

Decision of the Competition and Markets Authority

Online resale price maintenance in the digital piano and digital keyboard sector

Case 50565-2

1 August 2019

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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 Names have been replaced by a general descriptor of the individual's role.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

	<i>Page</i>
1. Introduction and Executive Summary	4
A. Glossary	6
2. Investigation.....	8
3. Facts	14
A. Addressees.....	14
I. Casio Electronics Co. Limited.....	14
II. Casio Computer Co., Limited	14
B. Piano and keyboard sector overview	15
I. UK pianos and keyboard sector	15
II. Casio UK's involvement in the UK piano and keyboard sector.....	16
III. Other UK piano and keyboard suppliers.....	17
IV. UK MI resellers.....	17
V. Casio UK's sales and distribution network.....	18
VI. Importance of internet sales as a retail channel to the MI sector.....	21
C. Casio Pricing Policy	22
I. Introduction and overview.....	22
II. Aims, content and duration.....	26
III. Monitoring and enforcement of the Casio Pricing Policy	35
IV. Illustrative examples of Casio UK's monitoring and enforcement.....	46
V. Casio UK's awareness about illegality of enforcing the Casio Pricing Policy 57	
VI. Consequences for resellers of non-compliance.....	60
D. Market Definition.....	63
I. Purpose of and framework for assessing the relevant market.....	64
II. Relevant product market	64
III. Sales through different distribution channels	66
IV. Relevant geographic market.....	67
V. Conclusion on market definition	68
4. Legal Assessment.....	68
A. Introduction.....	68
B. Undertakings	70
I. Key legal principles	70
II. Conclusion on undertakings	71
C. Agreement and/or concerted practice.....	71
I. Key legal principles	71
II. Agreement.....	72
III. Concerted practice	74

IV.	Agreement and/or concerted practice between Casio UK and [Reseller 1].	75
D.	Object of Preventing, Restricting or Distorting Competition	104
I.	Key legal principles	104
II.	Legal Assessment of the Agreement	112
E.	Appreciable Restriction of Competition	115
I.	Key legal principles	116
II.	Legal assessment	116
F.	Effect on Trade between EU Member States	117
I.	Key legal principles	117
II.	Legal assessment	119
G.	Effect on Trade within the UK	122
I.	Key legal principles	122
II.	Legal assessment	123
H.	Exclusion or Exemption	123
I.	Exclusion	123
II.	Block exemption/Parallel exemption	123
III.	Individual exemption	124
I.	Attribution of liability	125
I.	Key legal principles	125
II.	Liability for the Infringement	128
III.	Conclusion on joint and several liability	128
J.	Burden and standard of proof	129
I.	Burden of proof	129
II.	Standard of proof	129
5.	The CMA's Proposed Action	130
A.	The CMA's Proposed Decision	130
B.	Directions	131
C.	Financial Penalties	131
I.	General	131
II.	Intention/negligence	133
III.	Calculation of Penalties	135
IV.	Payment of penalty	143

1. INTRODUCTION AND EXECUTIVE SUMMARY

- 1.1 This Decision is addressed to Casio Electronics Co. Limited (Casio UK) and to its ultimate parent company, Casio Computer Co., Limited (Casio Japan) (together, the Addressees).
- 1.2 By this Decision,¹ the Competition and Markets Authority (the CMA) has concluded that:
- Casio UK infringed the prohibition in section 2(1) of the Competition Act 1998 (the Act) (the Chapter I prohibition) and/or Article 101 of the Treaty on the Functioning of the European Union (the TFEU) by entering into an agreement and/or participating in a concerted practice with [Reseller 1], one of Casio UK's UK resellers:
 - that [Reseller 1] would not advertise or sell online digital pianos or digital keyboards supplied to it by Casio UK (the Relevant Products) below a price specified by Casio UK from time to time (the Minimum Price);
 - which amounted to resale price maintenance (RPM) in respect of online sales of the Relevant Products by [Reseller 1].
 - The agreement and/or concerted practice:
 - had as its object the prevention, restriction or distortion of competition within the UK and/or between EU Member States;
 - may have affected trade within the UK and/or between EU Member States; and
 - lasted from 4 February 2013 to 5 April 2018 (the Relevant Period) (referred to below as the Infringement).
- 1.3 The CMA has decided to attribute liability for Casio UK's Infringement to its ultimate parent company, Casio Japan, making Casio UK and Casio Japan jointly and severally liable for the Infringement.
- 1.4 The CMA has applied Rule 10(2) of the CMA's Rules in this case and has addressed this Decision only to the Addressees identified in paragraph 1.1 above and not to [Reseller 1].

¹ The CMA hereby gives notice of its decision subject to Rule 10(1) of The Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014 (SI 2014/458).

- 1.5 The CMA has decided to impose a financial penalty on the Addressees pursuant to section 36(1) of the Act.

A. Glossary

Term	Definition
Act	Competition Act 1998
Addressees	Casio UK and Casio Japan
Agreement	The agreement and/or concerted practice between Casio UK and [Reseller 1] that [Reseller 1] would not advertise or sell the Relevant Products online below the Minimum Price
Article 101 TFEU	Article 101 of the Treaty on the Functioning of the European Union
[X]	[A subsidiary of Casio Japan]
Casio UK	Casio Electronics Co. Limited (company number: 01203633)
Casio Japan	Casio Computer Co., Limited (company number: 0110-01-030015)
Casio Pricing Policy	The arrangements between Casio UK and its UK resellers according to which resellers would not advertise or sell the Relevant Products online at prices below the Minimum Price
CAT	Competition Appeal Tribunal
Chapter I prohibition	The prohibition imposed by section 2(1) of the Competition Act 1998
CMA	The Competition and Markets Authority
CMA Rules	The Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014 (SI 2014/58)
Commission	The European Commission
Court of Justice	The Court of Justice of the European Union (formerly the European Court of Justice)
Daily Reports	Daily price monitoring reports sent by Price2Spy to Casio UK, comprising Casio UK's resellers online advertised prices for certain Relevant Products and sometimes also for certain of its competitors' products
December RFI	Section 26 Notice issued to Casio UK on 6 December 2018 (URN C_CAS01748)
Decision	This decision dated 01 August 2019
Effect on Trade Guidelines	Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty (2004/C 101/07)
EA02	The Enterprise Act 2002
EMI	Electronic Musical Instruments
EU	The European Union
First April RFI	Section 26 Notice issued to Casio UK on 17 April 2018 (URN V_CAS00005)
First March RFI	Section 26 Notice issued to Casio UK and Casio Japan on 14 March 2019 (URN C_CAS02363)
General Court	The General Court of the European Union (formerly the Court of First Instance)

Term	Definition
Guide Price	A price set by Casio UK and included on price lists that it provided to resellers before April 2016
IBISWorld Report	IBISWorld Industry Report G47.591 Musical Instrument Retails in the UK
Independent resellers	Music Dealers Main and Stockist and Music Dealers Open together comprise the Independent category of resellers
Infringement	The infringement of the Chapter I prohibition and/or Article 101 TFEU regarding the Relevant Products, as specified in paragraph 1.2 above.
MAP	Minimum advertised price
Mass market	The Addressees describe these resellers as non-specialist retailers in respect of musical instruments. These include national chains, catalogue companies and national online retailers (e.g. [Reseller]). These retailers sell both digital keyboards and CDP Digital Pianos.
Minimum Price	The minimum price specified by Casio UK from time to time in connection with the Casio Pricing Policy which was referred to by Casio UK in its price lists at different times as the Guide Price or RSP
MI	Musical Instrument/s
Music Dealers Main and Stockist	This covers specialist music retailers who [X].
OFT	The Office of Fair Trading, one of the CMA's predecessor organisations
Music Dealers Open	The Addressees describe these resellers as music retailer account holders that may sell Digital Keyboards and entry level Digital Pianos in the CDP range but who purchase from Casio UK's "open" product list and have [X], such that they are [X]. Occasionally, an open dealer may be [X].
Penalties Guidance	CMA's <i>Guidance as to the appropriate amount of a penalty</i> (CMA73, April 2018)
Price Alerts	Price2Spy price alert emails which informed Casio UK of changes to the prices of Relevant Products advertised by its resellers online
Relevant Period	4 February 2013 to 5 April 2018
Relevant Products	The relevant products covered by the Infringement are all digital pianos and all digital keyboards marketed and sold by Casio UK during the Relevant Period (see figure 3.1), but this does not include associated accessories, such as stands, adapters, and pedals. Whenever this term is used, it may also refer to any subset of the products described above.
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
RPM	Resale price maintenance
RRP	Recommended retail price

Term	Definition
RSP	Recommended selling price – a price set by Casio UK according to UK trading conditions and included on price lists that it provided to resellers after April 2016
s.26 Notice	A notice issued under section 26 of the Act
Second April RFI	Section 26 Notice issued to Casio UK on 23 April 2018 (URN V_CAS00055)
Second March RFI	Section 26 Notice issued to Casio UK and Casio Japan on 21 March 2019 (URN C_CAS02407)
SDA	Selective Distribution Agreement
September RFI	Section 26 Notice issued to Casio UK on 19 September 2018 (URN C_CAS01490)
SO	The Statement of Objections dated 11 April 2019
TFEU	Treaty on the Functioning of the European Union
The 12 Resellers	Resellers of the Relevant Products to whom the CMA sent s.26 Notices on 17 April 2018
The s.27 Notice	The s.27 Notice issued to Casio UK by the CMA on 17 April 2018 (URN V_CAS00004)
VABER	Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the TFEU to categories of vertical agreements and concerted practices (OJ L 102, 23.4.2010), known as the Vertical Agreements Block Exemption Regulation
Vertical Guidelines	Commission Guidelines on Vertical Restraints [2010] OJ C130/01

References to legislation in the above Glossary refer equally to any amendments to that legislation.

2. INVESTIGATION

2.1 [X], on 17 April 2018, the CMA opened a formal investigation under section 25 of the Act into a suspected competition law infringement by Casio UK. The CMA did so having determined that it had reasonable grounds for suspecting that:

- a. Casio UK had infringed the Chapter I prohibition and/or Article 101 TFEU by being involved in anti-competitive agreements and/or concerted practices ('arrangements' where the context permits) with at least one UK reseller;
- b. these arrangements restricted the price at which musical instruments (MI) supplied by Casio UK were advertised online by the reseller/s; and

- c. this, in turn, restricted the price at which MI were sold by the reseller/s – making the arrangements a form of resale price maintenance (RPM).
- 2.2 At the same time, the CMA made an administrative decision to focus the evidence-gathering in this investigation on:
- the period from 1 January 2013; and
 - the Relevant Products (digital pianos and digital keyboards, excluding accessories).
- 2.3 On 17 April 2018, the CMA entered Casio UK's business premises under section 27 of the Act and required documents relevant to its investigation to be produced and information relevant to its investigation to be provided (the s.27 Notice).² On the same date, the CMA also issued Casio UK with a notice under section 26 of the Act (s.26 Notice) requiring further documents and information to be produced (the First April RFI).³
- 2.4 Also on 17 April 2018, the CMA issued s.26 Notices to the following 12 resellers (the 12 Resellers), requiring production of information and documents:
- [Reseller 2]⁴
 - [Reseller 3]⁵
 - [Reseller 4]⁶
 - [Reseller 5]⁷
 - [Reseller 6]⁸
 - [Reseller 7]⁹
 - [Reseller 8]¹⁰

² URN V_CAS00004 (the s.27 Notice).

³ URN V_CAS00005 (First April RFI).

⁴ URN C_CAS000065 (s.26 Notice to [Reseller 2]) and URN C_CAS000069 (Annex 1 to s.26 Notice to [Reseller 2]).

⁵ URN C_CAS000071 (s.26 Notice to [Reseller 3]) and URN C_CAS000073 (Annex 1 to s.26 Notice to [Reseller 3]).

⁶ URN C_CAS000077 (s.26 Notice to [Reseller 4]) and URN C_CAS000078 (Annex 1 to s.26 Notice to [Reseller 4]).

⁷ URN C_CAS000096 (s.26 Notice to [Reseller 5]) and URN C_CAS000098 (Annex 1 to s.26 Notice to [Reseller 5]).

⁸ URN C_CAS000028 (s.26 Notice to [Reseller 6]) and URN C_CAS000030 (Annex 1 to s.26 Notice to [Reseller 6]).

⁹ URN C_CAS000089 (s.26 Notice to [Reseller 7]) and URN C_CAS000091 (Annex 1 to s.26 Notice to [Reseller 7]).

¹⁰ URN C_CAS000083 (s.26 Notice to [Reseller 8]) and URN C_CAS000085 (Annex 1 to s.26 Notice to [Reseller 8]).

- [Reseller 9]¹¹
 - [Reseller 10]¹²
 - [Reseller 11]¹³
 - [Reseller 12]¹⁴
 - [Reseller 1].¹⁵
- 2.5 On 19 April 2018, during the exercise of the s.27 Notice, the CMA conducted a voluntary first-account interview with [Casio Senior Employee 4], Casio UK.¹⁶
- 2.6 On 23 April 2018 the CMA issued Casio UK with a further s.26 Notice requiring further documents and information to be produced (the Second April RFI).¹⁷
- 2.7 Between 8 May and 2 July 2018, the CMA reviewed approximately 100,000 documents, made available by Casio UK in response to the s.27 Notice, at the offices of Casio UK's then solicitors. Approximately 3,500 of these documents were deemed to be responsive to the s.27 Notice and taken onto the CMA's case file.
- 2.8 On 19 September 2018, the CMA issued Casio UK with a further s.26 Notice (the September RFI).¹⁸
- 2.9 On 1 November 2018, the CMA held a State of Play meeting with Casio UK.¹⁹
- 2.10 On 19 November 2018, the CMA sent letters to Casio UK and Casio Japan informing them of the CMA's decision to expand the scope of the

¹¹ URN C_CAS00059 (s.26 Notice to [Reseller 9]) and URN C_CAS00061 (Annex 1 to s.26 Notice to [Reseller 9]).

¹² URN C_CAS00047 (s.26 Notice to [Reseller 10]) and URN C_CAS00049 (Annex 1 to s.26 Notice to [Reseller 10]).

¹³ URN C_CAS00034 (s.26 Notice to [Reseller 11]) and URN C_CAS00036 (Annex 1 to s.26 Notice to [Reseller 11]).

¹⁴ URN C_CAS00053 (s.26 Notice to [Reseller 12]) and URN C_CAS00055 (Annex 1 to s.26 Notice to [Reseller 12]).

¹⁵ URN C_CAS00045 (s.26 Notice to [Reseller 1]) and URN C_CAS00042 (Annex 1 to s.26 Notice to [Reseller 1]).

¹⁶ URN C_CAS00860 (Transcript of interview with [Casio Senior Employee 4] dated 19 April 2018).

¹⁷ URN V_CAS00055 (Second April RFI).

¹⁸ URN C_CAS01490 (September RFI).

¹⁹ URN C_CAS01682 (Note of November State of Play Meeting dated 1 November 2018).

investigation to include Casio Japan as the ultimate parent company of Casio UK.²⁰

- 2.11 On 6 December 2018, the CMA issued Casio UK with a further s.26 Notice (the December RFI).²¹
- 2.12 On 9 January 2019, the CMA held a State of Play meeting with Casio Japan.²²
- 2.13 On 14 January 2019, pursuant to its powers under section 26A of the Act (s.26A powers), the CMA conducted compulsory interviews with [Senior Employee 1] of [Reseller 1],²³ and [Senior Employee 2] of [Reseller 1].²⁴
- 2.14 On 22 January 2019, the CMA issued [Reseller 1] with a further s.26 Notice (the [Reseller 1] January RFI).²⁵
- 2.15 On 23 January 2019, Casio UK and Casio Japan submitted to the CMA an offer of commitments.²⁶ On 29 January 2019, the CMA rejected the offer of commitments.²⁷
- 2.16 On 1 February 2019, the CMA conducted compulsory interviews with [Casio Employee 1],²⁸ and [Casio Senior Employee 4], of Casio UK under its section 26A powers.²⁹
- 2.17 On 21 February 2019, Casio UK and Casio Japan wrote to the CMA to express their interest in entering into discussions to explore settlement.³⁰
- 2.18 On 13 March 2019, the CMA issued Casio UK and Casio Japan with a s.26 Notice (the First March RFI).³¹

²⁰ URN C_CAS01680 (Letter scoping Casio Japan into investigation dated 19 November 2018).

²¹ URN C_CAS01748 (December RFI).

²² URN C_CAS02308 (Note of January State of Play Meeting 9 January 2019).

²³ URN C_CAS02410 (Transcript of interview with [Senior Employee 1] dated 14 January 2019).

²⁴ URN C_CAS02332 (Transcript of interview with [Senior Employee 2] dated 14 January 2019).

²⁵ URN C_CAS02118 ([Reseller 1] January RFI).

²⁶ URN C_CAS02131 (Commitments letter dated 23 January 2019).

²⁷ URN C_CAS02271 (Commitments rejection email dated 29 January 2019).

²⁸ URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019); Note: when provided with the opportunity to review his responses after the interview, [Casio Employee 1] provided clarifications to some of his responses - URN C_CAS02400 (Transcript of interview with [Casio Employee 1] dated 1 February 2019 containing clarifications by [Casio Employee 1]).

²⁹ URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019); Note: when provided with the opportunity to review his responses after the interview, [Casio Senior Employee 4] provided clarifications to some of his responses - URN C_CAS02402 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019 containing clarifications by [Casio Senior Employee 4]).

³⁰ URN C_CAS02325 (Initial Settlement Letter dated 21 February 2019).

³¹ URN C_CAS02363 (First March RFI).

- 2.19 On 21 March 2019, the CMA issued Casio UK and Casio Japan with a s.26 Notice (the Second March RFI).³²
- 2.20 On 22 March 2019, Casio UK and Casio Japan agreed in principle to settlement of the matter.³³
- 2.21 On 22 March 2019, the CMA sent [Reseller 1] a request for further information (the [Reseller 1] March RFI).³⁴
- 2.22 On 11 April 2019, the CMA issued a Statement of Objections (the SO) to Casio UK and Casio Japan, in which it proposed to make a decision that Casio UK had infringed the Chapter I prohibition of the Act and/or Article 101 TFEU. The SO also set out the CMA's intention to hold Casio Japan jointly and severally liable for Casio UK's alleged infringement on the basis that it had been the latter's ultimate parent company throughout the period of the alleged infringement. In the circumstances of this case, the CMA applied Rule 5(3) of the CMA Rules and addressed the SO only to the Addressees and not to the reseller counterparty to the alleged agreement/s and/or concerted practice/s.³⁵
- 2.23 On 11 April 2019, the CMA informed [Reseller 1] that it had issued the SO to Casio UK and Casio Japan. At the same time, it provided [Reseller 1] with an opportunity to provide representations on the SO which [Reseller 1] declined.
- 2.24 On 25 April 2019, following receipt of the SO, Casio UK and Casio Japan reconfirmed their interest in settlement discussions.
- 2.25 On 13 May 2019, 31 May 2019 and 18 June 2019, Casio UK and Casio Japan submitted representations (limited to manifest factual inaccuracies) to the CMA on the matters set out within the SO.
- 2.26 On 26 and 27 March 2019 and 3 and 8 July 2019, Casio UK and Casio Japan submitted representations in relation to mitigating factors to be taken into account in the calculation of any financial penalty.
- 2.27 On 18 July 2019, following settlement discussions, Casio UK and Casio Japan offered to settle the case. Casio UK and Casio Japan voluntarily, clearly and unequivocally admitted the facts and allegations of infringement

³² URN C_CAS02407 (Second March RFI).

³³ URN C_CAS02412 (In principle settlement agreement dated 22 March 2019).

³⁴ URN C_CAS02413 ([Reseller 1] March RFI).

³⁵ Likewise, the CMA has applied Rule 10(2) of the CMA Rules and addressed this Decision to Casio UK and Casio Japan only.

as set out in the SO,³⁶ which are now reflected in the Decision, and agreed to co-operate in expediting the process for concluding the case.

- 2.28 On 23 July 2019, the CMA confirmed that it would settle the case with Casio UK and Casio Japan and that it intended to proceed to issue an infringement decision.

³⁶ Subject to limited representations relating to manifest factual inaccuracies communicated to and agreed by the CMA, see paragraphs 14.8 and 14.14 of the [Guidance on the CMA's investigation procedures in Competition Act 1998 cases: CMA8](#), January 2019.

3. FACTS

A. Addressees

I. Casio Electronics Co. Limited

3.29 Casio Electronics Co. Limited (Casio UK) is a UK-based business which is active in the supply of Casio products, including but not limited to electronic musical instruments (EMI), in the United Kingdom (UK) and Republic of Ireland.³⁷

3.30 Casio UK is a private limited company registered at Companies House under company number 01203633.³⁸

3.31 Casio UK had a turnover of £53.4 million in 2017/18 (the most recent year for which Casio UK's published accounts exist).³⁹

3.32 Casio UK operates divisions which sell the following Casio products:

- calculators;
- digital projectors;
- EMI;
- point of sale equipment; and
- watches.⁴⁰

II. Casio Computer Co., Limited

3.33 Throughout the Relevant Period, Casio UK has been a wholly-owned subsidiary of Casio Computer Co., Limited (Casio Japan), which is the ultimate parent company of Casio UK.⁴¹ It supplies, amongst other products, EMI under the Casio brand.

3.34 Casio Japan is a global corporation headquartered in Tokyo, Japan with company registration number 0110-01-030015.⁴² It is listed on the Tokyo

³⁷ URN C_CAS01516 (Response dated 3 October 2018 to September RFI), paragraph 1.1.

³⁸ See <https://beta.companieshouse.gov.uk/company/01203633>.

³⁹ URN C_CAS02305 (Casio UK Annual Report 2017/18), p.7.

⁴⁰ URN V_CAS00030 (Casio UK Company Organisation Chart dated 16 April 2018 provided in response to First April RFI).

⁴¹ URN C_CAS00601 (Response dated 8 May 2018 to Second April RFI), paragraph 1.1 and URN C_CAS02305 (Casio UK Annual Report 2017/18), p.18.

⁴² URN C_CAS00601 (Response dated 8 May 2018 to Second April RFI), paragraph 2.1.

Stock Exchange⁴³ and its published accounts state that it had a turnover of £2.126 billion in the financial year ending in 2018.⁴⁴

- 3.35 Casio Japan directly owns eight subsidiaries based in Europe, including Casio UK. Casio UK is the only UK-registered subsidiary of Casio Japan.⁴⁵ The vast majority, if not all, of Casio Japan's business in the UK is conducted through Casio UK.⁴⁶
- 3.36 [X] is another subsidiary of Casio Japan and [X].⁴⁷ Casio Japan also owns subsidiaries in Japan, as well as in multiple countries throughout Asia and the Americas.

B. Piano and keyboard sector overview

- 3.37 This section provides an overview of those aspects of the piano and keyboard sector that are relevant to this investigation.

I. UK pianos and keyboard sector

- 3.38 The market research company, IBISWorld Ltd (IBISWorld), estimates that the musical instrument sector in the UK was worth £444.3 million in 2017/18,⁴⁸ and that keyboards, pianos, and organs made up [10% - 20%] of the musical instrument sector in 2017/18.⁴⁹
- 3.39 The UK piano and keyboard sector broadly consists of the supply of the following:
- acoustic pianos;
 - digital pianos;
 - electric pianos;

⁴³ URN C_CAS00601 (Response dated 8 May 2018 to Second April RFI), paragraph 1.2.

⁴⁴ URN C_CAS02426 (Response dated 27 March 2019 to First March RFI), Annex 3.

⁴⁵ URN C_CAS00606 (Casio Japan Corporate structure charts provided in response dated 8 May 2018 to Second April RFI), p.1.

⁴⁶ '[Casio UK] do supply [Reseller 5] but only for direct delivery to UK schools, not for stock. The reason is we didn't want to make complicated supply lines where the UK office of [Reseller 5] was purchasing stock and supplying Germany. As [Reseller 5] is a German account, it is only right that [a subsidiary of Casio Japan] supply' - URN E_CAS00597 (Email from [Casio Senior Employee 5] to [Casio Employee 2], Sales Manager of [a subsidiary of Casio Japan], dated 25 March 2014), p.1.

⁴⁷ URN C_CAS01516 (Response dated 3 October 2018 to September RFI), paragraphs 2.1 and 2.2.

⁴⁸ URN M_CAS00005 (IBISWorld Report, March 2019), p.30.

⁴⁹ URN M_CAS00004 (IBISWorld Report, December 2017), p.13.

- keyboards;
- synthesisers; and
- organs.⁵⁰

II. Casio UK's involvement in the UK piano and keyboard sector

3.40 Casio UK currently sells the following EMI and EMI-related products:

- digital pianos;
- digital keyboards; and
- accessories for these instruments (including piano/keyboard stands and power adapters).⁵¹

3.41 Digital pianos have 88 keys and emulate the sound of an acoustic piano through digitally sampled and reproduced sound. Digital keyboards have fewer than 88 keys and play a wider range of sounds than a digital piano.⁵²

3.42 Figure 3.1 below sets out details of the digital pianos and keyboards which Casio UK sold as at September 2018. This figure details the Relevant Products, all of which were sold throughout the Relevant Period, with the exception of the Grand Hybrid range, which was launched in September 2015.⁵³

⁵⁰ URN M_CAS00002 (IBISWorld Report, July 2018), p.13.

⁵¹ Casio UK's EMI Division has in the past also sold DJ Controller Units - URN C_CAS01505 (Response dated 26 September 2018 to September RFI), paragraph 1.3.

⁵² URN C_CAS01505 (Response dated 26 September 2018 to September RFI), paragraphs 1.4-1.5.

⁵³ URN E_CAS06114 (Web page - Press release Casio grand hybrid pianos - Casio website <https://www.casio-music.com/euro/casio-music-life/inside-casio-music/> accessed 19 March 2019) and URN E_CAS06113 (Press release Casio launches grand hybrid pianos at Lincoln Center event - Casio website <https://www.casio.com/news/detail/casio-launches-grand-hybrid-pianos-at-lincoln-center-event> accessed 19 March 2019).

Figure 3.1: Casio digital piano and keyboard product range and September 2018 UK pricing

Product Type	Segment	Product Range	Product code	September 2018 RRP price range	September 2018 RSP price range
Digital Pianos	Grand Hybrid	GP	GP	£[X] - £[X]	£[X] - £[X]
	Standard/Premium	AP	AP	£[X] - £[X]	£[X] - £[X]
		PX	PX	£[X] - £[X]	£[X] - £[X]
	Entry-level	CDP	CDP	£[X] - £[X]	£[X] - £[X]
Digital Keyboards	Standard/Premium	High-Grade Keyboards	WK/CTK	£[X] - £[X]	£[X] - £[X]
		KLK (key lighting keyboards)	LK	£[X] - £[X]	£[X] - £[X]
		Standard Keyboards	CTK	£[X] - £[X]	£[X] - £[X]
	Mini	MM/M	SA	£[X] - £[X]	£[X] - £[X]

Source: Casio UK's response dated 26 September 2018 to Q5.b. of the September RFI⁵⁴ and the CMA's analysis of Casio UK's documents provided pursuant to the s.27 Notice.

III. Other UK piano and keyboard suppliers

3.43 Other suppliers of digital pianos and digital keyboards in the UK include Yamaha, Roland, Nord, Korg, and Kawai.⁵⁵

IV. UK MI resellers

3.44 Resellers in the UK have traditionally specialised in certain MI.⁵⁶ There is a large number of small MI resellers in the UK, most of which only operate from one location. These are typically referred to as 'Independent' resellers.

3.45 The CMA does not have detailed information on piano and keyboard resellers specifically. However, IBISWorld reports that there were 1687 enterprises in the MI sector as a whole in the 2017/18 period.⁵⁷ Despite four resellers having been estimated to have contributed over [20%-30%] of the total estimated MI retail industry revenue in 2017/18,⁵⁸ the industry does not currently have 'a *dominant nationwide chain of musical instrument stores*'.⁵⁹

⁵⁴ URN C_CAS01505 (Response dated 26 September 2018 to September RFI), paragraph 1.21.

⁵⁵ As sold by prominent musical instrument retailer [Reseller 7] URN E_CAS06119 (Examples of digital piano suppliers as sold by [Reseller 7].([X])) [web page] accessed 2 April 2019.

⁵⁶ URN M_CAS00002 (IBISWorld Report, July 2018), p.6 and p.19.

⁵⁷ URN M_CAS00005 (IBISWorld Report, March 2019), p.30.

⁵⁸ URN M_CAS00004 (IBISWorld Report, December 2017), p.18.

⁵⁹ The top four are listed as Gear4music (Holdings) plc, S&T Audio Ltd, Dawsons Music Ltd and J & A Beare Ltd - URN M_CAS00004 (IBISWorld Report, December 2017), pp.22-24.

By 2019, IBISWorld estimated the number of enterprises in the sector had dropped to 1684,⁶⁰ with this number estimated to decline by [less than 1%] over the five years following 2018/19.⁶¹

- 3.46 In addition to being sold through specialised MI resellers, MI are also sold by larger retail chains that do not specialise solely in MI. These include large national retailers, as well as catalogue companies. Casio UK calls these 'Mass' resellers.
- 3.47 IBISWorld notes that the internet and online retailing are increasingly important in the MI sector with online only resellers posing a competitive threat to traditional bricks-and-mortar musical instrument retailers.⁶²
- 3.48 MI resellers compete on several aspects including price, range, service and location.⁶³ Sales are made both through the internet and traditional bricks-and-mortar stores many of which also sell online. Lower overheads have allowed online-only stores to offer a wider product range, at lower prices.⁶⁴
- 3.49 The IBISWorld Report notes that, for the would-be purchaser, there are several advantages that bricks-and-mortar MI resellers have over internet-only resellers. These include: the opportunity to test products before buying; more personalised advice, and speed of delivery.⁶⁵
- 3.50 However, the IBISWorld Report also states that 'consumers are relatively price conscious, especially when purchasing more expensive products, and will compare prices in different shops to find the lowest price possible'.⁶⁶

V. Casio UK's sales and distribution network

- 3.51 Casio UK sells primarily via a network of resellers in the UK.⁶⁷ It uses the following distribution channels:

⁶⁰ URN M_CAS00005 (IBISWorld Report, March 2019), p.30.

⁶¹ URN M_CAS00005 (IBISWorld Report, March 2019), p.30.

⁶² URN M_CAS00002 (IBISWorld Report, July 2018), p.6.

⁶³ URN M_CAS00002 (IBISWorld Report, July 2018), p.21.

⁶⁴ URN M_CAS00002 (IBISWorld Report, July 2018), p.5.

⁶⁵ URN M_CAS00002 (IBISWorld Report, July 2018), pp.8-9.

⁶⁶ URN M_CAS00002 (IBISWorld Report, July 2018), p.21.

⁶⁷ During at least part of the Relevant Period, Casio UK has also sold direct to end-consumers via its own website - URN C_CAS00860 (Transcript of interview with [Casio Senior Employee 4] dated 19 April 2018), p.13, line 22 to p.14, line 2; and URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.62, line 12 to p.64, line 19.

- Mass market resellers;⁶⁸
- Independent resellers (comprising Music Dealers Main, Stockist and Open);
- Distributors;⁶⁹ and
- Education (direct to customers).⁷⁰

Mass market

3.52 Mass market resellers are not musical instrument specialists. They are national retail chains, catalogue companies and national online retailers (e.g. [Reseller 13], [Reseller 14] and [Reseller 15]), and the distributors which supply them (e.g. [X]). These resellers sell both digital keyboards and entry-level digital pianos. They are [X]⁷¹ with Casio UK and, therefore, are [X]. For the 5-year period 2012/13 to 2017/18, sales to the Mass market channel accounted for an average of [40 to 50%] of Casio UK's EMI Division UK revenue.⁷²

Independent resellers

3.53 Music Dealers Main and Stockist have [X] with Casio UK. All Music Dealers Main and Stockist are [X], in addition to keyboards and entry-level digital pianos. Only a [X].⁷³

⁶⁸ URN C_CAS01505 (Response dated 26 September 2018 to September RFI), paragraph 2.2 and Annex 1.

⁶⁹ Casio UK has indicated that dealers/distributors refers to distributors or sub-distributors serving the island of Ireland. Casio UK is unable to specify what proportion of the products sold to this distribution channel is subsequently sold to Northern Ireland. Nonetheless, the CMA considers that this channel is relatively small (accounting for, on average, [0-10%] of Casio UK's sales in the period 2012/13-2016/17) and it is unclear what proportion of sales through this channel went to UK consumers rather than non-UK consumers - URN C_CAS01505 (Response dated 26 September 2018 to September RFI), paragraph 2.2 and Annex 1. Therefore, the CMA has not included the turnover from the 'Distributors' channel in the Relevant Turnover. Sales to such distributors are not discussed further in this Statement of Objections. See also URN C_CAS02423 (Response dated 27 March 2019 to first March RFI), paragraph 2.1.

⁷⁰ URN C_CAS01505 (Response dated 26 September 2018 to September RFI), paragraph 2.2 and Annex 1.

⁷¹ For further details on SDAs, see paragraphs 3.56ff below.

⁷² These sales include, but are not limited to, the Relevant Products. URN C_CAS01505 (Response dated 26 September 2018 to September RFI), paragraph 3.1 and Annex 1 to the response.

⁷³ URN C_CAS02424 (Response dated 27 March 2019 to First March RFI), Annex 1.

- 3.54 Music Dealers Open sell keyboards and entry-level digital pianos. They have [REDACTED] with Casio UK and are, therefore, [REDACTED]. They accept Casio UK's general terms and conditions.⁷⁴
- 3.55 For the 5-year period from 2012/13 to 2017/18, sales to independent resellers accounted for an average of [50 to 60%] of Casio UK's EMI Division UK revenue.⁷⁵

Selective Distribution Agreements

- 3.56 The Music Dealers Main and Music Dealers Stockist resellers make up the vast majority of Casio UK's independent reseller network.⁷⁶ [REDACTED].⁷⁷ Casio UK first [REDACTED].⁷⁸
- 3.57 [REDACTED]⁷⁹
- 3.58 Once a reseller [REDACTED].

Education

- 3.59 The Education channel covers direct sales (by Casio UK) to education establishments and organisations. Casio UK has said that these tend to be individually negotiated sales procured by education establishments via tender processes, as well as occasional sales to influencers.⁸⁰ For the period 2012/13 to 2017/18, sales through the Education channel accounted on average for less than [0 to 5]% of Casio UK's EMI Division UK revenue.⁸¹

⁷⁴ URN E_CAS04644 (Email from [Casio Employee 3] to [Reseller 16] dated 30 August 2017), pp.1-2; URN C_CAS01516 (Response dated 3 October 2018 to September RFI) paragraph 12.2.2.

⁷⁵ URN C_CAS02424 (Response dated 27 March 2019 to First March RFI), Annex 1.

⁷⁶ Based on Casio UK's reported EMI revenue, the 'Music Dealers Open' independent resellers accounted for an average [REDACTED]% of Casio UK's total EMI revenue in the financial years 2012/13 to 2017/18 – URN C_CAS01506 (Response dated 26 September to September RFI), Annex 1.

⁷⁷ See for example URN V_CAS00009 (Selective Distribution Agreement between Casio UK and [Reseller 1] dated 1 November 2015).

⁷⁸ Prior to the introduction [REDACTED], the commercial relationship between Casio UK and its Main and Stockist resellers was based on [REDACTED]. For example, see URN V_CAS00015 (EMI Division Main Dealer Agreement 2011-12 between Casio and [Reseller 1] dated 20 September 2011).

⁷⁹ URN V_CAS00009 (Selective Distribution Agreement between Casio UK and [Reseller 1] dated 1 November 2015), paragraph 4.1.

⁸⁰ URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.62, lines 15-20 and URN C_CAS01516 (Response dated 3 October 2018 to September RFI) paragraph 12.2.4; URN E_CAS01800 (Presentation titled 'EMI UK business Plans – June 2015' dated 12 May 2015), p.26.

⁸¹ URN C_CAS02424 (Response dated 27 March 2019 to First March RFI), Annex 1.

VI. Importance of internet sales as a retail channel to the MI sector

- 3.60 Mintel reported that total online retail sales in the UK in 2017 were £[50-£60] billion, a [10 to 20]% growth from the previous year, which accounted for [10 to 20]% of total retail sales in the UK for that period. Despite the slowdown in growth from the previous year (from [20 to 30]%), Mintel predicts that the total online retail sales will continue to grow by double-digit figures through to 2023.⁸²
- 3.61 In the MI sector specifically, IBISWorld estimates that online spending is likely to increase over the five years to 2023/24.⁸³
- 3.62 In response to the CMA's s.26 Notice dated 17 April 2018,⁸⁴ the 12 Resellers reported the proportion of their annual revenue accounted for by online sales. The average proportion of online sales by the 12 Resellers at the beginning of the Relevant Period was 36% (with a range of around 10% to around 80%) while the proportion reported five years later, towards the end of the Relevant Period was 39% (with a range of around 10% to around 80%).⁸⁵
- 3.63 Customers seeking to purchase MI may be attracted to online shopping due to a number of factors including a wider range of products, lower prices and the convenience of shopping from their homes.⁸⁶
- 3.64 While some online sales are made by resellers who also own bricks-and-mortar stores, others are online-only. The latter are able to offer lower prices as they face relatively low operating costs, including lower labour costs.⁸⁷
- 3.65 The CMA considers that the ability to sell or advertise MI at discounted prices on the internet can intensify price competition between resellers

⁸² URN M_CAS00003 (Mintel report) [*Online Retailing, UK* - July 2018], p.33.

⁸³ URN M_CAS00005 (IBISWorld Report, March 2019), p.8.

⁸⁴ URN C_CAS00548 ([Reseller 2] Section C of response to s.26 Notice); URN C_CAS00547 ([Reseller 2] *Last 5 Year Financial Info In Store vs Online* dated 2 May 2018 in response to Section C of s.26 Notice); URN C_CAS00524 ([Reseller 3] Section C of response to s.26 Notice); URN C_CAS00558 ([Reseller 5] Section C of response to s.26 Notice); URN C_CAS00556 ([Reseller 4] Section C of response to s.26 Notice); URN C_CAS00553 ([Reseller 6] Section C of response to s.26 Notice); URN C_CAS00451 ([Reseller 7] Section C of response to s.26 Notice); URN C_CAS00550 ([Reseller 8] Section C of response to s.26 Notice); URN C_CAS00586 ([Reseller 9] Section C of response to s.26 Notice); URN C_CAS00299 ([Reseller 10] Section C of response to s.26 Notice); URN C_CAS00467 ([Reseller 11] Section C of response to s.26 Notice); URN C_CAS00502 ([Reseller 12] Section C of response to s.26 Notice); URN C_CAS00348 ([Reseller 1] Section C of response to s.26 Notice).

⁸⁵ The proportion of online sales by one reseller may not be representative of a wider industry trend and may be influenced by several factors including e.g. product type/brand, and a reseller's own commercial preferences.

⁸⁶ URN M_CAS00002 (IBISWorld Report, July 2018), p.21.

⁸⁷ URN M_CAS00002 (IBISWorld Report, July 2018), p.27. IBISWorld states that wages in traditional bricks and mortar retail stores are typically higher than those paid by online only retailers.

(online and/or offline) due to the increased transparency and reduced search costs from internet shopping. Various resellers also publicly advertise price-matching promises.⁸⁸ Greater price competition increases resellers' incentives to act efficiently and pass on cost savings to consumers in the form of lower retail prices.

3.66 Therefore, preventing or restricting resellers' ability to determine their own online resale prices is likely to:

- reduce price competition from online sales of pianos and keyboards;
- reduce downward pressure on the retail price of pianos and keyboards; and
- thereby potentially result in higher prices for consumers.

C. Casio Pricing Policy

I. Introduction and overview

3.67 The CMA concludes that for a period of time, including the entire Relevant Period, Casio UK operated and attempted to implement a market-wide pricing policy, the purpose of which was to ensure that resellers would not advertise or sell the Relevant Products⁸⁹ online below a certain minimum price specified by Casio UK from time to time (the Minimum Price). In the CMA's view, Casio UK intended that this pricing policy (the Casio Pricing Policy) should apply across its entire UK reseller network, including to [Reseller 1]. See paragraphs 3.75 to 3.91 below.

Evidence base

3.68 The CMA has based its findings regarding the Casio Pricing Policy principally on contemporaneous evidence including:

- internal Casio UK correspondence relating to the operation and/or enforcement of the Casio Pricing Policy (including email, SMS, iMessage, and Google Hangout chats);
- minutes/agendas of internal sales meetings;

⁸⁸ C_CAS00299 ([Reseller] Section C of response to s.26 Notice); C_CAS00502 ([Reseller] Section C of response to s.26 Notice); C_CAS00348 ([Reseller] Section C of response to s.26 Notice).

⁸⁹ See Figure 3.1 above for a list of the product codes associated with the Relevant Products within Casio UK's EMI product range.

- correspondence between Casio UK and resellers;
- correspondence between Casio UK and other external parties; and
- correspondence between Casio UK, [a subsidiary of Casio Japan].⁹⁰

3.69 Where relevant, the CMA has also relied on:

- information obtained directly from Casio UK or resellers contained in responses to formal requests for information sent under section 26 of the Act; and
- transcripts of interviews with:
 - [Casio Senior Employee 4], Casio UK on 19 April 2018⁹¹ and 1 February 2019;⁹²
 - [Casio Employee 1], Casio UK on 1 February 2019;⁹³
 - [Senior Employee 1], [Reseller 1], on 14 January 2019;⁹⁴ and
 - [Senior Employee 2], [Reseller 1], on 14 January 2019.⁹⁵

3.70 The evidence described below shows that Casio UK's employees were aware of the potential illegality of implementing the Casio Pricing Policy and were careful not to communicate their pricing instructions to resellers in writing.⁹⁶ In addition, the nature of the Casio Pricing Policy was such that Casio UK rarely needed to contact resellers about the policy (in writing or otherwise) when resellers were complying with it because the Minimum Price (referred to as the Guide Price until April 2016 and from then on as the Recommended Selling Price (RSP)) was clearly displayed on Casio UK's price lists relating to the Relevant Products.⁹⁷ This limited the need for written

⁹⁰ Obtained under the s.27 Notice.

⁹¹ URN C_CAS00860 (Transcript of interview with [Casio Senior Employee 4] dated 19 April 2018).

⁹² URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019).

⁹³ URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019).

⁹⁴ URN C_CAS02410 (Transcript of interview with [Reseller 1, Senior Employee 1] dated 14 January 2019).

⁹⁵ URN C_CAS02332 (Transcript of interview with [Reseller 1, Senior Employee 2] dated 14 January 2019).

⁹⁶ URN E_CAS00176 (Internal Casio UK email from [Casio Employee 3] dated 12 March 2013), p.2; URN E_CAS05809 (Google Hangout message from [Casio Employee 4] to [Casio Senior Employee 4] dated 17 April 2018); See URN E_CAS01774 (Email from [Casio Senior Employee 5] to [Casio Employee 1], [Casio Employee 3] and [Casio Employee 5] dated 4 June 2015); URN E_CAS02744 (Email from [Casio Senior Employee 4] to [Casio Employee 3], [Casio Employee 6], [Casio Employee 1], [Casio Employee 5], [Casio Employee 7], [Casio Employee 8] and [Casio Employee 9] dated 19 April 2016), p.1. See also paragraphs 3.165 to 3.167 below.

⁹⁷ There is evidence that resellers were aware of a MAP/RPM agreement even where it was not explicitly stated by Casio UK in its correspondence with them. For example, Casio UK circulated to its resellers a new price list, to become effective on 2 September 2014, describing the relevant prices as '*target prices*'. Notwithstanding that

or oral communication about the Casio Pricing Policy (and therefore the amount of written evidence relating to it).

- 3.71 Despite this, the CMA has obtained the written evidence described in this Section which, demonstrates the existence of the Casio Pricing Policy. This written evidence is corroborated by witness evidence describing the verbal and written communications that took place at the time.

People involved: roles and reporting lines

- 3.72 Figures 3.2 and 3.3 below set out the names and roles of key Casio UK and [Reseller 1] employees referred to in this Decision to make it easier to understand the surrounding context to the evidence set out in the following sections.

description, when [Reseller 10], one of Casio UK's resellers, received the price list, it internally instructed its staff to 'ensure these **new MAP[RPM] prices** are ready to be uploaded at the end of the day as they need to be live tomorrow.' URN E_CAS05519 (Internal [Reseller 10] email dated 1 September 2014). [Emphasis added by the CMA]

Figure 3.2: Relevant Casio UK and [Reseller 1] employees

Employee	Area of responsibility and dates
[REDACTED]	[Casio Senior Employee 1] of Casio UK from [REDACTED] to [REDACTED].
[REDACTED]	[Casio Senior Employee 2] of Casio UK from [REDACTED] to [REDACTED] [REDACTED] . [REDACTED].
[REDACTED]	[Casio Senior Employee 3] of Casio UK from [REDACTED] to [REDACTED] [REDACTED] [REDACTED].
[REDACTED]	[Casio Senior Employee 6] of Casio UK from [REDACTED] to [REDACTED]. Previously [REDACTED].
[REDACTED]	[Casio Senior Employee 7] of Casio UK from [REDACTED] to [REDACTED].
[REDACTED]	[Casio Senior Employee 4] of Casio UK from [REDACTED] to [REDACTED].
[REDACTED]	[Casio Senior Employee 5] of Casio UK from [REDACTED] to [REDACTED].
[REDACTED]	[Casio Employee 1] of Casio UK from [REDACTED] to [REDACTED]. Responsible for [REDACTED].
[REDACTED]	[Casio Employee 7] of Casio UK from [REDACTED] to present. Responsible for [REDACTED] .
[REDACTED]	[Casio Employee 3] of Casio UK from [REDACTED] until [REDACTED]. Responsible for [REDACTED].
[REDACTED]	[Casio Employee 4] of Casio UK from [REDACTED] until [REDACTED]. Former [REDACTED].
[REDACTED]	[Casio Employee 5] of Casio UK from [REDACTED] to [REDACTED]. Responsible for [REDACTED].
[REDACTED]	[Casio Employee 8] of Casio UK from [REDACTED] to [REDACTED].
[REDACTED]	[Casio Employee 6] of Casio UK from [REDACTED] to [REDACTED].
[REDACTED]	[Casio Employee 9] of Casio UK from [REDACTED] to [REDACTED].
[REDACTED]	[Casio Employee 11] of Casio UK from [REDACTED] to [REDACTED].
[REDACTED]	[Employee] of [Reseller 1] from [REDACTED] to [REDACTED]. [Senior Employee 1] [REDACTED].
[REDACTED]	[Senior Employee 2] of [Reseller 1] from [REDACTED] to [REDACTED].

