

DEPARTMENT FOR BUSINESS, INNOVATION AND SKILLS

COMPETITION REGIME: DRAFT SECONDARY LEGISLATION – PART TWO

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

- 1.1 As a general matter, we consider that the publication exclusion set out at section 188A of the Enterprise Act 2002 (inserted by section 47 of the Enterprise and Regulatory Reform Act 2013) is likely to be of limited utility in bringing conduct outside the scope of the revised criminal cartel offence, given that secrecy is inherent in the nature of cartel activity, particularly in the case of 'hard core' cartel activity of the type with which the revised cartel offence is concerned. As a result, we do not consider that the publication exclusion is likely to lead to a reduction in the level of criminal cartel activity, but rather will impose an excessively formalistic burden on parties to legitimate arrangements who wish to mitigate the risk of a criminal investigation in future.
- 1.2 In addition, we do not consider that it is realistic to expect customers (particularly in the case of arrangements where the class of customers in question is comprised of final consumers) to consult one or more of the Gazettes referred to in the draft Order in order to determine whether they may be affected by published arrangements. Setting aside our general concerns regarding the publication exclusion, we consider that a more appropriate forum for publication of relevant arrangements may be on the website of the Competition and Markets Authority (the "CMA"), with parties required to submit a short notification to the CMA for publication in a single, centralised location. It would be helpful, for this purpose, if the CMA were to provide a template, standard-form notification setting out the information which parties are required to publish in order to benefit from the publication exclusion.

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

- 2.1 We do not consider that we are in a position to provide a meaningful estimate of the number of advertisements which may be expected to be placed in one of the Gazettes specified in the draft Order.

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

- 3.1 None.

4 Do you have any comments on the draft Regulations?

- 4.1 None.

5 Do you have any comments on the draft Rules?

- 5.1 None.

Berwin Leighton Paisner LLP

11 November 2013