffice without listing any detailed terms applying within the scope of the joint venture or joint bidding arrangement (so an example clarifying that stating in a bid that “the Alpha group and Beta Ltd are pleased to present this joint bid” will meet the requirement for the exclusion would be useful).**

**As regards the requirement to give the products or services to which the arrangements relate, it should be clarified that this information does not need to be provided separately in a case where the arrangements relate to the products or service which are subject to the supply or bid in question (so in the example just given, indicating that “the Alpha group and Beta Ltd are pleased to present this joint bid” should suffice without adding the superfluous but arguably required “in relation to the widgets to which this bid relates”). Absent these clarifications, individuals could face prosecution and at least the need to prove that a defence applies even when, in business terms, they had been entirely frank.**

### **Chapter 3. Concurrency: Competition Act 1998 (Concurrency) Regulations 2014**

*Question 4: Do you have any comments on the draft Regulations?*

**Comments:**

**Regulation 4:** There is no provision for the views of materially affected parties to be taken into account regarding case allocation. We consider that the Regulations should provide that a competent person must have regard to the representations of affected parties when determining the exercise of Part 1 functions.

**Regulation 5 (Disputes):** The draft Regulations provide that, in determining a dispute as to competence, the CMA must have regard to representations made by relevant competent persons. We consider that the CMA should also be obliged to have regard to representations made by affected parties as to which competent person should have jurisdiction over a case.

It would also be helpful to include the definition of "competent person" in the Regulations as well as the Explanatory Note.

**Regulation 8:** We are concerned that the CMA will have the ability to exercise jurisdiction at any stage before the Regulator issues a Statement of Objections. There is typically a significant period of time between the start of an investigation and issuing of a Statement of Objections. If a case can be transferred to the CMA when the investigation is well underway, there is a risk that this could lead to a longer investigation period. In our view there should be limited period within which the CMA must decided whether or not to take over a case.



#### Chapter 4. Antitrust: The Competition Appeal Tribunal (Warrants) (Amendment) Rules 2014

*Question 5: Do you have any comments on the draft Rules?*

Comments:

**We have no comments.**

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply ☒

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

☒ Yes

☐ No