Source: Casio UK responses dated 3 October 2018⁹⁸ and 1 March 2019⁹⁹ to Question 3 of the September RFI. [Reseller 1] response dated 20 April 2018 to Section B Question 1 of [Reseller 1] April RFI,¹⁰⁰ transcripts of section 26A interviews with [Reseller 1 Senior Employee 1]¹⁰¹ and [Reseller 1 Senior Employee 2]¹⁰² and Companies House notices filed [REDACTED].¹⁰³

3.73 Figure 3.3 below shows the organisational structure of Casio UK during the Relevant Period. Current holders of each role are depicted in black font, and previous incumbents and reporting lines in red font.

⁹⁸ URN C_CAS01516 (Response dated 3 October 2018 to September RFI) paragraph 3.1 and URN C_CAS01517 (Annex 1 of response to September RFI dated 3 October 2018).

⁹⁹ URN C_CAS02339 (Response dated 1 March 2019 to clarificatory request to September RFI) p.2 and URN C_CAS02340 (Annex 1 of response dated 1 March 2019 to clarificatory request to September RFI).

Figure 3.3: Casio UK Company Organisational Chart showing reporting lines of relevant employees



Source: Casio UK company Organisation Chart¹⁰⁴ and Casio UK responses dated 3 October 2018 and 1 March 2019 to Question 3 of the September RFI.¹⁰⁵

3.74 The remainder of Section C below sets out the relevant factual background to the Casio Pricing Policy as indicated by the evidence, including:

- its commercial aims, content and duration;
- its monitoring and enforcement;
- illustrative examples of Casio UK's monitoring and enforcement of the Casio Pricing Policy (underlining the widespread application of and adherence to the Casio Pricing Policy in relation to all Relevant Products across Casio UK's network of resellers throughout the Relevant Period);
- Casio UK's awareness of the illegality of its enforcement activities; and
- the consequences for resellers of non-compliance.

II. Aims, content and duration

Commercial aims

3.75 The evidence shows that Casio UK's commercial aims for introducing the Casio Pricing Policy were at least twofold:

- it was designed to increase the attractiveness of the Relevant Products (and Casio's brand more generally) by enabling Casio UK's resellers to

¹⁰⁰ URN C_CAS00263 (Company structure chart provided in response dated 20 April 2018 to [Reseller 1] April RFI).

¹⁰¹ URN C_CAS02410 (Transcript of interview with [Reseller 1 Senior Employee 1] dated 14 January 2019), p2, line 18-19.

¹⁰² URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.2, line 25 to p.2, line 26.

¹⁰³ URN E_CAS06111 (Companies House record: Appointment of [REDACTED] as [Reseller 1 Senior Employee 1] [REDACTED] of [Reseller 1] dated [REDACTED]), p.1; and URN E_CAS06112 (Companies House record: Appointment of [REDACTED] as [Senior Employee 2] [REDACTED] of [Reseller 1] dated [REDACTED]), p.1.

¹⁰⁴ URN V_CAS00030 (Casio UK Company Organisation Chart dated 16 April 2018 provided in response to First April RFI).

¹⁰⁵ URN C_CAS01516 (Response dated 3 October 2018 to September RFI) paragraph 3.1 and URN C_CAS01517 (Annex 1 of response to September RFI dated 3 October 2018); URN C_CAS02339 (Response dated 1 March 2019 to clarificatory request to September RFI), p.2 and URN C_CAS02340 (Annex 1 of response dated 1 March 2019 to clarificatory request to September RFI).

achieve attractive margins, thus encouraging them to stock and sell the Relevant Products;^{106, 107} and

- in doing so, it aimed to help Casio UK secure, maintain and/or improve its UK market position in digital pianos and digital keyboards relative to its competitors, especially [X] and to a lesser extent [X].¹⁰⁸

3.76 To achieve these commercial aims, Casio UK applied the Casio Pricing Policy to new products as they were introduced, including the Grand Hybrid piano range which launched in September 2015.¹⁰⁹

Maintaining the aims of the Casio Pricing Policy through pan-European price harmonisation

3.77 Based on the evidence, during 2013 and the first half of 2014, the success of the Casio Pricing Policy was under threat. Casio UK found that the influence of EU resellers' online pricing was making UK online prices more volatile¹¹⁰

¹⁰⁶ In an email dated 2 March 2013 from [Casio Senior Employee 5] to [Casio Employee 1], [Casio Employee 3], [Casio Employee 5] and [Casio Employee 8], [Casio Senior Employee 5] listed a number of resellers advertising several of the Relevant Products at '*below P [price]*'. At the bottom of the email [Casio Senior Employee 5] stated, '*[t]his is a cornerstone policy of EMI and has helped us achieve the business levels we have*'; URN E_CAS00136 (Email from [Casio Senior Employee 5] to [Casio Employee 1], [Casio Employee 3] and [Casio Employee 5] dated 2 March 2013), pp.1-3; slide 2 '*maintain stable pricing*'; slides 7-9 – section entitled '*Maintain stable pricing*'; slide 8 - '*regain control of pricing*' - URN E_CAS02856 (Presentation titled '*EMI UK Business Plans – May 2016*' dated 13 May 2016), pp.2 and 7-9; '*retailer margin opportunity key for growth*'; '*...it would probably become a little bit more stable; like I said, that disparity would not be so wide*' URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.291, line 3 to p.291, line 4 and p.291, line 26 to p.292, line 11.

¹⁰⁷ This was in response to complaints from Casio UK's resellers about low margins and threats that they would stop stocking Casio's keyboards and digital pianos due to falling online prices. For example, [Casio Employee 1] stated that resellers would threaten him that if Casio UK was unable to '*enable [resellers] to make suitable margin*', they would stop selling Casio products – URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.108, line 4 to p.109, line 7.

¹⁰⁸ In an interview with [Casio Employee 1], [Casio Employee 1] expressed concern that if Casio UK was unable to maintain resellers' margins that there was the potential that resellers would consider selling Casio's competitors' products instead. He stated that he was told this by some resellers – URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.80, line 19 to p.81, line 4.

¹⁰⁹ URN E_CAS06114 (Web page - Press release Casio grand hybrid pianos - Casio website <https://www.casio-music.com/euro/casio-music-life/inside-casio-music/> accessed 19 March 2019) and URN E_CAS06113 (Press release Casio launches grand hybrid pianos at Lincoln Center event - Casio website <https://www.casio.com/news/detail/casio-launches-grand-hybrid-pianos-at-lincoln-center-event> accessed 19 March 2019).

¹¹⁰ [Casio Senior Employee 5] referred to '*a number of European dealers ([Reseller 17], [Reseller 18], [Reseller 5]) having their own price war and also taking UK business by very low pricing*'. He goes on to add '*[t]he pricing in the UK is now very random, potentially affecting many areas of the business.... The net result is we may have to re-price to compete with [Reseller 17]/[X]*'. The case team infers that '[X]' refers to [a subsidiary of Casio Japan]. At this time [Reseller 5] refers to [Reseller 5], a wholly owned subsidiary of [Reseller 5] - URN E_CAS00751 (Email from [Casio Senior Employee 5] to [Casio Senior Employee 7] dated 2 July 2014), p.1; In April 2014, Casio UK's bid to enforce its MAP/RPM policy appeared to be increasingly challenging due to an

and vice versa. Certain EU-based subsidiaries of Casio Japan had complained to [a subsidiary of Casio Japan] about some UK resellers' pricing dragging down prices in other EU Member States.¹¹¹

- 3.78 The evidence shows that to address this, Casio UK liaised with [a subsidiary of Casio Japan] and other EU-based subsidiaries of Casio Japan in an effort to stabilise UK pricing.¹¹² [Casio Senior Employee 5] raised the issue with senior Casio UK and [a subsidiary of Casio Japan] executives, including [Casio Senior Employee 3].¹¹³
- 3.79 Senior Casio UK executives had concluded by early 2014 that the only solution was pan-European price harmonisation.¹¹⁴ By June 2014, [Casio Senior Employee 3] appeared to be coordinating this plan. For example, [Casio Senior Employee 3] asked [Casio Employee 12], of [a subsidiary of Casio Japan], by email to provide '*Your time schedule to coordinate price of [European resellers who also sell into the UK] [Reseller 17], [Reseller 18]*

online '*price war*' involving resellers based in continental Europe. The main players here were [Reseller 19], [Reseller 17] and [Reseller 18]. Each appears to have sold directly to consumers in the UK both directly through their websites, as well as through third party marketplace platforms such as Amazon. See URN E_CAS06116 ([Reseller 17] website showing selection of Casio Digital Pianos available to be purchased in GBP - [REDACTED] accessed 26 March 2019); URN E_CAS06117 ([Reseller 18] website showing selection of Casio Digital Pianos available to be purchased in GBP - [REDACTED] accessed 26 March 2019); and URN E_CAS06118 ([Reseller 19] website showing selection of Casio Digital Pianos available to be purchased in GBP - [REDACTED] accessed 23 March 2019); This is also illustrated in an internal Casio email from [Casio Senior Employee 5] in April 2014 where he complains of the negative impact of such resellers - URN E_CAS00623 (Email from [Casio Senior Employee 5] to [Casio Employee 2], [Casio Employee 12], [Casio Senior Employee 3], [Casio Senior Employee 7] and others dated 28 April 2014).

¹¹¹ On 25 January 2013, [Casio Employee 13], of [a subsidiary of Casio Japan], emailed [Casio Senior Employee 5], stating '*We have been informed below online site which is operated by UK company. They offer our instruments at very low prices. (...) I wonder that even in pound, their price is cheaper than average market prices in UK. So, I suppose they suffer your business too. Do you know this site? And any action can be considered?*' - URN E_CAS00209 (Email from [Casio Employee 13] to [Casio Senior Employee 5] dated 25 January 2013), p.4-8; On 14 February 2013, [Casio Employee 14], of [a subsidiary of Casio Japan], emailed [Casio Senior Employee 5] to complain about online prices offered by [Reseller 7] that were causing problems for a reseller in Spain - URN E_CAS00211 (Email from [Casio Employee 14], of [a subsidiary of Casio Japan], to [Casio Senior Employee 5] dated 14 February 2013), pp.1-2.

¹¹² In an internal Casio email to his European counterparts in May/June 2014, [Casio Senior Employee 5] described the development of UK pricing issues generated by resellers in continental Europe, and Casio UK's attempts to remedy this - URN E_CAS00698 (Email exchange between [Casio Senior Employee 5] and [Casio Employee 12], of [a subsidiary of Casio Japan], dated 3 June 2014), p1-2.

¹¹³ [Casio Senior Employee 5] provided price comparison information which showed these retailers were '*way below our [UK] street [prices]*.' [Casio Senior Employee 5] stated, '*We are constantly fighting the battle to maintain dealer margin in the UK – it is one of the foundations of our proposition to the market.*' URN E_CAS00511 (Email from [Casio Senior Employee 5] to [Casio Employee 2] of [a subsidiary of Casio Japan] dated 6 February 2014), p.4.

¹¹⁴ URN E_CAS00510 (Email from [Casio Employee 8] to [Casio Senior Employee 5], dated 13 February 2014).

and [Reseller 19].’ According to his email, this was in a bid to ‘decide UK’s pricing structure from July onward’.¹¹⁵

3.80 As noted above,¹¹⁶ the evidence shows that Casio UK viewed dealer margin as ‘one of the foundations of [its] proposition to the market’. In July 2014, [Casio Senior Employee 5] expressed concerns to his EMI Sales Team colleagues¹¹⁷ and to Casio UK senior executives¹¹⁸ that low internet pricing was undermining this proposition and may lead to resellers refusing to stock Casio UK’s products.

3.81 In the second half of 2014, the Casio group was considering introducing pan-European price harmonisation in response to these concerns and with a view to maintaining the commercial aims of the Casio Pricing Policy.¹¹⁹ In the second half of 2016, [a subsidiary of Casio Japan] and Casio UK implemented pan-European price harmonisation.¹²⁰ It did so by setting a euro price for each product, adopting a Casio-internal € to £ exchange rate similar to the forex exchange rate, and using this internal exchange rate to

¹¹⁵ URN E_CAS00748 (Email from [Casio Senior Employee 3] to [Casio Employee 12], of [a subsidiary of Casio Japan], dated 26 June 2014), p.3.

¹¹⁶ See paragraph 3.78 above.

¹¹⁷ In an email dated 14 July 2014, [Casio Senior Employee 5] expressed to colleagues [Casio Employee 1], [Casio Employee 3] and [Casio Employee 5] some frustration with low online pricing, ‘On Friday I had my first direct call from a small dealer who was losing business due to low internet pricing. Comments like “there’s no point selling Casio if we cant [sic] make a profit” really concerns (and annoy!) me. Please report back to me any similar situation you may encounter.’ - URN E_CAS00778 (Email from [Casio Senior Employee 5] to [Casio Employee 1], [Casio Employee 3] and [Casio Employee 5] dated 14 July 2014).

¹¹⁸ [Casio Senior Employee 5] reported his concern in a Casio internal email on 11 July 2014 to [Casio Senior Employee 3] and [Casio Senior Employee 7], the then Casio UK [X], in which he stated, ‘I fear this is the tip of the iceberg and there are more problems in the market and potentially unhappy dealers who may soon consider not selling Casio.’ URN E_CAS00775 (Email from [Casio Senior Employee 5] to [Casio Senior Employee 3] and [Casio Senior Employee 7] dated 11 July 2014), p.4.

¹¹⁹ In an email from [Casio Senior Employee 5] to [Casio Employee 12], [Casio Senior Employee 5] stated: ‘Speaking frankly we need to achieve this [a stable market in which dealers can make margin] as soon as possible. We could have a situation develop where our biggest competition is each other.’ URN E_CAS00748 (Email from [Casio Senior Employee 3] to [Casio Employee 12], of [a subsidiary of Casio Japan], dated 26 June 2014), p.5. In an email from [Casio Employee 10], [X], [a subsidiary of Casio Japan], to [Casio Senior Employee 1], [Casio Employee 10] said: ‘I heard that it has been the same since you, [Casio Senior Employee 1], were here last time, but I heard that, goods have moved between [a subsidiary of Casio Japan] and Casio UK mainly via the musical instrument dealers (online) as the EUR and GBP market rates change, and there has been a history of conflicts between the dealers, complaints from them and **undesired price competition**. And I heard it is a fact that they had to spend a lot of time tackling these issues.’ URN E_CAS04584 (Email from [Casio Employee 10], of [a subsidiary of Casio Japan], to [Casio Senior Employee 1] dated 9 August 2017), p.4. [Emphasis added by the CMA]

¹²⁰ In an email from [Casio Employee 10] to [Casio Senior Employee 1], [Casio Employee 10] stated: ‘it was July 2016 when [a subsidiary of Casio Japan] and Casio UK reached an agreement on the price based on the price harmonization. Then, after a grace period, the UK implemented the sales price change’ (URN E_CAS04584 (Email from [Casio Employee 10], of [a subsidiary of Casio Japan], to [Casio Senior Employee 1] dated 9 August 2017), p.5.’

adjust the £ prices to align with € prices.¹²¹ By smoothing out currency and other price fluctuations, Casio UK was able to ensure a more level playing field from which it could better achieve the commercial aims of and so encourage compliance with the Casio Pricing Policy.

Content and communication

- 3.82 The following paragraphs outline the CMA's conclusions regarding the content of the Casio Pricing Policy¹²² and the way in which it was communicated to resellers.
- 3.83 According to [Casio Employee 1], resellers would be told when they agreed to become Casio UK resellers that Casio UK expected them to sell the Relevant Products at or above the Minimum Price detailed on its price lists.¹²³
- 3.84 Even though the Casio Pricing Policy does not appear to have been written down,¹²⁴ its contents could be easily determined from the price lists Casio

¹²¹ (URN E_CAS04584 (Email from [Casio Employee 10], of [a subsidiary of Casio Japan], to [Casio Senior Employee 1] dated 9 August 2017), p.4.

¹²² [Casio Employee 1] confirmed in his interview that an unwritten policy aimed at getting '*stability in the marketplace*' *'by sorting out online discrepancies'* did exist for the Relevant Period and that, as far as he was aware, this policy came from the two [Casio Senior Employees] in charge at the time. CMA: '*The next part of your sentence, the last part, says, "most of whom – (...) want to support our policy". So, what is your policy?*' [Casio Employee 1]: '*(...) that's the strategy; (...), it's the plan. (...) again, I, I know what you're alluding to there, (...), but I have used that word there. (...) but again, it's a policy from a [Casio Senior Employee] and, (...) not, as I'm aware, a company policy.*' CMA: '*Okay. The [Casio Senior Employee], initially, being [Casio Senior Employee 5] and now [Casio Senior Employee 4]?*' [Casio Employee 1]: '*Correct.*' CMA: '*And what is that policy?*' [Casio Employee 1]: '*(...) to be proactive; to attempt to get stability in the marketplace where we're able to.*' CMA: '*By, as you say, sorting out online discrepancies?*' [Casio Employee 1]: '*Yes.*' URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.279, lines 7-24.

Note: when provided with the opportunity to clarify his response after the interview, [Casio Employee 1] stated, '*The possible inconsistency across my answers regarding a pricing policy arose from the lack of clarity on what might be meant by the term "policy". The CMA asked if there were a written or unwritten policy and I struggled to express whether the actions with respect to pricing constituted a policy under such a broad concept of the term. From my perspective, I was reacting to requests for help from dealers rather than the implementation of a "Company Policy"*'. URN C_CAS02400 (Transcript of interview with [Casio Employee 1] dated 1 February 2019 containing clarifications by [Casio Employee 1]), p.281, line 25 to p.282, line 8. In the CMA's view, this 'clarification' does not undermine the evidential value of [Casio Employee 1]'s earlier account, especially since his earlier statement is corroborated by the written evidence and other witness evidence set out in detail below.

¹²³ URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.228, line 10 to p.229, line 6.

¹²⁴ [Casio Senior Employee 4], Casio UK, stated in his second interview that he was not aware of Casio UK having had a **written minimum advertised price (MAP) policy signed off by senior members of the organisation**. [Emphasis added by the CMA.] - CMA: '*And did Casio have any, um, minimum advertised price policy at all?*' [Casio Senior Employee 4]: '*What do you mean by "policy"?*' CMA: '*Um ... anything, I suppose, written down and, er, signed off that -- by senior members of the organisation where you advertise prices across the internet and across resellers at a certain pricing level.*' [Casio Senior Employee 4]: '*Not that I'm aware of. I'm*

UK sent to its resellers from time to time together with Casio UK's initial pricing instructions to resellers. Casio UK's price lists:

- specified the Minimum Price at or above which resellers were expected to advertise and sell the Relevant Products online;¹²⁵
- specified the trade price or marketing support price at which resellers could expect to purchase the Relevant Products from Casio UK; and
- so revealed the margin the reseller could expect to make if it followed the Casio Pricing Policy.

The Minimum Price and its communication

3.85 Casio UK used a number of terms to refer to the Minimum Price. At the start of the Relevant Period, Casio UK referred to it as '*P price*',¹²⁶ although, at various times during the Relevant Period, the Minimum Price was referred to as '*street price*'¹²⁷ or '*street*',¹²⁸ recommended selling price ('*RSP*') (from April 2016),¹²⁹ '*MAP*',¹³⁰ and/or '*target price*'.¹³¹

not aware of an official document that sets that out. Um ... no.' URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.294, lines 2-11. However, the written evidence and other witness evidence (set out in detail below) shows that an unwritten pricing policy did, in fact, exist.

¹²⁵ See paragraph 3.86 below.

¹²⁶ URN E_CAS00136 (Email from [Casio Senior Employee 5] to [Casio Employee 1], [Casio Employee 3] and [Casio Employee 5] dated 2 March 2013), p.1 and URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.146, lines 23-26.

¹²⁷ URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.382, line 21 to p.383, line 3 and URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.294, lines 21-26.

¹²⁸ URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.71, line 23 to p.72, line 2.

¹²⁹ URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.384, line 14 to p.384, line 15 and URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.90, line 24 to p.91, line 10. Note: when provided with the opportunity to clarify his response, [Casio Employee 1] stated, '*The possible inconsistency across my answers regarding a pricing policy arose from the lack of clarity on what might be meant by the term "policy". The CMA asked if there were a written or unwritten policy and I struggled to express whether the actions with respect to pricing constituted a policy under such a broad concept of the term. From my perspective, I was reacting to requests for help from dealers rather than the implementation of a "Company Policy"*'. URN C_CAS02400 (Transcript of interview with [Casio Employee 1] dated 1 February 2019 containing clarifications by [Casio Employee 1]), p.387, line 22 to p.388, line 8.

¹³⁰ URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.382, line 21 to p.383, line 3 and URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.190, lines 4-6.

¹³¹ URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.358, line 10 to p.359, line 6.

3.86 As set out above,¹³² Casio UK communicated the Minimum Price for the Relevant Products to its resellers periodically,¹³³ in price lists which also detailed the trade prices (the price at which the reseller could purchase an item from Casio UK).¹³⁴ To this end:

- from 2013 until mid-April 2016,¹³⁵ the price lists sent to resellers included a '*Guide Price*' and a trade price. The Guide Price was the Minimum Price;¹³⁶ and
- in late April 2016, Casio UK issued new price lists to resellers which detailed various prices: Recommended Retail Price (RRP), RSP, Standard Trade, Stocking Plan and Marketing Support. In these new price lists the RSP was the equivalent of the earlier Guide Price – the Minimum Price. The '*marketing support*' price was the equivalent of the earlier trade price.^{137,138}

¹³² See paragraph 3.84 above.

¹³³ Witness interview evidence of periodicity of price lists '*Probably - again, it's speculation - it could be two or three a year*' - C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.186, line 7 and '*-- at least once or twice a year we'd get a price list, if not more*' - C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.242, line 16.

¹³⁴ URN E_CAS05569 (Casio UK EMI Main Dealer Price List dated 14 January 2013); URN E_CAS00237 (Casio UK EMI Main Dealer Price List dated 9 April 2013); URN E_CAS05622 (Casio UK EMI Main Dealer Price List dated 21 May 2013); URN E_CAS00497 (Casio UK EMI Main Dealer Price List dated 29 January 2014); URN E_CAS00746 (Casio UK EMI Main Dealer Price List dated 12 June 2014); URN E_CAS01122 (Casio UK EMI Main Dealer Price List dated 1 October 2014); URN E_CAS01712 (Casio UK EMI Main Dealer Price List dated 13 April 2015); URN E_CAS01804 (Casio UK EMI Main Dealer Price List dated 1 June 2015); URN E_CAS05562 (Casio UK EMI Main GP Dealer Price List dated 6 November 2015); URN E_CAS02417 (Casio UK EMI Main GP Dealer Price List dated 6 January 2016); URN E_CAS05565 (Casio UK EMI Main GP Dealer Price List dated 4 February 2016); URN E_CAS02585 (Casio UK EMI Main GP Dealer Price List dated 9 March 2016); URN E_CAS05560 (Casio UK EMI Main GP Dealer Price List dated 18 April 2016); URN E_CAS03177 (Casio UK EMI Price List Main GP dated 16 August 2016); URN E_CAS04115 (Casio UK EMI Main GP Dealer Price List dated 1 April 2017); URN E_CAS04363 (Casio UK EMI Main GP Dealer Price List dated 7 June 2017); URN E_CAS05730 (Casio UK EMI Main GP Dealer Price List dated 7 June 2017); URN E_CAS04547 (Casio UK EMI Main GP Dealer Price List dated 1 August 2017); URN E_CAS04740 (Casio UK EMI Main GP Dealer Price List dated 26 September 2017); URN E_CAS05229 (Casio UK EMI Main GP Dealer Price List dated 24 January 2018); URN E_CAS05459 (Casio UK EMI Main GP Dealer Price List dated 1 April 2018).

¹³⁵ The first price lists including RRP, RSP etc was emailed out to resellers on or about 20 April 2016 – URN E_CAS02748 (Email from [Casio Senior Employee 4] to [Reseller 1] dated 19 April 2016) and URN E_CAS02749 (Email from [Casio Employee 6] to [Reseller 3] dated 19 April 2016).

¹³⁶ [Casio Employee 1] stated during the witness interview that '*Guide Price*' was synonymous with '*RSP*' - URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.83, line 21 to p.84, line 7.

¹³⁷ '*Your trade price is the far right column under the heading 'Market --' 'Marketing Contribution'. Basically, it's the lowest price on the sheet.*' - URN E_CAS02770 (Email from [Casio Employee 1] to [Reseller 65], dated 21 April 2016), p.1; The first of these new format price lists had an issue date of 18 April 2016 – see URN E_CAS05560 (Casio UK EMI Main GP Dealer Price List dated 18 April 2016).

¹³⁸ For example, in a price list dated 1 April 2017, the CDP130's specified price (here the RSP) was £299. This meant that Casio UK instructed its resellers to advertise to consumers online at £299. For this product, the RRP

3.87 In order to preserve the Minimum Price, Casio UK also specified that resellers:

- should advertise and sell the Relevant Products online at or above the Minimum Price with either free delivery or separately set out delivery charges. For example, if the Minimum Price was £199, resellers could offer £199 plus free delivery or £199 plus £10 delivery, but not £189 plus £10 delivery;¹³⁹ and
- should not offer online discount codes, for example, 5% off all products on a particular reseller's website.¹⁴⁰

Trade price, marketing support price and resellers' margin

3.88 Casio UK set the margin given to resellers adhering to the Casio Pricing Policy for each product range (for example, GP, AP, PX, CDP). Resellers could calculate the margin for each product range from the relevant price lists by calculating the difference between the Minimum Price and the trade/marketing support price.¹⁴¹

Expansion of the Casio Pricing Policy to cover the bundling of Relevant Products

3.89 At some point during the Relevant Period, Casio UK expanded the Casio Pricing Policy by introducing requirements in relation to the bundling of Relevant Products with accessories. It instructed resellers to only advertise and sell bundles comprising of particular products and at particular prices.

was £479.00 and the marketing support price was £174.42 – see URN E_CAS04113 (Casio EMI Main Price List dated 1 April 2017).

¹³⁹ URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.129, line 14 to p.134, line 18.

¹⁴⁰ On 28 October 2016, [Reseller 1 Senior Employee 2] emailed [Casio Employee 1] complaining about [Reseller 10] offering a 5% off discount code. [Casio Employee 1] responded: *'We are aware [Reseller 1 Senior Employee 2], [Reseller 1 Senior Employee 1] needs to speak to [Casio Senior Employee 4]. I cannot respond by email.* URN E_CAS03534 (Email from [Casio Employee 1] to [Senior Employee 2] dated 28 October 2016), p.1. Another example of this is an email of 9 March 2016 from [Reseller 1 Senior Employee 2] to [Reseller 1 Senior Employee 1] with the title: *'Are Voucher Codes OK that offer a discount?'* The email was copied to [Casio Senior Employee 5] and [Casio Employee 1], as well as representatives of other musical instrument suppliers. It contained a link to www.topvoucherscode.co.uk with the text, *'[Reseller 10] 5% off all the website any product'* and a link to www.myvouchercode.co.uk relating to [Reseller 69]. – URN E_CAS02593 (Email from [Reseller 1 Senior Employee 2] to [Reseller 1 Senior Employee 1] ([Casio Employee 1] copied) dated 9 March 2016), pp.1-2.

¹⁴¹ For example, in June 2017 and January 2018 the RSP for the AP and PX ranges provided a [X]% margin above the marketing support price. For CDP the margin was [X]% and for all keyboards it was [X]% - see URN E_CAS05730 (Casio UK EMI Main GP Dealer Price List dated 7 June 2017) and URN E_CAS05553 (Casio UK EMI Main GP Dealer Price List dated 24 January 2018); This margin changed over time. For example, in 2014 the margin between the Guide Price and the trade price was approximately [X]% for AP, PX and CDP products, and between [X]% and [X]% for CTK, WK and LK products, with the margin for SA products just [X]%. See URN E_CAS05570 (Casio EMI Main Dealer Price List dated 29 January 2014).

Casio UK introduced these requirements in response to resellers using bundling to circumvent the Casio Pricing Policy.¹⁴² Casio UK communicated the requirements relating to the composition of bundles and their pricing in a more ad-hoc manner, over the phone or in face to face meetings, as resellers developed their approaches to bundling.^{143 144}

Duration

In place before the start of the Relevant Period and ceased after the end of the Relevant Period

3.90 Based on the evidence, the origins of the Casio Pricing Policy pre-date the Relevant Period.¹⁴⁵ The evidence set out below shows that the Casio Pricing Policy was likely already in place by early January 2013 at the latest.¹⁴⁶ This

¹⁴² On 12 August 2014 [Employee], of [Reseller 23], sent an email to [Casio Employee 3] with the subject, 'We've just had to match this....'. In the email [Employee] provided a link to the AP450 on the [Reseller 27] website and said, 'Everything but the kitchen sink lobbed in!!' - URN E_CAS00879 (Email exchange between [Casio Employee 3] and [Employee], of [Reseller 23], dated 12-13 August 2014), p.1-2; URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.103, line 23 to p.104, line 12.

¹⁴³ For example, in an email from Casio to [Reseller 10] setting out product and pricing requirements for bundles incorporating the CDP-120, URN E_CAS05519 (Email from [Casio Senior Employee 5] to [Reseller 10] dated 29 August 2014), pp.1-2; and URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.228, lines 11-26. See also URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.238, lines 7-15 in which [Reseller 1 Senior Employee 2] stated that Casio UK either wrote down what was to be in each bundle or dictated the requirements to him.

¹⁴⁴ The CMA received evidence of this treatment of bundling from as early as in 2013 when, in response to reseller complaints, Casio UK asked the relevant offending resellers to amend their advertised prices. Further, in an internal email in 2014 Casio UK referred specifically to the '*bundling problem*' and confirmed steps to be taken by Casio UK in this regard. See URN E_CAS00107 (Email from [Casio Employee 3] to [Casio Employee 1] dated 25 February 2013), p.2 is an early example of Casio UK contacting a reseller who was bundling items, in February 2013. URN E_CAS00293, URN E_CAS00476 of 31 January 2014 is an example with [Casio Senior Employee 5] referring to '*the bundle situation*'. See also URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.189, line 19 to p.190, line 26.

¹⁴⁵ For example, on 23 July 2014, [Senior Employee] of [Reseller 3], recounted an incident in an email to [Casio Senior Employee 5], where he stated: '*you might remember some years ago you sold me and [Reseller 5] a pile of CTK496 or something and we had an agreement to sell for one price – and they trashed them*'. [Casio Senior Employee 5] replied acknowledging the episode. In the same conversation, [Senior Employee] then sought assurances that, for the latest product being offered to him, Casio would be '*impressing a MAP on all*'. [Casio Senior Employee 5] replied: '*Yes, to on-line*' - URN E_CAS00819 (Email exchange between [Casio Senior Employee 5] and [Senior Employee] of [Reseller 3] dated 23 July 2014), p.1.

¹⁴⁶ For example, in an email dated 9 January 2013 between a reseller (Reseller 20) and Casio UK, [Reseller 20] stated: '*[Reseller 21] and [Reseller 10] both have £679 as the price for the PX750:- ... Is that the new MAP? I've got £[redacted] on mine*'. It also showed [Casio Employee 1] having spoken to [Reseller 21]. [Casio Employee 1] then emailed [Casio Employee 5] to ask him to call [Reseller 10] to '*nip this one in the bud*' i.e. require it to raise its prices back to the Minimum Price - URN E_CAS00042 (Email exchange between [Reseller 20], [Casio Employee 1], [Casio Employee 5] and [Casio Senior Employee 5] dated 9 January 2013); In an interview with [Casio Employee 1], [Casio Employee 1] stated that by asking [Casio Employee 5] to call [Reseller 10] to '*nip this one in the bud*' he was instructing [Casio Employee 5] to call [Reseller 10] to discuss the pricing of the PX750 – URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.76, line 24 to p.77, line 23.

evidence consists of communications between Casio UK and certain of its UK resellers indicating that the Casio Pricing Policy existed, resellers were adhering to it and it was being monitored and enforced in early 2013.¹⁴⁷ At this time, Casio UK's sales staff, including National Accounts Managers, were also instructed to '*sort*', '*in a coordinated way*', resellers that were advertising the Relevant Products below the Minimum Price.¹⁴⁸

- 3.91 The evidence indicates that Casio UK's monitoring and enforcement of the Casio Pricing Policy came to an end in April 2018.¹⁴⁹ The CMA considers that this was as a result of the launch of the CMA's investigation.¹⁵⁰

III. Monitoring and enforcement of the Casio Pricing Policy

Overview

- 3.92 Casio UK sought to monitor and enforce the Casio Pricing Policy during the Relevant Period by:

- monitoring resale prices through resellers reporting where other resellers were not adhering to the Casio Pricing Policy;¹⁵¹

¹⁴⁷ URN E_CAS00079 (Email sent by [Reseller 1 Senior Employee 2] forwarded internally between [Casio Senior Employee 5], [Casio Employee 1], [Casio Employee 3] and [Casio Employee 5] dated 4 February 2013), p.1; and URN E_CAS00176 (Email sent by [Casio Employee 3] to [Casio Employee 5], [Casio Senior Employee 5] and [Casio Employee 1] dated 12 March 2013).

¹⁴⁸ In an email dated 2 March 2013 from [Casio Senior Employee 5] to [Casio Employee 1], [Casio Employee 3], [Casio Employee 5] and [Casio Employee 8], [Casio Senior Employee 5] listed a number of resellers advertising several of the Relevant Products at '*below P [price]*'. At the bottom of the email [Casio Senior Employee 5] stated, '*[t]his is a cornerstone policy of EMI and has helped us achieve the business levels we have*'. URN E_CAS00136 (Email from [Casio Senior Employee 5] to [Casio Employee 1], [Casio Employee 3] and [Casio Employee 5] dated 2 March 2013), pp.1-3.

¹⁴⁹ Email from [Senior Employee 3] of [Reseller 1], to the CMA enclosing an email from [Reseller 1 Senior Employee 1] stating that, '*The changes since April regarding pricing are that no discussion are made from casio [sic] regarding retail pricing and the price list now clearly states that retailers are able to sell at whatever price they decide. Phone calls / emails regarding retail prices have completely stopped.*' URN C_CAS02269 (Response 29 January 2019 to [Reseller 1] January RFI dated 22 January 2019), p.1.

¹⁵⁰ URN C_CAS02410 (Transcript of interview with [Reseller 1 Senior Employee 1] dated 14 January 2019), p.80, lines 20-22 and p.253, lines 18-25; URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.61, lines 13-16 and p.77, lines 10-24; URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.385, line 21 to p.388, line 12; URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.291, lines 15-20.

¹⁵¹ See paragraphs 3.93 to 3.96 below.

- itself monitoring resellers' prices,¹⁵² including by using Price2Spy price monitoring software for part of the Relevant Period (both on its own and later in conjunction with Google Hangouts);¹⁵³
- contacting resellers directly, who were found or suspected not to be adhering to the Casio Pricing Policy by pricing below the Minimum Price and encouraging them to increase their prices to at least the Minimum Price;¹⁵⁴
- checking whether resellers it had contacted had indeed changed their prices as agreed;¹⁵⁵
- introducing new tiered trade pricing terms to incentivise resellers to adhere to the Casio Pricing Policy;¹⁵⁶
- prioritising its enforcement of the Casio Pricing Policy on higher-end products;¹⁵⁷
- buying back under-priced stock from resellers;¹⁵⁸ and
- threatening and/or imposing sanctions on resellers for not adhering to the Casio Pricing Policy.¹⁵⁹

Resellers monitoring each other

- 3.93 The evidence shows that resellers proactively policed each other's pricing, regularly emailing automated price monitoring software reports and/or links to Casio UK in order to alert Casio UK to other resellers whose prices were under the Minimum Price. For examples, see below Sections 3.C.IV: *Illustrative examples of Casio UK's monitoring and enforcement* and 4.C.IV: *Agreement and/or concerted practice between Casio UK and [Reseller 1]*.
- 3.94 [Casio Employee 1] and [Casio Senior Employee 4] stated in interview that complaints from resellers about being undercut by other resellers were frequent and time-consuming to follow up, leading to a desire on the part of

¹⁵² Either directly itself by means of internet searching, or software that provided reports based on automated searching or indirectly through receiving reports from resellers of other resellers' prices being under the Minimum Price.

¹⁵³ See paragraphs 3.98 to 3.110 below.

¹⁵⁴ See section 3.C.IV below.

¹⁵⁵ See section 3.C.IV below.

¹⁵⁶ See paragraphs 3.111 to 3.113 below.

¹⁵⁷ See paragraphs 3.114 to 3.116 below.

¹⁵⁸ See paragraphs 3.117 to 3.118 below.

¹⁵⁹ See paragraphs 3.171 to 3.183 below.

the EMI Sales Team to promote price stability amongst Casio UK's network of resellers.¹⁶⁰

- 3.95 [Casio Senior Employee 4] and [Casio Employee 1] further explained to the CMA in interview that, following complaints from resellers about other resellers having undercut them, they would routinely call resellers to encourage them to raise their prices back to the Minimum Price. [Casio Employee 1] advised the CMA that this had been Casio UK's approach before, throughout and shortly after the Relevant Period.¹⁶¹
- 3.96 [Reseller 1 Senior Employees] explained to the CMA in interview that Casio UK staff (in their case [Casio Employee 1] and occasionally [Casio Senior Employee 5] or [Casio Senior Employee 4]) would regularly ring them up to ask them to increase their prices back to the Minimum Price if [Reseller 1] was found to be pricing below the Minimum Price.¹⁶²

Developments in Casio UK's monitoring and enforcement during the Relevant Period

- 3.97 The evidence set out below shows how Casio UK increased its monitoring and enforcement capability during the Relevant Period. It introduced increasingly sophisticated, automated and responsive monitoring techniques. It also sought to better target its enforcement of the Casio Pricing Policy.

¹⁶⁰ When asked how much of his day-to-day work was physically spent on monitoring what resellers were selling at, [Casio Employee 1] replied, '*Too much*' - URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.375, line 16. In his interview, [Casio Senior Employee 4] stated, '*I knew if there wasn't [price] stability the guys would be absolutely bombarded with complaints...from the UK dealers*' - URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.227, lines 19-20.

¹⁶¹ That is, Casio UK's approach had been the same from January 2013 until April 2018 – the period on which the CMA focussed its evidence gathering. URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.93, line 20 to p.94, line 4; p.102, lines 16-23; p.117, line 4 to p.118, line 3; p.181, line 27 to p.182, line 11; p.188, lines 14-17; and p.332, lines 6-21.

¹⁶² URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.61, line 18 to p.62, line 23; p.66, lines 16-21; p.69, line 12 to p.70, line 21; p.77, lines 15-24; p.97, lines 1-5; p.98, lines 4-8; p.100, lines 6-8; p.109, lines 17-18; p.151, lines 3-25; p.152, lines 19-21; p.183, lines 3-19; URN C_CAS02410 (Transcript of interview with [Reseller 1 Senior Employee 1] dated 14 January 2019), p.84, lines 18-21; p.93, line 23 to p.95, line 20; p.98, lines 7-16; p.101, line 10 to p.102, line 6; p.111, line 22 to p.112, line 11; p.138, lines 13-16; p.146, lines 24-26; p.151, lines 9-11; p.152, lines 17-24; p.176, line 19 to p.177, line 1; p.243, lines 7-14.

Means of monitoring and enforcement from January 2013 to February 2016

- 3.98 In the early part of the Relevant Period, Casio UK began to move from a reliance on the reports of resellers that a particular reseller was below the Minimum Price to the use of its own intelligence.
- 3.99 From 2013 to early 2016, Casio UK monitored and enforced the Casio Pricing Policy in the following ways:
- its EMI sales staff contacted resellers to encourage compliance in an ad hoc and reactive manner after having received reseller reports of other resellers' non-compliance; and
 - its EMI sales staff contacted resellers to encourage compliance as part of a more regular routine after either:
 - having received a spreadsheet report compiled through Google shopping or Amazon searches by a colleague (typically [Casio Employee 6] or [Casio Employee 8]) highlighting resellers' resale prices which were below the Minimum Price; or
 - as part of a concerted effort to bring resellers' pricing into line, for instance, in advance of a visit from a Casio Japan executive.¹⁶³
- 3.100 From February 2013, Casio UK was actively monitoring its UK resellers' online pricing. In an email dated 25 February 2013, [Casio Employee 3] referred to '*Internet Day, Oh joy*', and asked [Casio Employee 1] to contact [Reseller 1] about its online price for the CDP-220 (£399.00, which was subsequently raised to £[~~3~~]).¹⁶⁴ According to witness evidence from [Casio Employee 1], there was a regular pattern of Casio UK monitoring its resellers' online pricing at this time.¹⁶⁵
- 3.101 By 2015, Casio UK's monitoring of its resellers' online pricing had become a dedicated work stream. [Casio Employee 6] was tasked with coordinating Casio UK's response to violations of the Casio Pricing Policy.¹⁶⁶

¹⁶³ URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.178, line 24 to p.179, line 7.

¹⁶⁴ URN E_CAS00107 (Internal Casio UK email exchange dated 25 February 2013), p.1-2.

¹⁶⁵ URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.113, line 16 to p.114, line 4.

¹⁶⁶ [Casio Employee 6] then emailed Casio UK's sales team with a list of models and prices, together with weblinks to instances where these models are being sold for less than the respective prices. These were divided up by sales person showing who was responsible for dealing with each reseller. For example, [Casio Senior Employee 5] forwarded a long list of links to various resellers' websites from [Reseller 1] to the EMI team and asked [Casio Employee 6] to sort it by dealer and then to send it to the account managers, see URN

3.102 [Casio Employee 6] also collated a price comparison spreadsheet of Casio UK's resellers' advertised resale prices as against Casio UK's '*P*' prices (another name for the Minimum Price, see paragraph 3.85 above).¹⁶⁷ This was called an '*online price comparison*' spreadsheet. It was produced for [Casio Senior Employee 5] and circulated to the wider Casio EMI Sales Team.¹⁶⁸ It covered selected products spanning the whole range of Casio UK's Relevant Products available at that time. The comparison spreadsheet used conditional formatting to show where the resellers' resale prices were below the '*P*' price.¹⁶⁹ These reports were then circulated to EMI Sales Team colleagues for follow up action.¹⁷⁰

Means of monitoring and enforcement from March 2016 to April 2018

3.103 [Casio Senior Employee 5] left Casio UK at the end of January 2016 and was replaced by [Casio Senior Employee 4] from 1 February 2016. [Casio Senior Employee 4] introduced a number of important changes to the way Casio UK monitored and enforced the Casio Pricing Policy:

- In March 2016, Casio UK changed the means of monitoring resellers' online resale pricing from in-house manual collation of online searches to the use of automated reporting software (Price2Spy). In doing so, Casio UK increased its monitoring capabilities significantly by providing for daily reporting together with real-time individual price change alerts. See paragraphs 3.104 to 3.110 below.
- In April 2016, Casio UK introduced new, more complex tiered trade pricing terms,¹⁷¹ with the most advantageous terms being used as a lever for enforcing the Casio Pricing Policy.

E_CAS02287 (Email from [Casio Senior Employee 5] to [Casio Employee 1], [Casio Employee 3] and [Casio Employee 5] (copying [Casio Employee 6]) dated 25 November 2015), p.1. Subsequently, [Casio Employee 6] forwarded the edited list to the EMI Sales Team - URN E_CAS02288 (Email from [Casio Employee 6] to [Casio Employee 1], [Casio Employee 5], [Casio Employee 3], [Casio Employee 7] and [Casio Senior Employee 5] dated 25 November 2015), pp.1-3.

¹⁶⁷ URN E_CAS00095 (Spreadsheet titled 'EMI Online Price Comparison 13FEB 2013').

¹⁶⁸ URN E_CAS00094 (Email from [Casio Senior Employee 5] to [Casio Employee 1], [Casio Employee 3] and [Casio Employee 5] dated 14 February 2013).

¹⁶⁹ In an email to [Casio Employee 6] and [Casio Senior Employee 5], [Casio Employee 8] said: '*It highlight [sic] in Red if price is 80% from P price and becomes bold red letter if the price is less than P price. [sic]*'. The name of the tab within the spreadsheet on which the prices were displayed was named '*Main Culprits*' with the respective date. It was also referred to as the '*usual suspects*.' - URN E_CAS00142 (Email from [Casio Employee 8] to [Casio Employee 6] and [Casio Senior Employee 5] dated 5 March 2013). See also URN E_CAS01772 (Email from [Casio Employee 6] to [Casio Senior Employee 5] dated 2 June 2015) and attachment URN E_CAS01773 (Spreadsheet titled '*Euro & UK Pricing 01 June 2015 main culprits pianos*' dated 2 June 2015).

¹⁷⁰ URN E_CAS01440 (Email from [Casio Senior Employee 5] to [Casio Employee 1], [Casio Employee 3] and [Casio Employee 5] dated 20 January 2015).

¹⁷¹ URN C_CAS02421 (Response dated 26 March 2019 to Second March RFI), paragraph 2.

- In April 2016, Casio UK likely prioritised the focus of its enforcement of the Casio Pricing Policy towards higher-end products.
- In November 2016, Casio UK looked to buy back under-priced stock rather than it being sold for less than the Minimum Price.
- In May 2017, Casio UK's EMI Sales Team began to use Google Hangouts in conjunction with Price2Spy to facilitate communication and coordination in respect of Price2Spy automated price monitoring reports and to expedite enforcement of resellers' adherence to the Minimum Price.

Price2Spy automated price tracking

Price2Spy reports purchased by Casio UK

- 3.104 Based on the evidence, the introduction of Price2Spy reporting markedly increased the effectiveness, timeliness and scope of Casio UK's monitoring of the Casio Pricing Policy. From March 2016, Casio UK received two main types of automated and 'real-time' market monitoring communications from software company, Price2Spy:¹⁷²
- daily '*Products Violating MAP/Target price*'¹⁷³ reports (Daily Reports);¹⁷⁴ and
 - real-time '*Price changes detected*' alerts (Price Alerts).¹⁷⁵
- 3.105 Price2Spy generated the Daily Reports detailing, for a range of products, any reseller whose prices breached the Casio Pricing Policy. These Daily Reports were set up to track webpages, the links to which were identified for

¹⁷² URN E_CAS06120 (Price2Spy company website homepage - <http://www.Price2Spy.com/> accessed on 2 April 2018). There is evidence which indicates that [a subsidiary of Casio Japan] had been using Price2Spy for some time before Casio UK and may have suggested the company to Casio UK - URN E_CAS02567 (Email from [Casio Employee 10], of [a subsidiary of Casio Japan], to [Casio Senior Employee 4] dated 2 March 2016); In addition, there is evidence to suggest that Casio UK was in contact with companies offering similar services in July 2014 - URN E_CAS00842 (Email from 24 I.S. Ltd (Price Intelligence) to [Casio Senior Employee 5] dated 30 July 2014) and October 2016 - URN E_CAS03484 (Email from IntelligentEye Ltd T/A Competitor Monitor to [Casio Senior Employee 4] dated 17 October), p.1.

¹⁷³ On its website, Price2Spy states that its services provide the capability to '**Analyze which retailer (and exactly when!) started pricing chain-reaction (that was followed by other sites)**'. See URN E_CAS06121 (Price2Spy company website - Brands Manufacturers Page - <http://www.Price2Spy.com/en/solutions/brands-manufacturers.html> (accessed on 2 April 2019). [Emphasis added by the CMA]

¹⁷⁴ URN E_CAS02618 (Email from Price2Spy to [Casio Senior Employee 4] dated 17 March 2016), p.1.

¹⁷⁵ URN E_CAS02767 (Email from [Casio Senior Employee 4] to Price2Spy dated 21 April 2016).

Price2Spy by Casio UK staff, including [Casio Senior Employee 4].¹⁷⁶
Subsequently, [Casio Employee 8] updated Price2Spy where necessary to change the products and/or resellers whose prices were being monitored.¹⁷⁷
The Daily Reports were titled '*products violating MAP*'.¹⁷⁸

Price2Spy reports' role in the monitoring of the Casio Pricing Policy

- 3.106 Price2Spy Daily Reports became the primary tool by which Casio UK monitored the marketplace, and [Casio Senior Employee 4] tasked Casio UK's sales team with addressing pricing issues flagged in the reports.¹⁷⁹ [Casio Senior Employee 4] sent the Price2Spy reports to colleagues, with instructions such as, '*[Casio Employee 1] – [Reseller 10] STILL not sorted and [Reseller 2] have been out on bundles for weeks.*'¹⁸⁰
- 3.107 Casio UK used the Price Alerts (which [Casio Senior Employee 4] received) to determine which of its resellers reduced resale prices below the Minimum Price first, and which resellers then followed. This knowledge could then be used to prioritise which resellers to contact in order to restore prices across its network of resellers to the Minimum Price.¹⁸¹

¹⁷⁶ URN E_CAS02600 (Email from [Casio Senior Employee 4] to [Casio Employee 15] and [Casio Employee 12], both of [a subsidiary of Casio Japan], and [Casio Senior Employee 7], [Casio Senior Employee 3] and [Casio Employee 8] dated 11 March 2016) and URN E_CAS03193 (Email from [Casio Senior Employee 4] to Price2Spy dated 18 August 2016).

¹⁷⁷ URN E_CAS05883 (Google Hangout exchange between [Casio Senior Employee 4] and [Casio Employee 8] dated 1 November 2017), pp.1-2.

¹⁷⁸ URN E_CAS02753 ('*Price2Spy Scheduled Report - Products violating MAP*' dated 20 April 2016) and URN E_CAS02785 ('*Price2Spy Scheduled Report - Products violating MAP*' dated 22 April 2016); Albeit, the name of the attached file continued to be '*Products violating MAP*'; In his interview with the CMA, [Casio Senior Employee 4] stated that '*Products Violating MAP*' was the default name given to the report by Price2Spy, and not the terminology chosen by Casio UK - URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.179, lines 11-21.

¹⁷⁹ '*Price2Spy – Are you checking this every morning? Are you taking action? With Immediate effect, please sort among yourselves via google hangout.*' - URN E_CAS04907 (Presentation titled '*EMI Sales Meeting – November 2017*' dated 5 November 2017), p.12.

¹⁸⁰ URN E_CAS03893 (Email from [Casio Senior Employee 4] to [Casio Employee 1], [Casio Employee 5], [Casio Employee 3], [Casio Employee 8], [Casio Employee 6], [Casio Employee 7] and [Casio Senior Employee 7] dated 1 February 2017). Further examples include URN E_CAS04020 (Email from [Casio Senior Employee 4] to [Casio Employee 5], [Casio Employee 1] and [Casio Employee 3] dated 10 March 2017) and URN E_CAS04042 (Email from [Casio Senior Employee 4] to [Casio Employee 3] dated 13 March 2017), p.1.

¹⁸¹ On 23 November 2017, [Casio Senior Employee 4] sent a Google Hangouts message to the Casio UK EMI team which said, '*[Casio Employee 8] – Can you take a look and see who moved first please in Price2Spy*'. [Casio Employee 8] replied with a screenshot of the Price2Spy web platform - URN E_CAS05897 (Google Hangouts exchange between [Casio Senior Employee 4], [Casio Employee 8], [Casio Employee 3], [Casio Employee 7], [Casio Employee 1] and [Casio Employee 5] dated 23-24 November 2017), p.2. On 20 January 2017, [Casio Employee 1] emailed [Casio Senior Employee 4] and asked: '*Are you able to see who moved first on price to spy? For example, if it was [Reseller 1]I would let them know that we know instead of [REDACTED] about*'. [Casio Senior Employee 4] replied, '*Looks like [Reseller 1]*', and attached a screenshot of a Price2Spy report -

- 3.108 The Price Alerts also notified Casio UK when resellers acted to raise their prices back to the Minimum Price, having been contacted by the EMI Sales Team.
- 3.109 [Casio Senior Employee 4] explained in interview that Casio UK introduced the Price2Spy software (in March 2016) to stabilise resale prices and so reduce the number of complaints it received about failures to adhere to the Casio Pricing Policy. He confirmed that the effect had been to narrow the range of resale prices in the market. The CMA infers from this that Price2Spy had facilitated widespread adherence to the Casio Pricing Policy and so Casio UK's monitoring had achieved its goal.^{182, 183}

Casio UK stopped acting upon Price2Spy's Daily Reports and Price Alerts

- 3.110 Casio UK continued to receive the Daily Reports and Price Alerts until at least 1 February 2019, albeit Casio UK employees stated in interview that they no longer followed up with resellers regarding prices below the Minimum Price since shortly after the CMA opened its investigation and Casio UK's then solicitors had provided competition law compliance training to Casio UK's EMI Sales Team in May 2018.¹⁸⁴

URN E_CAS03864 (Email exchange between [Casio Employee 1] and [Casio Senior Employee 4] dated 30 January 2017), p.1.

¹⁸² URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.290, line 7 to p.291, line 13.

¹⁸³ The CMA notes that the Organisation for Economic Co-operation and Development (OECD) has envisaged three scenarios relating to vertical agreements in which the use of pricing software could be problematic: First, **price monitoring algorithms can be used to detect deviations from a fixed or minimum resale price (RPM)**. In such cases, algorithm-enabled price monitoring does not constitute an RPM offence as such but forms part of the RPM infringement, as it contributes to the effectiveness of the RPM; Second, with regard to recommended prices, **'increased price transparency through price monitoring software enables easier detection of those retailers that deviate from manufacturers' pricing recommendations. It could therefore allow manufacturers to retaliate against retailers that do not comply with pricing recommendations and, therefore, limit the incentives of retailers to deviate from such pricing recommendations in the first place'**. If algorithm-enabled price monitoring allows a supplier to pressure a retailer to stick to a 'recommended' price, the supplier would be actually turning that 'recommended' price into a fixed resale price (RPM); and

Third, when retailer A adheres to fixed or minimum resale prices (RPM) and is being monitored by retailer B using algorithms, retailer B may match A's price. In this way, **one retailer's use of RPM may spread high prices to other retailers who may not be similarly engaged in RPM**.¹⁸³ [Emphasis added by the CMA]

See 'Algorithms and Collusion - Note from the European Union', paragraphs 13-16, available [https://one.oecd.org/document/DAF/COMP/WD\(2017\)12/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2017)12/en/pdf)

¹⁸⁴ URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.29, lines 3-14 and URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.385, line 21 to p.386, line 17.

New tiered pricing including Marketing Support

- 3.111 In a further effort to enforce the Casio Pricing Policy, in April 2016, Casio UK introduced new pricing terms and conditions, which were presented in new format Casio UK price lists.¹⁸⁵ As outlined above, in paragraph 3.86, the new price lists included more tiers of pricing: RRP, RSP, Standard Trade, Stocking Plan and Marketing Support prices.
- 3.112 Casio UK advised resellers that a condition of benefiting from the best Marketing Support prices on offer was adherence to the Casio Pricing Policy.¹⁸⁶
- 3.113 Casio UK's messaging around the new pricing terms and conditions both internally¹⁸⁷ and externally with its resellers¹⁸⁸ was that these terms were aimed at stabilising the market – by which Casio UK meant stabilising resale prices.¹⁸⁹

Focus of enforcement towards higher-end products

- 3.114 Some of the evidence suggests that, from April 2016, Casio UK focussed its enforcement of the Casio Pricing Policy towards '*higher-end*' lines. [Casio Employee 1] explained to a reseller in an email dated 9 June 2016, '*We are not attempting to do anything on the low end models for many reasons. So basically it's everything from The [sic] CTK-6200 above. The current terms and approach we have had since April [2016] have been very successful.*'¹⁹⁰
- 3.115 While this suggests that Casio UK paid less attention to enforcing adherence to the Casio Pricing Policy for the lower-end products within its portfolio,¹⁹¹ it

¹⁸⁵ See paragraph 3.86 above. Casio UK explained that the new pricing terms and conditions referred to changes in prices, as well as the introduction of RSP on to price lists. The new price lists also set out a breakdown of the discounts available to resellers. URN C_CAS02421 (Response dated 26 March 2019 to Second March RFI), paragraphs 2.1-2.2.

¹⁸⁶ See paragraph 3.172 to 3.173 below.

¹⁸⁷ In a presentation titled '*EMI UK Business Plans May 2016*', on page 8, under the heading '*New Terms and Conditions*' the first bullet point reads, '*Regain control of pricing*' - URN E_CAS02856 (Presentation titled '*EMI UK Business Plans – May 2016*' dated 13 May 2016), p.8.

¹⁸⁸ URN E_CAS02748 (Email from [Casio Senior Employee 4] to [Reseller 1] dated 19 April 2016).

¹⁸⁹ URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.85, lines 8-26 and URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.224, line 17 to p.225, line 15.

¹⁹⁰ URN E_CAS02940 (Email from [Casio Employee 1] to [Reseller 22] dated 9 June 2016), p.1; The CTK6200 falls into the '*standard/premium*' product segment, and can be further classified as a 'high-grade keyboard' as defined by Casio in its response to the 19 September 2018 s.26 Notice. [Text in brackets added by the CMA] For more information on product segmentation, see paragraph 3.191 below.

¹⁹¹ See footnote 316, and [Reseller 1 Senior Employee 2] recalled the Casio Pricing Policy having applied to all products from £100 upwards - URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.83, line 8 to p.84, line 3.

still indicates that Casio UK monitored pricing and sought to impose the Casio Pricing Policy across all Relevant Products.¹⁹² The CMA notes that all Casio UK price lists continued to include RSP, Standard Trade, Stocking Plan and Marketing Support pricing for all Relevant Products.

- 3.116 The CMA concludes from this that even if there was no active enforcement by Casio UK on lower-end models at this point, their inclusion in the price lists as detailed above would have likely acted as an incentive for resellers to price in accordance with the Casio Pricing Policy for them still to benefit from the lowest trade price. On this basis, the CMA concludes that lower-end products continued to be covered by the Casio Pricing Policy and thus continued to be Relevant Products.

Buying back under-priced stock

- 3.117 In order to maintain the integrity and effective enforcement of the Casio Pricing Policy, Casio UK also resorted to buying back under-priced stock to avoid other resellers reducing their prices to compete with this under-priced stock.
- 3.118 On 23 November 2016, [Casio Senior Employee 4] emailed [Casio Employee 3] a link to a CDP130 advertised on the website of one of Casio UK's resellers [Reseller 3] and stated, '£289 - *no need to do this. They [Reseller 3] have 2 in stock - Ill [sic] buy them back.*'¹⁹³ The targeted price for the CDP130 at this time was £[§].¹⁹⁴

Google Hangouts

- 3.119 [Casio Senior Employee 4] introduced group chats via Google Hangouts as a primary means of communication between Casio UK EMI staff in order to reduce the volume of email traffic in his team¹⁹⁵ and enable faster, real-time conversations¹⁹⁶ from any google-enabled device while he and his team were on the move.¹⁹⁷

¹⁹² See Section C.IV. *Illustrative examples of Casio UK's monitoring and enforcement* below.

¹⁹³ URN E_CAS03636 (Internal Casio UK email from [Casio Senior Employee 4] dated 23 November 2016). [Text in brackets added by CMA]

¹⁹⁴ URN E_CAS03177 (Casio UK EMI Price List Main GP dated 16 August 2016).

¹⁹⁵ URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.232, lines 13-19. URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.312, lines 12-21.

¹⁹⁶ URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.222, lines 8-11.

¹⁹⁷ URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.222, lines 15-17. URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.300, lines 17-19.

3.120 Casio UK used Google Hangouts alongside Price2Spy. Based on the evidence, the use of Google Hangouts had the following impact on the monitoring and enforcement of the Casio Pricing Policy:

- it enabled the sales team to share pricing information and/or instructions in relation to the Casio Pricing Policy in full view of other sales colleagues whose accounts were affected and their line manager, thus incentivising the sales team to act promptly;
- it expedited Casio UK's ability to react to the Daily Reports because it could be accessed remotely and while on the move using mobile or tablet devices;
- it potentially expedited Casio UK's enforcement of the Casio Pricing Policy by enabling the sales team to contact resellers more swiftly and ask them to revert to the Minimum Price earlier; and
- it also potentially reduced the management time involved in the coordination of Casio UK's monitoring and enforcement of the Casio Pricing Policy.

3.121 By May 2017,¹⁹⁸ Casio UK sales staff were using Google Hangouts heavily for internal communications, especially about online pricing issues. Casio UK's tactic of checking Price2Spy '*every morning*,' using Google Hangouts and '*taking action*' is documented in a November 2017 sales meeting presentation.¹⁹⁹

3.122 Conversations on Google Hangouts largely appear to mirror the types of discussions seen in earlier internal emails, although they could take place in real-time and were accessible in their entirety to a pre-selected group of people in one place. For example, below is an excerpt from a dialogue dated 24 November 2017:²⁰⁰

[Casio Senior Employee 4]: 'Guys – please sort [Reseller 10] and [Reseller 1]... on Amazon' (Web link to Amazon provided)

[Casio Employee 1]: 'Sent link [Senior Employee 1] of [Reseller 1]'

[Casio Senior Employee 4]: '[Casio Employee 5] – [Reseller 10]?'

¹⁹⁸ URN E_CAS05811 (Google Hangouts exchange between [Casio Senior Employee 4], [Casio Employee 8] and [Casio Employee 7] dated 3 May 2017).

¹⁹⁹ URN E_CAS04907 (Presentation titled '*EMI Sales Meeting – November 2017*' dated 5 November 2017), p.12.

²⁰⁰ URN E_CAS05897 (Google Hangouts exchange between [Casio Senior Employee 4], [Casio Employee 8], [Casio Employee 3], [Casio Employee 7], [Casio Employee 1] and [Casio Employee 5] dated 23-24 November 2017), pp.7-8. [Text in brackets added by the CMA]

[Casio Employee 5]: '[Employee] [of [Reseller 10]] is calling me back'

[Casio Senior Employee 4]: 'We need o [sic] get these sorted otherwise it will only collapse over the weekend – Please keep me posted.'

[Casio Employee 5]: 'ok'

[Casio Employee 1]: 'PX-860 now sorted with [Reseller 7] and [Reseller 1]'

[Casio Senior Employee 4]: 'great'

[Casio Senior Employee 4]: 'Any news on CDP130 on Amazon please?

[Reseller 1] and [Reseller 10]'

[Casio Employee 5]: '[Reseller 10] are sorted the price should change within 10 mins'

- 3.123 The evidence shows that the combination of the Price2Spy reporting and communication through Google Hangouts provided Casio UK with a very detailed, real-time understanding of its resellers' pricing and enabled swift action to contact resellers whose pricing fell below the Minimum Price on one or more Relevant Products in order to bring them back into line with the Casio Pricing Policy.

IV. Illustrative examples of Casio UK's monitoring and enforcement

- 3.124 Below are some illustrative examples of communications involving Casio UK and certain of its resellers. These examples show the widespread application of and adherence to the Casio Pricing Policy in relation to all Relevant Products across Casio UK's network of resellers throughout the Relevant Period.

- 3.125 More specifically, these communications show that:

- the Casio Pricing Policy was designed to apply to all or at least the vast majority of Casio UK's resellers;
- Casio UK monitored the whole range of Relevant Products from Mini keyboards (with product code SA) to Grand Hybrids (with product code GP);²⁰¹
- Casio UK monitored its UK network of resellers throughout the Relevant Period²⁰² in order to enforce the Casio Pricing Policy;

²⁰¹ See Figure 3.1 above.

²⁰² For the whole of the period for which the CMA has gathered evidence (January 2013 to April 2018): starting from before the Relevant Period and continuing afterwards.

- Casio UK monitored its resellers' prices through:
 - resellers reporting other resellers whose prices were not adhering to the Casio Pricing Policy; and
 - monitoring resellers' prices itself, including by using Price2Spy price monitoring software.
- Casio UK attempted to enforce the Casio Pricing Policy by contacting resellers directly who were found or suspected not to be adhering to the Casio Pricing Policy with a view to agreeing that they would increase their prices to at least the Minimum Price.

3.126 Based on the evidence from the Relevant Period set out below, the CMA has reasonable grounds for suspecting that more than 50 resellers²⁰³ selling the Relevant Products were subject to the Casio Pricing Policy, and that resellers generally adhered to Casio UK's requests to revert to the Minimum Price and did themselves take an active part in monitoring other resellers' adherence to the Casio Pricing Policy. However, the CMA makes no findings in respect of any resellers of the Relevant Products other than [Reseller 1].

2013 examples of monitoring and enforcement of the Casio Pricing Policy

February 2013: CTK 3200 – [Reseller 9]

3.127 On 4 February 2013, [Casio Employee 3] reported to [Casio Senior Employee 5], [Casio Employee 1] and [Casio Employee 5] that [Reseller 9]

²⁰³ URN E_CAS02814 ([Reseller 23]); URN E_CAS01024 ([Reseller 24]); URN E_CAS02276 ([Reseller 25]); URN E_CAS05290 ([Reseller 26]); URN E_CAS00391 [Reseller 3]; URN E_CAS02149 ([Reseller 27]); URN E_CAS04917 [Reseller 4]; URN E_CAS01188 ([Reseller 5]); URN E_CAS02940 ([Reseller 22]); URN E_CAS01672 ([Reseller 28]); URN E_CAS02226 ([Reseller 29]); URN E_CAS05148 [Reseller 7]; URN E_CAS02276 ([Reseller 30]); URN E_CAS02276 ([Reseller 31]); URN E_CAS03278 [Reseller 8]; URN E_CAS02456 ([Reseller 32]); URN E_CAS02376 ([Reseller 33]); URN E_CAS00138 ([Reseller 34]); URN E_CAS00202 ([Reseller 35]); URN E_CAS02403 ([Reseller 36]); URN E_CAS03849 ([Reseller 37]); URN E_CAS00410 ([Reseller 38]); URN E_CAS01001 ([Reseller 39]); URN E_CAS05519 [Reseller 10]; URN E_CAS00042 ([Reseller 20]); URN E_CAS01398 ([Reseller 40]); URN E_CAS02820 ([Reseller 41]); URN E_CAS05943 ([Reseller 12]*); URN E_CAS02820 ([Reseller 21]); URN E_CAS01688 ([Reseller 42]); URN E_CAS00615 ([Reseller 43]); URN E_CAS00148 ([Reseller 44]); URN E_CAS03314 ([Reseller 45]); URN E_CAS05039 ([Reseller 2]); URN E_CAS02272 ([Reseller 46]); URN E_CAS00138 ([Reseller 47]); URN E_CAS01156 ([Reseller 48]); URN E_CAS01313 ([Reseller 49]); URN E_CAS03306 ([Reseller 50]); URN E_CAS00387 ([Reseller 51]); URN E_CAS00518 [Reseller 9]; URN E_CAS02817 ([Reseller 52]); URN E_CAS02519 ([Reseller 54]); URN E_CAS00234 ([Reseller 55]); URN E_CAS00583 ([Reseller 56]); URN E_CAS04420 ([Reseller 57]); URN E_CAS03316 ([Reseller 58]); URN E_CAS00140 ([Reseller 59]); URN E_CAS00282 ([Reseller 60]); URN E_CAS04167 ([Reseller 61]); URN E_CAS02212 ([Reseller 62]); URN E_CAS00176 ([Reseller 63]); URN E_CAS01219 ([Reseller 64]); *denotes entities that are no longer trading as at the date of issue of this Decision.

had put prices back up to the Minimum Price and would like to see other resellers follow suit.

'Hi All,

I have Called (sic) [Reseller 9] and [Senior Employee] has put his price up to £[X] and would appreciate if the others e.g. [Reseller 1], [Reseller 10] etc. to follow in the same spirit!

(FYI [Reseller 1] are the cheapest on Amazon @ £116.23)

[Casio Employee 3]²⁰⁴

- 3.128 This followed within an hour of an email from [Senior Employee 2] at [Reseller 1] to [Casio Senior Employee 5] and [Casio Employee 1] asking them to look at the pricing by [Reseller 10] and [Reseller 9] of the CTK 3200, subject line: '*[Reseller 10] AND [Reseller 9] ON AMAZON MAYBE ELSEWHERE ALSO*' In the body of the email, [Reseller 1 Senior Employee 2] wrote, '*116.98 [Reseller 10] CTK 3200 ON AMAZON AND [Reseller 9] NOT MUCH DIFFERENT.*'

April 2013: CDP – [Reseller 55]

- 3.129 On 19 April 2013, [Casio Employee 3] reported that [Reseller 55] had agreed to change its price to at least the Minimum Price. Casio UK anticipated that this would also result in [Reseller 14]'s price going up as [Reseller 55]'s price had been '*pulling [Reseller 14] down*'.²⁰⁵

'Spoke to [Employee] @ [Reseller 55] and will change the price now
Regards,

[Casio Employee 3]²⁰⁶

September 2013: CTK 4200 – [Reseller 27], [Reseller 45] and [Reseller 21]

- 3.130 On 3 September 2013, [Casio Employee 1] emailed [Reseller 1] in response to an email from [Reseller 1] earlier that day with the subject line '*ctk4200 – [Reseller 68] (Reseller 45) [sic] and [Reseller 21] all under on amazon*' (including three links) and said:

²⁰⁴ URN E_CAS00080 (Email from [Casio Employee 3] to [Casio Employee 1], [Casio Senior Employee 5] and [Casio Employee 5] dated 4 February 2013), p.1.

²⁰⁵ This appears to be a reference to [Reseller 14]'s use of price tracking software which based [Reseller 14]'s pricing on the lowest of a number of reference resellers for any given product.

²⁰⁶ URN E_CAS00234 (Email from [Casio Employee 3] to [Casio Employee 1], [Casio Senior Employee 5] and [Casio Employee 5] dated 19 April 2013), p.1.

'I am unable to contact one of the dealers on the links until tomorrow morning so this will not be sorted until then.'²⁰⁷

- 3.131 This shows that [Casio Employee 1] contacted two of the resellers named by [Reseller 1] on 3 September 2013 and intended to contact the remaining reseller on 4 September 2013. It also shows that he expected that these resellers' prices for the CTK 4200 would no longer '*be under*' the Minimum Price on Amazon once he had contacted them.

November 2013: AP 450 - [Reseller 28] and [Reseller 51]

- 3.132 On 25 November 2013, [Reseller 28] emailed [Casio Senior Employee 5] some links to other resellers' pricing of the AP 450. [Casio Senior Employee 5] forwarded these to both [Casio Employee 1] and [Casio Employee 5] and said:

'Hi Guys

Can you follow the links,,, [Reseller 51] and [✂], a website operated by [Reseller 1].

Thanks

[Casio Senior Employee 5]²⁰⁸

- 3.133 On 26 November 2013, in the final message of this chain, [Casio Employee 5] stated, '*[Reseller 51] sorted!*', in an email to [Casio Employee 1], copied to [Casio Senior Employee 5], indicating that [Reseller 51] had raised its price for the AP 450 to at least the Minimum Price. This email exchange also shows that [Reseller 28] was actively monitoring other resellers' compliance with the Casio Pricing Policy.

2014 examples of monitoring and enforcement of the Casio Pricing Policy

February 2014: PX 850 – [Reseller 50]

- 3.134 On 5 February 2014, [Casio Senior Employee 5] emailed the EMI Sales Team to say: '*Hi Guys, See above from [Reseller 50] ...Thanks* [Casio Senior Employee 5], forwarding an email from [Reseller 50] with a long list of links to other resellers' product listings 'under price', including the PX 850 on [Reseller 50] website. A little under half an hour later, [Casio Employee 1]

²⁰⁷ URN E_CAS00317 (Email from [Casio Employee 1] to [Reseller 1 Senior Employee 2] dated 3 September 2013), p.1.

²⁰⁸ URN E_CAS00387 (Email exchange between [Casio Senior Employee 5], [Casio Employee 1] and [Casio Employee 5] dated from 25-26 November 2013), p.1. [Text in brackets added by the CMA]

replied '[Reseller 50] *sorted*',²⁰⁹ indicating that it was no longer 'under price' on the PX 850 and had raised its price to at least the Minimum Price.²¹⁰

June 2014: CTK 4200 – [Reseller 13]

- 3.135 On 16 June 2014, [Casio Senior Employee 5] corresponded with [Casio Employee 8] about talking to [Reseller 13] to ask it to change its price to at least the Minimum Price, or return the stock it held of the CTK 4200. [Casio Employee 8] then asked [Casio Employee 7], who was responsible for the Mass market reseller accounts, to ask [Reseller 13] if it could '*change the situation*'. This indicates that Casio UK considered contacting [Reseller 13] in relation to its sale of the CTK 4200 at below the Minimum Price. This was because it was affecting the sales of other resellers who were abiding by the Casio Pricing Policy. It is not clear from the evidence whether there was in fact any contact with [Reseller 13] on this point.²¹¹

September 2014: AP 250, AP 450, AP 650 – [Reseller 27]

- 3.136 On 2 September 2014, [Casio Senior Employee 5] emailed [Employee] and [Employee] at [Reseller 27] and asked when changes would be made to [Reseller 27]'s website:

'Can you give me some indication when there will be changes to the [Reseller 27] site? This is now urgent, most have changed. If you could let me know that would be much appreciated or If [sic] you have no plans to change could you confirm to me please.'²¹²

- 3.137 There followed an exchange between [Employee] and [Casio Senior Employee 5], in which [Employee] replied on 3 September 2014:

'As you are aware, as of the 1st of September 2014, we have raised prices for Casio products to the street prices as stated by you. Further you are also aware that this is not the first time that we have had to do this.

(...)

Meanwhile we are seriously considering, albeit very reluctantly, your policy / strategy of noncompetition.

²⁰⁹ URN E_CAS00486 (Email from [Casio Employee 1] to [Casio Senior Employee 5], [Casio Employee 5] and [Casio Employee 3] dated 5 February 2014), p.1.

²¹⁰ [Casio Employee 1] stated in his interview that it was his interpretation that the term sorted meant that the price had been '*rectified*', i.e. moved upwards - URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.126, lines 6-17.

²¹¹ URN E_CAS00730 (Email from [Casio Employee 8] to [Casio Senior Employee 5], [Casio Employee 7] and [Casio Employee 1] dated 16 June 2014).

²¹² URN E_CAS00962 (Email from [Casio Senior Employee 5] to [Employee] and [Employee] of [Reseller 27] dated 2 September 2014), pp.2-3.

(...)

Hopefully by the end of the day we will have... changed our listing on our website of at least one Casio product that complies with your policy / strategy and with your proposals as discussed at our meeting when we last met in Frankfurt. When this change has been done we will then invite you to look at this change. Once you have confirmed your agreement to the change we will then consider implementing the same changes for the remaining Casio products.

(...) we will contact you again during the day as soon as soon [sic] as we have made the change for your approval.'

- 3.138 This indicates that [Reseller 27] had previously raised its prices to at least the Minimum Price and was willing to do so again.

October 2014: CTK 4400 – [Reseller 58]

- 3.139 On 23 October 2014, [Casio Senior Employee 5] emailed the EMI Sales Team with the subject 'Re: Various P Prices' to say: 'Been doing some checking. Generally pretty good, but there are some issues that need following up (...) I want to get these resolved tomorrow pre weekend.' [Casio Senior Employee 5] email listed, among others, [Reseller 58] as advertising the CTK 1600 below price. On 24 October 2014, [Casio Employee 3] responded to [Casio Senior Employee 5] to say, '[Reseller 58] have been sorted'²¹³, indicating that [Reseller 58] had implemented Casio UK's request to change its price to at least the Minimum Price.

2015 examples of monitoring and enforcement of the Casio Pricing Policy

January 2015: CDP 120, PX 350 – [Reseller 27]

- 3.140 On 21 January 2015, [Employee] of [Reseller 27] emailed [Casio Senior Employee 5] asking for action to be taken about [Reseller 1]' pricing of the CDP120 and PX-350. [Employee] stated that [Reseller 27] had:

"led the way" in relation to Casio prices since 9.00am Monday 19th January 2015. As this was not the first time we have "led the way" for you at your request, I was very reluctant to accede to your request. However to show continued goodwill I acceded to your request.'²¹⁴

²¹³ URN E_CAS01188 (Email from [Casio Employee 3] to [Casio Senior Employee 5], [Casio Employee 1] and [Casio Employee 5] dated 24 October 2014), pp.1-4.

²¹⁴ URN E_CAS01457 (Email from [Employee] of [Reseller 27] to [Casio Senior Employee 5] dated Thursday 29 January 2015), p.2.

July 2015: SA 46 and LK 120 – [Reseller 10]

3.141 On 2 July 2015, [Casio Employee 5] forwarded on to his EMI Sales Team colleagues a price monitoring report that had been sent to him by [Reseller 10]. This report included a number of links to other resellers' product listings, their prices and the price difference between '[Reseller 10]' and the other resellers' prices for those products. The prices of the LK-120 and SA-46 were included within the report.²¹⁵ This email chain indicates that [Reseller 10] was actively monitoring other resellers' compliance with the Casio Pricing Policy.

September 2015: GP 500 - [Reseller 3]

3.142 On 14 September 2015, [Casio Employee 5] sent an internal email to [Casio Employee 3] with the subject line, '*Casio Grand Hybrid - Its [sic] already started!*'. In the email he provided a link to a Grand Hybrid product on [Reseller 3]' website. [Casio Employee 3] replied to this email later that morning to say that it was a mistake: '[Employee] [Reseller 3] *seems to remember a conversation with [Casio Senior Employee 5] that the P price would be £[£]... this has now been corrected!*'.²¹⁶ ²¹⁷ This indicates that [Reseller 3] was also adhering to the Casio Pricing Policy.

November 2015: CDP 130 – [Reseller 3], [Reseller 25], [Reseller 30]

3.143 On 20 November 2015 [Reseller 31] sent an email to [Casio Employee 1] which included links to product listings of the CDP 130 on the websites of [Reseller 25], [Reseller 3] and [Reseller 30]. The subject of the email was '*CDP130 Online Pricing*'. [Casio Employee 1] forwarded this email internally. [Casio Employee 3] replied later that afternoon to [Casio Employee 1] that each of [Reseller 3], [Reseller 25] and [Reseller 30] were '*sorted*',²¹⁸ indicating again that they had raised their prices to at least the Minimum Price in response to Casio UK's request.

²¹⁵ URN E_CAS01868 (Email from [Casio Employee 5] to [Casio Senior Employee 5], [Casio Employee 3], [Casio Employee 1] and [Casio Employee 6] dated 2 July 2015), p.1.

²¹⁶ URN E_CAS02071 (Email exchange between [Casio Employee 5], [Casio Employee 3], [Casio Senior Employee 5] and [Casio Employee 1] dated 14 September 2015). [Text in brackets added by the CMA]

²¹⁷ URN C_CAS00320.4 ([Reseller 3] organisation chart, provided to CMA on 24 April 2018 in response to question B.1 of the CMA's 17 April 2018 s.26 Notice to [Reseller 3]).

²¹⁸ URN E_CAS02276 (Email from [Casio Employee 3] to [Casio Employee 1], [Casio Senior Employee 5], [Casio Employee 5] and [Casio Employee 6] date 20 November 2015), p.1.

2016 examples of monitoring and enforcement of the Casio Pricing Policy

February 2016: CDP 130 - [Reseller 56]

- 3.144 On 10 February 2016, [Reseller 1] emailed [Casio Senior Employee 5] with the subject line '*[Reseller 69] and [Reseller 56]*'. The email contained a link to the Amazon website for the CDP 130. [Casio Senior Employee 5] responded to [Reseller 1] stating, '*[Reseller 56] sorted, chasing [Reseller 69]*'.²¹⁹ Again, this indicates that [Reseller 56] had raised its prices to at least the Minimum Price in response to Casio UK's request.

April 2016: PX 760 - [Reseller 24] and CTK 6200 – [Reseller 23]

- 3.145 On 26 April 2016, [Casio Senior Employee 4] sent an internal email with a number of links, among them links to a PX 760 advertised on the [Reseller 24] website, and a CTK 6200 [Reseller 23] listing on the Amazon platform. [Casio Senior Employee 4] asked the recipients to:

'take a look at the following links please and address them as a matter of urgency. £20 (min) added value bundle still stands. (...)

Please can you identify your retailers and make the necessary calls.

Can you let me know when you have done them please?

This is a priority.'

- 3.146 About 20 minutes later, [Casio Employee 3] replied to [Casio Senior Employee 4] to say '*[Reseller 24] and [Reseller 23] sorted*'.²²⁰ Again, this indicates that [Casio Employee 3] followed up with [Reseller 24] and [Reseller 23] and both resellers agreed to adjust their prices to at least the Minimum Price.

September 2016: AP 460 – [Reseller 8] and [Reseller 7]

- 3.147 On 9 September 2016, [Reseller 7] sent an email to [Casio Employee 1] which contained links to various resellers and products, including the AP 460 advertised by [Reseller 8]. [Casio Employee 1] forwarded the email to [Reseller 7] stating: '*[Reseller 8] sorted*'.²²¹ This email chain indicates that [Reseller 7] was actively monitoring other resellers' compliance with the

²¹⁹ URN E_CAS02511 (Email from [Casio Senior Employee 5] to [Reseller 1 Senior Employee 2] dated 10 February 2016).

²²⁰ URN E_CAS02814 (Internal Casio UK email from [Casio Senior Employee 4] and subsequent reply by [Casio Employee 3] dated 26 April 2016), p1; The link attributed to [Reseller 23] in the email is a link to an Amazon.co.uk search for the product with 'Amazon Standard Identification Number' (ASIN) B00824HUPE, which CMA understands to be the ASIN assigned to the Casio CTK6200 keyboard - URN E_CAS06115 (Screenshot of Amazon search for ASIN B00824HUPE showing results relating to CTK6200 - accessed 21 March 2019).

²²¹ URN E_CAS03278 (Email exchange between [Casio Employee 1] and [Employee] of [Reseller 7] dated 9 September 2016), pp.1-2.

Casio Pricing Policy and that [Reseller 8] agreed to raise its prices on request from Casio UK to at least the Minimum Price.

November 2016: GP 500, AP 700, AP 460 and AP 260 – [Reseller 3]

- 3.148 On 29 November 2016, [Casio Senior Employee 4] sent an internal email with the subject line, '[Reseller 3]', stating, '*They are not messing around with [manufacturer].*' [Casio Employee 3] replied, '*Just checking - They are discounting [manufacturer] as well*', to which [Casio Senior Employee 4] replied, '*but not [manufacturer]*'. In a later email that same morning, [Casio Employee 3] stated: '*DONE! ... [Employee] [Employee Reseller 3], has no idea why the prices had moved, Might be worthwhile you speaking to [Senior Employee] of [Reseller 3] direct*' and providing links to the GP 500, AP 700, AP 460 and AP 260 advertised on the [Reseller 3] website.^{222, 223} Again, this indicates that [Reseller 3] agreed to comply with Casio UK's request to raise its prices to at least the Minimum Price.

2017 examples of monitoring and enforcement of the Casio Pricing Policy

January 2017: WK 7600 – [Reseller 37]

- 3.149 On 24 January 2017, [Casio Senior Employee 4] sent an internal email with the subject: 'WK7600', stating:

'Please can you take a look at the prices of WK7600 - This is cuasing [sic] issues with our sell in plan.....

[Reseller 37]

[Reseller 1]

[Reseller 28]

All at £299 - Please can you get them to £[£] for the time being, not ideal but better. ...

Can you let the group know when you've had the conversations please?'

- 3.150 [Casio Employee 1] replied later that morning, '*[Reseller 37] sorted now*',²²⁴ signalling that [Reseller 37] agreed to comply with Casio UK's request to raise its prices to at least the Minimum Price.

²²² URN E_CAS03664 (Email exchange between [Casio Employee 3] and [Casio Senior Employee 4] dated 29 November 2016), pp.1-2. [Text in brackets added by the CMA]

²²³ URN C_CAS00320.4 ([Reseller 3] organisation chart, provided to CMA on 24 April 2018 in response to question B.1 of the CMA's 17 April 2018 s.26 Notice to [Reseller 3]).

²²⁴ URN E_CAS03849 (Email exchange between [Casio Senior Employee 4], [Casio Employee 3], [Casio Employee 1] and [Casio Employee 5] dated 24 January 2017), p.1.

May 2017: CDP 130 - [Reseller 47]

- 3.151 On 4 May 2017, [Reseller 1] sent an email to Casio UK with the subject line, '*289 cdp130 [Reseller 47] on EBAY - been here ages never changed*'. In the email [Reseller 1] provided a link to a CDP130 listed on eBay as a Black Friday Special. Later that afternoon, [Casio Employee 1] replied to [Reseller 1]'s email and stated, '*sorted now*'.²²⁵ Again, this indicates that [Reseller 47] agreed to comply with Casio UK's request to raise its prices to at least the Minimum Price.

July 2017: SA 76 – [Reseller 7] and [Reseller 1]

- 3.152 On 10 July 2017, [Casio Employee 7], emailed her colleagues [Casio Employee 8] and [Casio Senior Employee 4] with the subject '*Urgent – [✂]* SA76', saying:
- 'See below
[Reseller 7] are selling for £41! All my deals are getting pulled!! [Reseller 1] £43
Is there anything we can do?'²²⁶
- 3.153 [Casio Employee 7] email enclosed a forwarded message dated 7 July 2017, the previous Friday, from [Employee] of [Reseller 14], stating that '*market segment price had dropped heavily... I would have high losses on the item.*' He then asked: '*Can you increase backend-funding by 8.50GBP per unit?*'.
- 3.154 At this time, Casio UK's June 2017 EMI Price List²²⁷ was in force. The RSP for the SA 76 was £[✂], and the Marketing Support price for the SA 76 was £[✂] (ex VAT). It seems unlikely that Casio UK would have been prepared to drop this by more than a third. The CMA concludes that in asking whether there is '*anything we can do?*', [Casio Employee 7] was likely asking if action could be taken to restore [Reseller 7] and/or [Reseller 1] pricing on the SA 76 to at least the Minimum Price.

November 2017: AP 270 – [Reseller 57]

- 3.155 On 30 November 2017, [Casio Employee 3] sent a message to his EMI Sales Team colleagues (in the Hangout EMI Sales Guys Chat) at 09:56am alerting them to a complaint about [Reseller 57]'s pricing of the AP 270:

²²⁵ URN E_CAS04236 (Email exchange between [Casio Employee 1] and [Reseller 1 Senior Employee 1] and [Reseller 1 Senior Employee 2] dated 4 May 2017).

²²⁶ URN E_CAS04475 (Email from [Casio Employee 7] to [Casio Employee 8] and [Casio Senior Employee 4] dated 10 July 2017), p.1.

²²⁷ URN E_CAS04363 (Casio UK EMI Main GP Dealer Price List dated 7 June 2017).

'Complaint this morning about [Reseller 57] in the new models especially AP-270 @ £666 or something in that region – cheers.' A minute later, at 09:47, [Casio Senior Employee 4] replied, *'lets [sic] get on this please guys and check your Price 2 spy and all of your dealers'*. Two minutes later, at 09:57, [Casio Employee 1] replied *'I'll call [Reseller 57].'* [Casio Employee 1] then sent a message at 10:26 stating: *'[Reseller 57] now sorted'*.²²⁸ Again, this indicates that [Reseller 57] agreed to comply with Casio UK's request to raise its prices to at least the Minimum Price.

December 2017: CDP 230, LK 265 and SA 46 – [Reseller 5]

- 3.156 On 6 December 2017, [Reseller 5] emailed Casio UK with the subject line, *'Pricing'*. In the email [Reseller 5] provided a list of Casio products with corresponding prices and resellers. This included the CDP 230, LK 265 and SA 46 being advertised by [Reseller 14], and additional Relevant Products being advertised by other resellers (CTK 4400 and CTK 3500). [Casio Employee 5] forwarded the email to [Casio Senior Employee 4] stating: *'Hi [Casio Senior Employee 4], [Reseller 5] have just sent me this. Regards [Casio Employee 5].'*²²⁹ This indicates that [Reseller 5] was actively monitoring other resellers' compliance with the Casio Pricing Policy.

2018 examples of monitoring and enforcement of the Casio Pricing Policy

January 2018: GP 500 – [Reseller 7]

- 3.157 On 9 January 2018, [Casio Employee 3] sent a Google Hangouts message to the EMI team stating, *'[Reseller 7] @£3,370 on GP 500'* and providing a link to the [Reseller 7] website. [Casio Senior Employee 4] replied later that afternoon: *'This is being driven by Europe – The plan is to address on Thursday.'*²³⁰ This message from [Casio Senior Employee 4] indicates Casio UK's intent to follow up the price disparity with [Reseller 7].

April 2018: PX 160 – [Reseller 21]

- 3.158 On 3 April 2018 [Casio Employee 1] sent a Google Hangouts message to the EMI team (in the Hangout Full EMI Team chat) in which he highlighted

²²⁸ URN E_CAS05934 (Google Hangouts exchange between [Casio Senior Employee 4], [Casio Employee 5], [Casio Employee 3] and [Casio Employee 1] date 29 November 2017 to 6 December 2017), p.1.

²²⁹ URN E_CAS05028 (Email exchange between [Casio Employee 5], [Casio Senior Employee 4] and [Employee] of [Reseller 5] dated 6 December 2017).

²³⁰ URN E_CAS05902 (Google Hangouts exchange between [Casio Senior Employee 4], [Casio Employee 8], [Casio Employee 3], [Casio Employee 7], [Casio Employee 1] and [Casio Employee 5] dated 27 December 2017 to 9 January 2018), p.3.

[Reseller 3] and [Reseller 21] pricing of the PX160. [Casio Employee 1] asked:

‘What is happening with [Reseller 19], [Reseller 18] and [Reseller 17] [European resellers who also sell into the UK] [Casio Senior Employee 4]? looking at Price2Spy there’s no change with [Reseller 17] if anything it’s worse, dealers mainly clean (...) other than [Reseller 2]’s and [Reseller 3] on PX-160 (...) [Employee] from [Reseller 7] was off most of last week but is back today and will be concerned when he sees the situation.’

- 3.159 [Casio Senior Employee 4] replied that morning stating, ‘will come back to you... not heard back from Europe after sending them last weeks [sic] P2S’. Later that same morning, [Casio Employee 1] replied stating, ‘[Reseller 21]’s PX-160 now sorted, only [Reseller 3] now in UK’.²³¹ Again, this indicates that [Reseller 21]’s agreed to comply with Casio UK’s request to raise its prices to at least the Minimum Price.

V. Casio UK’s awareness about illegality of enforcing the Casio Pricing Policy

- 3.160 Casio UK understood that its interactions with its network of UK resellers with a view to enforcing the Casio Pricing Policy were not legal. Below are some examples which show:

- direct knowledge on the part of Casio UK’s staff that the implementation and enforcement of the Casio Pricing Policy was illegal;
- that Casio UK’s staff tried to avoid creating written records of communications relating to the Casio Pricing Policy; and
- that resellers alerted Casio UK’s staff to the possibility that the implementation and enforcement of the Casio Pricing Policy was illegal.

Casio UK’s staff direct knowledge of illegality

- 3.161 On 9 January 2013, [Casio Employee 3] expressed his concern about contacting a reseller, with whom Casio UK had no direct commercial

²³¹ URN E_CAS05908 (Google Hangouts exchange between [Casio Senior Employee 4], [Casio Employee 8], [Casio Employee 3], [Casio Employee 7], [Casio Employee 1] and [Casio Employee 5] dated 20 March 2018 to 5 April 2018), p.2.

relationship, in order to ask it to raise its prices, a behaviour he described as **'price fixing'**.²³²

- 3.162 On 3 July 2014 [Casio Employee 8] emailed [Senior Employee 5], and stated, '[Casio Senior Employee 3] just came down and asking how [manufacturer] communicates to UK and European dealers about new pricing strategy? **It seems Europe may going to be in trouble with [Reseller 19] about illegal pricing.**.. [sic] So [Casio Senior Employee 3] is wondering how [manufacturer] does [sic].'²³³
- 3.163 As set out in paragraph 3.180, on 4 December 2015, [Casio Senior Employee 5] stated in an email to [Casio Senior Employee 3] and [Casio Senior Employee 7] that, '*We have already used this invoice in the way mentioned, although **we have to be very subtle about this topic, for obvious legal reasons.***'²³⁴ The CMA concludes from the context in which this statement was made that the '*way mentioned*' and the '*topic*' that [Casio Senior Employee 5] was referring to was the use of sanctions against [Reseller 1] for its non-compliance with the Casio Pricing Policy.
- 3.164 The evidence also shows that employees of [a subsidiary of Casio Japan] had concerns about asking resellers to modify their prices and shared these with Casio UK staff. On 22 February 2018, in a Google Hangouts message between [Casio Senior Employee 4] and [Casio Employees 16, 17, 12 and 18], all of [a subsidiary of Casio Japan], [Casio Senior Employee 4] stated that [Reseller 5] was offering a PX160 at £404. [Casio Employee 16] replied: '*My contact (...) is not in the office today. **So it is very dangerous for me to call [Reseller 5] without knowing anyone.***'²³⁵

Casio UK's staff tried to avoid creating written records

- 3.165 In an email on 4 June 2015, from [Casio Senior Employee 5] to [Casio Employee 1], [Casio Employee 3] and [Casio Employee 5], [Casio Senior Employee 5] referred to a letter to be sent out to resellers regarding changes to '*P prices*'. In the email he stated, '***I have been banned from any***

²³² URN E_CAS00176 (Internal Casio UK email correspondence between [Casio Employee 6], [Casio Employee 1], [Casio Employee 3], [Casio Employee 5] and [Casio Senior Employee 5] dated 12-13 March 2013), p.2.

²³³ URN E_CAS00758 (Email from [Casio Employee 8] to [Casio Senior Employee 5] dated 3 July 2014). [Emphasis added by the CMA]

²³⁴ URN E_CAS02330 (Email exchange between [Casio Employee 8], [Casio Senior Employee 5], [Casio Senior Employee 3] and [Casio Senior Employee 7] dated 4-7 December 2015). [Emphasis added by the CMA]

²³⁵ URN E_CAS05858 (Google Hangouts exchange between [Casio Employee 16], [Casio Employee 17], [Casio Employee 12], and [Casio Employee 18], all of [a subsidiary of Casio Japan], and [Casio Senior Employee 4] dated 21-23 February 2018), p.1. [Emphasis added by the CMA]

reference to P.' Earlier in this email, [Casio Senior Employee 5] instructed the sales team to *'begin the process of getting P back in place from now'*.²³⁶

- 3.166 On 8 June 2015 [Casio Senior Employee 5] sent an internal email to [Casio Employee 1], [Casio Employee 3] and [Casio Employee 5] with the subject line *'Price sheets'*. The email attached two price lists, one for Main dealers and one for Stockist dealers. Each of the price lists contained a column headed *'Margin Price'*. [Casio Senior Employee 5] stated in the body of the email, ***'we cannot email these out, only discuss with dealers face and leave a copy if required.'***²³⁷
- 3.167 Later, in April 2016, the Casio UK EMI Sales Team was instructed not to refer to *'RSP's'* in writing. On 19 April 2016, [Casio Senior Employee 4] emailed the Casio UK EMI Sales Team with the subject *'New Price lists (please read Carefully)'*. In this email, [Casio Senior Employee 4] stated: ***'Do not put anything in writing about RSP's [sic]Call them!'***²³⁸

Resellers alerting Casio UK to possible illegality

- 3.168 On 23 April 2014, [Employee] of [Reseller 61] emailed [Casio Employee 5] and stated, ***'I must admit I am getting more than a bit annoyed at all the price fixing that is going on with suppliers now. MAP pricing has the effect of diluting the market.'***²³⁹
- 3.169 On 18 April 2015, [Employee] of [Reseller 61] emailed [Casio Employee 3] and stated, ***'I'm disappointed that Casio still have not managed to stabilise the street prices on their products... I know there are legalities involved, and Casio I'm sure are being very careful not to be seen to be price***

²³⁶ URN E_CAS01774 (Email from [Casio Senior Employee 5] to [Casio Employee 1], [Casio Employee 3], and [Casio Employee 5], dated 4 June 2015). [Emphasis added by the CMA]

²³⁷ URN E_CAS01780 (Email from [Casio Senior Employee 5] to [Casio Employee 1], [Casio Employee 3] and [Casio Employee 5] dated 8 June 2015). In this instance the CMA suspect that *Margin Price* is substitutable with 'p price', 'target price' or 'street price', meaning the minimum advertised price as dictated by the policy. [Emphasis added by the CMA] See URN E_CAS01774 (Email from [Casio Senior Employee 5] to [Casio Employee 1], [Casio Employee 3] and [Casio Employee 5] dated 4 June 2015) in which [Casio Senior Employee 5] stated, *'I have been banned from any reference to P.'*

²³⁸ URN E_CAS02744 (Email from [Casio Senior Employee 4] to [Casio Employee 3], [Casio Employee 6], [Casio Employee 1], [Casio Employee 5], [Casio Employee 7], [Casio Employee 8] and [Casio Employee 9] dated 19 April 2016), p.1. [Emphasis added by the CMA]

²³⁹ URN E_CAS00614 (Email exchange between [Employee] of [Reseller 61] and [Casio Employee 5] dated 23 April 2014, [Casio Employee 5] later forwarded the email exchange to [Casio Senior Employee 5]), p.1. [Emphasis added by the CMA]

fixing, but other distributors have managed to level the playing field by publishing LAP (lowest advertised price).'²⁴⁰

- 3.170 On 13 February 2018, [Casio Employee 7] received an email from [Employee], [§] about [Reseller 14]'s uniform policy in relation to setting retail prices. The CMA is not making any findings in relation to [Reseller 14], including on whether it was subject to the Casio Pricing Policy. Notwithstanding this, the CMA considers that the response from [Employee] drew Casio UK's attention to the fact that any supplier attempting to influence resale prices may be acting illegally. [Employee] stated:

'Thank you for raising concern about [Reseller 14] Pricing. ...

[Reseller 14] does not allow its suppliers to seek to influence the prices that [Reseller 14] will charge its customers for products. Any attempt by a supplier to compromise [Reseller 14]'s complete independence in setting prices would potentially expose the supplier to the risk of regulatory action. **It is a fundamental principle of EC and national competition law that a retailer is free to set its prices as it wishes and a supplier is not able to impose, directly or indirectly, a minimum or fixed resale price upon a retailer.**

Our central pricing strategy is to offer value to customers through consistently low pricing across our whole range of products. (...) We therefore cannot agree to the price guidelines included in your email.

It is imperative that you never engage in this form of discussion, verbal or written, with any [Reseller 14] employee or ever discuss anything about [Reseller 14] pricing with other retailers.'²⁴¹

VI. Consequences for resellers of non-compliance

- 3.171 Casio UK sought to encourage compliance with its Casio Pricing Policy by means of threatening (directly or indirectly) sanctions against resellers who did not comply. As set out below, these sanctions took various forms, including resellers potentially paying higher prices for the Relevant Products and/or orders being delayed or unfulfilled by Casio UK.

²⁴⁰ URN E_CAS01687 (Email exchange between [Casio Employee 3] and [Employee] of [Reseller 42] dated 17-18 April 2015), p.1. [Emphasis added by the CMA]

²⁴¹ URN E_CAS05272 (Email from [Reseller 14] to [Casio Employee 7] dated 13 February 2018), p.2. [Emphasis added by the CMA]

3.172 For example, in December 2013, in an internal Casio UK email, [Casio Employee 3] stated, 'I do know for a fact that [Reseller 44] follow rather than set [pricing] trends, as I have advised him that he will lose his extra 5% if he is found to be first'.²⁴² The CMA infers from the context in which this comment was made that the 'extra 5%' refers to a discount on the trade price.

3.173 Similarly, in an email dated 21 April 2016, [Casio Employee 1] explained to [Employee] of [Reseller 65]:

'Your trade price is the far right column under the heading 'Market --' 'Marketing Contribution'. Basically, it's the lowest price on the sheet. **The marketing contribution is discretionary, which means we can withdraw it from any dealer that does not work with us regarding online pricing,** et cetera. Hope this is clear.'²⁴³

3.174 The CMA notes that the '*marketing contribution*' referred to in [Casio Employee 1]'s email had been introduced by Casio UK on 18 April 2016,²⁴⁴ together with its new terms and conditions, to help address the pricing problems in the online market. It was designed to be a lever to make Casio UK's resellers comply with the Casio Pricing Policy.²⁴⁵

3.175 [Employee] of [Reseller 27] in an email to [Casio Senior Employee 4] dated 7 December 2017 with the subject '*Urgent – Casio Prices*' expressed concern that if [Reseller 27] did not comply with the Casio Pricing Policy, it may be punished:

'We have at all times supported your marketing / pricing policies. However In light (sic) of the above we would also now like to compete in the market place with these retailers. Can you please urgently give us your assurance that we can now compete in the market place, particularly at this time of the year, without:

a. the threat of having our trading terms being changed for the marketing support column price to the standard trade column price and

²⁴² URN E_CAS01398 (Internal Casio UK email from [Casio Employee 3] dated 30 December 2013).

²⁴³ URN E_CAS02770 (Email from [Casio Employee 1] to [Employee], of [Reseller 65], dated 21 April 2016), p.1. [Emphasis added by the CMA].

²⁴⁴ This was actually entitled '*Marketing Support*' in the price list itself.

²⁴⁵ [Casio Employee 1] confirmed that '*working with* [Casio UK] *regarding online pricing*' in this context meant having the prices at RSP. This was meant to be a threat though [Casio Employee 1] stated that he was not aware of it ever having been implemented - See URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.236, line 24 to p.237, line 18.

b. Casio conveniently running out of stock in response to any orders we place.’²⁴⁶

- 3.176 The CMA considers that the threat [Employee] cited of [Reseller 27] no longer being able to purchase Casio products at the marketing support price, likely meant [Reseller 27] paying at least 5% more – if [Reseller 27] qualified for the Stocking Plan price, or potentially 10% more if it only then qualified for the Standard Trade price.²⁴⁷
- 3.177 The second potential sanction [Employee] referred to is that Casio UK might put a ‘stop’ or ‘hold’ on orders that [Reseller 27] had placed with Casio UK until [Reseller 27] complied with the Casio Pricing Policy. [Reseller 1] witnesses also cited the implied/potential threat of orders being delayed or not fulfilled as a concern which had played a part in [Reseller 1] having adhered to the Casio UK Pricing Policy.²⁴⁸
- 3.178 All four witnesses interviewed by the CMA stated that these sanctions were not, to their knowledge, ever actually applied.²⁴⁹ There is, however, documentary evidence which shows that payment of an invoice from [Reseller 1] was at least temporarily withheld by Casio UK in late 2015.
- 3.179 On 4 December 2015, [Casio Employee 8] emailed [Casio Senior Employee 5] with the subject line ‘[Reseller 1] CDP120 invoice’ and stated:
- ‘[Casio Senior Employee 3]²⁵⁰ said to hold until [sic] end of December because we can use it when [Reseller 1] break pricing again.’

²⁴⁶ URN E_CAS05035 (Email from [Employee] of [Reseller 27] to [Casio Senior Employee 4] dated 7 December 2017), p.2. [Emphasis added by the CMA]

²⁴⁷ For example, at the time, if a reseller were to buy the AP460 at the Standard Trade price, there would be a margin of [X]% if sold at RSP, compared to margins of [X]% and [X]% if the reseller bought the product at the Stocking Plan and Marketing Support trade prices respectively - see URN E_CAS04747 (Casio EMI Main Dealer Price List dated 2 October 2017); also URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.236, lines 6-10; URN E_CAS02856 (Presentation titled ‘EMI UK Business Plans – May 2016’ dated 13 May 2016), p.8.

²⁴⁸ URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.67, lines 14-23 and p.98, lines 15-25; URN C_CAS02410 (Transcript of interview with [Reseller 1 Senior Employee 1] dated 14 January 2019), p.91, lines 15-25.

²⁴⁹ URN C_CAS02410 (Transcript of interview with [Reseller 1 Senior Employee 1] dated 14 January 2019), p.91, lines 1-4; URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.129, lines 5-10; URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.237, line 12 to p.238, line 4; URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.177, line 8.

²⁵⁰ [Casio Senior Employee 3], of Casio UK.

3.180 On 7 December 2015, [Casio Senior Employee 5] forwarded [Casio Employee 8]'s email to [Casio Senior Employee 3] and [Casio Senior Employee 7], and stated:

'We have already used this invoice in the way mentioned, although we have to be very subtle about this topic, for obvious legal reasons.'²⁵¹

3.181 The CMA considers that [Casio Senior Employee 5]'s statement that the invoice had '*already been used in this way*' is evidence that Casio UK had previously sanctioned [Reseller 1] for non-compliance with the Casio Pricing Policy, by means of withholding (temporarily) payment of the invoice.

3.182 The evidence shows that Casio UK considered additional, alternative sanctions from time to time, and that resellers considered the threat of such sanctions to be credible (see paragraphs 4.46ff below for details).

3.183 Based on the evidence above, the CMA concludes that:

- in at least one instance, Casio UK imposed sanctions on a reseller ([Reseller 1]) for non-compliance with the Casio Pricing Policy, albeit only temporarily;²⁵²
- irrespective of whether sanctions were imposed, they were credible and were at least threatened, directly or indirectly;²⁵³ and
- the fear of being sanctioned played an important part in encouraging resellers to adhere to the Casio Pricing Policy.²⁵⁴

D. Market Definition

3.184 As set out below, the CMA finds that the relevant market in this case is the supply through resellers of digital pianos and digital keyboards in the UK.

²⁵¹ URN E_CAS02330 (Email exchange between [Casio Employee 7], [Casio Senior Employee 5], [Casio Senior Employee 3] and [Casio Senior Employee 7] dated 4-7 December 2015).

²⁵² URN E_CAS02330 (Email exchange between [Casio Employee 8], [Casio Senior Employee 5], [Casio Senior Employee 3] and [Casio Senior Employee 7] dated 4-7 December 2015).

²⁵³ URN E_CAS02770 (Email exchange between [Casio Employee 1] and [Employee], of [Reseller 65], dated 20-21 April 2016), p.1.

²⁵⁴ URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.99, lines 9-19; URN C_CAS02410 (Transcript of interview with [Reseller 1 Senior Employee 1] dated 14 January 2019), p.189, lines 5-13 and p.257, line 21 to p.258, line 6.

I. Purpose of and framework for assessing the relevant market

- 3.185 When applying the Chapter I prohibition and Article 101(1) TFEU, the CMA is not obliged to define the relevant market, unless it is impossible, without such a definition, to determine whether the agreement in question has as its object or effect the appreciable prevention, restriction or distortion of competition.²⁵⁵
- 3.186 In the present case, the CMA considers that it is not necessary to reach a definitive view on market definition in order to determine whether there is an agreement between undertakings which has as its object the appreciable prevention, restriction or distortion of competition.²⁵⁶
- 3.187 Nonetheless, the CMA has formed a view of the relevant market as a conclusion on this is required in order to calculate Casio UK's 'relevant turnover' in the market affected by the Infringement for the purposes of establishing an effect on trade between Member States and the level of the financial penalty that the CMA has decided to impose on the Addressees.

II. Relevant product market

- 3.188 The CMA's starting point for assessing the relevant product market was the focal products which are subject to the Infringement. The CMA then assessed whether the product market should be broadened based on demand and supply side substitutability with other products.
- 3.189 Casio UK supplies digital pianos and digital keyboards.²⁵⁷ Within these two product types, Casio UK categorises its products further by product segments and ranges and then by individual models within each range as set out in Figure 3.1 above.
- 3.190 The digital piano segments identified by Casio are (i) Grand Hybrid pianos (GP product range);²⁵⁸ (ii) standard/premium digital pianos, which include the

²⁵⁵ Case T-62/98 *Volkswagen AG v Commission* EU:T:2000:180, paragraph 230, and Case T-29/92 *SPO and Others v Commission* EU:T:1995:34, paragraph 74.

²⁵⁶ See also *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, in which the CAT held, at paragraph 176, that in Chapter I cases 'determination of the relevant market is neither intrinsic to, nor normally necessary for, a finding of infringement'.

²⁵⁷ Digital Pianos have 88 keys and emulate the sound of an acoustic piano through digitally sampled and reproduced sound. Digital Keyboards have fewer than 88 keys and play a wider range of sounds than a Digital Piano. URN C_CAS01505 (Response dated 26 September 2018 to September RFI), paragraphs 1.4-1.5.

²⁵⁸ Casio has explained that the Grand Hybrid range of premium hybrid pianos is its most sophisticated product type. It was developed in collaboration with acoustic piano manufacturer C. Bechstein and uses a different technology for the weighting action of these keys than used in other digital pianos. URN C_CAS01505 (Response dated 26 September 2018 to September RFI), paragraphs 1.6-1.7.

Celvanio (AP product range) and the Privia (PX product range);²⁵⁹ and (iii) entry-level digital pianos (the Compact Digital Piano or CDP product range).²⁶⁰

- 3.191 The digital keyboard segments identified by Casio UK are standard/premium and mini keyboards.²⁶¹ Within the standard/premium keyboard segment, Casio UK has identified three product ranges: high grade keyboards, key lighting keyboards and standard keyboards.²⁶²
- 3.192 The evidence shows that the Casio Pricing Policy in general and the Infringement more specifically covered the full range of digital piano and digital keyboards supplied by Casio UK, including each of the segments identified by Casio UK and listed above (see Figure 3.1 and paragraphs 3.127 to 3.159).
- 3.193 Given that the Infringement, and the Casio Pricing Policy more generally, covered each of the product segments within both digital pianos and digital keyboards, all digital pianos and digital keyboards are focal products. It would make no difference for the calculation of any potential financial penalty if the CMA separated out different segments/ranges within these two product types into multiple product markets or aggregated the turnover of all the products into a single market. Therefore, for the purposes of this Decision, the CMA has not made any finding as to the existence of any narrower product markets and has instead aggregated all of the segments/ranges within digital pianos and all of the segments/ranges within digital keyboards in a single market.
- 3.194 For the reasons above, it is not necessary for the CMA to evaluate demand and supply side substitutability between the product segments identified by Casio UK.
- 3.195 The CMA finds that the relevant product market for the purpose of this case is the supply of digital pianos and digital keyboards.

²⁵⁹ The Celviano AP and Privia PX ranges are both 88-key weighted action digital pianos. The Celviano range are upright digital home pianos. The Privia range are compact portable digital pianos. URN C_CAS01505 (Response dated 26 September 2018 to September RFI), paragraph 1.10.

²⁶⁰ The CDP range comprises entry-level products that are primarily aimed at beginners. URN C_CAS01505 (Response dated 26 September 2018 to September RFI) paragraph 1.13.

²⁶¹ See Figure 3.1.

²⁶² URN C_CAS01505 (Response dated 26 September 2018 to September RFI) paragraph 1.16.

III. Sales through different distribution channels

- 3.196 Casio UK supplies its digital pianos and digital keyboards through different distribution channels. The vast majority of sales of the Relevant Products are through Independent resellers and Mass market resellers. In addition, a small proportion of Casio UK's sales of the Relevant Products [0-5]% of its annual EMI sales in the UK) are made directly to the Education channel.²⁶³ The CMA has considered whether the market for the supply of digital pianos and digital keyboards should be further subdivided by distribution channel.
- 3.197 The CMA would not normally define a separate market for different resellers, where resellers are sold an identical product. In determining whether there are separate markets, the key question is whether conditions of competition differ significantly between different reseller groups, such that some resellers could get better terms for the same requirements.²⁶⁴
- 3.198 Casio UK has described sales via its Education channel as being direct to customers. These are typically individual negotiated sales procured by education establishments via tender processes as well as occasional sales to influencers.²⁶⁵ It therefore appears that customers purchasing through this channel are less likely to consider purchasing through a Mass market or Independent reseller as a substitute to purchasing directly from Casio. As such the conditions of competition are likely to differ between the Education channel and Independent and Mass market resellers. For these reasons, for the purposes of this case the CMA has not included the Education channel in the relevant market. [✂]
- 3.199 As set out above in Section C *Casio Pricing Policy* paragraphs 3.67 to 3.183, the evidence shows that Casio's Pricing Policy applied to the Independent resellers channel and there is also evidence that Casio UK intended for the Casio Pricing Policy to apply to Mass market resellers as well.²⁶⁶ Moreover,

²⁶³ Casio UK also sells [0-10]% via [Reseller 32], its distributor for the island of Ireland. URN C_CAS02424 (Response dated 27 March 2019 to First March RFI), Annex 1.

²⁶⁴ See Merger assessment guidelines, CC2/OFT1254, paragraphs 5.2.28 to 5.2.31.

²⁶⁵ URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.62, lines 15-20 and URN C_CAS01516 (Response dated 3 October 2018 to September RFI) paragraph 12.2.4; In a presentation titled '*EMI UK Business Plans – June 2015*', slide with heading '*State Education Music Hub Development*' described Casio UK's new relationship with an '*Education Specialist*', which included sales to music education hubs, as well as '*open tender opportunities*' – URN E_CAS01800 (Presentation titled '*EMI UK business Plans – June 2015*' dated 12 May 2015), p.26; URN C_CAS02405 (Transcript of interview with [Casio Senior Employee 4] dated 1 February 2019), p.62, lines 15-20.

²⁶⁶ For example: in an email dated 2 March 2017 to [Casio Employee 3], [Reseller 45], an independent reseller, provided a link to the CTK3400 listing on [Reseller 14 - a Mass market reseller]. [Casio Employee 3] forwarded this internally within Casio, and stated: ' [Reseller 14 - a Mass market reseller] @ £89 for CTK3400 inc psu - cheaper than stockist price + vat'. [Casio Senior Employee 4], in response, stated, '*Please tell any retailers we*

the EMI sold via these channels are likely to be seen as demand-side substitutes by customers purchasing musical instruments.²⁶⁷ As such, the CMA considers that conditions of competition are sufficiently similar between the Mass market and Independent channels that, for the purposes of this case, there is no need to further sub-divide the relevant market by reseller type.

- 3.200 Based on the above, the CMA concludes that for the purposes of this case, the relevant market for digital pianos and digital keyboards includes both the Mass market and Independent channels, but not the Education channel.

IV. Relevant geographic market

- 3.201 The CMA has considered whether the market is likely to be narrower or wider than the whole of the UK.

- 3.202 [✂], ²⁶⁸. Pricing and product availability appear to be the same across all UK regions. Similarly, the Mass market channel does not appear to be geographically split. Moreover, the Casio Pricing Policy to which the Infringement relates and Casio UK's recommended selling prices, discussed further below, were set for the UK in its entirety.²⁶⁹ Therefore, the CMA concludes that for the purpose of this case the relevant geographical market was at least as wide as the UK.

- 3.203 The CMA has also considered whether the relevant geographic market may be wider than the UK. Casio UK has explained that Casio UK is an independently operated subsidiary of its parent company, Casio Japan, and Casio UK sets its own recommended selling price (RSP), which is a UK-specific, suggested re-selling price. Casio UK has stated that this is

are looking into this as a matter of urgency and we hope to have resolved at some point next week' - URN E_CAS03983 (Email exchange between [Employee] of [Reseller 45], [Casio Employee 3], [Casio Senior Employee 4], [Casio Employee 1], [Casio Employee 5] and [Casio Employee 7] dated 2 March 2018). It does appear to have been more difficult for Casio UK to restrict the prices of Mass market resellers. For example, in an email dated 11 December 2013 to [Reseller 66], an independent reseller, [Casio Employee 1] stated, 'I appreciate the lack of margin at the low end of the keyboard range, this is of course due to mass market accounts e.g. [Reseller 13] and [Reseller 67] etc. as they pretty much set their own prices' - URN E_CAS00415 (Email from [Casio Employee 1] to [Reseller 66] dated 11 December 2013), p.2.

²⁶⁷ For example, in an email dated 20 August 2014 to [Casio Employee 7], [Reseller 14], a Mass market reseller, stated: *'I have a couple of ongoing profitability issues that causing [sic] me problems. The CDP120 (Matching [Reseller 17], [an European independent reseller]) and the CTK3200AD (Matching [Reseller 10] [an independent reseller]). Particularly on the CDP 120 we will need to pull this from sale if we continue to lose money on it.'* URN E_CAS00967 (Email from [Employee] of [Reseller 14] to [Casio Employee 7] dated 20 August 2014), p.3.

²⁶⁸ Casio UK sells to the island of Ireland and on into Northern Ireland via distributor [Reseller 32].

²⁶⁹ In particular, the Casio Pricing Policy applied to online sales of resellers, which could be made to any UK location.

intended to take account of specific factors affecting the UK markets for such products, based on Casio UK's experience and assessment of competitive market conditions.²⁷⁰ This appears to have been the case for at least the first part of the Relevant Period. However, the evidence indicates shows that from the second half of 2016, Casio UK's RSPs were agreed with [a subsidiary of Casio Japan] under harmonised pan-European pricing, see paragraph 3.81. These harmonised prices appear to have been set first in euro and then translated into pounds sterling. This could suggest that the market may have been wider than the UK.

3.204 The CMA concludes that Casio UK's early approach of setting a different recommended selling price in the UK, relative to other countries, shows that at least for the earlier part of the Relevant Period there was a separate relevant geographic market for the sale of digital pianos and digital keyboards in the UK. In the light of this, the primarily UK-based distribution network and adopting a cautious approach, the CMA concludes for the purpose of this case that the geographic market is no smaller than the whole of the UK.

3.205 This is also consistent with the approach adopted by the European Commission in its 2003 Decision in relation to vertical price fixing by Yamaha for musical instruments, which found national markets.²⁷¹ The Commission found that distribution networks are organised on a country by country basis or groups of countries; and differences in taste and traditions are considerable.²⁷²

V. Conclusion on market definition

3.206 In view of the foregoing, the CMA finds that the relevant market in this case is the supply through resellers of digital pianos and digital keyboards in the UK.

4. LEGAL ASSESSMENT

A. Introduction

4.1 This Section sets out the CMA's legal assessment of Casio UK's agreement and/or concerted practice with [Reseller 1], one of its resellers, that [Reseller 1] would not advertise or sell digital pianos or keyboards supplied to it by Casio UK (the Relevant Products) below a certain

²⁷⁰ URN C_CAS01516 (Response dated 3 October 2018 to September RFI), paragraphs 1.4-1.5.

²⁷¹ Commission Decision of 16 July 2003 in Case COMP/37.975 *PO/Yamaha (Yamaha)*.

²⁷² The Commission also found that for some products price differences amount to up to 50%.

Minimum Price specified by Casio UK from time to time, in accordance with the Casio Pricing Policy.

- 4.2 As set out above, the CMA has reasonable grounds for suspecting that more than 50 other UK resellers of the Relevant Products (see footnote 203) were subject to the Casio Pricing Policy, and that resellers generally complied with Casio UK's requests to revert to the Minimum Price.²⁷³
- 4.3 However, for reasons of administrative efficiency, in accordance with its Prioritisation Principles,²⁷⁴ the CMA has decided to focus its findings on [Reseller 1] as one of the numerous resellers of the Relevant Products in order to demonstrate the existence of an agreement and/or concerted practice with Casio UK.
- 4.4 While the CMA has concluded that [Reseller 1] is a party to an infringing agreement and/or concerted practice with Casio UK, the CMA has decided not to address this Decision to [Reseller 1].²⁷⁵ The evidence shows that the Casio Pricing Policy was operated as a standard policy applicable to all or at least the vast majority of Casio UK's resellers. The CMA therefore considers it reasonable and proportionate to apply Rule 10(2) of the CMA's Rules in this case and address this Decision only to Casio UK and its ultimate parent company, Casio Japan, identified in paragraph 3.33 above. This does not preclude the CMA from taking enforcement action against [Reseller 1] or other resellers in any future cases.
- 4.5 For present purposes, the CMA's findings are made by reference to the following provisions of the UK and EU competition rules:
- Section 2 of the Act prohibits (among other matters) agreements and concerted practices between undertakings which may affect trade within the UK and have as their object or effect the prevention, restriction or distortion of competition within the UK, unless they are excluded or exempt in accordance with the provisions of Part 1 of the Act. References to the UK are to the whole or part of the UK.²⁷⁶ The prohibition imposed by section 2 of the Act is referred to as 'the Chapter I prohibition'.

²⁷³ See paragraph 3.126 above.

²⁷⁴ Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/299784/CMA16.pdf

²⁷⁵ Under Rule 10(2) of the CMA's Rules, where the CMA considers that an agreement infringes the Chapter I prohibition and/or the prohibition in Article 101(1) TFEU, the CMA may address its infringement decision to fewer than all the persons who are or were a party to that agreement.

²⁷⁶ Section 2(1) and (7) of the Act.

- Article 101(1) TFEU prohibits (among other matters) agreements and concerted practices between undertakings which may affect trade between EU Member States and which have as their object or effect the prevention, restriction or distortion of competition within the EU, unless they are exempt in accordance with Article 101(3) TFEU.

4.6 Section 60 of the Act sets out the principle that, so far as is possible (having regard to any relevant differences between the provisions concerned), questions arising in relation to competition within the UK should be dealt with in a manner which is consistent with the treatment of corresponding questions under EU competition law.

4.7 Section 60 of the Act also provides that the CMA must act (so far as it is compatible with the provisions of Part I of the Act) with a view to securing that there is no inconsistency with the principles laid down by the TFEU and the European Courts, and any relevant decision of the European Courts.²⁷⁷ The CMA must, in addition, have regard to any relevant decision or statement of the European Commission (the Commission).²⁷⁸

B. Undertakings

I. Key legal principles

4.8 For the purposes of the Chapter I prohibition and Article 101 TFEU, the focus is on the activities of an 'undertaking'. The concept of an 'undertaking' covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.²⁷⁹

4.9 An entity is engaged in 'economic activity' where it conducts any activity 'of an industrial or commercial nature by offering goods and services on the market'.²⁸⁰

4.10 The term 'undertaking' also designates an economic unit, even if in law that unit consists of several natural or legal persons.²⁸¹

²⁷⁷ The Act, section 60(2) and (4). The 'European Courts' means the Court of Justice (formerly the European Court of Justice) and the General Court (GC) (formerly the Court of First Instance). See the Act, section 59(1).

²⁷⁸ The Act, section 60(3). The Court of Justice recently held that national competition authorities '*may take into account*' guidance contained in non-legally binding Commission Notices (specifically the *Notice on agreements of minor importance which do not appreciably restrict competition under Article 101(1) of the Treaty on the Functioning of the European Union (De Minimis Notice)* [2014] OJ C291/01, but such authorities are not required to do so. See Case C-226/11 *Expedia Inc. v Autorité de la concurrence and Others*, EU:C:2012:795, paragraphs 29 and 31.

²⁷⁹ Case C-41/90 *Klaus Höfner and Fritz Elser v Macrotron GmbH*, EU:C:1991:161, paragraph 21.

²⁸⁰ Case C-118/85 *Commission v Italian Republic*, EU:C:1987:283, paragraph 7.

²⁸¹ Case C-97/08 P *Akzo Nobel NV v Commission*, EU:C:2009:536, paragraph 55.

II. Conclusion on undertakings

- 4.11 Casio UK, the entity directly involved in the agreement and/or concerted practice with [Reseller 1], was (and still is) engaged in the supply of digital keyboards, pianos and other electronic devices. [Reseller 1] was (and still is) engaged in the retail sale of musical instruments and accessories.
- 4.12 The CMA therefore concludes that both Casio UK and [Reseller 1] were, and still are, engaged in an economic activity and constitute/d undertakings for the purposes of the Chapter I prohibition and Article 101 TFEU during the Relevant Period and beyond.

C. Agreement and/or concerted practice

- 4.13 For the reasons set out below, the CMA finds that Casio UK and [Reseller 1] entered into an agreement and/or concerted practice that [Reseller 1] would not advertise or sell the Relevant Products below the Minimum Price in accordance with the Casio Pricing Policy.

I. Key legal principles

- 4.14 The Chapter I prohibition and Article 101 TFEU apply both to ‘agreements’ and ‘concerted practices’. It is not necessary, for the purposes of finding an infringement, to characterise conduct as exclusively an agreement or a concerted practice.²⁸² The aim of the Chapter I prohibition and Article 101 TFEU is to catch different forms of coordination between undertakings and thereby to prevent undertakings from being able to evade the competition rules simply on account of the form in which they coordinate their conduct.²⁸³

²⁸² Case C-8/08 *T-Mobile Netherlands BV and others v NMa*, EU:C:2009:343, paragraph 23 (citing Case C-49/92P *Commission v Anic Participazioni* [1999] EU:C:1999:356, paragraph 131). See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, [206(ii)].

²⁸³ Case C-382/12 P, *MasterCard Inc. v. European Commission*, EU:C:2014:2201, paragraph 63 and the case law cited. The unlawful co-ordination between undertakings may, for example, be characterised as a ‘concerted practice’ during the first phase of an infringement, but may subsequently have solidified into an ‘agreement’, and then been further affirmed, or furthered or implemented by, a ‘decision of an association’. This does not prevent the competition authority from characterising the co-ordination as a single continuous infringement. See Case T-9/99 *HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft mbH & Co. KG and Others v Commission*, EU:T:2002:70, paragraphs 186–188; Case C-238/05 *Asnef-Equifax, Servicios de Información sobre Solvencia y Crédito, SL v Asociación de Usuarios de Servicios Bancarios (Ausbanc)*, EU:C:2006:734, paragraph 32. See also Case T-305/94 etc *NV Limburgse Vinyl Maatschappij v Commission*, EU:T:1999:80, paragraph 696: ‘In the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the infringement precisely, for each undertaking and for any given moment, as in any event both those forms of infringement are covered by Article [101] of the Treaty.’

II. Agreement

- 4.15 The Chapter I prohibition and Article 101 TFEU catch a wide range of agreements, including oral agreements and ‘*gentlemen’s agreements*’.²⁸⁴ 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.²⁸⁵ An agreement may also consist of either an isolated act, or a series of acts, or a course of conduct.²⁸⁶
- 4.16 The key question in establishing an agreement 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.’²⁸⁷
- 4.17 The General Court has held that: ‘[...] it is sufficient that the undertakings in question should have expressed their joint intention to conduct themselves on the market in a specific way [...]’.²⁸⁸
- 4.18 However, it is not necessary to establish a joint intention to pursue an anti-competitive aim.²⁸⁹ The fact that a party may have played only a limited part in setting up an agreement, or may not be fully committed to its implementation, or may have participated only under pressure from other parties, does not mean that it is not party to the agreement.²⁹⁰
- 4.19 In the absence of an explicit agreement (for example, written down or based on a contract) between the parties to conduct themselves on the market in a specific way, tacit acquiescence by a party to conduct itself in the manner

²⁸⁴ Case C-41/69 *ACF Chemiefarma NV v Commission*, EU:C:1970:71, in particular, paragraphs 106–114.

²⁸⁵ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24 at [658]. See also Commission Decision 2003/675/EC *Video Games, Nintendo Distribution and Omega-Nintendo* [2003] OJ L255/33, paragraph 247.

²⁸⁶ Case C-49/92 P *Commission v Anic Partecipazioni SpA*, EU:C:1999:356, paragraph 81.

²⁸⁷ Case T-41/96 *Bayer AG v Commission*, EU:T:2000:242, paragraph 69 (upheld on appeal in Joined cases C-2/01 P and C-3/01 P *Bundesverband der Arzneimittel-Importeure eV and Commission v Bayer AG*, EU:C:2004:2, paragraphs 96–97).

²⁸⁸ Case T-7/89 *SA Hercules Chemicals NV v Commission*, EU:T:1991:75, paragraph 256.

²⁸⁹ Case T-168/01 *GlaxoSmithKline Services Unlimited v. Commission*, EU:T:2006:265, paragraph 77 (upheld on appeal in Joined cases C-501/06P etc *GlaxoSmithKline Unlimited v Commission*, EU:C:2009:610).

²⁹⁰ *Agreements and Concerted Practices (OFT401)*, December 2004 (adopted by the CMA Board), paragraph 2.8. See also Case T-25/95 *Cimenteries CBR and Others v Commission*, EU:T:2000:77, paragraphs 1389 and 2557 (this judgment was upheld on liability by the Court of Justice in Joined cases C-204/00 P etc *Aalborg Portland A/S and Others v Commission*, EU:C:2004:6, although the fine was reduced); and Case C-49/92 P *Commission v Anic Partecipazioni SpA*, EU:C:1999:356, paragraphs 79–80.

proposed by the other party is sufficient to give rise to an agreement for the purpose of the Chapter I prohibition and Article 101 TFEU.²⁹¹

- 4.20 The Commission's Vertical Guidelines, summarising the relevant case law and citing the judgments of the Court of Justice of the European Union (Court of Justice), describe how to establish tacit acquiescence to a unilateral policy:

'[...] in the absence of such an explicit acquiescence, the Commission can show the existence of tacit acquiescence. For that it is necessary to show first that one party requires explicitly or implicitly the cooperation of the other party for the implementation of its unilateral policy and second that the other party complied with that requirement by implementing that unilateral policy in practice.'²⁹²

- 4.21 The Vertical Guidelines provide examples of when tacit acquiescence may be deduced. Evidence of coercive behaviour or compulsion may point towards tacit acquiescence and is a relevant factor to consider. For instance:

'[...] for vertical agreements, tacit acquiescence may be deduced from the level of coercion exerted by a party to impose its unilateral policy on the other party or parties to the agreement in combination with the number of distributors that are actually implementing in practice the unilateral policy of the supplier. For instance, a system of monitoring and penalties, set up by a supplier to penalise those distributors that do not comply with its unilateral policy, points to tacit acquiescence with the supplier's unilateral policy if this system allows the supplier to implement in practice its policy.'²⁹³

- 4.22 However, a system of monitoring and penalties may not be necessary in all cases for there to be a concurrence of wills based on tacit acquiescence.²⁹⁴

- 4.23 The Chapter I prohibition and Article 101 TFEU apply to agreements irrespective of whether or not they are implemented.²⁹⁵ The fact that a party does not act on or subsequently implement, the agreement at all times does not preclude the finding that an agreement existed.²⁹⁶ In addition, the fact

²⁹¹ Case C-74/04 P *Commission v Volkswagen AG* EU:C:2006:460, paragraph 39; Case T-41/96 *Bayer AG v Commission*, EU:T:2000:242, and European Commission, *Guidelines on Vertical Restraints* [2010] OJ C130/01 (Vertical Guidelines), paragraph 25(a).

²⁹² Vertical Guidelines, paragraph 25(a).

²⁹³ Vertical Guidelines, paragraph 25(a).

²⁹⁴ Case C-260/09 P *Activision Blizzard Germany GmbH v Commission*, EU:C:2011:62, paragraph 77.

²⁹⁵ Commission decision of 29 September 2004 *French Beer* (Case COMP/C.37.750/B2), paragraph 64.

²⁹⁶ Case 86/82 *Hasselblad (GB) Limited v Commission*, EU:C:1984:65, paragraph 46; and Case C-277/87 *Sandoz v Commission*, EU:C:1990:6 (summary judgment), paragraph 3.

that a party does not respect the agreement at all times or comes to recognise that it can 'cheat' on the agreement at certain times does not preclude the finding that an agreement existed.²⁹⁷

4.24 Likewise, the fact that a party may have played only a limited part in the setting up of the agreement, or may not be fully committed to its implementation, or may have participated only under pressure from other parties does not mean that it is not party to the agreement.²⁹⁸

4.25 In particular, where an agreement has the object of restricting competition (as described below), parties cannot avoid liability for the resulting infringement by arguing that the agreement was never put into effect.²⁹⁹

III. Concerted practice

4.26 The prohibition on concerted practices prohibits, amongst other things, 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.³⁰⁰

4.27 Although the nature and extent of a concerted practice is addressed in the case law primarily in the context of so-called horizontal relationships (that is, between actual or potential competitors), it is also applicable to vertical relationships (that is, between undertakings at different levels of the supply chain).³⁰¹ The Court of Appeal has observed that:

²⁹⁷ Case T-141/89 *Tréfileurope v Commission*, EU:T:1995:62, paragraph 85; and Case C-246/86 *Belasco v Commission*, EU:C:1989:95, paragraphs 10 to 16.

²⁹⁸ OFT Competition law guideline on *Agreements and Concerted Practices* (OFT401), at paragraph 2.8. See also, for example, Case C-49/92P *Commission v Anic Participazioni*, EU:C:1999:356, paragraph 80; Cases T-25/95 *Cimenteries CBR SA v Commission*, EU:T:2000:77, paragraphs 1389 and 2557; and Case T-28/99 *Sigma Technologie di Rivestimento Srl v Commission*, EU:T:2002:76, at paragraph 40.

²⁹⁹ See, for example, Case 19/77 *Miller v Commission* EU:C:1978:19, at paragraphs 7 to 10; *French Beer* [2006] 4 CMLR 577; Case C-277/87 *Sandoz v Commission*, EU:C:1990:6; and Commission Decision 78/921/EEC *WANO Schwarzpulver* (IV/29.133) [1978] OJ L232/26.

³⁰⁰ Cases 48/69 etc *ICI Ltd v Commission*, EU:C:1972:70, paragraph 64. See also Case C-8/08 *T-Mobile Netherlands and Others v NMa*, EU:C:2009:343, paragraph 26; *JJB Sports plc v Office of Fair Trading* [2004] CAT 17, [151]–[153]; and Commission Decision 82/367/EEC *Hasselblad* (IV/25757) [1981] L161/18, in which the Commission stated at recital 47 (in a vertical context) that: 'For a concerted practice to exist it is sufficient for an independent undertaking knowingly and of its own accord to adjust its behaviour in line with the wishes of another undertaking.'

³⁰¹ See, for example, Case T-43/92 *Dunlop Slazenger International Ltd v Commission*, EU:T:1994:259 paragraph 101ff (concerted practice between Dunlop Slazenger and certain of its exclusive distributors in respect of various measures to enforce an export ban). See also the Commission Decision 2003/675/EC *Video Games, Nintendo Distribution and Omega-Nintendo* (COMP/35.587 etc) [2003] OJ L255/33, paragraphs 323–324 (agreements and/or concerted practices between Nintendo and its independent distributors to restrict parallel trade). Other

'The Chapter I prohibition catches agreements and concerted practices whether between undertakings at different levels or between those at the same level of commercial operation. An agreement between a supplier and a commercial customer, which may be called a vertical agreement, may breach the same prohibition as much as an agreement between competing suppliers of the same product or same type of product, which can be referred to as a horizontal agreement.'³⁰²

IV. Agreement and/or concerted practice between Casio UK and [Reseller 1]

Casio UK's communication of the Casio Pricing Policy

4.28 As set out in section 3 above, the CMA has found that as part of the Casio Pricing Policy, throughout the Relevant Period, Casio UK:

- instructed its resellers, including [Reseller 1], not to advertise or sell the Relevant Products online below the Minimum Price which it adjusted from time to time;³⁰³ this policy applied to the Relevant Products sold separately and, from some point during the Relevant Period, to certain bundles³⁰⁴ (made up of individual Relevant Products and certain accessories);
- monitored its resellers' online prices, including those of [Reseller 1], via a variety of methods across the period;³⁰⁵
- contacted resellers, including [Reseller 1], that offered the Relevant Products for sale online at a price below the Minimum Price from time to time;³⁰⁶ and

examples include: Commission Decision 72/403/CEE *Pittsburgh Corning Europe* (IV/26894) [1972] L272/35 (where a concerted practice was found between a supplier and a distributor); and Commission Decision 88/172/EEC *Konica* (IV/31.503) [1988] OJ L78/34, paragraph 36 (where there was a concerted practice between a supplier and a distributor).

³⁰² *Argos Limited and Others v Office of Fair Trading* [2006] EWCA Civ 1318, [28].

³⁰³ See paragraphs 3.83ff above.

³⁰⁴ See paragraph 3.89 above. [Casio Employee 1] confirmed in interview that Casio UK would either ring up its resellers to inform them about the permissible content and minimum price of bundles or communicate this information in meetings with them. See URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.268, lines 15-25.

³⁰⁵ See paragraphs 3.92ff above.

³⁰⁶ See paragraphs 3.98ff above.

- at times threatened sanctions against resellers that did not comply with the Casio Pricing Policy and on at least one occasion took enforcement action against [Reseller 1] for non-compliance.³⁰⁷

Resellers' adherence to the Casio Pricing Policy

- 4.29 The CMA has reasonable grounds for suspecting that more than 50 resellers were subject to, and generally agreed to adhere to the Casio Pricing Policy. However, for reasons of administrative efficiency, the CMA has chosen to focus its assessment of whether there was an agreement and/or concerted practice with Casio UK which infringed competition law on one reseller only, namely [Reseller 1].
- 4.30 However, the CMA considers that the Casio Pricing Policy could only be effective in its aim of protecting resellers' margins³⁰⁸ if there was general adherence to it by all or at least the vast majority of resellers making online sales of the Relevant Products.³⁰⁹
- 4.31 While some resellers occasionally sold the Relevant Products online below the Minimum Price specified by the Casio Pricing Policy, the evidence indicates that overall, adherence to the Casio Pricing Policy by resellers was high.³¹⁰
- 4.32 Based on this evidence, the CMA considers that many resellers were willing to comply with the Casio Pricing Policy and other resellers that may have

³⁰⁷ See paragraphs 3.171ff above.

³⁰⁸ See paragraph 3.75 above.

³⁰⁹ See, for example Casio UK internal email of 19 April 2016 from [Casio Senior Employee 4] regarding new price lists, stating: '(...) we have carefully planned to try and gain stability back in our market place & also to give confidence back to retailers in our full product line up. **This message has been delivered personally by me to our top eight retailers, all of whom supported it vehemently.** You guys have continued to deliver to **the rest of the network and to my knowledge, has been well received.**' (...) 'Email the price list to each dealer today if possible to give them time to change. (...). **Do not put anything in writing about RSP's....Call them!** (...) Please ensure your dealers know this is a period of transition for us, there will be problems, there will be retailers pushing their luck. **Ask them not to react, just call us while this beds in: Remember this is to support them and at their request.** Can you let me know when the top 20 accounts have been spoken too and acknowledged the price list.' – URN E_CAS02744 (Email from [Casio Senior Employee 4] to [Casio Employee 3], [Casio Employee 6], [Casio Employee 1], [Casio Employee 5], [Casio Employee 7], [Casio Employee 8] and [Casio Employee 9] dated 19 April 216). [Emphasis added by the CMA]

³¹⁰ See Casio UK internal email of 10 March 2017 from [Casio Employee 1] stating (in relation to complaints about a resellers who hadn't changed its price to the specified price): '*For the record this has been very awkward this week not just with [Reseller 1] but other dealers (most of who changed LAST FRIDAY as requested) asking why it's taken a week for this to be sorted. Unless we sort out the speed at which we sort out online discrepancies we will lose the support of the dealers, most of who want to help and support our policy which is ultimately better for everyone.*' – URN E_CAS04023 (Internal Casio UK email from [Casio Employee 1] dated 10 March 2017), p.1. [Emphasis added by the CMA]

wanted to discount online to remain competitive on price, had little choice but to comply.³¹¹ However, the CMA makes no findings in respect of resellers of the Relevant Products other than [Reseller 1].

[Reseller 1]'s agreement with the Casio Pricing Policy

- 4.33 On the basis of the evidence set out in Section 3 above and the findings of fact below, the CMA concludes that Casio UK entered into an agreement and/or concerted practice with [Reseller 1] that [Reseller 1] would not advertise or sell the Relevant Products online below the Minimum Price.
- 4.34 This was based on the joint understanding that the Casio Pricing Policy applied to all or at least the vast majority of Casio UK's UK resellers, and that Casio UK would take steps to ensure that other resellers of the Relevant Products also maintained their prices at or above the Minimum Price.
- 4.35 The CMA finds that, in accordance with the Casio Pricing Policy, the agreement and/or concerted practice between Casio UK and [Reseller 1] applied to both Relevant Products (sold individually) and (from some point during the Relevant Period) also to bundles made up of individual Relevant Products and certain accessories.
- 4.36 The CMA finds that the agreement and/or concerted practice between Casio UK and [Reseller 1] lasted from 4 February 2013 to 5 April 2018 (the Relevant Period).

Background: [Reseller 1]'s relationship with Casio UK

- 4.37 [Reseller 1] has been a Casio UK reseller for [X].³¹² [Reseller 1] started selling Casio UK's products online in [X].³¹³ It sells the Relevant Products online via its website, [X]. Between [X] and [X], [Reseller 1] also sold the Relevant Products via an alternative website, [X]. In addition to its own websites, [Reseller 1] also sells some of the Relevant Products via third party marketplaces such as eBay and Amazon.
- 4.38 [Reseller 1]'s relationship with Casio UK during the Relevant Period was (and still is) based on an SDA³¹⁴ for certain, but not all of the Relevant Products. However, neither the SDA nor any other written contractual

³¹¹ See paragraphs 3.126ff above.

³¹² [Casio Employee 1] stated in interview: 'I've dealt with [Reseller 1] for [X] years nearly.' - URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.33, line 4.

³¹³ URN C_CAS00348 ([Reseller 1] Section C of response to s.26 Notice), pp.4-5.

³¹⁴ URN V_CAS00009 (Selective Distribution Agreement between Casio UK and [Reseller 1] dated 1 November 2015).

agreement between Casio UK and [Reseller 1]'s in the CMA's possession mention the restrictions which formed the basis of the Casio Pricing Policy.

Casio UK's requests to [Reseller 1] to raise its prices in accordance with the Casio Pricing Policy and [Reseller 1] general compliance with these requests throughout the Relevant Period

- 4.39 The evidence (set out in further detail in paragraphs 4.57ff below) shows, however, that on numerous occasions throughout the Relevant Period, Casio UK instructed [Reseller 1] orally or via email to increase its online prices to the Minimum Price and that [Reseller 1] generally complied with these requests, though not always straight away.
- 4.40 Senior Employees of [Reseller 1] explained in interview that [Reseller 1] was regularly contacted by Casio UK, sometimes several times a day, and that communications tended to be oral (mostly by telephone) and occasionally by email.³¹⁵
- 4.41 When asked about this in interview, [Reseller 1 Senior Employee 1] stated:
- 'Well, we had a guide price, a retail price, that they wanted things to work to. (...) they had another word for it, which was MAP, minimum advertised price. That's what they used to talk about, but didn't actually really say it, and, (...), that's where they wanted, (...), the products to be. And (...) occasionally, they'd call or something just saying, "Do you know your prices have dropped a little bit?" "Yeah, we did". "Well, you know, why?", and we'd tell them why and then, (...), **there was an inference of, you need to work with this**

³¹⁵ [Reseller 1 Senior Employee 2] stated that at some point he started to avoid answering these calls, which meant that email exchanges became more frequent. URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 1] dated 14 January 2019), p.62, lines 3-5; [Reseller 1 Senior Employee 1] confirmed that he, too, tended to try to avoid answering phone calls from Casio UK. URN C_CAS02410 (Transcript of interview with [Reseller 1 Senior Employee 1] dated 14 January 2019), p.93, line 15 to p.94, line 14:

CMA: '(...) how would you describe the fact that a supplier is on the phone to you two to three times a day telling you to change your online price?'

[Reseller 1 Senior Employee 1]: 'Er, annoying, to be quite honest with you. Frustrating, time -- waste of time, you know. I had reps sat there constantly chasing their tail to try and, you know, control the price. It's like, don't ring me. **In fact, I didn't answer the phone quite often.** I believe that I know what they're ringing for, I'm not answering it, we're doing what we're doing.' [Emphasis added by the CMA]

CMA: 'But you said on occasion, you did?'

[Reseller 1 Senior Employee 1]: 'Yeah, occasionally, I had to, because obviously we need to speak to them, we need to order stock, we needed to know about the new products. So, we had to maintain a relationship to be a, you know, to be a dealer and have the knowledge I needed to pass on to our staff to be able to sell the products in the store. So, all them things are part and parcel of the business relationship, but there's been, you know, time of a number of years where the amount of time, you know, wasted with phone calls to try and do the impossible, you know, we used to get a lot of them. And quite often, we used to be the first to get the calls because of our prominence.'

otherwise you may miss out on whether it be deals, whether it be stock when we wanted it, et cetera.

So, we used to, what's the word, play the game, maybe, do what we needed to do'.³¹⁶

- 4.42 [Reseller 1 Senior Employee 2] confirmed that [Reseller 1] usually changed its online prices in response to Casio UK's instructions for fear of sanctions, though not always immediately. He said that [Reseller 1] also tried to stay competitive in other ways, for example by creating unique bundles consisting of Relevant Products and certain accessories.^{317, 318}

³¹⁶ URN C_CAS02410 (Transcript of interview with [Reseller 1 Senior Employee 1] dated 14 January 2019), p.83, lines 1-16. [Emphasis added by the CMA]; [Reseller 1 Senior Employee 2] confirmed in interview that Casio UK was operating the Casio Pricing Policy (a form of Minimum Advertised Price (MAP) policy) in relation to the Relevant Products. He stated that this policy applied both to stand-alone products and bundles, at least in relation to Casio's 'significant bestselling products', so 'maybe not, not the very entry level, 40-quid thing, maybe from the £100 one up' (...) 'probably everything apart from the SA in the end' - URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.82, lines 12-23; p.83, line 11 to p.84, line 26.

³¹⁷ URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.67, line 11 to p.68, line 10: [Reseller 1 Senior Employee 2]: 'I wouldn't want to speak to them because they would just say, "I want that product at £299. Can you change your prices?". (...) So, so, I'd then say, "(...) look, [Reseller 1 Senior Employee 1], do I have to be at £299?", I'd probably go to him and say, "Look, they're ringing me up again", and he'd say, "Look, just leave it for a few days". Then they'd keep on at it, and he said, "Look, you ..." And that's when it would be, "Look, you better put it back. Or we're not going to get these next deliveries. I can feel it coming." It was like that. And then, so we never I don't know if we actually ever got penalised, if you know what I mean, because we tried to stretch it to ...' CMA: 'But you would eventually come inline?' [Reseller 1 Senior Employee 2]: 'We'd, we'd eventually, yeah cos... But I'd try to I would then try and bundle it up, which it's just like a constant battle, you know?'

[Reseller 1 Senior Employee 1] confirmed that [Reseller 1] tried to stay competitive while also complying with the Casio Pricing Policy. He stated: 'We used the voucher code things for a way in the background to try and be more competitive and we used to change prices when we needed to because other people had.' URN C_CAS02410 (Transcript of interview with [Reseller 1 Senior Employee 1] dated 14 January 2019), p.83, lines 16-18.

³¹⁸ On bundles, [Reseller 1 Senior Employee 2] also stated in interview: 'Yeah, so if they said I had to be at £199 with a product, for example, right, so everyone's at £199. You see, you see them. Well, hang on, I want to stand out a bit here, so I'll put a stand with it and whatever. So, once they grasped that, they then said, "Well, everybody has to be at that now with that bundle". So really like nailing you down, like. So we had to bundle up. We were putting everything in up to the kitchen sink to, to then give us the added value company that we not that we even want to though as well. I need to you know, we want to make money, we're shoving these things in, it all costs money, but the perception to the customer is bigger than, than the cost.' URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.65, line 20 to p.66, line 3.

[Reseller 1 Senior Employee 1] similarly stated that one of the other things that [Reseller 1] used to do to stay competitive, 'which was considered breaking their guidelines, is we regularly did packages. So, we might have the products and then instead of them just being the product as it comes from Casio, we'd put a bench with it, we'd put a set of headphones, we'd put a book; added value, but at no extra cost. So again, to be competitive but without, erm, necessarily breaking their guidelines, as they call it, you know, for the pricing, which wasn't liked either, occasionally, but we still did it.' - URN C_CAS02410 (Transcript of interview with [Reseller 1 Senior Employee 1] dated 14 January 2019), p.100, lines 19-26.

Fear of sanctions in case of non-compliance with the Casio Pricing Policy on [Reseller 1]'s part throughout the Relevant Period

- 4.43 In interview, [Reseller 1 Senior Employee 1] and [Reseller 1 Senior Employee 2] stated that although they could not recall any sanctions for non-compliance with the Casio Pricing Policy having actually been imposed on [Reseller 1], there had always been concerns about such sanctions.
- 4.44 While threats of sanctions had not necessarily been expressed in direct terms, in [Reseller 1]'s view, there was a clear understanding, or inference, that there might be repercussions if [Reseller 1] did not *'work with'* Casio UK. [Reseller 1 Senior Employee 1] described the approach as a *'Can you help us and we'll help you'* approach.³¹⁹
- 4.45 In particular, [Reseller 1]'s Senior Employees stated in interview that they had been concerned about:
- Casio UK refusing to deliver the stock [Reseller 1] had ordered, or supplying it late, thus causing [Reseller 1] to be unable to fulfil its customers' orders or otherwise putting it at a competitive disadvantage;³²⁰
 - [Reseller 1] not getting *'as much marketing support'* for some of the events that it wanted to do; or support for shopping centre promotions in its [REDACTED] area to [REDACTED],³²¹ and/or
 - [Reseller 1] no longer getting other support from Casio UK when it needed it, for example provision of a demonstrator, or indeed [Reseller 1] no longer being a Casio dealer.³²²

³¹⁹ C_CAS02410 (Transcript of interview with [Reseller 1 Senior Employee 1] dated 14 January 2019), p.97, line 21 to p.98, line 16. [Reseller 1 Senior Employee 2] explained in interview that Casio UK had stated that [Reseller 1] would not *'be looked on as supporting Casio'* if it had refused to adhere to the Casio Pricing Policy. He stated that he had seen this as *'a bit of an indirect threat'*. URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.98, lines 10-18. See also p.67, lines 16-22 where [Reseller 1 Senior Employee 2] stated: *'It was, it was perceived that you wouldn't be seen as being onside with Casio, I think. They sort of mentioned that they didn't want dealers that weren't working with them. They never threatened to shut us down as an account, or, but the, the inference was there that if you're not working with them then you're not going to get the products. Or you're not even going to have an account possibly, from my perspective.'*

³²⁰ URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.67, lines 13-23; p.98, lines 15 – 25; URN C_CAS02410 (Transcript of interview with [Reseller 1 Senior Employee 1] dated 14 January 2019), p.97, lines 13-23.

³²¹ URN C_CAS02410 (Transcript of interview with [Reseller 1 Senior Employee 1] dated 14 January 2019), p.97, line 21 to p.98, line 3.

³²² URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.99, lines 9–19.

Threats of sanctions (direct, indirect and/or implied) from Casio UK and actual sanctions imposed on [Reseller 1] during the Relevant Period

4.46 The documentary evidence shows that most of the time, Casio UK staff adopted a 'request' rather than 'compel' attitude towards enforcing the Casio Pricing Policy towards [Reseller 1]. However, as [Reseller 1 Senior Employee 2] and [Reseller 1 Senior Employee 1] confirmed in interview, it seemed at least credible that Casio UK would impose sanctions on [Reseller 1] for non-compliance with the Casio Pricing Policy. The evidence also shows that such sanctions were, in fact, considered and on at least one occasion, actually imposed on [Reseller 1] by Casio UK, albeit only temporarily:

- On 29 July 2015, [Casio Employee 3] emailed his colleague [Casio Senior Employee 5], complaining about [Reseller 1] '*playing around again*' and suggesting: '***Perhaps we should put [Reseller 1] back to the pre price decrease price list for a while or even stockist pricing to see how they cope.***'³²³
- On 16 November 2015, [Casio Senior Employee 5] sent an internal email with the subject line '*Pricing*'. In it, [Casio Senior Employee 5] stated that [Resellers 1] were, '*refusing to "get in line" and as a result pricing has collapsed this weekend. We need to discuss what can we do and how should we respond to this. For example, **should we supply GP [grand piano] to [Reseller 1]? Should we support with marketing funds etc?***'³²⁴
- An email exchange of 4 December 2015 shows that, in late 2015, Casio UK did **temporarily withhold payment of a [Reseller 1] invoice** in an attempt to get [Reseller 1] to comply with its pricing request/s. When [Casio Employee 8] suggested withholding payment of the invoice until

³²³ URN E_CAS01956 (Email exchange between [Senior Employee 5] and [Casio Employee 3] dated 29 July 2015), pp.1-5. – [Emphasis added by the CMA]. [Casio Employee 3] also wrote: '*Can you speak to [Casio Employee 1] or [Reseller 1] direct? I have had 3 complaints in two days about their pricing - Everyone else seem to be playing ball except them. I sent you an email from [Employee] at [Reseller 45] this morning and I had a call yesterday saying that despite me assuring him this has been sorted it all fell apart when he looked on [Reseller 1] website who are playing around again and we aren't even a week into the new gentleman's agreement.*' [Text in brackets added by the CMA] The CMA concludes from this that [Casio employee 3] was suggesting that [Reseller 1] be given less favourable trading terms (ie a higher trade price) as a consequence of not adhering to the Casio Pricing Policy.

³²⁴ URN E_CAS02250 (Email from [Casio Senior Employee 5] to [Casio Senior Employee 7], [Casio Senior Employee 3], [Casio Employee 8] and [Casio Employee 9] dated 16 November 2015). [Emphasis added by the CMA]

the end of December in order to 'use it when [Reseller 1] break pricing again', [Casio Senior Employee 5] stated:

'Unfortunately we need to pay this invoice now. We have already used this invoice in the way mentioned, although we have to be very subtle about this topic, for obvious legal reasons. 3 weeks ago [Reseller 1] and [Reseller 27] were totally in line and correct. The current problem is caused by [Reseller 10] (...) and others, inevitably including [Reseller 1] and [Reseller 27], have followed. This is always a very complex situation and at this time we cannot point the finger at [Reseller 1], frankly its wrong.'³²⁵

- 4.47 From 25 April 2016, Casio UK also attempted to use the newly introduced 'marketing support' as a lever to get Casio UK's dealers to comply with the Casio Pricing Policy.³²⁶

Evidence showing an understanding between Casio UK and [Reseller 1] throughout the Relevant Period that [Reseller 1] was allowed to price below the Minimum Price temporarily to match other resellers of the Relevant Products

- 4.48 Documentary evidence (set out in detail below) shows that there were regular instances when [Reseller 1] openly referred to its intention to lower its prices for the Relevant Products because another reseller was not adhering to the Casio Pricing Policy.
- 4.49 The CMA concludes from this that there was an understanding between Casio UK and [Reseller 1] that resellers (including [Reseller 1]) were allowed to drop their prices below the Minimum Price temporarily to match a competitor's lower price/s, provided that they raised them again once their competitor/s did.³²⁷ On occasion, Casio UK expressly advised this action as

³²⁵ [Casio Employee 8] sent the initial email with the subject line '[Reseller 1] CDP120 invoice' to her Casio UK colleague [Casio Senior Employee 5], stating that '[Casio Senior Employee 3] said to hold untill [sic] end of December because we can use it when [Reseller 1] break pricing again'. On 7 December 2015, [Casio Senior Employee 5] forwarded this email to his Casio UK colleagues [Casio Senior Employee 3] and [Casio Senior Employee 7] (copying [Casio Employee 8]), with the quote set out above - URN E_CAS02330 (Email exchange between [Casio Employee 8], [Senior Employee 5], [Casio Senior Employee 3] and [Casio Senior Employee 7] dated 4-7 December 2015).

³²⁶ See paragraph 3.174 above.

³²⁷ This understanding was confirmed in interview by [Casio Employee 1] in relation to an email exchange with [Reseller 1] in 2017. CMA: '[Reseller 1] could match while it's sorted out?' [Casio Employee 1]: 'Yes.' CMA: 'So, this, this is consent from Casio that resellers can [price] -- below the RSP for the duration until these issues are fixed?' [Casio Employee 1]: 'Yeah. They would probably have done it anyway, but yes.' - URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.287, lines 12-20.

a temporary measure until Casio UK had ensured that the Minimum Price/s was/were reinstated.³²⁸

- 4.50 [Reseller 1 Senior Employee 2] confirmed in interview that [Reseller 1] was constantly checking its competitors' prices and attempted to remain competitive despite the Casio Pricing Policy. Therefore, when [Reseller 1] found a competitor advertising one or more of the Relevant Products below the Minimum Price, it would often match it, at least temporarily.³²⁹

Occasional 'cheating' by [Reseller 1] during the Relevant Period no impediment to finding of an agreement and/or concerted practice with Casio UK

- 4.51 Some of the evidence suggests that [Reseller 1] did not fully comply with Casio UK's requests and/or instructions at all times. On occasion throughout the Relevant Period, [Reseller 1] 'cheated' on the minimum set price, that is, lowered its price for the Relevant Products to below the Minimum Price even when none of its competitors had done so. However, [Reseller 1] tended to revert to the Minimum Price when 'caught' for fear of sanctions.³³⁰ This shows that it did consider there to be an agreement between it and Casio UK that it would generally implement the Casio Pricing Policy. In any event, based on the totality of the evidence in the CMA's possession, [Reseller 1]'s 'cheating' was normally limited to a small subset of the product range and focussed on different products over time.
- 4.52 Furthermore, [Reseller 1]'s non-compliance in part and/or its 'cheating' on the agreement and/or concerted practice at certain times does in any event not preclude the finding that an agreement and/or concerted practice existed.³³¹

³²⁸ For example, see URN E_CAS00055 (Email from [Casio Senior Employee 5] to [Reseller 5] dated 21 January 2013), p.1.

³²⁹ [Reseller 1 Senior Employee 2] explained in interview that resellers were generally supposed to inform Casio UK first before matching a competitor:

CMA: *'Did Casio expect resellers to seek approval before matching competitors' prices? Did they, would they have expected you if you were going to match, would they have expected you to tell them first?'*

[Reseller 1 Senior Employee 2]: *'Yeah, they tried to do that. Yeah. Well, yeah, they did expect us to do that. Reality is that ... sometimes I did that. Majority of time, I didn't.'* - URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.209, line 23 to p.210, line 2.

³³⁰ See URN C_CAS02332 (Reseller 1 Transcript of interview with [Senior Employee 2] dated 14 January 2019), p.67, line 11 to p.68, line 10.

³³¹ See paragraph 4.23 above. Furthermore, in the CMA's view, the evidence of 'cheating' is offset by the volume and quality of evidence (set out in detail below) indicating that [Reseller 1] 'agreed' with the Casio Pricing Policy and that at any given time during the Relevant Period, [Reseller 1] was generally supportive of, and agreed to abide by, or acquiesced in, the Casio Pricing Policy for the majority of Relevant Products.

[Reseller 1] monitoring and reporting other resellers who did not comply with the Casio Pricing Policy during the Relevant Period

- 4.53 As set out above, [Reseller 1] was actively watching its competitors' online pricing. On numerous occasions during the Relevant Period, [Reseller 1] reported other resellers to Casio UK for advertising or selling the Relevant Products online below the Minimum Price. In the CMA's view this, too, confirms that [Reseller 1] understood there to be an agreement and/or concerted practice in relation to the Casio Pricing Policy which meant that it would not advertise or sell the Relevant Products below the Minimum Price.
- 4.54 In fact, the evidence shows that [Reseller 1] was particularly active in policing the Casio Pricing Policy and that Casio UK provided regular feedback to it on breaches it raised (such as 'sorted' or 'we are on it'), confirming that the breaches of the Casio Pricing Policy by other resellers that [Reseller 1] had brought to Casio UK's attention had been rectified or were being followed up.

Detailed evidence by year supporting a finding of agreement and/or concerted practice between [Reseller 1] and Casio UK throughout the Relevant Period

- 4.55 Below is evidence (set out separately for each year during the Relevant Period) which supports the CMA's finding that there was an agreement and/or concerted practice between Casio UK and [Reseller 1] that [Reseller 1] would adhere to the Casio Pricing Policy.
- 4.56 Where appropriate, the evidence has been arranged by type of conduct, for example:
- [Reseller 1] monitoring and complaining about other resellers not adhering to the Casio Pricing Policy;
 - [Reseller 1] agreeing to raise its prices to the Minimum Price for the Relevant Products on request from Casio UK;
 - [Reseller 1] requesting permission from, or declaring its intention to match competitors' lower prices to Casio UK, indicating that there was an understanding that such 'matching' was generally permissible on a temporary basis until competitors' prices were in line with the Casio Pricing Policy again; and
 - [Reseller 1] declaring its general support for/complaining about the negative effects of its adherence to the Casio Pricing Policy.

2013

- 4.57 The evidence for 2013 shows that there was an agreement and/or concerted practice between Casio UK and [Reseller 1] that [Reseller 1] would adhere to the Casio Pricing Policy.

[Reseller 1] monitoring and complaining about other resellers not adhering to the Casio Pricing Policy

- 4.58 For example, on 4 February 2013, [Reseller 1 Senior Employee 2] sent an email to [Casio Senior Employee 5] and [Casio Employee 1] regarding the pricing of the CTK3200 on Amazon by two other retailers stating:

‘116.98 [Reseller 10] CTK 3200 ON AMAZON AND [Reseller 9] NOT MUCH DIFFERENT. They are both getting lower and lower on Casio Products. Please have a look.’³³²

- 4.59 On 27 February 2013, [Reseller 1 Senior Employee 2] sent an email to [Casio Employee 1] and [Casio Senior Employee 5] with a link to the CPD120 on Amazon. In his email, [Senior Employee 2] stated:

‘Please can you sort out [Reseller 68] or stop supplying them they are constantly getting cheaper and cheaper. Its [sic] not just one product either they just keep undercutting by pence starting a rolling downhill. (...) I will have no option but to match if you cannot sort them out.’

- 4.60 [Casio Employee 1] responded: ‘*We are on it thanks.*’³³³

- 4.61 There are numerous other examples in 2013 of [Reseller 1] reporting to Casio UK the ‘non-compliant’ online pricing of the Relevant Products by other resellers,³³⁴ which confirm the understanding between Casio UK and [Reseller 1] about the application of the Casio Pricing Policy.

³³² Casio UK followed up on this with a call to [Reseller 9] which resulted in [Reseller 9] raising its price. URN E_CAS00080 (Email from [Casio Employee 3] to [Casio Employee 1], [Casio Senior Employee 5] and [Casio Employee 5] dated 4 February 2013), pp.1-2.

³³³ URN E_CAS00108 (Email exchange between [Reseller 1 Senior Employee 2] and [Casio Employee 1] dated 27 February 2013); In interview, [Reseller1 Senior Employee 2], when asked what his statement, ‘*I will have no option but to match if you cannot sort them out*’, meant, explained that he would have then had to go down in price. Asked about the meaning of [Casio Employee 1]’s response, he said that he understood this to mean that Casio UK would, ‘*sort it*’, by getting [Reseller 68] ‘*back to the MAP price they want them at by dictating to them in - by going to visit them in some cases to like they’ve done with us*’ - URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.126, line 5 to p.127, line 4.

³³⁴ That is, pricing below the price specified by Casio UK. For example, on 1 March 2013, [Reseller 1 Senior Employee 2] emailed [Senior Employee 5] and [Casio Employee 1] attaching a link to [Reseller 28]’s website and stating: ‘*which bit does [Reseller 28] NOT GET!!!*’ - URN E_CAS00124 (Email from [Reseller 1] to [Casio Senior Employee 5] and [Casio Employee 1] dated 1 March 2013); On 12 March 2013, [Reseller 1 Senior Employee 2]

[Reseller 1] agreeing to raise its price/s to the Minimum Price on request from Casio UK (both in response to price-matching and occasional 'cheating')

- 4.62 The evidence for 2013 shows that on many occasions when [Reseller 1] was setting prices for the Relevant Products below the Minimum Price, it was matching another competitor. On those occasions, it was generally prepared to raise prices again on request from Casio UK provided that/as soon as its competitor/s did.
- 4.63 The same was true on occasions when [Reseller 1] was simply 'cheating', that is, for example, not just matching a competitor's price but beating it by a penny so that it would be the cheapest one online.³³⁵ Again, the evidence shows that it was generally prepared to raise prices again when caught.³³⁶
- 4.64 For example, on 25 February 2013, [Casio Employee 3] sent an internal email to [Casio Employee 1] with the subject line 'CDP-220 ~ [Reseller 1]', stating: 'As it is internet day (oh joy) ... can you have a word with [Reseller 1] today when you call them as they have the CDP-220 on line at £399.00 but

sent an email to [Casio Senior Employee 5] and [Casio Employee 1], attaching a link to the website of [Reseller 63], showing a price for a CTK6200. [Casio Employee 1] replied later that day 'sorted' – URN E_CAS00174 (Email exchange between [Casio Employee 1] and [Reseller 1 Senior Employee 2] dated 12 March 2013); On 15 March 2013, [Reseller 1 Senior Employee 2] emailed [Casio Senior Employee 5] and [Casio Employee 1], attaching a link to eBay – URN E_CAS00185 (Email from [Reseller 1 Senior Employee 2] to [Casio Senior Employee 5] and [Casio Employee 1] dated 15 March 2013). On 18 March 2013, [Reseller 1 Senior Employee 2] emailed [Casio Senior Employee 5] and [Casio Employee 1] a link to a [Reseller 9] listing with the statement 'CDP120 UNDER [Reseller 9] AND [Reseller 68] ON AMAZON AGAIN!!' – URN E_CAS00186 (Email from [Reseller 1 Senior Employee 2] to [Casio Senior Employee 5] and [Casio Employee 1] dated 18 March 2013). On 12 August 2013, [Reseller 1 Senior Employee 2] sent an email to [Casio Senior Employee 5] and [Casio Employee 1] with a subject line 'ctk4200 – [Reseller 27] [Reseller 68] ([Reseller 45]) and [Reseller 21] all under on amazon' attaching links to three Amazon listings. [Casio Employee 1] responded the same day, saying that he was unable to contact one of the dealers on the links until the next morning so this would not be sorted until then – URN E_CAS00317 (Email from [Casio Employee 1] to [Reseller 1 Senior Employee 2] dated 3 September 2013); On 29 November 2013, [Reseller 1] sent an email with a subject line 'ap245 484.00' to [Casio Employee 1], attaching a link to the [Reseller 8] website. On 2 December 2013, [Casio Employee 1] responded 'sorted'. – URN E_CAS00392 (Email exchange between [Reseller 1] and [Casio Employee 1] dated 29 November to 2 December 2013).

³³⁵ 'And so, occasionally, I'd, I'd beat them as well anyway, so I would be the cheapest. We used to have this thing where we'd just have a look and beat them by a penny, you know' (...) 'and then they'd ring, "Well, nobody else is at that price?". "Oh, are they not?" and (...) then I'd speak to [Reseller 1 Senior Employee 1] and say (...), "What am I meant to do here?" and he went, "Look, you better just put it back because I've just put an order in and they might not send them".' URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.63, lines 13-16; See also p.201, lines 10-16: 'we called it like "chancing our arm". We'd just stick something at a lower price here and there, to see if they picked up on it, and then to then put it back, and sort of make out, "Oh, somebody else must have changed them. We've put it back." So we were just ... playing the game.'

³³⁶ It is not always clear from the evidence itself whether [Reseller 1] was matching a competitor's price or simply 'cheating' at any given time.

this includes free double stand and headphones mentioned by [Reseller 70] last week.’ [Casio Employee 1] responded shortly afterwards: ‘[Resellers 1] have now moved to £[X] inc X stand. Could whoever this account is please have a word as [Resellers 1] were matching these.’³³⁷

- 4.65 On 2 July 2013, [Casio Employee 1] sent an email to his colleague [Casio Senior Employee 5] saying: ‘*[Employee] [Reseller 21] informed me that on Amazon [Reseller 10], [Reseller 28] and [Reseller 1] are also at £625 (...) I will call [Reseller 1]*’ (no products mentioned). [Casio Employee 1] later replied: ‘*[Reseller 1] sorted!*’³³⁸
- 4.66 The CMA concludes from this that [Reseller 1] raised its prices in response to [Casio Employee 1]’s call. This is supported by [Casio Employee 1]’s confirmation in interview that his reference to the term ‘*sorted*’ in connection with pricing complaints from resellers generally meant that the price/s in question had been raised back to the Minimum Price (which was initially referred to as the ‘*Guide Price*’ and later on as ‘*RSP*’).³³⁹
- 4.67 Another example of this is provided by an email exchange between [Casio Employee 1] and [Reseller 1 Senior Employee 2] in early December 2013. On 3 December 2013, [Reseller 1] (via its [X] email address) sent an email to [Casio Employee 1] with the subject line ‘*px and aps all altered - cdp still out*’ and a link to a product listing on Amazon.
- 4.68 [Casio Employee 1] replied the same day and stated: ‘This would be much easier sorted out over the phone, but as you cannot find the time to call us could you also urgently look at the following: PX-750 PX-780 PX-350 AP-250’. On 4 December 2013, [Reseller Senior Employee 2] replied, and said: ‘*Sorry for not getting back to you. I do not have my mobile at the moment it is in for repair and I have been mad busy. I have changed these as requested.*’³⁴⁰

³³⁷ URN E_CAS00107 (Internal Casio UK email exchange dated 25 February 2013), p.2; In his interview, [Casio Employee 1] explained that ‘*internet days*’ were days introduced by [Casio Senior Employee 5] where the [X] like [Casio Employee 1] would be office-based and spend all day contacting resellers to deal with the build-up of complaints, (or threats) of resellers about other resellers’ pricing which they had received in the previous weeks or months. URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.113, lines 20-26.

³³⁸ URN E_CAS00276 (Email exchange between [Casio Employee 1] and [Casio Senior Employee 5] dated 2 July 2013).

³³⁹ For example, URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.126, lines 6-17; p.163 lines 10-14; p.211, lines 9-12, p.302, lines 17-20.

³⁴⁰ [Casio Employee 1] forwarded the email internally saying: ‘*this is (at last) a response from [Reseller 1]*.’ URN E_CAS00397 (Email from [Casio Employee 1] to [Casio Employee 5], [Casio Employee 3] and [Casio Senior Employee 5] dated 4 December 2013), p.1. [Emphasis added by the CMA]

- 4.69 In interview, [Reseller 1 Senior Employee 2] explained that he thought that the meaning of [Casio Employee 1]'s statement that this, '*would be much easier sorted out over the phone*', was twofold.
- First (and most importantly), [Casio Employee 1] preferred to speak to him directly as he knew that he was then able to get him to implement any price changes directly while they were on the phone rather than sending numerous emails with requests to change which [Reseller 1 Senior Employee 2] often ignored for as long as he could.
 - Second, Casio UK had also said more generally that it did not want to discuss pricing in writing. [Reseller 1 Senior Employee 2] thought that this may have been because it was not sure if it was, '*doing the right thing*'.³⁴¹
- 4.70 When asked about the meaning of [Casio Employee 1]'s request to '*urgently look at the following*', [Reseller Senior Employee 2] explained that it meant that [Reseller 1] were not '*at the price they want us to be at for those products, PX-750, 780, 350 and AP-250*'. The CMA concludes that this was another request to [Reseller 1] to raise its online prices for the products in question to the Minimum Price which [Reseller 1] then confirmed to Casio UK it had complied with.
- [Reseller 1] requesting permission from, or declaring its intention to match competitors' lower prices temporarily to, Casio UK**
- 4.71 On 1 March 2013, [Reseller 1 Senior Employee 2] sent an email with the subject line, '*[Reseller 68] still under price*', to [Casio Senior Employee 5] and [Casio Employee 1] with a link to CPD120 on Amazon and stating:
- 'cpd120 £317 plus 3.99 delivery on AMAZON by [Reseller 68] still!!!! I have no option now but to match they have potentially had 3 days well under price!!'
- 4.72 [Casio Employee 1] replied to [Reseller 1 Senior Employee 2] saying that Casio UK had made and was continuing to make calls to the relevant resellers following [Reseller 1] sending him the link and that it was making some progress. [Reseller 1 Senior Employee 2] replied asking [Casio Employee 1] to let him know when they were '*sorted*' for him '*to correct*'.³⁴²

³⁴¹ URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.175, line 5 to p.177, line 6.

³⁴² URN E_CAS00125 (Email exchange between [Reseller 1 Senior Employee 2] and [Casio Employee 1] dated 1 March 2013), pp.1-2. In interview, [Reseller 1 Senior Employee 2] confirmed that the term '*match*' meant going

- 4.73 The CMA concludes that this email exchange shows both an understanding between Casio UK and [Reseller 1] that [Reseller 1] was allowed to match competitors' lower prices temporarily and that [Reseller 1] was generally prepared to revert to the Minimum Price again, once its competitors had done so.

2014

- 4.74 The evidence for 2014 continues to show that [Reseller 1] agreed with, and/or generally adhered to, the Casio Pricing Policy.

[Reseller 1] monitoring and complaining about other resellers not adhering to the Casio Pricing Policy and sometimes requesting permission to price match

- 4.75 As in 2013, [Reseller 1] regularly complained to Casio UK about other resellers pricing online below the Minimum Price, sometimes combined with a request to match, or the statement, '*had to match*'.³⁴³
- 4.76 For example, on 19 Mar 2014, [Reseller 1] (via its [REDACTED] email address) emailed [Casio Senior Employee 5] and [Casio Employee 1] with the subject line '*[Reseller 10] STILL UNDER WITH CASIO ON AMAZON FOR AGES NOW - CAN I MATCH?!*' with links to the Amazon and [Reseller 10] websites.³⁴⁴

down to the lowest competitor price. He also stated that '*making some progress*' in his view meant that [Casio Employee 1] had '*got some of the dealers who were under the "dictated price" to go to the price they want*' and some not. URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.149, lines 3-9, and p.150, line 25 to p.151, line 1.

³⁴³ The latter again supports the finding of an understanding between Casio UK and [Reseller 1] that [Reseller 1] could temporarily match other resellers' lower prices as part of the agreement and/or concerted practice between Casio UK and [Reseller 1].

³⁴⁴ URN E_CAS00573 (Email from [Reseller 1] to [Casio Senior Employee 5] and [Casio Employee 1] dated 19 March 2014), p.1.

There are numerous other examples of pricing complaints from [Reseller 1] in 2014. For example, [Reseller 1] emailed [Casio Employee 1] with the subject line '*is this ok?*' attaching a link to CDP120 on the [Reseller 7] website. [Casio Employee 1] replied: '*for now ok but this is going to be looked into further in the next 2-3 weeks*' – URN E_CAS00580 (Email from [Reseller 1] to [Casio Employee 1] dated 26 March 2014); [Reseller 1] emailed [Casio Employee 1] and [Casio Senior Employee 5] with a link to an Amazon listing stating '*had to match*' – URN E_CAS00603 (Email from [Reseller 1] to [Casio Employee 1] and [Casio Senior Employee 5] dated 8 April 2014); A very similar example is another email of [Reseller 1] of 8 April 2014 attaching a link to Amazon with the subject line '*Matched*' – URN E_CAS00604 (Email from [Reseller 1] to [Casio Employee 1] to [Casio Senior Employee 5] dated 8 April 2014); [Reseller 1] emailed [Casio Employee 1] and [Casio Senior Employee 5] with the subject line, '*[Reseller 27]!!*' and a link to the [Reseller 27] website (regarding a casio-privia-px-150-digital-piano-deluxe-bundle) and stated '*WE ARE [REDACTED] AND ALWAYS HAVE BEEN FOR THR [sic] FULL PACKAGE. HERE ARE OUR CURRENT PRICES*' with a link to [Reseller 1] [REDACTED] website – URN E_CAS00649 (Email from [Reseller 1] to [Casio Senior Employee 5] and [Casio Employee 1] dated 12 May 2014); [Reseller 1] sent [Casio Employee 1] and [Casio Senior Employee 5] an email with the subject line '*[Reseller 28] under price on [REDACTED]*', attaching a link

[Reseller 1] agreeing to raise its price/s to the Minimum Price on request from Casio UK (both in response to price-matching and occasional 'cheating')

- 4.77 Like the 2013 evidence, the evidence for 2014 shows that when [Reseller 1] was advertising or selling the Relevant Products online below the Minimum Price (either in an attempt to 'cheat' or because it was matching another competitor's lower online prices),³⁴⁵ it was generally prepared to raise prices back to the Minimum Price on request from Casio UK.³⁴⁶
- 4.78 For example, on 1 May 2014, [Casio Employee 1] sent an internal email to [Casio Senior Employee 5] stating: '*I have just spoke [sic] to [Reseller 1 Senior Employee 2] at [Resellers 1] and he will change PX-150*'. [Casio Senior Employee 5] replied: '*Good news from [Reseller 1 Senior Employee 2] ...*'³⁴⁷

to the website. URN E_CAS00684 (Email exchange between [Casio Employee 1] and [Casio Employee 5], forwarding an earlier email from [Reseller 1], dated 27 May 2014); For example: [Reseller 1] complained about one of its competitors' offering discounts via discount codes, see URN E_CAS00733 (Email from [Reseller 1] to [Casio Employee 1] (among others) dated 24 June 2014); [Reseller 1] sent an email to [Casio Senior Employee 5] and [Casio Employee 1], with the subject line stating '*[Reseller 28] UNDER STILL - IF ALL THE LINKS ARE NOT SORTED BY AM TOMORROW IAM MATCHING THEM ALL! - [Reseller 1 Senior Employee 1] I HAVE SENT LOADS!*' The email included a link to the PX150BK on Amazon. The same email exchange shows that on the next day, [Casio Employee 1] informed [Casio Senior Employee 5] via email that he had spoken to [Reseller 1 Senior Employee 2] and explained that [Casio Employee 5] had spoken to [Reseller 28] and [Reseller 10] and they would change [prices] as soon as possible the next day. [Casio Employee 1] then stated that [Reseller 1 Senior Employee 2] would not change prices that evening as a result. This is consistent with [Reseller 1]'s explanation that they tried to stay competitive as much as they could and didn't usually raise their prices to MAP unless and until their competitors were doing the same – URN E_CAS01151 (Email exchange between [Casio Employee 1] and [Casio Senior Employee 5], attaching an earlier email from [Reseller 1], dated 15 October 2014), pp.1-2; Similarly, on 18 October 2014, [Reseller 1] sent an email with the subject line: '*[Reseller 10], [Reseller 27], [Reseller 28], [Reseller 3] GHAVE [sic] ALL MESSED UP THE PRICES SO I HAVE HAD TO MATCH!!!*' to [Casio Employee 1] and [Casio Senior Employee 5] – URN E_CAS01170 (Email from [Reseller 1] to [Casio Employee 1] and [Casio Senior Employee 5] dated 18 October 2014), p.4.

³⁴⁵ In an email from [Casio Senior Employee 5] to [Casio Employee 1], in response to a complaint about [Reseller 1] by [Reseller 45], [Casio Senior Employee 5] noted: '*We do need to encourage [Reseller 1] not to react to small 'off the radar' price changes, this does increasingly point the finger back to [Reseller 1], not sure how we change this other than direct conversation*'. URN E_CAS00694 (Email from [Casio Senior Employee 5] to [Casio Employee 1] dated 2 June 2014).

³⁴⁶ [Reseller 1]'s occasional attempts to 'cheat' often made them the subject of complaints from other resellers. For example, on 2 May 2014, [Reseller 27] sent an email to [Casio Employee 1] complaining about [Reseller 1]'s 'street prices' and stating: '*Thank you for your assistance in correcting the PX150 and the PX 350 street prices on [Reseller 1] website. This is really appreciated. I am not sure why these are being corrected one at a time and not all at the same time. We still have issues with [Reseller 1]'s street prices. Apart from the PX-150 and the PX-350, for example the CDP-120 at £285 / PX-350 at £574 / PX-850 at £749 / AP-450BK at £799 are still out of line.*' - URN E_CAS00635 (Email from [Reseller 27] to [Casio Senior Employee 5] dated 1 May 2014), p.1; Another complaint from [Reseller 27] about [Reseller 1]'s pricing is set out in an email to [Casio Senior Employee 5] of 3 March 2014 - URN E_CAS00541 (Email from [Reseller 27] to [Casio Senior Employee 5] dated 3 March 2014), p.1.

³⁴⁷ URN E_CAS00632 (Email from [Casio Employee 1] to [Casio Senior Employee 5] dated 1 May 2014).

- 4.79 Likewise, on 15 May 2014, [Reseller 1] (via its [✂] email address) sent an email to [Senior Employee 5] with the subject line '[✂] - [Reseller 1]- AMAZON DONE TO MAP EBAY NEXT'.³⁴⁸
- 4.80 This email confirms that [Reseller 1] was familiar with the term 'MAP' and actually referred to it in some of its communications with Casio UK.^{349,350}
- 4.81 When asked about the meaning of this email in interview, [Reseller 1 Senior Employee 2] stated:
- 'Casio were dictating what price to be at in terms of MAP price, the manufacturer advertised price, that they wanted you to be at on your website. They were also telling you what price they wanted you to be at on eBay and Amazon, which was generally the same thing. So, they may have at that point said: "Put them there", and then we've done Amazon and we were, are doing eBay next.'³⁵¹
- 4.82 When asked why [Reseller 1] would have sent the email in question to [Casio Senior Employee 5], [Reseller 1 Senior Employee 2] explained that the likely reason was that [Casio Senior Employee 5] had earlier got in touch with [Reseller 1] on the phone to request that it raise its price for a certain product to the Minimum Price. Although [Reseller 1] might have initially tried to resist this request over the phone, [Casio Senior Employee 5] would have likely told [Reseller 1] that it wouldn't '*be seen as being favourable*' if it didn't change the price in question. At the same time, he would have assured [Reseller 1] that he would '*sort everyone else out*' if [Reseller 1] raised its

³⁴⁸ URN E_CAS00653 (Email from [Reseller 1] to [Casio Senior Employee 5] dated 15 May 2014).

³⁴⁹ Another example of [Reseller 1] itself referring to the term MAP in its communication with Casio UK is an email complaint of 19 September 2014 to [Senior Employee 5] and [Casio Employee 1] with the subject line '*[Reseller 27] under MAP NOW!! CDP120 298.99*' – URN E_CAS01017 (Email from [Reseller 1] to [Casio Senior Employee 5] and [Casio Employee 1] dated 19 September 2014). In interview, [Reseller 1 Senior Employee 2] explained that this email would have likely been sent as a follow-up to a request from Casio UK to [Reseller 1] to raise their price for the CDP120. Its purpose would have been to justify why [Reseller 1]'s price was below the agreed MAP. [Reseller 1 Senior Employee 2] stated that Casio UK always wanted to see evidence of competitors' prices that [Reseller 1] were allegedly matching and therefore always asked [Reseller 1] to send them links which [Reseller 1 Senior Employee 2] said it regularly did. URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.116, lines 5–14.

³⁵⁰ [Reseller 1 Senior Employee 1] confirmed in interview that 'MAP' (minimum advertised price) was a term that Casio UK used to talk about as the price where they wanted their products to be. URN C_CAS02410 (Transcript of interview with [Reseller 1 Senior Employee 1] dated 14 January 2019), p.83, lines 6-9.

³⁵¹ URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.107, lines 20-25.

price. [Reseller 1] would have then emailed afterwards to report that it had done so.³⁵²

- 4.83 Another example of [Reseller 1] changing the prices of the Relevant Products on request from Casio UK is an email exchange of 28 October 2014. That day, [Employee] of [Reseller 1] emailed [Casio Employee 1] placing orders. [Casio Employee 1] replied: *'I didn't want to bother you on the phone again! but the changes we spoke about earlier really need to take affect [sic] as soon as possible or else there will be a domino effect online overall (I'm under pressure from HQ on this [Employee] so I really would appreciate your urgent attention) if there are [sic] any problems at your end just let me know.'*³⁵³ [Casio Employee 1] later replied to [Employee]'s original email, saying: *'All changes are showing now :) many thanks!!'*³⁵⁴
- 4.84 Likewise, on 7 November 2014, following a complaint from [Reseller 45] about [Resellers 1]'s pricing of the CTK 3200 with and without AC adaptor, [Casio Employee 1] stated in an internal email *'Just caught [Reseller 1 Senior Employee 2] and he will sort them'*.³⁵⁵

2015

- 4.85 The evidence for 2015 continues to show that [Reseller 1] agreed with, or at least knowingly went along with the Casio Pricing Policy.

[Reseller 1] agreeing to raise its price/s to the Minimum Price on request from Casio UK (both in response to price-matching and occasional 'cheating')

- 4.86 As in previous years, the evidence for 2015 indicates that [Reseller 1] generally agreed to raise its prices on request from Casio UK, both in response to occasional 'cheating' and where it had dropped its prices in order to match a competitor and that competitor's prices had been 'sorted'.
- 4.87 For example, on 5 January 2015, [Casio Senior Employee 5] sent an email to [Casio Employee 1] asking him to chase [Reseller 1] and another retailer regarding the PX-860, explaining that [Reseller 1] had followed the latter.

³⁵² URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.109, lines 17-23.

³⁵³ URN E_CAS01207 (Email from [Casio Employee 1] to [Reseller 1] dated 28 October 2014), p.1.

³⁵⁴ URN E_CAS01208 (Email from [Casio Employee 1] to [Reseller 1] dated 28 October 2014), p.1.

³⁵⁵ URN E_CAS01235 (Email from [Reseller 45], later forwarded internally by [Casio Employee 3] to [Casio Employee 1], [Casio Employee 5] and [Senior Employee 5] dated 7 November 2014), pp.1-2.

[Casio Employee 1] replied on 6 January 2015, stating that both were 'sorted'.³⁵⁶

- 4.88 Similarly, on 13 October 2015, [Senior Employee 2] sent an email with links to various resellers and products to [Casio Senior Employee 5] UK. [Casio Senior Employee 5] forwarded the email internally noting: '*I am in the middle of sorting [Reseller 1] and pricing in general.*' Shortly afterwards, [Casio Senior Employee 5] followed up with another reply: '*[Reseller 1] have told me they are changing now, so we need to make sure the others are doing the same...*'.³⁵⁷
- 4.89 As evidenced by the example below, on occasion, [Reseller 1] was even prepared to raise prices back to the Minimum Price when competitors' online prices were below it '*to show Casio some goodwill*'.
- 4.90 On 26 November 2015, [Reseller 1 Senior Employee 2] emailed [Casio Senior Employee 5], naming three other resellers and stating: '*Not sorted so we are moving from now. Please call when you get the chance.*'.³⁵⁸
- 4.91 In interview, [Reseller 1 Senior Employee 2] explained that this email likely related to an occasion when Casio UK had asked him to '*show him some goodwill by going to the price (...) Even though others weren't*'. Casio UK

³⁵⁶ URN E_CAS01405 (Internal Casio UK email exchange dated 5-6 January 2015), p1. The evidence shows that this was not an isolated incidence. For example, on 22 May 2015, [Employee] of [Reseller 45] sent an email to [Casio Senior Employee 5] and [Casio Employee 3] providing a link to the CTK3400 on Amazon saying '*Just thought you might want to tell [Reseller 1] that they are missing out on a whole lot of margin by selling the CTK3400 for £99*' – URN E_CAS01750 (Email from [Employee] of [Reseller 45] to [Casio Senior Employee 5] dated 22 May 2015); Later on 22 May 2015, [Casio Employee 1] emailed [Casio Employee 5], providing a link to the CTK3400 on [Reseller 1]'s website saying '*sorted [Casio Employee 5]*' – URN E_CAS01751 (Email exchange between [Casio Employee 5] and [Casio Employee 1] dated 22 May 2015); On 2 September 2015, [Casio Employee 1] sent an SMS Message to his colleague [Casio Senior Employee 5] saying, '*I spoke to [Reseller 1 Senior Employee 2] and he will change today*' – URN E_CAS05960 (SMS exchange between [Casio Senior Employee 5] and [Casio Employee 1] dated 2 September 2015); On the same day, [Casio Senior Employee 5] sent an internal email saying that they needed to get [Reseller 1] in line on Amazon for the CDP120 – URN E_CAS02048 (Email from [Casio Senior Employee 5] to [Casio Employee 3], [Casio Employee 5] and [Casio Employee 1] dated 2 September 2015); Later that day, [Casio Senior Employee 5] sent another email to [Casio Employee 8] in another context and mentioning in relation to CDP120 pricing '*Just waiting for [Reseller 1] to change, but they did agree to do it today*' – URN E_CAS02051 (Email from [Casio Senior Employee 5] to [Casio Employee 8] dated 2 September 2015). [Text in square brackets added by the CMA]

³⁵⁷ URN E_CAS02132 (Internal email from [Casio Senior Employee 5] dated 13 October 2015), pp.1-4.

³⁵⁸ URN E_CAS02297 (Email from [Reseller 1 Senior Employee 2] to [Casio Senior Employee 5] dated 26 November 2015). Casio UK appears to have perceived [Reseller 1] as generally willing to comply with the Casio Pricing Policy. For example, in a Casio internal email dated 1 December 2015, [Casio Senior Employee 5] stated: '*Bear in mind 2 weeks ago [Reseller 27] and [Reseller 1] were 100% in place and it fell apart because [Reseller 10] refused to move, following [Reseller 19]. (...) Yes, just a mess as usual, but if we can get [Reseller 10] (and of course others!) up there is a strong desire by [Reseller 27] and indeed [Reseller 1] to move.*' – URN E_CAS02315 (Internal Casio UK email from [Casio Senior Employee 5] dated 1 December 2015), p.1. [Emphasis added by the CMA]

would have asked him to raise prices for the Relevant Products to the Minimum Price for a day or two. The reason behind this would have been that [Reseller 1] was *'one of the most aggressive sellers'* and therefore, lots of people would be looking at it. After consulting internally, [Reseller 1 Senior Employee 2] would have likely gone along with the request for a couple of days. In this instance, as Casio UK had not managed to 'sort' out the other resellers within the specified time, [Reseller 1] had decided to compete again and informed Casio UK accordingly.³⁵⁹

[Reseller 1] monitoring and complaining about other resellers not adhering to the Casio Pricing Policy

- 4.92 [Reseller 1] also continued to complain about other resellers who were not complying with the Casio Pricing Policy and often received feedback on its complaints from Casio UK. For example, on 10 April 2015, [Reseller 1 Senior Employee 2] sent an email with the subject line *'ctk3400'* to [Casio Employee 1], including a link to the [Reseller 20] website. [Casio Employee 1] responded the same day *'Sorted'*.³⁶⁰
- 4.93 On 23 July 2015, [Casio Senior Employee 5] sent an email to his colleague [Casio Employee 1], as well as [Reseller 1 Senior Employee 4], [Reseller 1 Senior Employee 1] and [Reseller 1 Senior Employee 2] (all of [Reseller 1]) with the subject line *'Options'*, stating that *'Further to our conversation....'* [pricing] for a list of four specific resellers had been sorted. [Reseller 1 Senior Employee 2] responded the next day with, *'[Reseller 10] on Amazon'*.³⁶¹
- 4.94 In interview, [Reseller 1 Senior Employee 2] explained that the statement *'Further to our conversation'* was most likely a reference to an earlier telephone call from Casio UK or an earlier email [from [Reseller 1]] with some links. He also stated that the other four resellers mentioned in [Casio Senior Employee 5]'s email were *'firms that he's dictating to in the same way they're dictating to us. And he's just letting me know that they're sorted out. And that then they should be at the, what the MAP price[sic]'*. [Reseller 1 Senior Employee 2] also stated that his own reference to *'[Reseller 10] on Amazon'* in his follow-up email to [Casio Senior Employee 5] likely referred

³⁵⁹ URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.243, lines 5-22.

³⁶⁰ URN E_CAS01684 (Email exchange between [Reseller 1 Senior Employee 2] and [Casio Employee 1] dated 10 April 2015).

³⁶¹ URN E_CAS01915 (Email exchange between [Reseller 1 Senior Employee 5] and [Senior Employee 2] dated 23-24 July 2015), p.1.

to [Reseller 10] being below *'the MAP price that they're dictated to be on Amazon'*.³⁶²

2016

- 4.95 The evidence for 2016 paints a similar picture in terms of an ongoing agreement and/or concerted practice between Casio UK and [Reseller 1] regarding [Reseller 1]'s adherence to the Casio Pricing Policy. It shows that there were regular exchanges about the pricing of the Relevant Products between Casio UK and [Reseller 1] with [Reseller 1] generally agreeing to raise prices to the Minimum Price at Casio UK's request, though not always straight away.³⁶³

[Reseller 1] agreeing to raise its price/s to the Minimum Price on request from Casio UK (both in response to price-matching and occasional 'cheating')

- 4.96 For example, on 22 January 2016, [Reseller 1 Senior Employee 2] emailed [Casio Senior Employee 5] (copying [Senior Employee 4] of [Reseller 1]) with the subject line *'Regarding our favourite subject'* stating: *'Just so you are aware **you have my full support** and I am keen to get to the line with this subject and sorted by this weekend if we can. Please let me know as soon as you can that the others are correct as our shops have been affected beyond comprehension.'*³⁶⁴

³⁶² URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.181, lines 7-15, p.183, lines 9-19 and p.184, lines 12-19.

³⁶³ As in previous years, on occasion, [Reseller 1] clearly tried to 'cheat' in 2016 by advertising or selling individual Relevant Products below the specified price without matching one of its competitors. For example, on 11 November 2016, Price2Spy emailed the latest price report to Casio UK under the heading: *'Price2Spy Scheduled Report - Products violating MAP (Nov-11 2016)'* [Casio Employee 8] forwarded the report to [Casio Senior Employee 4] asking what had happened to [Reseller 27]. [Casio Senior Employee 4] responded: *'Will be sorted today - They followed [Reseller 1]!! I spoke with them yesterday, he will move this morning. [Reseller 1] have been messing about.'* – URN E_CAS03587 (Email exchange between [Casio Employee 8] and [Casio Senior Employee 4] dated 11 November 2016), p.1. However, based on the totality of the evidence in the CMA's possession, including the testimony of [Reseller 1]'s Senior Employees, occasional cheating was limited to individual products and [Reseller 1] actually complied with the Casio Pricing Policy for the vast majority of the Relevant Products (as well as raising prices again when 'caught').

³⁶⁴ URN E_CAS02467 (Email from [Reseller 1 Senior Employee 2] to [Casio Senior Employee 5] dated 22 January 2016) [Emphasis added by the CMA].

Similarly, on 5 May 2016, [Casio Employee 1] emailed [Reseller 1 Senior Employee 2] asking him to look at the CDP130 on eBay and providing the relevant link. On 6 May 2016, [Reseller 1 Senior Employee 2] replied *'changed'*. On 10 May 2016, [Casio Employee 1] forwarded the email to [Casio Senior Employee 4] saying, *'I asked Reseller 1 [Senior Employee 2] last week to look at the eBay one and as you will see he replied done.'*

URN E_CAS02843 (Email exchange between [Casio Employee 1] and [Reseller 1 Senior Employee 2], later forwarded to [Casio Senior Employee 4], dated 5-10 May 2016), p.1.

On 12 May 2016, [Casio Employee 1] sent a follow up email to [Reseller 1 Senior Employee 2] asking him to look at the link again as it did not appear to have changed. On 13 May 2016, [Reseller 1 Senior Employee 2] replied *'Fixed'* along with some links to other resellers regarding CDP130. [Casio Employee 1] forwarded this email to

- 4.97 In interview, [Reseller 1 Senior Employee 2] explained that in his view, the *'favourite subject'* being referred to was *'MAP pricing'*. He stated that he would have expressed his *'full support'* to [Casio Senior Employee 5] out of concern that [Reseller 1] might not otherwise *'get the products'* or *'the support we want'*, even though behind the scenes, [Reseller 1] may have been *'playing the game'* and *'stick something at a lower price here and there, to see if they picked up on it, and then (...) put it back'*.
- 4.98 [Reseller 1 Senior Employee 2] considered that at the time when he sent the email, Casio UK had probably been complaining to him about [Reseller 1] not always maintaining the Minimum Price. Overall, according to [reseller 1 Senior Employee 2], [Reseller 1] was *'trying to just keep them [Casio UK] pacified'* so that it didn't lose Casio UK as a supplier. [Reseller 1 Senior Employee 2] also explained that in his statement that he was *'keen to get to the line'*, *'the line'* was the *'MAP price'*. Others being *'correct'* meant others being *'at MAP price'*.³⁶⁵

Casio UK allowing [Reseller 1] to match competitors' lower prices temporarily

- 4.99 The evidence for 2016 continues to show that there was on-going agreement between Casio UK and [Reseller 1] that if [Reseller 1]'s competitors were advertising the Relevant Products online below the Minimum Price, [Reseller 1] was generally allowed to match them, until everyone else's pricing had reverted back to the Minimum Price.
- 4.100 For example, on 29 April 2016, [Casio Employee 1] sent an internal email to [Casio Senior Employee 4] reporting that [Reseller 1 Senior Employee 2] had called him to ask for *'advice before doing anything.... which is good!'* In relation to other resellers selling the CDP130 on Amazon and Ebay (links forwarded to him by [Reseller 1 Senior Employee 2]), [Casio Employee 1] noted that he had told [Reseller 1 Senior Employee 2] that because of the late time of the day he could not guarantee that he could get all of the links sorted before 5.30pm that day so they had ***'agreed that [Reseller 1] could***

[Casio Senior Employee 4], commenting that [Reseller 1 Senior Employee 1] had obviously spoken to [Reseller 1 Senior Employee 2] following his [Casio Employee 1]'s phone call with [Reseller 1 Senior Employee 1] the previous afternoon – URN E_CAS02853 (Email exchange between [Casio Employee 1] and [Reseller 1 Senior Employee 2], later forwarded to [Casio Senior Employee 4], dated 12-13 May 2016), pp.1-2.

³⁶⁵ URN C_CAS02332 (Transcript of interview with [Reseller 1 Senior Employee 2] dated 14 January 2019), p.201, line 24 to p.204, line 6. [Reseller 1 Senior Employee 2] also explained that the statement about [Reseller 1's] shops being *'affected beyond comprehension'* referred to [Reseller 1]'s physical shops. Although Casio UK's MAP policy did not formally apply to these, [Reseller 1 Senior Employee 2] pointed out that by 2016, potential customers were often checking prices online so [Reseller 1]'s shop prices were affected by whatever [Reseller 1]'s said on its website.

match them only on the platforms that the links relate [sic] NOT [Reseller 1] MAIN SITE'.³⁶⁶

[Reseller 1] complaining to Casio UK about the negative effects of implementing the Casio Pricing Policy

4.101 On 12 October 2016, [Reseller 1 Senior Employee 1] complained to [Casio Employee 1] about [Reseller 1]'s lack of sales of the Relevant Products due to [Reseller 1]'s adherence to the Casio Pricing Policy. [Casio Employee 1] reported [Reseller 1]'s dissatisfaction back to [Casio Senior Employee 4] in an email stating:

'[Reseller 1] are very unhappy about this [Casio Senior Employee 4] as [Senior Employee 1] puts it: "**we've worked with you and again we've lost another day in sales on this model**" this is really on edge mate.'³⁶⁷

4.102 In interview, [Casio Employee 1] stated that [Reseller 1]'s reference to 'working with [Casio UK]' would have referred to [Reseller 1] helping 'to get stability in the marketplace' by keeping 'as close to RSP as possible', in this instance by putting '[its] price up' on request from Casio UK.³⁶⁸

[Reseller 1] monitoring and complaining about other resellers not adhering to the Casio Pricing Policy

4.103 [Reseller 1] also continued to complain to Casio UK about other resellers not adhering to the Casio Pricing Policy.

³⁶⁶ URN E_CAS02826 (Email from [Casio Employee 1] to [Casio Senior Employee 4] dated 29 April 2016), p.1. [Emphasis added by the CMA]. Another example of this is an email exchange of 20 January 2016 between [Casio Senior Employee 5] and [Reseller 1 Senior Employee 4] with the subject line 'Our fav subject...'. In this, [Casio Senior Employee 5] noted that several other resellers were 'sorted' and asked [Reseller 1 Senior Employee 4] to move his prices in response: 'Could you get your team to move ASAP. We sent a sheet to [Reseller 1 Senior Employee 1] yesterday, so he has the request. **As usual [Reseller 1] VERY key in this situation.**' [Emphasis added by the CMA] [Reseller 1 Senior Employee 4] agreed that he would move his prices as soon as [Reseller 27] did. The following day, on 21 January 2016, [Casio Senior Employee 5] followed up with [Reseller 1 Senior Employee 4] by stating: 'Just to confirm, the point in your email re [Employee] of [Reseller 27] is 100% sorted.' – URN E_CAS02466 (Email exchange between [Casio Senior Employee 5] and [Senior Employee 4] of [Reseller 1] dated 20-21 January 2016), p.1-2.

³⁶⁷ [Casio Senior Employee 4] responded: 'we have to do our best and manage [Reseller 1 Senior Employee 1] on this. Its a daily battle and will continue to be (as he states with [Reseller 1] too etc). ... **[Resellers 1] are not always on the recivng [sic] end** [emphasis added by the CMA] and I would remind them whilst you were away and actually pricing was fully in line, it was actually them who were out on bundles and I called [Reseller 1 Senior Employee 2] and emailed him twice to no response. I will look at these issue [sic] this morning and attempt to get them rectified.' URN E_CAS03445 (Internal Casio UK emailed dated 12 October 2016), p.1. [Emphasis added by the CMA].

³⁶⁸ URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019), p.266, lines 5-25.

- 4.104 For example, on 28 October 2016, [Reseller 1 Senior Employee 2] emailed [Casio Employee 1] complaining about [Reseller 10] offering a 5% off discount code. [Casio Employee 1] responded: *'We are aware [Reseller 1 Senior Employees 1 and 2] needs to speak to [Casio Senior Employee 4]. I cannot respond by email.'*³⁶⁹

2017

- 4.105 The evidential picture for 2017 looks very similar and continues to support the CMA's finding of an ongoing agreement and/or concerted practice with regard to the Casio Pricing Policy between Casio UK and [Reseller 1].

[Reseller 1] agreeing to raise its price/s to the Minimum Price on request from Casio UK (both in response to price-matching and occasional 'cheating')

- 4.106 Again, the evidence shows that [Reseller 1] raised prices for the Relevant Products to the Minimum Price on request from Casio UK.
- 4.107 For example, on 9 January 2017, [Casio Senior Employee 4] of Casio UK sent an internal email asking for a *'concerted effort to clean up Price 2 Spy'* by close of play the following day by way of telephone calls. On 10 January 2017, [Casio Employee 1] of Casio UK replied that he had spoken to [Reseller 1] and that he would check later to confirm the changes had been made.³⁷⁰ [Casio Employee 1] later replied to the original email from [Casio Senior Employee 4] stating: *'[Reseller 1] have now changed'* with a link to [Reseller 1]'s website, featuring multiple Casio product listings.³⁷¹

³⁶⁹ URN E_CAS03534 (Email from [Casio Employee 1] to [Reseller 1 Senior Employee 2] dated 28 October 2016), p.1. [Emphasis added by the CMA]. Another example of this is an email of 9 March 2016 from [Reseller 1 Senior Employee 2] to [Reseller 1 Senior Employee 1] with the title: *'Are Voucher Codes OK that offer a discount?'* The email was copied to [Casio Senior Employee 5] and [Casio Employee 1], as well as representatives of other musical instrument suppliers. It contained a link to www.topvoucherscode.co.uk with the text, *'[Reseller 10] 5% off all the website any product'* and a link to www.myvouchercode.co.uk relating to [Reseller 69]. – URN E_CAS02593 (Email from [Reseller 1 Senior Employee 2] to [Reseller 1 Senior Employee 1] ([Casio Employee 1] copied) dated 9 March 2016), pp.1-2.

Similarly, in an exchange dated 21 April 2016, [Casio Employee 1] emailed [Reseller 1 Senior Employee 1] regarding the pricing of the CDP130 by [Reseller 27] – URN E_CAS02773 (Email from [Casio Employee 1] to [Reseller 1 Senior Employee 1] dated 21 April 2016), p.1. The CMA infers that this would have been in response to a complaint by [Reseller 1] about [Reseller 27]'s pricing.

On 5 August 2016, [Reseller 1 Senior Employee 2] forwarded links to [Casio Employee 1] relating to product listings on Amazon and [Reseller 19]'s website. – URN E_CAS03140 (Email from [Reseller 1 Senior Employee 2] to [Casio Employee 1] dated 2 August 2016).

³⁷⁰ URN E_CAS03809 (Email exchange between [Casio Employee 1], [Casio Senior Employee 4], [Casio Employee 5] and [Casio Employee 3] dated 9-10 January 2017), p.1.

³⁷¹ URN E_CAS03810 (Email from [Casio Employee 1] to [Casio Senior Employee 4] dated 10 January 2017), p.1. Similarly, on 10 March 2017, [Casio Employee 1] sent an internal email in response to an email from his colleague [Casio Employee 3] the previous day about [Reseller 1] and others being below MAP regarding the CTK 6200. He reported about two separate conversations with [Reseller 1] during which [Reseller 1 Senior

- 4.108 On 24 July 2017, [Casio Senior Employee 4] sent a Google Hangouts message to the EMI Sales Team saying, *'we now need to sort out prices as a priority today, please can you start making calls'*. Later that day, [Casio Employee 1] replied to the message saying, *'Just spoke to [Reseller 1 Senior Employee 1] he is sorting now, I stressed to do before 5.00'*.³⁷²
- 4.109 On 12 October 2017, following a Google Hangouts request from [Casio Senior Employee 4] to the sales team to *'get people back in line'* after a price drop on the CDP130, [Casio Employee 1] stated: *'[Reseller 1] and [Reseller 21] sorted and both have agreed to turn auto tracking off until tomorrow'*.³⁷³ On the same day, [Casio Employee 1] emailed [Reseller 1 Senior Employee 2] and [Reseller 1 Senior Employee 1] thanking them for sorting out the CDP 130 on Amazon and asking them also to check the [Reseller 1] website. [Reseller 1 Senior Employee 2] replied: *'done'*.³⁷⁴

Employee 1] had stated that [Reseller 1] had adjusted its price for the CTK 6200 three times following assurances that their competitor [Reseller 10] would also change. However, as [Reseller 10]'s price had only changed overnight, [Reseller 1] had auto-tracked them twice, which had pulled its price down. [Casio Employee 1] reported that his conversation with [Senior Employee 1] had been very *'awkward'* and concluded by saying: ***'Unless we sort out the speed at which we sort out online discrepancies we will lose the support of the dealers, most of who want to help and support our policy which is ultimately better for everyone.'*** - URN E_CAS04023 (Internal Casio UK email from [Casio Employee 1] dated 10 March 2017), p.1. [Emphasis added by the CMA]

On 26 April 2017, [Casio Senior Employee 4] sent an internal email with the subject line *'Amazon - CDP130'*, featuring a list of resellers including [Reseller 1] and a link to Amazon. [Casio Employee 1] later replied: *'[Reseller 1] now sorted on this one.'* – URN E_CAS04191 (Email exchange between [Casio Employee 1], [Casio Senior Employee 4], [Casio Employee 5] and, [Casio Employee 3] dated 26 April 2017).

Likewise, on 27 June 2017, [Casio Senior Employee 4] emailed [Reseller 1 Senior Employee 1] and [Reseller 1 Senior Employee 2] asking them to look at a link to the PX360 on the [Reseller 1]'s website. [Reseller 1 Senior Employee 2] responded with a link to the PX360 on the [Reseller 7] website, to which [Casio Senior Employee 4] replied the next day: *'[Reseller 7] and [Reseller 57] sorted. can you please look at this.'* [Reseller 1 Senior Employee 2] replied shortly afterwards: *'done'*. E_CAS04420 (Email exchange between [Casio Senior Employee 4] and [Reseller 1 Senior Employee 2] dated 27-28 June 2017), pp.1-2.

There was a similar email exchange a few days earlier, on 22 June 2017. On that occasion, [Casio Employee 1] wrote to [Reseller 1 Senior Employee 2] and [Reseller 1 Senior Employee 1] under the heading *'Casio urgent'* stating *'Hello, please could you urgently look at your PX 160 listing as per my email yesterday.'* [Reseller 1 Senior Employee 2] responded shortly afterwards saying *'done'*. – URN E_CAS04397 (Email exchange between [Reseller 1 Senior Employee 2] and [Casio Employee 1] dated 22 June 2017), pp.1-2.

³⁷² URN E_CAS05915 (Google Hangouts exchange between [Casio Senior Employee 4], [Casio Employee 5], [Casio Employee 3] and [Casio Employee 1] dated 20-24 July 2017), pp.1-2.

³⁷³ URN E_CAS05926 (Google Hangouts exchange between [Casio Senior Employee 4], [Casio Employee 5], [Casio Employee 3] and [Casio Employee 1] dated 12 October 2017), p.1-2.

³⁷⁴ URN E_CAS04821 (Email exchange between [Casio Employee 1] and [Reseller 1 Senior Employee 2] dated 12 October 2017), p.1. Almost three weeks later, on 31 October 2017, [Casio Employee 1] emailed [Reseller 1 Senior Employee 1] again with the subject line *'Amazon CDP: I've just had a quick check and it doesn't appear to have changed on Amazon yet, if there are any problems please let me know, I'm under a bit of pressure to have this sorted asap.'* [Reseller 1 Senior Employee 1] responded shortly afterwards: *'Its [sic] been done should be updated now.'* – URN E_CAS04886 (Email exchange between [Casio Employee 1] and [Reseller 1 Senior Employee 1] dated 21 October 2017), pp.1-2.

Casio UK allowing [Reseller 1] to match competitors' lower prices temporarily

- 4.110 As for previous years, the evidence for 2017 also supports the CMA's conclusion that there was an understanding between Casio UK and [Reseller 1] that [Reseller 1] could temporarily lower its prices to below the Minimum Price to match other resellers.
- 4.111 For example, on 10 March 2017, [Casio Employee 1] sent an internal email to [Casio Senior Employee 4] with the subject line '*Price2Spy Scheduled Report - Products violating MAP*', stating: '*[Reseller 19] are out on the PX-5, this is pulling [Reseller 7] down ([Employee] called me yeeterday [sic]) and [Reseller 1] are reacting to them.*' [Casio Senior Employee 4] responded: '*This is a European issue as [Reseller 18] and [Reseller 17] are both out on this too. Tell them I'm looking into it, however unlikely to get resolved today. **Happy for them to match whilst those three European dealers are out.***'³⁷⁵

[Reseller 1] monitoring and complaining about other resellers not adhering to the Casio Pricing Policy

- 4.112 The evidence also shows again that [Reseller 1] itself kept monitoring other resellers in 2017 and would report pricing below MAP to Casio UK, with Casio UK often reporting back to [Reseller 1] on how Casio UK was dealing with the matters raised.
- 4.113 For example, on 16 February 2017, [Reseller 1 Senior Employee 1] sent an email with the subject line '*[Reseller 27] £699 PX860*' to [Casio Senior Employee 4], including a link to the PX860 on [Reseller 27]'s website. [Casio Senior Employee 4] responded the same day, stating that he had spoken to one of the staff members [at [Reseller 27]] and '*it should be sorted by tonight*'.³⁷⁶

³⁷⁵ URN E_CAS04026 (Email exchange between [Casio Employee 1] and [Casio Senior Employee 4] dated 10 March 2017), p.1. [Emphasis added by the CMA]. Also on 10 March 2017, [Casio Employee 1] sent an internal email referring to an attached screenshot and stating: '*[Reseller 1] changed again and are correct. They will check this afternoon that others have changed as they cannot go over the weekend on this Fulfilled by Amazon listing unless they are competitive.*' – URN E_CAS04025 (Email exchange between [Casio Senior Employee 4], [Casio Employee 3], [Casio Employee 1] and [Casio Employee 5] dated 10 March 2017), p.2.

On 7 August 2017, [Reseller 1 Senior Employee 2] sent an email to [Resellers 1 Senior Employee 1] and [Casio Employee 1] with the subject line '*fyi - MATCH OR SORT OUT?*' [Emphasis added by the CMA] and forwarding screenshots of the [Reseller 27] website relating to the AP650 and the CDP130. – URN E_CAS04573 (Email exchange between [Casio Employee 1], [Reseller 1 Senior Employee 2] and [Reseller 1 Senior Employee 1] dated 7 August 2017), pp.1-3.

³⁷⁶ URN E_CAS03943 (Email exchange between [Reseller 1 Senior Employee 1] and [Casio Senior Employee 4] dated 16 February 2017), p.1. [Text in brackets added by the CMA]

2018

- 4.114 Finally, the evidence for 2018 supports the CMA's finding that the agreement and/or concerted practice between [Reseller 1] and Casio UK with regard to the Casio Pricing Policy was ongoing.

[Reseller 1] agreeing to raise its price/s to the Minimum Price on request from Casio UK (both in response to price-matching and occasional 'cheating')

- 4.115 [Reseller 1] continued to comply with requests from Casio UK to adjust its pricing of the Relevant Products in accordance with the Casio Pricing Policy. The CMA concludes from this that it at least tacitly acquiesced to, or approved of, the Casio Pricing Policy.
- 4.116 For example, on 19 March 2018, [Casio Senior Employee 4] sent a Google Hangouts message to the Casio EMI Sales Team stating: *'We need to start sorting the network today, Europe are also doing the same across all products.'* [Casio Employee 1] later responded to say that he had spoken to [Reseller 1]. The next day, he followed up and stated: *'[Reseller 1] now sorted'*.³⁷⁷
- 4.117 On 5 April 2018, [Casio Senior Employee 4] sent a Google Hangouts message to [Casio Employee 1] asking him to look into the PX870 on the [Reseller 1] website. [Casio Employee 1] replied shortly afterwards and said that he had just spoken *'to [Reseller 1 Senior Employee 1] he will sort, they [Reseller 1] had started to match the lower Euro prices'*.³⁷⁸

There are other examples. For example, on 28 April 2017, [Reseller 1 Senior Employee 2] emailed [Casio Employee 1] with a link to the CDP130 on [Reseller 5]'s website and the subject line *'[Reseller 5] with cdp130 at 284.00'*. [Casio Employee 1] replied minutes later, stating: *'sorted now'*. – URN E_CAS04215 (Email exchange between [Casio Employee 1], [Reseller 1 Senior Employee 2] and [Reseller 1 Senior Employee 1] dated 28 April 2017), p.1.

On 28 September 2017, [Reseller 1 Senior Employee 2] emailed [Casio Employee 1] with a screenshot of the [Reseller 7] website and the subject line *'ap700'*. [Casio Employee 1] replied straight away, asking [Reseller 1 Senior Employee 1] to call him. – URN E_CAS04745 (Email exchange between [Casio Employee 1], [Reseller 1 Senior Employee 2] and [Reseller 1 Senior Employee 1] dated 28 September 2017), pp.1-2.

³⁷⁷ URN E_CAS05943 (Google Hangouts exchange between [Casio Senior Employee 4], [Casio Employee 5], [Casio Employee 3] and [Casio Employee 1] dated 19-21 March 2018), p.1 and p.4. [Casio Employee 1] then stated in a further message on 21 March 2018: *'Just checked AP-270BK and PX-160 links in red on Price2Spy with [Reseller 7], [Reseller 1] and [Reseller 57] and when you click through they are correct...'*. The CMA concludes that [Casio Senior Employee 4]' message of 19 March 2018 was likely sent in response to a Price2Spy report of 18 March 2018, which indicated that the price of the AP270 and PX160 (among others) was below the target price on the [Reseller 1] website. – URN E_CAS05379 (Price2Spy *'Products violating MAP'* daily report dated 18 March 2018).

³⁷⁸ URN E_CAS05857 (Google Hangouts exchange between [Casio Senior Employee 4] and [Casio Employee 1] dated 5 April 2018). [Text in brackets added by the CMA]

Conclusion on the agreement and/or concerted practice between Casio UK and [Reseller 1]

4.118 In view of the foregoing, the CMA concludes that, throughout the Relevant Period:

- Casio UK instructed [Reseller 1] on numerous occasions to follow the Casio Pricing Policy with regard to the Relevant Products. This tended to happen when [Reseller 1] had been caught matching another reseller's lower prices or occasionally when [Reseller 1] was 'cheating'.
- [Reseller 1] told Casio UK on numerous occasions that it had been adhering to the Casio Pricing Policy as instructed and the evidence shows that it did generally raise its prices to at least the Minimum Price on Casio UK's request, albeit not always immediately.
- [Reseller 1] was concerned that advertising or selling the Relevant Products online below the Minimum Price might result in it not receiving the stock it had ordered, the support it wanted from Casio UK or might otherwise damage its relationship with Casio UK, possibly even to the extent that it may no longer be a Casio UK dealer.
- Although in interview, senior staff of [Reseller 1] could not recall any sanctions for non-compliance with the Casio Pricing Policy actually having been imposed on [Reseller 1] by Casio UK, the evidence shows that towards the end of 2015, Casio UK temporarily withheld payment of an invoice to [Reseller 1] because [Reseller 1] was selling some of the Relevant Products online below the Minimum Price.³⁷⁹ Other sanctions against [Reseller 1] (such as a withdrawal of marketing funds or imposition of less favourable trading terms) were also contemplated by individual Casio UK staff members but the CMA does not have any evidence showing if these were ever imposed. Nonetheless, this shows that there was at least a 'credible threat' of sanctions.
- On multiple occasions throughout the Relevant Period, [Reseller 1] reported other resellers to Casio UK for selling the Relevant Products online at a price below the Minimum Price. This further confirms that there was an understanding between [Reseller 1] and Casio UK that the Casio Pricing Policy applied to all or at least the vast majority of resellers, including [Reseller 1].

³⁷⁹ URN E_CAS02330 (Email exchange between [Casio Employee 8], [Casio Senior Employee 5], [Casio Senior Employee 3] and [Casio Senior Employee 7] dated 4-7 December 2015).

- 4.119 The CMA has taken into account the context of the arrangements between Casio UK and [Reseller 1], including the evidence that employees of Casio UK were aware of the potential illegality of enforcing/agreeing the Casio Pricing Policy with resellers, including [Reseller 1] and were careful not to communicate pricing instructions in writing.³⁸⁰ In addition, the nature of the Casio Pricing Policy was such that Casio UK rarely needed to contact [Reseller 1] about it (in writing or otherwise) when [Reseller 1] was complying with it because it was based on a price list as far as pricing for individual Relevant Products was concerned, and on oral instructions from Casio UK (both as to content and pricing) for certain bundles consisting of the Relevant Products and certain accessories. This limited the need for written or oral communication about the Casio Pricing Policy (and therefore the amount of written evidence relating to it).
- 4.120 In light of the above, the CMA finds a concurrence of wills between [Reseller 1] and Casio UK that [Reseller 1] would not advertise or sell the Relevant Products online below the Minimum Price during the Relevant Period. In particular, the CMA finds that:
- Casio UK instructed [Reseller 1] not to advertise or sell the Relevant Products online below the Minimum Price, with the credible threat (at least implicit) of repercussions if [Reseller 1] failed to comply; and
 - [Reseller 1]:
 - understood the instructions from Casio UK and the potential consequences if it did not comply; and
 - in practice, agreed to abide by and/or implemented Casio UK's instructions not to advertise or sell the Relevant Products online below the Minimum Price, including making price adjustments when instructed to do so by Casio UK.
- 4.121 The CMA concludes that this constitutes an agreement for the purposes of the Chapter I prohibition and/or Article 101 TFEU.
- 4.122 In the alternative, the CMA finds that the arrangements identified above constituted at least a concerted practice between Casio UK and [Reseller 1], on the basis that [Reseller 1] knew Casio UK's wishes as regards to the Casio Pricing Policy and adjusted its online advertising and pricing behaviour as a result, thereby knowingly substituting practical cooperation for the risks of price competition between it and other resellers.

³⁸⁰ See paragraphs 3.165 to 3.167.

- 4.123 The CMA finds that this constitutes a concerted practice for the purposes of the Chapter I prohibition and/or Article 101 TFEU. In the remainder of this SO, the agreement and/or concerted practice between Casio UK and [Reseller 1] that [Reseller 1] would not advertise or sell the Relevant Products online below the Minimum Price will be referred to simply as the ‘Agreement’.
- 4.124 The CMA finds that the duration of the Agreement was at least five years and two months (from 4 February 2013 to 5 April 2018).

D. Object of Preventing, Restricting or Distorting Competition

- 4.125 For the reasons set out below, the CMA finds that the Agreement had as its object the prevention, restriction or distortion of competition.

I. Key legal principles

General

- 4.126 The Chapter I prohibition and Article 101 TFEU prohibit agreements and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition.
- 4.127 The term ‘object’ in both prohibitions refers to the sense of ‘aim’, ‘purpose’, or ‘objective’, of the coordination between undertakings in question.³⁸¹
- 4.128 Where 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.³⁸²
- 4.129 The Court of Justice has held that 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.³⁸³ The Court of Justice has characterised as the ‘*essential legal criterion*’ for a finding of anti-competitive object that the coordination between undertakings

³⁸¹ See, for example, respectively: Case 56/64 *Consten & Grundig v Commission*, EU:C:1966:41, paragraph 343 (‘...Since the agreement thus aims at isolating the French market... it is therefore such as to distort competition...’); Case 96/82 *IAZ and Others v Commission*, EU:C:1983:310, paragraph 25; C-209/07 *Competition Authority v Beef Industry Development Society*, EU:C:2008:643 (BIDS), paragraphs 32–33.

³⁸² See, for example, C-8/08 *T-Mobile Netherlands BV v NMa*, EU:C:2009:343, paragraphs 28–30 and the case law cited therein, and *Cityhook Limited v Office of Fair Trading* [2007] CAT 18, at 269.

³⁸³ C-67/13 P *Groupeement des Cartes Bancaires v Commission*, EU:C:2014:2204 (Cartes Bancaires), paragraph 50; affirmed in C-373/14 P *Toshiba v Commission* EU:C:2016:26 (Toshiba), paragraph 26.

'reveals in itself a sufficient degree of harm to competition' such that there is no need to examine its effects.³⁸⁴

- 4.130 In order to determine whether an agreement reveals a sufficient degree of harm such as to constitute a restriction of competition 'by object', regard must be had to:
- the content of its provisions;
 - its objectives; and
 - the economic and legal context of which it forms a part.³⁸⁵
- 4.131 Although the parties' subjective intention is not a necessary factor in determining whether an agreement is restrictive of competition, there is nothing prohibiting that factor from being taken into account.³⁸⁶
- 4.132 An agreement may be regarded as having an anti-competitive object even if it does not have a restriction of competition as its sole aim but also pursues other legitimate objectives.³⁸⁷

Resale Price Maintenance

- 4.133 Article 101(1)(a) TFEU and section 2(2)(a) of the Act expressly prohibit agreements and/or concerted practices which *'directly or indirectly fix purchase or selling prices'*.
- 4.134 Resale price maintenance (RPM) is defined in the Vertical Guidelines as 'agreements or concerted practices having as their direct or indirect object the establishment of a fixed or minimum resale price or a fixed or minimum price level to be observed by the buyer'.³⁸⁸ RPM has been found consistently in EU and national decisional practice (including the UK) to constitute a

³⁸⁴ *Cartes Bancaires*, paragraphs 49 and 57. See also *Toshiba*, paragraph 26.

³⁸⁵ *Cartes Bancaires*, paragraph 53 and *Toshiba*, paragraph 27. According to the Court of Justice in *Cartes Bancaires*, paragraphs 53 and 78, in determining that context, it is also necessary to take into consideration all relevant aspects of the context, having regard in particular to 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.

³⁸⁶ *Cartes Bancaires*, paragraph 54; affirmed in C-286/13 P *Dole v Commission*, EU:C:2015:184, paragraph 118.

³⁸⁷ *BIDS*, paragraph 21. See also *Ping Europe Limited v CMA* [2018] CAT 13 (Ping), paragraphs 101-105, where the CAT recently confirmed that its approach follows that set out by the Court of Justice in, eg, *Cartes Bancaires*. More specifically, the CAT stated that *'the Tribunal approaches the issue of object infringement on the basis that an agreement revealing a sufficient degree of harm to competition may be deemed to be a restriction of competition "by object" irrespective of the actual, subjective aims of the parties involved, even if those aims are legitimate.'*

³⁸⁸ Vertical Guidelines, paragraph 48.

restriction of competition by object.³⁸⁹ The Court of Justice has also held that the imposition of fixed or minimum resale prices on distributors is restrictive of competition by object.³⁹⁰

- 4.135 The European Courts have established that it is not unlawful for a supplier to impose a maximum resale price or to recommend a particular resale price.³⁹¹ However, describing a price as a ‘recommended’ retail price does not prevent this from amounting to *de facto* RPM, if the reseller does not remain genuinely free to determine its resale price (for example, if there is pressure or coercion exerted by the supplier to adhere to the recommended price).³⁹²
- 4.136 The Court of Justice has confirmed that ‘it is necessary to ascertain whether such a retail price is not, in reality, fixed by indirect or concealed means, such as the fixing of the margin of the [reseller],³⁹³ threats, intimidation, warnings, penalties or incentives’.³⁹⁴ This would include, for example, threats

³⁸⁹ See cases further below in this section, including cases such as: Commission Decision 73/322/EEC *Deutsche Phillips* (IV/27.010) [1973] OJ L293/40; Commission Decision 77/66/EEC *GERO-fabriek* (IV/24.510) [1977] OJ L16/8; Commission Decision 80/1333/EEC *Hennessy-Henkell* (IV/26.912) [1980] OJ L383/13; Commission Decision 97/123/EC *Novalliance/Systemform* (IV/35.679) [1997] OJ L47/11; Commission Decision 2001/135/EC *Nathan-Bricolux* (COMP.F.1/36.516) [2001] OJ L 54/1, paras 86–90; in *Volkswagen II*, Commission Decision 2001/711/EC *Volkswagen* (COMP/F-2/36.693) [2001] OJ L262/4, annulled on appeal Case T-208/01 *Volkswagen AG v Commission* EU:T:2003:326 and Case C-74/04 P *Commission v Volkswagen AG*, EU:C:2006:460; *CD prices*, Commission Press Release IP/01/1212, 17 August 2001; Commission Decision 16 July 2003 *PO/Yamaha* (COMP/37.975). See also CMA decision of 24 May 2016 *Commercial refrigeration* (CE/9856-14); CMA decision of 10 May 2016 *Bathroom fittings* (CE/9857-14); *HUSKY*, Czech NCA decision of 28 January 2011, upheld on appeal by Brno Regional Court judgment of 26 April 2012; *Young Digital Planet*, Polish NCA decision of 30 October 2012; *Hyundai Motor Vehicles*, Bulgarian NCA decision of 6 November 2012; *Vila*, Danish NCA settlement decision of 30 October 2013; *Pioneer v Bundeswettbewerbsbehörde*, Austrian Cartel Court rulings of March–June 2014; *Witt Hvidevarer*, Danish NCA settlement of 10 July 2014; and decision by the Austrian Competition Authority against *Samsung Electronics Austria GmbH* of 4 November 2015 (BWB/K-396). See to this effect also the Commission Staff Working document ‘Guidance on restrictions of competition “by object” for the purpose of defining which agreements may benefit from the De Minimis Notice’, revised version of 03/06/2015, paragraph 3.4 (http://ec.europa.eu/competition/antitrust/legislation/de_minimis_notice_annex_en.pdf).

³⁹⁰ See Case 243/83 *SA Binon & Cie v SA Agence et messageries de la presse*, EU:C:1985:284, paragraph 44, where the Court of Justice held that ‘provisions which fix the prices to be observed in contracts with third parties constitute, of themselves, a restriction on competition within the meaning of [Article 101 (1)] which refers to agreements which fix selling prices as an example of an agreement prohibited by the Treaty’. Vertical Guidelines, paragraphs 223–229. See also Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, [2010] OJ L102/1 (VABER), recital 10.

³⁹¹ See, for example, Order in Case C-506/07 *Lubricantes y Carburantes Galaicos SL v GALP Energía España SAU*, EU:C:2009:504 paragraph 4.

³⁹² Order in Case C-506/07 *Lubricantes y Carburantes Galaicos SL v GALP Energía España SAU*, EU:C:2009:504 paragraph 4; and Case C-279/06 *CEPSA Estaciones de Servicio SA v LV Tobar e Hijos SL*, EU:C:2008:485. See also VABER, Article 4(a); and Case 161/84 *Pronuptia de Paris GmbH v Pronuptia de Paris Irmgard Schillgallis*, EU:C:1986:41, paragraph 25.

³⁹³ Vertical Guidelines, paragraph 48.

³⁹⁴ Case C-279/06 *CEPSA Estaciones de Servicio SA v LV Tobar e Hijos SL*, EU:C:2008:485, paragraph 71. See also Case C-260/07 *Pedro IV Servicios SL v Total España SA*, EU:C:2009:215, paragraph 80; and Commission

to delay or suspend deliveries or to terminate supply in the event that the retailer does not observe a given price level.³⁹⁵ Other measures include the withdrawal of credit facilities, prevailing on other dealers not to supply³⁹⁶ and threatened legal action, pressuring telephone calls and letters.³⁹⁷

- 4.137 RPM can be achieved not only directly, for example, via a contractual provision that directly sets a fixed or minimum resale price,³⁹⁸ but also indirectly.³⁹⁹ As previously stated, whether or not there is indirect RPM in any particular case will depend on whether the ability of resellers to determine their resale prices has genuinely been restricted.⁴⁰⁰
- 4.138 Lastly, RPM can be made more effective when combined with measures to identify price-cutting distributors, such as the implementation of an automated price-monitoring system or the obligation on resellers to report other members of the distribution network who deviate from the standard price level.⁴⁰¹ However, the use of such measures does not, in itself, constitute RPM.⁴⁰²

Decision 2001/711/EC *Volkswagen* (COMP/F-2/36.693) [2001] OJ L262/4 (which includes warnings against deep discounting).

³⁹⁵ Vertical Guidelines, paragraph 48. See also Case 86/82 *Hasselblad (GB) Limited v Commission*, EU:C:1984:65; and Commission Decision 2001/711/EC *Volkswagen* (COMP/F-2/36.693) [2001] OJ L262/4.

³⁹⁶ Case 86/82 *Hasselblad (GB) Limited v Commission*, EU:C:1984:65.

³⁹⁷ See Commission Decision 2001/711/EC *Volkswagen* (COMP/F-2/36.693) [2001] OJ L262/4. In paragraphs 44-55 of its decision, the Commission noted various measures taken to enforce 'price discipline' among dealers, including threats of legal action against dealers offering discounts, dealers reporting discounts to Volkswagen and telephone calls and letters from Volkswagen demanding that discounts and promotions be ceased. The decision was overturned on appeal to the GC due to the Commission's flawed assessment of whether or not there was an agreement between Volkswagen and its dealers. However, the Commission's analysis of RPM remains relevant and this case confirms that recommended retail prices could involve unlawful RPM.

³⁹⁸ Case 243/83 *SA Binon & Cie v SA Agence et messageries de la presse*, EU:C:1985:284; Case 311/85 *ASBL Vereniging van Vlaamse Reisbureaus v ASBL Sociale Dienst van de Plaatselijke en Gewestelijke Overheidsdiensten*, EU:C:1987:418; Case 27/87 *SPRL Louis Erauw-Jacquery v La Hesbignonne SC*, EU:C:1988:183; Commission Decision of 16 July 2003 *PO/Yamaha* (COMP/37.975); *Agreements between Lladro Comercial SA and UK retailers fixing the price for porcelain and stoneware figures*, CP/0809-01, 31 March 2003.

³⁹⁹ See Vertical Guidelines, paragraph 48.

⁴⁰⁰ Order in Case C-506/07 *Lubricantes y Carburantes Galaicos SL v GALP Energía España SAU*, EU:C:2009:504; and *VABER*, Article 4(a).

⁴⁰¹ Vertical Guidelines, paragraph 48. See to this effect also Commission Decisions of 24 July 2018 AT.40181 – *Philips*, paragraph 64: ('Price monitoring and adjustment software programmes multiply the impact of price interventions. Consequently, by closely monitoring the resale prices of its retailers and intervening with lowest-pricing retailers to get their prices increased, Philips France's Consumer Lifestyle business could avoid online price "erosion" across, potentially, its entire (online) retail network.') as well as AT.40182 – *Pioneer*, paragraph 155; and AT.40469 – *Denon & Marantz*, paragraph 95.

⁴⁰² Vertical Guidelines, paragraph 48.

Price advertising, advertising and other similar restrictions

- 4.139 Restrictions on advertising prices below a certain level have in the past sometimes been found to lead to *de facto* RPM. The Commission has considered the application of Article 101(1) TFEU to advertising restrictions imposed by manufacturers in supply agreements in a number of investigations. The OFT has also concluded that advertising restrictions can restrict retailers' ability to determine their own sale prices in a previous decision.⁴⁰³
- 4.140 The relevant restrictions have taken different forms in different cases, including:
- guidelines issued to retailers requiring them to use in shops or outside the supplier's recommended list prices;⁴⁰⁴
 - a contractual requirement not to produce advertising material which includes prices different from the supplier's price list without the supplier's approval;⁴⁰⁵
 - a contractual requirement to withdraw and not to repeat advertisements to which the supplier objected in writing (where there was evidence that this was being used to exclude dealers who were offering low prices from the supplier's distribution network);⁴⁰⁶
 - a contractual requirement (agreed between members of a trade association) requiring them to display the supplier's list price and prohibiting any public announcement of rebates on those prices;⁴⁰⁷ and
 - a prohibition on dealers mentioning discounts or price reductions in any advertising materials, advertisements or promotional campaigns.⁴⁰⁸

⁴⁰³ *Agreements between Lladró Comercial SA and UK retailers fixing the price for porcelain and stoneware figures*, CP/0809-01, 31 March 2003. See also *Trade associations, professions and self-regulating bodies* (OFT 408, December 2004), adopted by the CMA Board, paragraph 3.14.

⁴⁰⁴ Commission Decision 16 July 2003 *PO/Yamaha* (COMP/37.975). *Infra*.

⁴⁰⁵ *Ibid*.

⁴⁰⁶ Commission Decision 82/367/EEC *Hasselblad* (IV/25.757) [1982] OJ L161/18; upheld on appeal in Case 86/82 *Hasselblad (GB) Limited v Commission*, EU:C:1984:65. *Infra*.

⁴⁰⁷ Case 73/74 *Groupeement des Fabricants de Papiers Peints de Belgique and others v Commission* EU:C:1975:160.

⁴⁰⁸ *Agreements between Lladró Comercial SA and UK retailers fixing the price for porcelain and stoneware figures*, CP/0809-01, 31 March 2003.

- 4.141 The *Hasselblad*⁴⁰⁹ and *Yamaha*⁴¹⁰ decisions stress the importance of price advertising in terms of communicating with customers and in encouraging price competition.
- 4.142 In *Yamaha*,⁴¹¹ the Commission objected to restrictions contained in selective distribution agreements on dealers advertising prices which were different to Yamaha's list prices. In particular, the Commission was concerned by advertising restrictions which formed part of a wider policy by Yamaha to enforce RPM in a number of territories including the Netherlands and Italy. Yamaha placed restrictions on its dealers in the Netherlands and Italy preventing them from advertising prices below Yamaha's recommended retail prices.
- 4.143 The Dutch dealer contracts (described as 'guidelines') prohibited dealers from advertising prices which differed from Yamaha's list prices. The Commission stated that:
- '[Yamaha's guidelines] clearly prevented the dealer from announcing either within or outside the shop a price other than the one established in the price list. Even if discounts may have been possible, it is clear that the dealer was severely restricted in its freedom to communicate to the customer the price it fixed and that such discounts, if the dealer was still willing to offer them, could not be communicated in a way contrary to the guidelines. [...] [The circular sent to Dutch dealers] constitutes a restriction of the dealer's ability to determine its sales prices. This practice has the object of fixing the maximum level of discounts and, as a consequence, the minimum level of resale prices, thereby restricting or distorting price competition.'⁴¹²
- 4.144 Meanwhile, the distribution agreement with dealers in Italy prohibited dealers from publishing '*in whichever form*' prices which differed from Yamaha's official price lists. The dealers were also prohibited from reproducing advertising material and price lists which were different to Yamaha's official price lists. The Commission found that
- 'the dealers' freedom to set prices is strictly limited. Dealers cannot attract clients by advertising prices that differ from the "published prices" of

⁴⁰⁹ Commission Decision 82/367/EEC *Hasselblad* (IV/25.757) [1982] OJ L161/18 (*Hasselblad*).

⁴¹⁰ Commission Decision 16 July 2003 *PO/Yamaha* (COMP/37.975).

⁴¹¹ *Ibid.*

⁴¹² *Ibid.*, paragraphs 125–126.

[Yamaha], nor by indicating prices in their shops different from those indicated by [Yamaha].'⁴¹³

- 4.145 The Commission concluded that Yamaha's agreements had the object of influencing resale prices, thereby restricting or distorting price competition.
- 4.146 In *Groupeement des Fabricants de Papiers Peints de Belgique*, the Court of Justice equated a prohibition on announcing rebates with 'a system of fixing selling prices'.⁴¹⁴
- 4.147 In both *Yamaha* and *Groupeement des Fabricants de Papiers Peints de Belgique*, it was accepted that the possibility of resellers being able to grant discounts did not prevent the restriction from infringing Article 101(1) TFEU. In *Yamaha*, the Commission stated that '*[e]ven if discounts may have been possible, it is clear that the dealer was severely restricted in its freedom to communicate to the customer the price it fixed and that such discounts, if the dealer was still willing to offer them, could not be communicated in a way contrary to the guidelines.*'⁴¹⁵
- 4.148 In *Hasselblad*,⁴¹⁶ the Commission condemned a selective distribution agreement which allowed the manufacturer to prohibit adverts by a dealer containing statements that it '*can match any other retailer's selling prices*'. In addition to prohibiting particular adverts, Hasselblad had also threatened to withdraw credit facilities from dealers who did not treat prices in its retail price list as minimum selling prices and had terminated a UK dealership which had advertised its products at discounted prices. The Commission found that Hasselblad's contractual right to prohibit adverts restricted competition within the meaning of Article 101(1) for the following reason:⁴¹⁷
- 'This extensive right of intervention enables Hasselblad (GB) to prevent actively competing and price-cutting dealers [...] from advertising their activities, the more so as Hasselblad (GB) is not required to give any justification for its censorship measures.'
- 4.149 The Commission concluded that Hasselblad's distribution policy (including Hasselblad's right to prohibit adverts) 'interferes with the freedom of the authorised dealers to fix their prices, using the dealers' fear of termination of the Dealer Agreement as a means of hindering price competition between

⁴¹³ Ibid, paragraphs 133–135.

⁴¹⁴ Case 73/74 *Groupeement des Fabricants de Papiers Peints de Belgique and others v Commission*, EU:C:1975:160.

⁴¹⁵ Commission Decision 16 July 2003 *PO/Yamaha* (COMP/37.975), paragraph 125.

⁴¹⁶ Commission Decision 82/367/EEC *Hasselblad* (IV/25.757) [1982] OJ L161/18.

⁴¹⁷ Ibid, paragraph 60.

authorised dealers'.⁴¹⁸ The Commission considered that Hasselblad's use of its dealer agreements (including the advertising restrictions) 'as a means to influence retail prices', amounted to a restriction of competition under Article 101(1) TFEU. On appeal,⁴¹⁹ the Court of Justice found that the Commission had been right to conclude that the advertising restriction constituted an infringement of Article 101(1) TFEU.⁴²⁰

- 4.150 In *Lladró*,⁴²¹ the OFT noted that the advertising of resale prices, including discounts, promotes price transparency between retailers and provides a significant incentive for retailers to compete on price. Provisions restricting a retailer's freedom to inform potential customers of discounts which are being offered remove a key incentive for, and constitute an obstacle to, price competition between retailers. The OFT concluded in *Lladró* that the '*obvious consequence*' of price advertising restrictions is to restrict retailers' ability to determine their own sale prices and that '*any such provision has as its object the prevention, restriction or distortion of competition.*'⁴²²
- 4.151 Further, in *Commercial refrigeration*⁴²³ the CMA found that a policy which prevented resellers from advertising the supplier's products below a minimum advertised price (MAP) set out in the supplier's MAP policy constituted *de facto* RPM as in the legal and economic context in which it operated, it genuinely restricted in practice the ability of the resellers to determine their online sales price for the relevant products at a price below the MAP.⁴²⁴

⁴¹⁸ Ibid, paragraph 66.

⁴¹⁹ Case 86/82 *Hasselblad (GB) Limited v Commission*, EU:C:1984:65, paragraph 43.

⁴²⁰ On the assessment of advertising restrictions, more specifically 'MAP' (minimum advertised pricing), under EU competition law, please also see the European Parliament's '*Notice to Member States*' regarding '*Petition No 2383/2014 by Norbert Perstinger (Austrian), on the introduction of the Minimum Advertised Price (MAP) in the European Union*', available at

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FNONSGML%20COMPARL%20PE-572.975%2001%20DOC%20PDF%20V0%2F%2FEN>

⁴²¹ *Agreements between Lladró Comercial SA and UK retailers fixing the price for porcelain and stoneware figures*, CP/0809-01, 31 March 2003.

⁴²² Ibid, paragraph 70.

⁴²³ *Online resale price maintenance in the commercial refrigeration sector*, Case CE/9856/14, 24 May 2016. The CMA found that the minimum advertised price policy constituted RPM because, by restricting the price at which its goods were advertised online, the policy prevented dealers from deciding the resale price for those goods. The CMA found that there was a clear link between the advertised price and the resale price when goods are purchased online.

⁴²⁴ Ibid. in particular, see paragraphs 6.43.2-3. In making this finding the CMA noted, in particular, that where customers buy the products online (ie '*click-to-buy*' sales), the advertised price is typically the price paid by the customer, that is, the sales price and, also, that the MAP policy was reinforced by measures to identify resellers who priced below the MAP combined with actual or threatened sanctions for advertising prices below the MAP.

II. Legal Assessment of the Agreement

4.152 For the reasons set out below, the CMA finds that the object of the Agreement was to prevent, restrict or distort competition through RPM and it was therefore, by its very nature, harmful to the proper functioning of normal competition. This finding is based on an assessment of the Agreement's content and objectives as well as the legal and economic context in which it operated.

Content of the Agreement

4.153 As set out above:

- the Agreement between Casio UK and [Reseller 1] stipulated that [Reseller 1] would not advertise or sell the Relevant Products online below the Minimum Price in accordance with the Casio Pricing Policy.⁴²⁵
- [Reseller 1]'s commitment to adhere to the Casio Pricing Policy was reinforced by measures on Casio UK and other resellers' part to monitor the market and identify resellers who advertised or sold the Relevant Products online below the Minimum Price, including by way of using auto tracking software (in case of resellers) and, from 2016, Price2Spy software by Casio UK.⁴²⁶
- It was also reinforced by a credible threat of sanctions based on remarks from Casio UK that [Reseller 1] would not '*be looked on as supporting Casio*' if it did not work with Casio UK,⁴²⁷ as well as actual sanctions. More specifically, [Reseller 1] was concerned that if it advertised the Relevant Products online below the Minimum Price in breach of the Casio Pricing Policy, it risked being put on less favourable trading terms, delays in receiving stock of the Relevant Products from Casio UK, less marketing or general support and similar repercussions.⁴²⁸ The evidence shows that sanctions (delayed payment of an invoice by Casio UK) were actually imposed on [Reseller 1] on at least one occasion.⁴²⁹

4.154 The CMA concludes that even insofar as the Agreement related to the price at which [Reseller 1] could **advertise** the Relevant Products online (in terms

⁴²⁵ See paragraphs 4.118ff above. This also meant that [Reseller 1] was not supposed to offer discounts (for example via discount codes or vouchers) that would have lowered the online price for the Relevant Products to below the Minimum Price. See paragraph 4.104 and footnotes 369 and 317 above.

⁴²⁶ See paragraphs 3.92ff above.

⁴²⁷ See footnote 319 above.

⁴²⁸ See paragraph 4.45 above.

⁴²⁹ See paragraphs 4.46 f above.

of requiring adherence to a MAP), it restricted in practice the ability of [Reseller 1] to **sell** the Relevant Products online at a price below the Minimum Price. This is because where a customer bought the Relevant Products from [Reseller 1] online (ie '*click-to-buy*' sales), the advertised price was typically the price paid by the customer for the Relevant Products, that is, the sales price.⁴³⁰

- 4.155 As set out above, the CMA concludes that the restrictions on [Reseller 1] setting its own online resale price for the Relevant Products applied to the sale of Relevant Products by [Reseller 1] (sold individually) and, from some point during the Relevant Period, also to the sale of certain bundles made up of a Relevant Product and certain accessories.⁴³¹
- 4.156 On the basis of the above, the CMA finds that the Agreement amounted to RPM in respect of online sales of the Relevant Products by [Reseller 1].
- 4.157 Both at the EU and the national level (including the UK), RPM has consistently been found to have the object of preventing, restricting or distorting competition.⁴³²

Objectives of the Agreement

- 4.158 The CMA concludes that the main objective of the Agreement (and the Casio Pricing Policy more generally) was to fix a Minimum Price at which [Reseller 1] (and other resellers adhering to the Casio Pricing Policy) would sell the Relevant Products online. The totality of the evidence in the CMA's possession shows that the aim of this was to:
- reduce downward pressure on online prices of the Relevant Products;⁴³³

⁴³⁰ [Reseller 1] estimates that it sells no more than [0-10]% of the Relevant Products online at a price below the advertised price (for example on the basis of occasional 'call for best price' promotions). URN C_CAS00348 ([Reseller 1] Section C of response to [Reseller 1] April RFI dated 25 April 2018), p.5. Similarly, in response to a clarificatory request to the [Reseller 1] April RFI, [Reseller 1] confirmed that its estimate of the proportion of Relevant Products sold below the price advertised online (approximately [3-5]%) was likely to have been the same throughout the Relevant Period. URN C_CAS02319 (Response dated 21 February 2019 to clarificatory request to [Reseller 1] April RFI), p.3.

⁴³¹ See paragraph 3.89 above.

⁴³² See to this effect, for example, the recent Commission decisions of 24 July 2018 in cases AT. 40465 (*Asus*), paragraph 107; AT. 40469 (*Denon & Marantz*), paragraphs 93 f; AT. 40181 (*Philips*), paragraph 61 and AT. 40182 (*Pioneer*), paragraph 152.

⁴³³ See paragraph 3.66 above.

- reduce online price competition between [Reseller 1] and other resellers of the Relevant Products who adhered to the Casio Pricing Policy; and⁴³⁴
- prevent online price wars both within the UK, and with resellers in Europe,⁴³⁵

thereby protecting or improving the margins of resellers of the Relevant Products who adhered to the Casio Pricing Policy, including [Reseller 1].⁴³⁶

4.159 The CMA concludes that, in the absence of the Agreement, [Reseller 1] would have been able to determine independently its online price for the Relevant Products. In this way, it would have had the freedom to attract and win customers by using the internet to signal to customers the existence of a price advantage over its competitors. This would have greatly increased the scope for price competition between [Reseller 1] and its competitors.

4.160 As set out in paragraph 3.75 above, the evidence shows that Casio UK's rationale for introducing the Casio Pricing Policy, which formed the basis for the Agreement with [Reseller 1], was at least twofold:

- to increase the attractiveness of the Relevant Products (and Casio's brand more generally) by enabling its resellers to achieve attractive margins, thus encouraging them to stock and sell the Relevant Products; and
- to thereby help Casio UK secure, maintain and/or improve its UK market position in digital pianos and digital keyboards relative to its competitors, especially [X] and to a lesser extent [X].

4.161 The CMA concludes that Casio UK was aware that the implementation of the Casio Pricing Policy (the basis for the Agreement) would lead to potentially illegal '*price fixing*'.⁴³⁷ Various documents on the CMA's file show that wherever possible, Casio UK carefully avoided putting instructions to resellers (including [Reseller 1]) or threats regarding potential sanctions in writing.⁴³⁸

⁴³⁴ See paragraph 3.66 above.

⁴³⁵ See paragraphs 3.77ff above.

⁴³⁶ See paragraph 3.80 above.

⁴³⁷ URN E_CAS00176 (Email sent by [Casio Employee 3] to [Casio Employee 5], [Casio Senior Employee 5] and [Casio Employee 1] dated 12 March 2013), p.2.

⁴³⁸ [Casio Senior Employee 5] instructed the EMI Sales Team to not email copies of documents entitled '*EMI Pricing Structure 2015*' to resellers: '*[W]e cannot email these out, only discuss with dealers face and leave a copy if required.*' URN E_CAS01780 (Email from [Casio Senior Employee 5] to [Casio Employee 1], [Casio Employee 3] and [Casio Employee 5] dated 8 June 2015); Later, [Casio Senior Employee 4] stated, '*do not put anything in*

4.162 The CMA finds that this 'subjective' awareness of the necessary consequences of the Casio Pricing Policy further supports its conclusion that the Agreement had the object of preventing, restricting or distorting competition through RPM in the supply of the Relevant Products in the UK.

Legal and economic context of the Agreement

4.163 Section 3. B. above provides an overview of the domestic digital piano and digital keyboard sector. In reaching its finding that the Agreement had the object of preventing, restricting or distorting competition, the CMA has had regard to the actual context in which the Agreement operated, including:

- the goods affected by it;⁴³⁹
- the conditions of the functioning and structure of the market;⁴⁴⁰ and
- the relevant legal and economic context.⁴⁴¹

4.164 The CMA considers that the legal and economic context in which digital pianos and digital keyboards are supplied means that a restriction on the price at which the Relevant Products can be advertised or sold online restricts competition by its very nature. This is based, among other factors, on the ever-increasing importance of the internet as a retail channel, and product pricing as one of the main factors based on which resellers compete.

Conclusion on the object of the Agreement

4.165 For the reasons set out above, the CMA concludes that the Agreement had as its object the prevention, restriction or distortion of competition (through the application of RPM) in the supply of the Relevant Products within the UK.

E. Appreciable Restriction of Competition

4.166 For the reasons set out below, the CMA finds that the Agreement appreciably prevented, restricted or distorted competition for the supply of

writing about RSP's....Call them! - URN E_CAS02744 (Email from [Casio Senior Employee 4] to [Casio Employee 3], [Casio Employee 6], [Casio Employee 1], [Casio Employee 5], [Casio Employee 7], [Casio Employee 8] and [Casio Employee 9] dated 19 April 216), p.1.

⁴³⁹ See section 3.B.I above.

⁴⁴⁰ See section 3.B.III and 3.B.V. above.

⁴⁴¹ See section 3.B above.

digital pianos and digital keyboards within the EU (for the purposes of Article 101 TFEU) and the UK (for the purposes of the Chapter I prohibition).

I. Key legal principles

- 4.167 An agreement that is restrictive of competition will only fall within the Chapter I prohibition or Article 101 TFEU if its effect on competition is appreciable.⁴⁴²
- 4.168 The Court of Justice has clarified that an agreement that may affect trade between Member States and that has an anti-competitive object constitutes, by its nature and independently of any concrete effect that it may have, an appreciable restriction on competition.⁴⁴³ In accordance with section 60 of the Act, this principle applies equally in respect of the Chapter I prohibition (taking account of the relevant differences between Art 101 TFEU and the Chapter I prohibition): accordingly, an agreement that may affect trade within the UK and that has an anti-competitive object constitutes, by its nature and independently of any concrete effect that it may have, an appreciable restriction of competition.⁴⁴⁴

II. Legal assessment

- 4.169 As set out above, the CMA has concluded that the Agreement had the object of preventing, restricting or distorting competition (see paragraph 4.165 above). The Agreement was also capable of affecting trade between Member States (see paragraphs 4.170ff below) and trade within the UK (see paragraphs 4.184 and 4.187 ff below). The CMA therefore finds that the Agreement constituted, by its very nature, an appreciable restriction of competition in the retail sale of digital pianos and digital keyboards for the purposes of the Chapter I prohibition and Article 101 TFEU.

⁴⁴² It is settled case law that an agreement between undertakings falls outside the prohibition in Article 101(1) TFEU if it has only an insignificant effect on the market: see Case C-226/11 *Expedia Inc. v Autorité de la concurrence and Others*, EU:C:2012:795, paragraph 16 citing, among other cases, Case 5/69 *Völk v Vervaecke*, EU:C:1969:35, paragraph 7. See also *Agreements and Concerted Practices* (OFT401, December 2004), adopted by the CMA Board, paragraph 2.15.

⁴⁴³ Case C-226/11 *Expedia Inc. v Autorité de la concurrence and Others*, EU:C:2012:795, paragraph 37; and Commission Notice on agreements of minor importance [2014] OJ C291/01, paragraphs 2 and 13.

⁴⁴⁴ See, for example, *Carewatch and Care Services Limited v Focus Caring Services Limited and Others* [2014] EWHC 2313 (Ch) paragraphs 148ff.

F. Effect on Trade between EU Member States

4.170 For the reasons set out below, the CMA finds that the Agreement satisfies the requisite test for an effect on trade between EU Member States within the meaning of Art 101 TFEU.

I. Key legal principles

4.171 Article 101 TFEU applies where an agreement or concerted practice may affect trade between EU Member States appreciably.⁴⁴⁵

4.172 In order that trade may be affected by an agreement, 'it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that [the] agreement may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States'.⁴⁴⁶

4.173 When assessing whether an agreement may affect trade between Member States, the CMA will have regard to the approach set out in the Commission's *Guidelines on the effect on trade concept contained in Article 81 and 82 of the Treaty (Effect on Trade Guidelines)*.⁴⁴⁷

4.174 The assessment of whether an agreement is capable of affecting trade between Member States involves consideration of various factors which, taken individually, may not be decisive.⁴⁴⁸ These factors include the nature of the agreement, the nature of the products covered by the agreement, the position and importance of the undertakings concerned and the economic and legal context of the agreement.⁴⁴⁹

4.175 According to the Effect on Trade Guidelines, agreements relating to tradable products whereby undertakings engage in resale price maintenance (RPM) and which cover the whole of a Member State may have direct effects on trade between Member States by increasing imports from other member States and by decreasing exports from the Member State in question.⁴⁵⁰

⁴⁴⁵ Case 22/71 *Béguelin Import Co. v S.A.G.L. Import Export*, EU:C:1971:113, paragraph 16.

⁴⁴⁶ Case 56/65 *Société Technique Minière v Maschinenbau Ulm GmbH*, EU:C:1966:38, p249.

⁴⁴⁷ *Agreements and Concerted Practices* (OFT401, December 2004), adopted by the CMA Board, paragraph 2.23, and Commission Notice, *Guidelines on the effect on trade concept contained in Article 81 and 82 of the Treaty* [2004] OJ C101/07 (Effect on Trade Guidelines).

⁴⁴⁸ Effect on Trade Guidelines, paragraph 28, citing Case C-250/92 *Gottrup-Klim e.a. Grovvareforeninger v Dansk Landbrugs Grovvaresekskab AmbA*, EU:C:1994:413, paragraph 54.

⁴⁴⁹ Effect on Trade Guidelines, paragraphs 28 and 32.

⁴⁵⁰ Effect on Trade Guidelines, paragraph 88. Agreements involving RPM may also affect patterns of trade in much the same way as horizontal cartels. To the extent that the price resulting from RPM is higher than that

4.176 The assessment of whether an agreement has an ‘appreciable’ effect on trade between Member States similarly depends on various factors and the circumstances of each case.⁴⁵¹ For example, the stronger the market position of the undertakings concerned, the more likely it is that an agreement that is capable of affecting trade between Member States can be held to do so appreciably.⁴⁵²

4.177 There are no general quantitative rules covering all categories of agreements indicating when trade between Member States is capable of being appreciably affected.⁴⁵³ However, the Commission considers that in principle agreements are not capable of appreciably affecting trade between Member States when the following cumulative conditions (the ‘NAAT rule’) are met:

- the aggregate market share of the parties on any relevant market within the Community affected by the agreement does not exceed 5% and
- in the case of vertical agreements, the aggregate annual Community turnover of the supplier in the products covered by the agreement does not exceed 40 million euro.⁴⁵⁴

4.178 If an agreement does not fall within the criteria set out above, a case by case analysis is necessary.⁴⁵⁵ This needs to take into account, for example, the market position of the undertakings concerned, the nature of the agreement and the nature of the products covered.⁴⁵⁶

prevailing in other Member States, this price level is only sustainable if imports from other Member States can be controlled.

⁴⁵¹ Effect on Trade Guidelines, paragraph 45.

⁴⁵² Effect on Trade Guidelines, paragraph 45.

⁴⁵³ Effect on Trade Guidelines, paragraph 46.

⁴⁵⁴ Effect on Trade Guidelines, paragraph 52. This turnover is to be calculated on the basis of total Community sales excluding tax during the previous financial year by the undertaking concerned, of the products covered by the agreement (the contract products). Effect on Trade Guidelines, paragraph 54. This ‘negative’ rebuttable presumption also applies where during two successive calendar years this turnover threshold is not exceeded by more than 10% and this market threshold is not exceeded by more than two percentage points. Effect on Trade Guidelines, paragraph 52. According to the Effect on Trade Guidelines, the NAAT rule applies irrespective of the nature of the restrictions contained in an agreement, including so-called ‘*hardcore restrictions*’. Effect on Trade Guidelines, paragraph 50.

⁴⁵⁵ Effect on Trade Guidelines, paragraph 51. However, where an agreement by its very nature is capable of affecting trade between Member States, there is a rebuttable positive presumption that such effects on trade are appreciable when the turnover of the parties in the products covered by the agreement exceeds 40 million euro. According to the Effect on Trade Guidelines, in the case of such agreements, it can also often be presumed that such effects are appreciable when the market share of the parties exceeds 5% - Effect on Trade Guidelines, paragraph 53.

⁴⁵⁶ Effect on Trade Guidelines, paragraph 45.

II. Legal assessment

4.179 The CMA finds that the Agreement had the potential to appreciably affect trade between EU Member States. The CMA has based its finding on the following assessment.

Agreement capable of affecting trade between Member States

4.180 As set out above, the Agreement restricted the price at which [Reseller 1] could sell the Relevant Products (tradable products) online to customers in the UK and potentially beyond and therefore led to RPM.⁴⁵⁷ Pursuant to the *Effect on Trade Guidelines*, agreements involving RPM which cover the whole of a Member State may have direct effects on trade between Member States by increasing imports from other Member States and by decreasing exports from the Member State in question.⁴⁵⁸ Based on this, the CMA concludes that the Agreement was capable of affecting trade between Member States.

Appreciability

4.181 The CMA finds that the appreciability criterion, which is part of the effect on trade test, is also met in this case.

4.182 The CMA concludes that the negative rebuttable presumption that the Agreement was **not** capable of appreciably affecting trade between Member States does not apply since the cumulative criteria of the NAAT rule⁴⁵⁹ are not met in this case. While the turnover limb of the NAAT test⁴⁶⁰ is met,⁴⁶¹ the market share threshold⁴⁶² is not met since Casio UK's market share in the (upstream) market for the supply of digital pianos and digital keyboards

⁴⁵⁷ See paragraph 4.156 above.

⁴⁵⁸ *Effect on Trade Guidelines*, paragraph 88.

⁴⁵⁹ Set out in paragraph 4.177 above.

⁴⁶⁰ Aggregate annual Community turnover of the supplier in the products covered by the agreement not exceeding 40 million euro.

⁴⁶¹ In the CMA's view, the correct interpretation of this test is that only the value of sales of the Relevant Products from Casio UK to [Reseller 1] is to be taken into account, as only this represents turnover related to the 'products covered by' the Agreement. The total value of digital keyboards/pianos supplied to [Reseller 1] by Casio UK (for resale) in 2017/18 was £[REDACTED]+ VAT (and £[REDACTED]+ VAT the year before). See URN C_CAS02490 (Response dated 25 March 2019 to [Reseller 1] March RFI), p.2.-Even if, on the basis of a more liberal interpretation, in calculating the relevant turnover, regard was had to the entirety of Casio's UK turnover in digital pianos and digital keyboards in the UK (as the turnover in the type of products covered by the agreement), in 2017/18 the relevant turnover would be no more than £[REDACTED] - URN C_CAS02424 (Response dated 27 March 2019 to First March RFI), Annex 1; (Note: the total turnover excludes revenue from the Education and non-UK distribution (ie Distributors) channels or from accessories).

⁴⁶² (Aggregate) market share of the parties not exceeding 5% on any relevant market affected by the agreement.

to UK resellers was at least [5-15]%⁴⁶³ in Casio UK's last financial year before the end of the Infringement (2017/2018) and therefore exceeded 5%.⁴⁶⁴

4.183 The factors set out below underpin the CMA's finding that the Agreement was potentially capable of having an appreciable effect on trade between Member States:

- the turnover and market position of the undertaking concerned: while Casio UK may not hold the highest market share in the digital keyboard and piano market in the UK, it holds a significant proportion. The CMA estimates Casio UK's share of supply to be at least [5-15]%,⁴⁶⁵
- in relation to digital pianos and digital keyboards, [Reseller 1] is one of the top 8 resellers of Casio-branded products in the UK,⁴⁶⁶
- the CMA has been provided with evidence that at least one Casio UK reseller proactively sold the Relevant Products to consumers in EU Member States other than the UK⁴⁶⁷ and others, including [Reseller 1],⁴⁶⁸

⁴⁶³ The CMA does not have any exact market share or market value figures for the (upstream) market for the supply of digital pianos and digital keyboards to UK resellers.

The CMA has based this [5-15]% figure on the following assumptions: (1) Casio UK's 2017/18 turnover in the Relevant Products was £[§], excluding the Education and Distributor distribution channels and net of deductions for sales rebates, value added tax and other taxes (URN C_CAS02424 (Response dated 27 March 2019 to First March RFI), Annex 1); (2) the total revenue of the retail sale of the piano, keyboard and organ market in the UK for 2017/18 was £[§] million (URN M_CAS00005 (IBISWorld Report, March 2019), p.30 and URN M_CAS00004 (IBISWorld Report, December 2017), p.13).

This [5-15]% figure is an underestimate of Casio UK's market share because the £[§] revenue figure provided by Casio UK relates to its sales of Relevant Products to resellers, whereas the £[§] million IBISWorld Report revenue figure related to: (1) organs and acoustic pianos as well as digital pianos and digital keyboards; and (2) sales to end-customers and would therefore include a resale margin, which the upstream Casio UK figure does not.

⁴⁶⁴ In the CMA's view, the rebuttable positive presumption of an effect on trade (see footnote 455 above) does not apply in this case, either. Based on paragraph 88 of the *Effect on Trade Guidelines*, RPM agreements covering the whole of a Member State (like in this case) 'may be capable of affecting trade between Member States', but are not, by their 'very nature' capable of affecting trade.

⁴⁶⁵ Please see footnote 463 for how this market share figure has been calculated.

⁴⁶⁶ URN E_CAS02599 (Email from [Casio Senior Employee 4] to [Casio Senior Employee 3] dated 10 March 2016), pp.1-2.

⁴⁶⁷ In June 2017 [Casio Senior Employee 4] described the supply arrangement with [Reseller 7] as, '[§] [Reseller 7] [§]. The European side of their business is growing as they plan to compete and take on [Reseller 17]. Currently, we supply all of [Reseller 7] Casio products to their UK warehouse, they rework and send over to each respective centre.' [Casio Senior Employee 4] goes on to say that [Reseller 7] have requested that Casio UK ship directly to its European warehouses, and had requested to be put in contact with [a subsidiary of Casio Japan]. URN E_CAS04371 (Email from [Casio Senior Employee 4] to undisclosed recipients dated 14 June 2017).

⁴⁶⁸ 'It's mainly UK. We get the odd, um, enquiry that does come further afield, but it's not because we're promoting further afield, it's – they've just found us somehow. Er, we do a bit in Ireland, because that – that –

would sell them to consumers who approached them from other EU Member States;

- there is also evidence that a number of resellers based in other EU Member States were selling the Relevant Products to customers located in other EU Member States, including the UK, such as [Reseller 17], [Reseller 19], and [Reseller 18] [European resellers who also sell into the UK],^{469, 470}
- some UK resellers complained about these resellers in other EU Member States undercutting their own UK prices;⁴⁷¹
- Casio UK sought from late 2016 onwards to set consistent €/£ prices in relation to sales between [Reseller 17/Reseller 19/Reseller 18] [European resellers who also sell into the UK] and UK consumers in an attempt to prevent imports of the Relevant Products into the UK from resellers outside the UK;⁴⁷²

we're recognised over there that they – but again that huge amount. Our market really is UK.' URN C_CAS02410 (Transcript of interview with [Reseller 1 Senior Employee 1] dated 14 January 2019), p.57, lines 19-23.

⁴⁶⁹ For example, URN E_CAS00597 (Email from [Casio Senior Employee 5] to [Casio Employee 2], [REDACTED] of [a subsidiary of Casio Japan], dated 25 March 2014), p.1-2; See also paragraphs 3.77-3.81 above.

⁴⁷⁰ See URN C_CAS02410 (Transcript of interview with [Reseller 1 Senior Employee 1] dated 14 January 2019): CMA: *'And in terms of the other, er, competitors that you're monitoring, are they UK-based?'* [Reseller 1 Senior Employee 1]: *'Er, yeah. There are a number of European people that are quite prominent in the UK, er, and yes, they, you know, they can be quite aggressive on price sometimes, but -- in fact, I suppose we did compete against them sometimes, if they looked like they're UK-based and they're selling into, we'll do whatever's required to remain competitive, if it's viable for us. And if it's not, we don't do it. That's it, really.'* - p.104, line 25 to p.105, line 8; [Reseller 1 Senior Employee 1]: *'Er, no idea. Until recently, Europe has not been of any interest to us at all. The only reason we're now looking at a little bit in terms of competing is because of a few German retailers that have come in with some quite high-profile websites and obviously, paid to be there in the mix of what we're doing in the UK. Erm, so that's more recent in the last three or four years, probably, that's been the case; prior to that, it was just UK.'* - p.128, lines 18-24; [Reseller 1 Senior Employee 1]: *'[Reseller 19] is a European country, I think -- European dealer; I can't remember, from [REDACTED] or somewhere. And I think I've said before, there's a couple of European, er, retailers now that have become very prevalent in the UK. [Reseller 19] is one because their website in the UK is .co.uk, so although they're not in the UK, from a customer's point of view looking, they wouldn't know that. Therefore, it's quite easy to buy and I want to make sure that they're not, you know, we want to be competitive to that if it's coming up prominent in the UK.'* - p.236, lines 5-12.

⁴⁷¹ For example, on 10 March 2017, [Casio Employee 1] sent an internal email to [Casio Senior Employee 4] under the heading *'Price2Spy Scheduled Report - Products violating MAP'* forwarding the most recent Price2Spy report, stating: *'[Reseller 19] are out on the PX-5, this is pulling [Reseller 7] ([Employee] called me yeeterday [sic]) and [Reseller 1] are reacting to them.'* [Casio Senior Employee 4] responded: *'This is a European issue as [Reseller 18] and [Reseller 17] are both out on this too. Tell them I'm looking into it, however unlikely to get resolved today. Happy for them to match whilst those three European dealers are out.'* - URN E_CAS04026 (Email exchange between [Casio Employee 1], [Casio Senior Employee 4], [Casio Employee 5] and [Casio Employee 3] dated 10 March 2017).

⁴⁷² See paragraphs 3.77-3.81 above.

- the Agreement related to online commerce which, by its nature, is likely to reach consumers in other EU Member States; and
- the products that were the subject of the Agreement could be easily traded across borders as there were no significant cross-border barriers, in particular when sold through resellers online. The Commission has previously found evidence of competition across borders in the EEA in relation to musical instruments.^{473 474}

G. Effect on Trade within the UK

4.184 For the reasons set out below, the CMA finds that the Agreement satisfies the test for an effect on trade within the UK.

I. Key legal principles

4.185 The Chapter I prohibition applies to agreements and concerted practices which may affect trade within the UK.⁴⁷⁵ As set out in its guidance on *Agreements and concerted practices*, the CMA considers that in practice it is very unlikely that an agreement which appreciably restricts competition within the United Kingdom does not also affect trade within the United Kingdom. So, in applying the Chapter I prohibition the CMA's focus will be on the effect that an agreement has on competition.⁴⁷⁶

4.186 On whether the effect on trade within the UK must be appreciable, the CAT has held that there is no need to import into the Act the rule of 'appreciability' under EU law. The CAT's reasoning for this is that in EU law the requirement of an appreciable effect on trade is a jurisdictional rule the essential purpose of which is to demarcate the fields of EU law and UK domestic law

⁴⁷³ For example, in its *Yamaha* decision, the Commission found that, as evidenced by Yamaha, many dealers were engaged in substantial cross-border sales to end-users and that this demonstrated that the transport costs were not necessarily an obstacle and that dealers had the resources and administrative capabilities necessary to engage in cross-border sales activities. *Yamaha*, paragraph 94.

⁴⁷⁴ Although there are factors indicating that manufacturers compete to supply digital pianos and digital keyboards across borders within the EEA, in the CMA's view, the available evidence is not sufficiently comprehensive or compelling to define a market wider than the UK.

⁴⁷⁵ The UK includes any part of the UK in which an agreement operates or is intended to operate: section 2(7) of the Act. As is the case in respect of Article 101 TFEU, it is not necessary to demonstrate that an agreement has had an actual impact on trade – it is sufficient to establish that the agreement is capable of having such an effect: joined cases T-202/98 etc *Tate & Lyle plc and Others v Commission*, EU:T:2001:185, paragraph 78.

⁴⁷⁶ *Agreements and concerted practices*, OFT 401, paragraph 2.25. This guidance was originally published by the Office of Fair Trading (OFT) and has been adopted by the CMA Board.

respectively. According to the CAT, there is therefore no need to import this concept into domestic competition law.⁴⁷⁷

II. Legal assessment

4.187 The CMA finds that the Agreement may have affected trade within the UK or a part of the UK. This is because the pricing restriction imposed by the Agreement applied to [Reseller 1]’s online prices, in relation to products which are traded throughout the UK and beyond. The pricing restriction therefore potentially affected customers wishing to purchase the Relevant Products from [Reseller 1] throughout the whole of the UK and possibly beyond.

4.188 On this basis, the CMA concludes that the Agreement satisfies the test for an effect on trade within the UK.

H. Exclusion or Exemption

I. Exclusion

4.189 The Chapter I prohibition does not apply in any of the cases in which it is excluded by or as a result of Schedules 1 to 3 of the Act.⁴⁷⁸

4.190 The CMA finds that none of the relevant exclusions apply to the Agreement.

II. Block exemption/Parallel exemption

4.191 An agreement is exempt from Article 101(1) TFEU if it falls within a category of agreement which is exempt by virtue of a block exemption regulation.

4.192 Similarly, pursuant to section 10 of the Act, an agreement is exempt from the Chapter I prohibition if it falls within a category of agreement which is exempt from Article 101(1) TFEU by virtue of a block exemption regulation.⁴⁷⁹

⁴⁷⁷ *Aberdeen Journals v Director of Fair Trading* [2003] CAT 11 at 459–461. In a subsequent case (*North Midland Construction plc v Office of Fair Trading* [2011] CAT 14 at 48–51 and 62), the CAT held that, although there had been some criticism of the CAT’s decision in *Aberdeen Journals*, it was not necessary to reach a conclusion on the question whether the appreciability requirement extends to the effect on UK trade test as, at least in that case, there was a close nexus between appreciable effect on competition and appreciable effect on trade within the UK, in that if one was satisfied, the other was likely to be so. For completeness, it should be mentioned that the High Court has doubted whether the CAT was correct on this point in two cases, namely *P&S Amusements Ltd v Valley House Leisure Ltd* [2006] EWHC 1510 (Ch), paragraphs 21, 22 and 34 and *Pirtek (UK) Ltd v Joinplace Ltd* [2010] EWHC 1641 (Ch), paragraphs 61–67.

⁴⁷⁸ Section 3 of the Act sets out the following exclusions: Schedule 1 covers mergers and concentrations, Schedule 2 covers competition scrutiny under other enactments; and Schedule 3 covers general exclusions.

⁴⁷⁹ This is the case irrespective of whether or not it affects trade between EU Member States.

- 4.193 It is for the parties wishing to rely on these provisions to adduce evidence that the exemption criteria are satisfied.⁴⁸⁰
- 4.194 Vertical agreements that restrict competition may be exempt from the Chapter I prohibition/Article 101(1) TFEU if they fall within the Vertical Agreements Block Exemption Regulation (the 'VABER').⁴⁸¹ The VABER exempts such agreements where the relevant market shares of the supplier and the buyer each do not exceed 30%, unless the agreement contains one of the so-called 'hardcore' restrictions in Article 4 of the VABER.⁴⁸²
- 4.195 Article 4(a) of the VABER provides that the exemption provided for in Article 2 of the VABER does not apply to those agreements which directly or indirectly have as their object *'the restriction of the buyer's ability to determine its sale price, without prejudice to the possibility of the supplier to impose a maximum sale price or recommend a sale price, provided that they do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered, by any of the parties.'*
- 4.196 As set out above, in the CMA's view, the Agreement restricted [Reseller 1]'s (that is the buyer's) ability to sell the Relevant Products online below the Minimum Price. Therefore, the Agreement restricted [Reseller 1]'s (the buyer's) ability to determine its sale price (ie it amounted to RPM).⁴⁸³ The CMA therefore finds that Article 4(a) of the VABER is engaged in the present case such that the block exemption provided for in Article 2 of the VABER does not apply to the Agreement. It follows that the Agreement is not exempt from the application of the Chapter I prohibition (by virtue of section 10 of the Act) or Article 101(1) TFEU.

III. Individual exemption

- 4.197 Agreements which satisfy the criteria set out in section 9 of the Act/Article 101(3) TFEU are exempt from the Chapter I prohibition/Article 101(1) TFEU.
- 4.198 There are four cumulative criteria to be satisfied:
- the agreement contributes to improving production or distribution, or promoting technical or economic progress;
 - while allowing consumers a fair share of the resulting benefit;

⁴⁸⁰ See by analogy section 9(2) of the Act.

⁴⁸¹ Commission Regulation No 330/2010 on the application of Article 101(3) of the Treaty on the functioning of the European Union to categories of vertical agreements and concerted practices [2010] OJ L102/1.

⁴⁸² See Articles 2–4 of the VABER.

⁴⁸³ See paragraph 4.165 above.

- the agreement does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; and
- the agreement does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

4.199 In considering whether an agreement satisfies the criteria set out in section 9 of the Act/Article 101(3) TFEU, the CMA will have regard to the Commission's Article 101(3) Guidelines.⁴⁸⁴

4.200 The CMA notes that agreements which have as their object the prevention, restriction or distortion of competition, are unlikely to benefit from individual exemption as such restrictions generally fail (at least) the first two conditions for exemption: they neither create objective economic benefits, nor do they benefit consumers. Moreover, such agreements generally also fail the third condition (indispensability).⁴⁸⁵ However, each case ultimately falls to be assessed on its merits.

4.201 It is for the party claiming the benefit of exemption to adduce evidence that substantiates its claim.⁴⁸⁶ Neither Casio, nor [Reseller 1], made any submissions on this point.

I. Attribution of liability

I. Key legal principles

4.202 For each party that the CMA finds to have infringed the Chapter I prohibition and/or Article 101 TFEU, the CMA will first identify the legal entity that was directly involved in the infringement. It will then determine whether liability for the infringement should be shared with any other legal entity, in which case each legal entity's liability will be joint and several on the basis that all form part of the same undertaking.

4.203 Companies belonging to the same corporate group will often constitute a single undertaking within the meaning of the Chapter I prohibition/Article 101 TFEU allowing the conduct of a subsidiary to be attributed to the parent

⁴⁸⁴ Commission Notice, *Guidelines on the Application of Article 81(3) of the Treaty* [2004] OJ C101/97 (Article 101(3) Guidelines). See also *Agreements and Concerted Practices* (OFT401, December 2004), adopted by the CMA Board, paragraph 5.5.

⁴⁸⁵ Article 101(3) Guidelines, paragraph 46 and Vertical Guidelines, paragraph 47.

⁴⁸⁶ Article 101(3) Guidelines, see paragraphs 51–58; Vertical Guidelines, paragraph 47. See also section 9(2) of the Act.

company. A parent company may be held jointly and severally liable for an infringement committed by a subsidiary company where, at the time of the infringement, the parent company was able to and did exercise decisive influence over the conduct of the subsidiary, so that the two form part of a single economic unit for the purposes of the Chapter I prohibition and/or Article 101 TFEU.⁴⁸⁷

- 4.204 According to settled case law, in the specific case where a parent company has a 100% shareholding in a subsidiary that has infringed the competition rules: (i) the parent company is able to exercise decisive influence over the conduct of the subsidiary; and (ii) there is a rebuttable presumption that the parent company does in fact exercise decisive influence over the conduct of its subsidiary.⁴⁸⁸
- 4.205 In those circumstances, it is sufficient for the CMA to prove that the subsidiary is wholly owned by the parent company in order to presume that the parent exercises decisive influence over the commercial policy of the subsidiary. The CMA will then be able to regard the parent company as jointly and severally liable for the payment of any fine imposed on its subsidiary, unless the parent company, which has the burden of rebutting that presumption, adduces sufficient evidence to show that its subsidiary acts independently on the market.⁴⁸⁹
- 4.206 As to the interpretation of ‘*decisive influence*’, the CAT noted in *Durkan*⁴⁹⁰ that such influence may be indirect and can be established even where the parent does not interfere in the day-to-day business of the subsidiary or where the influence is not reflected in instructions or guidelines emanating from the parent to the subsidiary. Instead, one must look generally at the relationship between the two entities, and the factors to which regard may be

⁴⁸⁷ Case C-97/08 P *Akzo Nobel NV and Others v Commission*, EU:C:2009:536, paragraph 60–61; and Case T-24/05 *Alliance One International, Inc., formerly Standard Commercial Corp. and Others v Commission*, EU:T:2010:453, paragraphs 126–130. See also Case 107/82 *Allgemeine Elektrizitäts-Gesellschaft AEG-Telefunken AG v Commission*, EU:C:1983:293, paragraph 50.

⁴⁸⁸ Case T-517/09 *Alstom v Commission*, EU:T:2014:999, paragraph 55; Case C-97/08 P *Akzo Nobel NV and Others v Commission*, EU:C:2009:536, paragraph 60. Case T-24/05 *Alliance One International, Inc., formerly Standard Commercial Corp. and Others v Commission*, EU:T:2010:453, paragraphs 126–130; and Case T-325/01 *DaimlerChrysler AG v Commission*, EU:T:2005:322, paragraphs 217–221. This principle was recently confirmed again by the General Court in its judgment of 12 July 2018, *The Goldman Sachs Group v Commission*, T-419/14, ECR, EU:T:2018:445, paragraph 44.

⁴⁸⁹ See Case C-97/08 P *Akzo Nobel NV and Others v Commission*, EU:C:2009:536, paragraph 61 and *The Goldman Sachs Group v Commission*, T-419/14, ECR, EU:T:2018:445, paragraph 45.

⁴⁹⁰ *Durkan Holdings Limited and Others v Office of Fair Trading* [2011] CAT 6.

had when considering the issue of decisive influence '*are not limited to commercial conduct but cover a wide range*'.⁴⁹¹

- 4.207 In examining whether a parent company has the ability to exercise decisive influence over the market conduct of its subsidiary, account must be taken of all the relevant factors relating to the economic, organisational and legal links which tie the subsidiary to its parent company and, therefore, of the economic reality.⁴⁹²
- 4.208 The actual exercise of decisive influence is assessed on the basis of factual evidence including, in particular, through an analysis of the management powers that the parent companies have over the subsidiary.⁴⁹³ The actual exercise of decisive influence can be shown directly by the parent's specific instructions or rights of co-determination of commercial policy and can also be inferred indirectly from the totality of the economic, organisational and legal links between the parent company and the relevant subsidiary.⁴⁹⁴ Influence over aspects such as corporate strategy, operational policy, business plans, investment, capacity, provision of finance, human resources and legal matters are relevant even if each of those factors taken in isolation does not have sufficient probative value.⁴⁹⁵
- 4.209 The actual exercise of decisive influence by the parent company over the subsidiary may be deduced from any, or a combination, of the following non-exhaustive factors:
- board composition and board representation by the parents on the board of the subsidiary;⁴⁹⁶
 - overlapping senior management;⁴⁹⁷

⁴⁹¹ *Durkan Holdings Limited and Others v Office of Fair Trading* [2011] CAT 6 [22].

⁴⁹² See Joined cases C-293/13 P and C-294/13 P *Fresh Del Monte Produce Inc. v Commission and Commission v Fresh Del Monte Produce Inc.*, EU:C:2015:416, paragraph 76. See also Case C-440/11 P *European Commission v Stichting Administratiekantoor Portielje and Gosselin Group NV*, EU:C:2013:514, paragraph 66; and Case T-45/10 *GEA Group AG v Commission*, EU:T:2015:507, paragraph 133.

⁴⁹³ T-77/08 *The Dow Chemical Company v Commission* EU:T:2012:47 confirmed on appeal C-179/12 *The Dow Chemical Company v Commission* EU:C:2013:605.

⁴⁹⁴ T-314/01 *Avebe v Commission* EU:T:2006:266, paragraph 136 and case-law cited; T-77/08 *The Dow Chemical Company v Commission* EU:T:2012:47 paragraph 77; *Durkan v Office of Fair Trading* [2011] CAT 6, paragraphs 19–22.

⁴⁹⁵ T-132/07 *Fuji Electric Co. Ltd v Commission* EU:T:2011:344, paragraph 183.

⁴⁹⁶ Case T-399/09 *Holding Slovenske elektrarne d.o.o. (HSE) v Commission*, EU:T:2013:647, paragraph 38.

⁴⁹⁷ Case T-132/07 *Fuji Electric Co. Ltd v Commission*, EU:T:2011:344, paragraph 184.

- the business relationship between the parent company and the subsidiary;⁴⁹⁸
- presence of the parent company in the same business sector;⁴⁹⁹
- sole representation by the parent company in the administrative proceedings;⁵⁰⁰
- parent and subsidiary presenting themselves to the outside world as forming part of the same group, such as references in the annual reports, description of being part of the same group;⁵⁰¹ and
- the level of control over the important elements of the business strategy of the subsidiary, the level of integration of the subsidiary into the parent company's corporate structure and how far the parent company, through representatives on the board of the subsidiary, was involved in the running of the subsidiary.⁵⁰²

II. Liability for the Infringement

- 4.210 The legal entity that was directly involved in the Infringement throughout the Relevant Period was Casio UK. Accordingly, the CMA finds Casio UK liable for the Infringement.
- 4.211 Casio UK was 100% owned by Casio Japan throughout the Relevant Period.⁵⁰³
- 4.212 Based on the legal principles set out in paragraph 4.204 above, this means that: (i) Casio Japan was able to exercise decisive influence over the conduct of Casio UK throughout the Relevant Period; and (ii) there is a rebuttable presumption that Casio Japan did in fact exercise decisive influence over the conduct of Casio UK. Casio Japan has not rebutted this presumption.

III. Conclusion on joint and several liability

- 4.213 In the light of the above, the CMA concludes that Casio UK and its ultimate parent company, Casio Japan, formed a single economic unit for the purposes of the Chapter I prohibition and/or Article 101 TFEU throughout the

⁴⁹⁸ T-132/07 *Fuji Electric Co. Ltd v Commission* EU:T:2011:344, paragraph 184.

⁴⁹⁹ Commission Decision 2007/691/EC *Fittings* (COMP/F/38.121) [2007] OJ L283/63.

⁵⁰⁰ Case C-286/98 P *Stora Kopparbergs Bergslags AB v Commission*, EU:C:2000:630.

⁵⁰¹ Case T-399/09 *Holding Slovenske elektrarne d.o.o. (HSE) v Commission*, EU:T:2013:647, paragraphs 33–36 and 62–66.

⁵⁰² *Durkan v Office of Fair Trading* [2011] CAT 6, paragraph 31.

⁵⁰³ See paragraph 3.33 above.

Relevant Period. Casio Japan and Casio UK are therefore jointly and severally liable for the payment of any fine imposed in relation to the Infringement.

J. Burden and standard of proof

I. Burden of proof

4.214 The burden of proving an infringement of the Chapter I prohibition/Article 101 TFEU lies with the CMA.⁵⁰⁴

4.215 This burden does not preclude the CMA from relying, where appropriate, on inferences or evidential presumptions. In *Napp*, the CAT stated:

‘That approach does not in our view preclude the Director,⁵⁰⁵ in discharging the burden of proof, from relying, in certain circumstances, from inferences or presumptions that would, in the absence of any countervailing indications, normally flow from a given set of facts, for example [...] that an undertaking’s presence at a meeting with a manifestly anti-competitive purpose implies, in the absence of explanation, participation in the cartel alleged.’⁵⁰⁶

4.216 The CMA finds that it has discharged its burden of proof in this case.

II. Standard of proof

4.217 The CMA is required to demonstrate that an infringement has occurred on the balance of probabilities which is the civil standard of proof.⁵⁰⁷ The CAT clarified in the *Replica Football Kit* appeals that:⁵⁰⁸ *‘[t]he standard remains the civil standard. The evidence must however be sufficient to convince the Tribunal in the circumstances of the particular case, and to overcome the presumption of innocence to which the undertaking concerned is entitled.’*

⁵⁰⁴ *Napp Pharmaceutical Holdings Ltd and Subsidiaries v Director General of Fair Trading* [2002] CAT 1 [95] and [100]. See also *JJB Sports plc v Office of Fair Trading* [2004] CAT 17 [164] and [928]–[931]; and *Tesco Stores Limited and Others v Office of Fair Trading* [2012] CAT 31 [88].

⁵⁰⁵ References to the ‘Director’ are to the former Director General of Fair Trading (DGFT). The post of DGFT was abolished under the Enterprise Act 2002 and the functions of the DGFT were transferred to the OFT. From 1 April 2014 the OFT’s competition and certain consumer functions were transferred to the CMA by virtue of the Enterprise and Regulatory Reform Act 2013.

⁵⁰⁶ *Napp Pharmaceutical Holdings Ltd and Subsidiaries v Director General of Fair Trading* [2002] CAT 1 [110].

⁵⁰⁷ *Tesco Stores Limited and Others v Office of Fair Trading* [2012] CAT 31 [88].

⁵⁰⁸ *JJB Sports plc and Allsports Limited v Office of Fair Trading* [2004] CAT 17 [204]. See also *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24 [164]–[166].

- 4.218 The Supreme Court has further clarified that this standard of proof is not connected to the seriousness of the suspected infringement.⁵⁰⁹ The CAT has also expressly accepted the reasoning in this line of case law.⁵¹⁰
- 4.219 The CMA finds that this standard of proof has been met in relation to the Infringement.

5. THE CMA'S PROPOSED ACTION

A. The CMA's Proposed Decision

- 5.1 On the basis of the evidence set out in this Decision, the CMA has concluded that Casio UK infringed the Chapter I prohibition and/or Article 101 TFEU by entering into an agreement and/or participating in a concerted practice with [Reseller 1]:
- that [Reseller 1] would not advertise or sell online the Relevant Products below the Minimum Price;
 - which amounted to RPM in respect of online sales of the Relevant Products by [Reseller 1].
- 5.2 The CMA finds that this agreement and/or concerted practice:
- had as its object the prevention, restriction or distortion of competition within the UK and/or between EU Member States;
 - may have affected trade within the UK and/or between EU Member States; and
 - lasted from 4 February 2013 to 5 April 2018.
- 5.3 The CMA has decided to attribute liability for Casio UK's Infringement to its ultimate parent company, Casio Japan, making Casio UK and Casio Japan jointly and severally liable for the Infringement.
- 5.4 The remainder of this Section sets out the enforcement action which the CMA is taking and its reasons for taking that action.

⁵⁰⁹ *Re S-B (Children)* [2009] UKSC 17 [34]. See also *Re B (Children)* [2008] UKHL 35 [72].

⁵¹⁰ *North Midland Construction plc v Office of Fair Trading* [2011] CAT 14 [15]–[16].

B. Directions

- 5.5 The CMA concludes that the Infringement has ceased. Therefore, in the CMA's view, it is not necessary to give directions to any party in this case.⁵¹¹

C. Financial Penalties

I. General

- 5.6 Section 36(1) of the Act provides that on making a decision that an agreement⁵¹² has infringed the Chapter I prohibition or Article 101(1) TFEU, the CMA may require an undertaking which is a party to the agreement concerned to pay the CMA a penalty in respect of the infringement.
- 5.7 As set out above, the CMA finds the Addressees (which are part of the same single economic entity) jointly and severally liable for the Infringement. Therefore, in the CMA's view it is appropriate to impose a financial penalty for the Infringement jointly and severally on the Addressees.

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

- 5.8 Provided the penalties the CMA imposes in a particular case are:
- a. within the range of penalties permitted by section 36(8) of the Act⁵¹³ and the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (the 2000 Order);⁵¹⁴ and
 - b. the CMA has had regard to the Penalties Guidance⁵¹⁵ 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.⁵¹⁶

⁵¹¹ Section 32(1) of the Act provides that if the CMA has made a decision that an agreement infringes the Chapter I prohibition and Article 101(1) TFEU, it may give to such person(s) as it considers appropriate such directions as it considers appropriate to bring the infringement to an end.

⁵¹² Or, as appropriate, concerted practice or decision by an association of undertakings – see section 2(5) of the Act.

⁵¹³ Section 36(8) of the Act reads: '*No penalty fixed by the [OFT]* under this section may exceed 10% of the turnover of the undertaking (determined in accordance with such provisions as may be specified in an order made by the Secretary of State).'

⁵¹⁴ SI 2000/309, as amended by the Competition Act (Determination of Turnover for Penalties) (Amendment) Order 2004, SI 2004/1259.

⁵¹⁵ [CMA's guidance as to the appropriate amount of a penalty](#) (CMA73, 18 April 2018), paragraph 1.10.

⁵¹⁶ *Argos Limited and Littlewoods Limited v OFT* [2005] CAT 13, at [168] and *Umbro Holdings and Manchester United and JJB Sports and Allsports v OFT* [2005] CAT 22, at [102].

- 5.9 The CMA is not bound by its decisions in relation to the calculation of financial penalties in previous cases.⁵¹⁷ Rather, the CMA makes its assessment on a case-by-case basis,⁵¹⁸ having regard to all relevant circumstances and the objectives of its policy on financial penalties.
- 5.10 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 infringements and the desirability of deterring both the undertaking on which the penalty is imposed and other undertakings from engaging in behaviour that breaks the prohibition in Chapter I of the Act (as well as other prohibitions under the Act and the TFEU as the case may be).⁵¹⁹

‘Small agreements’: immunity from fines under section 39 of the Act

- 5.11 Section 39 of the Act provides for ‘small agreements’ immunity from fines, in certain circumstances. This immunity does not apply to infringements of Article 101 TFEU. A ‘small agreement’ is one between undertakings with a combined ‘applicable turnover’ of no more than £20m in the ‘business year ending in the calendar year preceding one during which the infringement occurred.’⁵²⁰
- 5.12 Section 39 of the Act does not apply in this case. Section 39 of the Act does not apply to any ‘*price fixing agreement*’ which includes RPM.⁵²¹ As set out above, the CMA concludes that the pricing restrictions imposed on [Reseller 1] in this case are a form of RPM.
- 5.13 In any event, as the turnover of the Addressees exceeded £20 million in the 2011-2012 business year, the Addressees do not benefit from immunity from penalty under section 39(3) of the Act.

⁵¹⁷ See, for example, *Eden Brown and Others v OFT* [2011] CAT 8, at [78].

⁵¹⁸ Penalties Guidance, paragraphs 2.5 and 2.8. 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 maxim that each case stands on its own facts is particularly pertinent*’. See also *Eden Brown and Others v OFT* [2011] CAT 8, 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*’.

⁵¹⁹ The Act, [Chapter 1: Agreements](#).

⁵²⁰ The Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000, Section 3.

⁵²¹ Sections 39(1)(b) and 39(9) of the Act. Section 39(9) of the Act reads as follows: ‘*In subsection (1) ‘price fixing agreement’ means 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.*’

II. Intention/negligence

- 5.14 The CMA may impose a penalty on an undertaking which has infringed the Chapter I prohibition and/or Article 101 TFEU if it is satisfied that the infringement has been committed intentionally or negligently.⁵²² However, the CMA is not obliged to specify whether it considers the infringement to be intentional or merely negligent.⁵²³
- 5.15 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’.⁵²⁴
- 5.16 This is consistent with the approach taken by the Court of Justice 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.’⁵²⁵
- 5.17 The intention or negligence relates to the facts, not the law. 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.⁵²⁶
- 5.18 As set out in previous decisions, the CMA considers that the circumstances in which the CMA might find that an infringement has been committed intentionally include situations in which the agreement or conduct in question has as its object the restriction of competition.⁵²⁷
- 5.19 In establishing whether or not there is intention, the CMA may consider internal documents generated by the undertakings in question. For the purposes of this case, the case team has taken into account evidence of

⁵²² Section 36(3) of the Act.

⁵²³ *Napp Pharmaceutical Holdings Ltd v Director General of Fair Trading* [2002] CAT 1, paragraphs 453–457; see also *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, paragraph 221.

⁵²⁴ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, paragraph 221.

⁵²⁵ Case C-280/08 P *Deutsche Telekom v Commission* EU:C:2010:603, paragraph 124.

⁵²⁶ See Case C-681/11 *Bundeswettbewerbsbehörde v Schenker & Co. AG*, EU:C:2013:404

⁵²⁷ *Online resale price maintenance in the light fittings sector*, Case 50343, 3 May 2017, paragraph 5.14; *Online resale price maintenance in the bathroom fittings sector*, Case CE/9857-14, 10 May 2016, paragraph 7.16; *Online resale price maintenance in the commercial refrigeration sector*, Case CE/9856/14, 24 May 2016, paragraph 7.19; and *Design, construction and fit-out services* Case 50481, 16 April 2019, paragraph 6.11.

deliberate concealment of an agreement or practice by the parties as strong evidence of an intentional infringement.⁵²⁸

- 5.20 For the reasons given at Section 4.D, paragraphs 4.125 to 4.165 above, the CMA has concluded that the Infringement had as its object the prevention, restriction or distortion of competition.
- 5.21 In the light of the evidence set out at Sections 3.C.V. 'Casio UK's awareness about illegality of enforcing the Casio Pricing Policy'⁵²⁹ and 4.D.IV 'Agreement and/or concerted practice between Casio UK and [Reseller 1]', paragraph 4.161 above, the CMA concludes that Casio UK was aware of the anti-competitive nature of its conduct.
- 5.22 Even ignoring the evidence referred to in the paragraph above, the CMA concludes that Casio UK must have been aware, or could not have been unaware, that its conduct had the object or would have the effect of restricting competition.⁵³⁰ It is widely known that RPM, which the Infringement amounted to, infringes competition law. At the very least, Casio UK ought to have known that the Infringement would reduce price competition between [Reseller 1] and other resellers.

⁵²⁸ See paragraphs 3.70 and 3.165 to 3.167 above.

⁵²⁹ In addition, the evidence shows that the three [Senior Employees 1, 2 and 3] of Casio UK in post during the Relevant Period were each at least aware of the existence and use of the Price2Spy software. [Casio Senior Employee 3], of Casio UK, was aware of the Price2Spy price monitoring service being set up as he asked [Casio Senior Employee 4] about the final cost involved: URN E_CAS02599 (Email from [Casio Senior Employee 3] to [Casio Senior Employee 4] dated 10 March 2016) [Casio Senior Employee 4] replied providing the cost - URN E_CAS02603 (Email from [Casio Senior Employee 4] to [Casio Senior Employee 3], [Casio Senior Employee 7] and [Casio Employee 8] dated 14 March 2016) In April 2016, [Casio Senior Employee 4] appears to have granted his colleague [Casio Employee 8] access to the system. [Casio Employee 8] then provided access instructions and passwords to Casio UK's [Casio Senior Employee 2]: URN E_CAS02776 (Email from [Casio Employee 8] to [Casio Senior Employee 2] dated 21 April 2016). More recently, these reports were forwarded by [Casio Employee 8] to Casio UK's [Casio Senior Employee 1]. For example, see URN E_CAS04919 (Email from [Casio Employee 8] to [Casio Senior Employee 1] and [Casio Senior Employee 4] dated 7 November 2017). Further, there is evidence which shows that (1) [Casio Senior Employee 3] was actively involved in the monitoring and enforcement of the Casio Pricing Policy URN E_CAS00511 (Email from [Casio Senior Employee 3] to [Casio Employee 13], of [a subsidiary of Casio Japan], dated 6 February 2014) and URN E_CAS02180 (email from [Casio Senior Employee 3] to [Casio Senior Employee 5] dated 27 October 2015), p.1, and the Agreement: see URN E_CAS02330 (Email exchange between [Casio Employee 8], [Casio Senior Employee 5], [Casio Senior Employee 3] and [Casio Senior Employee 7] dated 4-7 December 2015); (2) that [Casio Senior Employee 2] at least knew about and potentially encouraged the Casio Pricing Policy (URN E_CAS03033) and the Agreement: see URN E_CAS02937 (Email from [Casio Senior Employee 4] to [Casio Senior Employee 2] dated 8 Jun 2016); and that [Casio Senior Employee 1] was aware of the Casio Pricing Policy: See URN E_CAS04682 (Email from [Casio Senior Employee 1] to [Casio Senior Employee 4] dated 8 September), p.1; see also URN E_CAS04925 (email from [Casio Senior Employee 1] to [Casio Employee 10] dated 6 November 2017), p.11.

⁵³⁰ See paragraph 5.16 above.

5.23 On this basis, the CMA finds that Casio UK committed the Infringement intentionally or, at the very least, negligently and that the conditions for imposing a fine on the Addressees are therefore met.

III. Calculation of Penalties

5.24 As noted in paragraph 5.7 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 establishes a six-step approach for calculating the penalty. The six steps and their application in this case are set out below.

Step 1 – the starting point

5.25 The starting point for determining the level of financial penalty that will be imposed on an undertaking is calculated having regard to (i) the seriousness of the infringement and the need for general deterrence and (ii) the relevant turnover of the undertaking.⁵³¹

5.26 In this case, the CMA has decided to apply a starting point percentage of 19% to a relevant turnover of £[~~£~~], leading to a starting point of £[~~£~~] based on the considerations set out below.

Seriousness of the Infringement and need for general deterrence

5.27 To reflect the seriousness of an infringement, the CMA will apply a starting point of up to 30% of an undertaking's relevant turnover.⁵³² The actual percentage that is applied to the relevant turnover depends, in particular, on the nature of the infringement. The more serious the infringement, the higher the likely percentage rate.⁵³³

5.28 When making its assessment of the seriousness of an infringement, the CMA will consider a number of factors. These include:

- the nature of the product, including the nature and extent of demand for that product;
- the structure of the market, including the market share(s) of the undertaking(s) involved in the infringement;
- market concentration and barriers to entry;

⁵³¹ Penalties Guidance, paragraphs 2.3 to 2.10.

⁵³² Penalties Guidance, paragraph 2.4.

⁵³³ Penalties Guidance, paragraph 2.6.

- the market coverage of the infringement;
- the actual or potential effect of the infringement on competitors and third parties; and
- the actual or potential harm caused to consumers whether directly or indirectly.⁵³⁴

5.29 The CMA will also take into account the need to deter other undertakings, whether in the same market or more broadly, from engaging in the same or similar conduct.⁵³⁵

5.30 The assessment is case-specific, taking account of all the circumstances of the case.⁵³⁶

Nature of the infringement

5.31 At the first stage of its starting point assessment, the CMA considers the likelihood that the type of infringement at issue will, by its nature, cause harm to competition.⁵³⁷

5.32 The Infringement in this case amounted to RPM, which constitutes vertical 'price fixing' and a so-called 'hardcore' restriction within the meaning of Article 4(a) of the VABER. As such it is within the category of infringements which the CMA considers are most likely by their very nature to harm competition, and which will generally attract a starting point between 21 and 30% of relevant turnover.⁵³⁸

5.33 However, the CMA notes that the Infringement does not fall within the category of the most serious infringements of the Chapter I prohibition and Article 101 TFEU (such as horizontal price fixing, market sharing and other cartel activities), which would ordinarily attract a starting point towards the upper end of the 21% to 30% range.⁵³⁹

⁵³⁴ Penalties Guidance, paragraph 2.8.

⁵³⁵ Penalties Guidance, paragraph 2.9.

⁵³⁶ Penalties Guidance, paragraphs 2.5 and 2.8.

⁵³⁷ Penalties Guidance, paragraph 2.6.

⁵³⁸ Penalties Guidance, paragraph 2.6.

⁵³⁹ Penalties Guidance, paragraph 2.6. See also the CMA's decision in *Online resale price maintenance in the light fittings sector*, Case 50343, 3 May 2017, paragraph 5.25.

Specific circumstances relevant to the extent and likelihood of harm to competition in this case

5.34 At the second stage of its starting point assessment, the CMA considers the need to adjust the starting point upwards or downwards to take account of specific circumstances of the case that might be relevant to the extent and likelihood of harm to competition and ultimately consumers. The relevant specific circumstances in this case were:

- *The nature of the product, including the nature and extent of demand for the product:* Evidence obtained from the 12 Resellers indicates that almost 40% of the sales of the Relevant Products are online.⁵⁴⁰ The CMA considers that the ability to sell or advertise MI at discounted prices on the internet can intensify price competition between resellers (online and/or offline) due to the increased transparency and reduced search costs from internet shopping.⁵⁴¹
- *The structure of the market including the market share of Casio UK:* There are several competitors to Casio UK in the supply of digital pianos and digital keyboards in the UK, including Yamaha, Roland, Nord, Korg and Kawai.⁵⁴² Casio UK has a relatively small market share of at least [5-15]%, well behind the market leader.⁵⁴³
- *The market coverage of the infringement:* The Infringement covered all of the Relevant Products sold by [Reseller 1]. It had a clear impact on, [Reseller 1], with Casio UK seeking to prevent or restrict its ability to determine its own retail prices for the Relevant Products.
- *The actual or potential effect of the infringement on competitors and third parties:* The CMA considered the following factors in particular:
 - The Infringement would likely have had a wider effect in the market: reducing downward pressure on the retail price of the Addressees' digital pianos and digital keyboards more widely, including through both the Independent and Mass market channels.⁵⁴⁴ The evidence indicates that when setting their own prices, Independent resellers

⁵⁴⁰ See paragraph 3.62 above.

⁵⁴¹ See paragraph 3.65 and 3.66 above.

⁵⁴² See paragraph 3.43 above.

⁵⁴³ See paragraph 4.182 above.

⁵⁴⁴ See paragraphs 3.67 and 3.75 to 3.91 above. URN C_CAS02404 (Transcript of interview with [Casio Employee 1] dated 1 February 2019); Note: when provided with the opportunity to review his responses after the interview, [Casio Employee 1] provided clarifications to some of his responses - URN C_CAS02400 (Transcript of interview with [Casio Employee 1] dated 1 February 2019 containing clarifications by [Casio Employee 1]).

used each others' prices as a reference point,⁵⁴⁵ and at least some Mass market resellers used Independent reseller prices as a reference point.⁵⁴⁶ This view is supported by the fact that many of Casio UK's resellers used online price monitoring software to keep track of their competitors' online prices, therefore amplifying the impact of the Infringement.⁵⁴⁷

- Casio UK's own use of online price monitoring software ensured that it was able to detect price reductions more easily and quickly than would otherwise have been the case.⁵⁴⁸

General deterrence

5.35 In setting the starting point at 19%, the CMA has also taken into account the need to deter other undertakings from engaging in similar infringements in the future. In particular, the CMA notes the high prevalence of RPM-related letters on the register of warning and advisory letters issued by the CMA in 2017 and 2018.⁵⁴⁹

Relevant Turnover

5.36 The 'relevant turnover' is defined in the Penalties Guidance as the turnover of the undertaking in the relevant product market and relevant geographic market affected by the infringement in the undertaking's last business

⁵⁴⁵ See Sections 3.C.IV: *Illustrative examples of Casio UK's monitoring and enforcement* and 4.C.IV: *Agreement and/or concerted practice between Casio UK and [Reseller 1]*, paragraphs 4.46 and 4.48-4.50.

⁵⁴⁶ See paragraph 3.199 above; URN E_CAS05897 (a Google Hangouts extract from "Chat: Hangout Full EMI Team", conversation between [Casio Senior Employee 4], [Casio Employee 8], [Casio Employee 3], [Casio Employee 1] and [Casio Employee 5] from 7.36am on 23 November 2017 to 5.18pm on 24 November 2017), p.4, [Casio Employee 3] tells [Casio Senior Employee 4] "being pulled down on Amazon by [Reseller 5]"; URN E_CAS03704 (email from [Casio Senior Employee 4] to [Casio Employee 5], [Casio Employee 1] and [Casio Employee 3], dated 7 December 2016), provides a link to a [Reseller 14] search for a CDP120 stating that [Reseller 14] (the company) will follow/match the other resellers that had a listing for the CDP120 at the time. In a subsequent email dated 7 December 2016 from [Casio Employee 1] to [Reseller 1 Senior Employee 1], Casio tells a reseller to increase its price and [Reseller 14] will follow automatically (which they follow up to say that it did); and URN E_CAS02816 (email exchange between Casio and [Reseller 1] dated 26 April 2016), in which [Reseller 1] is 'ratting' to Casio about a number of resellers, including [Reseller 14].

⁵⁴⁷ See paragraph 3.93 above.

⁵⁴⁸ See paragraphs 3.92 and 3.98 to 3.110 above.

⁵⁴⁹ See register of [Warning letters](#) issued by the CMA and register of [Advisory letters](#) issued by the CMA.

year.⁵⁵⁰ The 'last business year' is the financial year preceding the date when the infringement ended.⁵⁵¹

- 5.37 In this case, the relevant turnover of Casio UK from the supply through resellers of digital pianos and digital keyboards in the UK for the financial year ending 31 March 2018 was £[✂].

Step 2 – adjustment for duration

- 5.38 The starting point under step 1 may be increased, or in particular circumstances, decreased to take into account the duration of the infringement.⁵⁵² Where the total duration of an infringement is more than one year, the CMA will round up part years to the nearest quarter year, although the CMA may in exceptional cases decide to round up the part year to a full year.⁵⁵³
- 5.39 In this case, the CMA applied a multiplier of 5.25 to the starting point to reflect the duration of the Infringement which lasted from 4 February 2013 to 5 April 2018 (5 years and 2 months).⁵⁵⁴

Step 3 – adjustment for aggravating and mitigating factors

- 5.40 The amount of the penalty, adjusted as appropriate at step 2, may be increased where there are aggravating factors, or reduced where there are mitigating factors.⁵⁵⁵ A non-exhaustive list of aggravating and mitigating factors is set out in the Penalties Guidance.⁵⁵⁶ In the circumstances of this case, the CMA considers that it is appropriate to adjust the penalty at step 3 to take account of the factors set out below.

⁵⁵⁰ Penalties Guidance, paragraph 2.11. The CMA notes the observation of the Court of Appeal in *Argos Ltd and Littlewoods Ltd v OFT* and *JJB Sports plc v OFT* [2006] EWCA Civ 1318, at paragraph 169 that: '[...] 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).

⁵⁵¹ Penalties Guidance, paragraph 2.11.

⁵⁵² Penalties Guidance, paragraph 2.16.

⁵⁵³ Penalties Guidance, paragraph 2.16

⁵⁵⁴ Penalties Guidance, paragraph 2.16.

⁵⁵⁵ Penalties Guidance, paragraph 2.17.

⁵⁵⁶ Penalties Guidance, paragraphs 2.18 and 2.19.

Aggravating factor: involvement of directors or senior management

5.41 The CMA concludes that a 5% uplift for director involvement is appropriate in this case. This is for the involvement in the Infringement of Casio UK's [Casio Senior Employees 1, 2 and 3]. The documentary evidence shows that these three [Senior Employees 1, 2 and 3], whose sequential tenures covered the Infringement Period, were all at least aware of the alleged Casio Pricing Policy.⁵⁵⁷ The evidence further shows that [Senior Employee 3] during Infringement Period up to April 2016 ([Casio Senior Employee 3]) knew about resale pricing restrictions being imposed on [Reseller 1] specifically, and appears even to have suggested imposing sanctions for the latter's breach of them.

Mitigating factor: adequate steps having been taken to ensure compliance with competition law

- 5.42 The CMA also considers that it is appropriate to grant the Addressees a 10% discount as the Addressees have taken adequate steps with a view to ensuring future compliance with competition law, including providing competition compliance training to all the Addressees' staff.
- 5.43 Following the CMA's investigation and the settlement discussions, the Addressees provided details of a comprehensive new competition law compliance programme. This includes appropriate steps relating to competition law risk identification, assessment, mitigation and review, to which its Board has fully and publicly committed.⁵⁵⁸
- 5.44 The CMA considers that the Addressees have provided sufficient evidence of compliance activities which demonstrate a clear and unambiguous commitment to future competition law compliance throughout the organisation from the top down to warrant a reduction in penalty.
- 5.45 In terms of its public commitment, Casio Japan has published a statement regarding its commitment to compliance on its website, as well as the websites of each of its European sales subsidiaries.⁵⁵⁹ The Addressees have

⁵⁵⁷ See footnote 529 above.

⁵⁵⁸ On 3 and 8 July 2019 Casio UK and Casio Japan submitted representations in relation to compliance. See also paragraph 2.26.

⁵⁵⁹ See:

- Worldwide: https://world.casio.com/news/2019/0628_law/
- Casio UK: <https://www.casio.co.uk/corporate/competition-law/>
- Casio Benelux (Dutch): https://www.casio-europe.com/nl/nieuws/detail/5287_casio-gaat-nalevingsprogramma-voor-mededingingswetgeving-implementeren/

also committed to submitting a report to the CMA on their compliance activities every year, for the next five years.

Mitigating factor: cooperation

- 5.46 The CMA finally concludes that it is appropriate to grant the Addressees a 10% discount for cooperation.⁵⁶⁰ This is to reflect the Addressees' cooperation in relation to certain aspects of the CMA's evidence gathering. In particular, this included:
- a. making documents available for review by the CMA on its then lawyers' own E- discovery, document recovery and review platform housed at its then lawyers' offices; and
 - b. providing translations of Japanese documents.
- 5.47 The CMA has also taken account of the fact that at the time of the inspection at Casio UK's premises, Casio UK made a senior manager available for a voluntary interview.
- 5.48 The Addressees' cooperation enabled the enforcement process to be concluded more speedily and efficiently.

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- Casio Europe (English): https://www.casio-europe.com/euro/news/detail/5290_casio-to-implement-the-competition-law-compliance-programme/
 - Casio Europe (German): https://www.casio-europe.com/de/news/detail/5284_casio-implementiert-programm-zur-einhaltung-des-wettbewerbsrechts/
 - Casio Europe (Italy): https://www.casio-europe.com/it/notizie/detail/5291_casio-per-implementare-il-programma-di-conformita-alla-normativa-sulla-concorrenza/
 - Casio Scandinavia (Finnish): https://www.casio-europe.com/fi/uutiset/detail/5290_casio-to-implement-the-competition-law-compliance-programme/
 - Casio Scandinavia (Norwegian): https://www.casio-europe.com/no/nyheter/detail/5290_casio-to-implement-the-competition-law-compliance-programme/
 - Casio Scandinavia (Swedish): https://www.casio-europe.com/se/nyheter/detail/5290_casio-to-implement-the-competition-law-compliance-programme/
 - Casio France: https://www.casio-europe.com/fr/actualites/detail/5285_casio-met-en-oeuvre-le-programme-de-conformite-aux-lois-sur-la-concurrence/
 - Casio Portugal: https://www.casio-europe.com/pt/noticias/detail/5288_a-casio-prepara-se-para-implementar-o-programa-de-conformidade-com-a-lei-da-concorrenca/
 - Casio Russia: https://www.casio-europe.com/ru/news/detail/5289_casio-vnedryaet-programmu-soblyudeniya-antimonopolnogo-zakonodatelstva/
 - Casio España: https://www.casio-europe.com/es/noticias/detail/5286_casio-implementara-el-programa-de-cumplimiento-de-las-leyes-de-competencia/

⁵⁶⁰ The Penalties Guidance provides that the CMA may decrease the penalty at step 3 where an undertaking fully cooperates with the CMA which enables the enforcement process to be concluded more effectively and/speedily. Penalties Guidance, paragraph 2.19. The Penalties Guidance provides that, for these purposes, what is expected is cooperation over and above respecting timelimits specified or otherwise agreed (which will be a necessary but not sufficient criterion). Penalties Guidance, footnote 35.

Step 4 – adjustment for specific deterrence and proportionality

- 5.49 At step 4, the CMA will assess whether, in its view, the overall penalty is appropriate in the round.⁵⁶¹ The penalty may be adjusted either to:
- a. increase it to achieve specific deterrence (namely, ensuring that the penalty imposed on the infringing undertaking will deter it from engaging in anti-competitive practices in the future); or
 - b. reduce it to ensure that a penalty is proportionate, having regard to appropriate indicators of the size and financial position of the undertaking at the time the penalty is being imposed as well as any other relevant circumstances of the case.⁵⁶²
- 5.50 Taking all the relevant circumstances of this case into account, on balance, the CMA does not consider that an uplift for specific deterrence is appropriate in this case.
- 5.51 In carrying out its step 4 assessment, the CMA has regard to the infringing undertaking's size and financial position, the nature of the infringement and the impact of the undertaking's infringing activity on competition.⁵⁶³
- 5.52 The penalty for the Infringement after step 3 is £4,619,419. In the light of the Addressees' financial indicators, the CMA does not consider that a proportionality reduction or a deterrence uplift at step 4 are appropriate in this case. The CMA considers that the penalty is appropriate and sufficient for deterrence purposes without being disproportionate or excessive.

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

- 5.53 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

⁵⁶¹ Penalties Guidance, paragraph 2.24.

⁵⁶² The CMA will generally consider three years averages for profits and turnover, and may consider indicators of size and financial position from the time of the infringement – Penalties Guidance, paragraph 2.20. The CMA has considered a range of financial indicators in this regard, based on published accounting information and information provided by Casio at the time of calculating the penalty. Those financial indicators included relevant turnover; average worldwide turnover (three year average); average operating profit (three year average); average profit after tax (three year average); net assets (for the last financial year); dividends (three year average); and net assets and dividends (assets for the last financial year plus three years' dividends).

⁵⁶³ Penalties Guidance, paragraph 2.20.

decision.⁵⁶⁴ The CMA has assessed the penalty against this threshold. The assessment has not led to the need for any reduction of the penalty at step 5 of the penalty calculation.

- 5.54 In addition, the CMA must, when setting the amount of a penalty for a particular agreement or conduct, take into account any penalty or fine that has been imposed by the European Commission, or by a court or other body in another Member State of the EU in respect of the same agreement or conduct.⁵⁶⁵ As no other EU body has imposed a penalty in this case, no adjustments to avoid double jeopardy were necessary.

Step 6 – application of reduction for settlement

- 5.55 The CMA will apply a penalty reduction where an undertaking agrees to settle with the CMA, which will involve, among other things, the undertaking admitting its participation in the infringement.⁵⁶⁶
- 5.56 In this case, the CMA considers it appropriate to grant the Addressees a 20% discount to reflect the fact that the Addressees have admitted the Infringement and agreed to cooperate in expediting the process for concluding the Investigation. This discount is granted on condition that the Addressees continue to comply with the continuing requirements of settlement as set out in the settlement agreements between each of Casio UK and Casio Japan and the CMA.

IV. Payment of penalty

- 5.57 In light of the above, the CMA requires the Addressees to pay a penalty of £3,695,535. The individual figures in the summary table at Figure 5.1 below are rounded to the nearest pound sterling.
- 5.58 The penalty will become due to the CMA in its entirety on 2 October 2019⁵⁶⁷ and must be paid to the CMA by close of banking business on that day or on such other day or days agreed with the CMA in writing.⁵⁶⁸

⁵⁶⁴ Section 36(8) of the Act and the 2000 Order, as amended. See also Penalties Guidance, paragraph 2.25. The business year on the basis of which worldwide turnover is determined will be the one preceding the date on which the decision of the CMA is taken or, if figures are not available for that business year, the one immediately preceding it.

⁵⁶⁵ Penalties Guidance, paragraph 2.28.

⁵⁶⁶ Penalties Guidance, paragraph 2.30.

⁵⁶⁷ The next working day two calendar months from the expected receipt of the Decision.

⁵⁶⁸ Details on how to pay the penalty are set out in the letter accompanying this Decision.

5.59 If that date has passed and:

- the period during which an appeal against the imposition, or amount, of that penalty may be made has expired without an appeal having been made, or
- such an appeal has been made and determined,

the CMA may commence proceedings to recover from the undertaking in question any amount payable under the penalty notice which remains outstanding, as a civil debt due to the CMA.⁵⁶⁹

⁵⁶⁹ Section 37(1) of the Act.

Figure 5.1: Summary table of final penalty for the Addressees

Step	Description		Adjustment	Figure
	Relevant Turnover			£[X]
1	Starting point as a percentage of relevant turnover		19%	£[X]
2	Adjustment for duration		x 5.25	£[X]
3	Adjustment for aggravating and mitigating factors	<i>Aggravating: Senior management involvement</i>	+ 5%	+ £[X]
		<i>Mitigating: Cooperation</i>	- 10%	- £[X]
		<i>Mitigating: Compliance</i>	- 10%	- £[X]
		Total Adjustment	- 15%	- £[X]
4	Adjustment for specific deterrence and proportionality		0%	£4,619,419
5	Adjustment to prevent the statutory maximum being exceeded		N/A	N/A
	Total Penalty			£4,619,419
6	Settlement discount		- 20%	- £923,884
	Total penalty payable for the Infringement			£3,695,535

SIGNED:

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1 August 2019

Ann Pope

Senior Director of Antitrust Enforcement

for and on behalf of the Competition and Markets Authority