

Decision of the Competition and Markets Authority

Online resale price
maintenance in the
electronic drum sector

22 July 2020

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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 [§].

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 Names have been replaced by a general descriptor of the individual's role.

1. Contents

1. Introduction and Executive Summary	4
A. Glossary	6
2. Investigation.....	9
3. Facts	17
A. Addressees of the Decision	17
I. Roland (U.K.) Limited	17
II. Roland Corporation	17
B. Electronic drum sector overview	18
I. UK electronic drum sector	18
II. Roland UK's involvement in the UK electronic drum sector	18
III. Other UK electronic drum suppliers.....	21
IV. UK MI Resellers	21
V. Roland UK's sales and distribution network	21
VI. Importance of internet sales as a retail channel to the MI sector	24
C. Roland Pricing Policy.....	25
I. Introduction.....	25
II. Commercial aims, content and communication, scope and duration.....	31
III. Monitoring and enforcement of the Roland Pricing Policy	43
IV. Consequences for MI Resellers of non-compliance with the Roland Pricing Policy	51
V. Roland UK's awareness about illegality of implementing and enforcing the Roland Pricing Policy	59
VI. Illustrative examples of Roland UK's monitoring and enforcement.....	72
D. Market Definition.....	88
I. Purpose of and framework for assessing the relevant market.....	88
II. Relevant product market	88
III. Sales through different distribution channels.....	91
IV. Relevant geographic market.....	93
V. Conclusion on market definition	94
4. Legal Assessment.....	94
A. Introduction.....	94
B. Undertakings	96
I. Key legal principles	96
II. Conclusion on undertakings	97
C. Agreement and/or Concerted Practice	97
I. Key legal principles	97
II. Agreement.....	98
III. Concerted Practice	100

IV.	Agreement and/or concerted practice between Roland UK and [Reseller 1]	101
D.	Object of Preventing, Restricting or Distorting Competition	142
I.	Key legal principles	142
II.	Legal Assessment of the Agreement.....	150
E.	Appreciable Restriction of Competition.....	153
I.	Key legal principles	153
II.	Legal assessment	154
F.	Effect on Trade between EU Member States	154
I.	Key legal principles	154
II.	Legal assessment	156
G.	Effect on Trade within the UK.....	158
I.	Key legal principles	159
II.	Legal assessment	159
H.	Exclusion or Exemption	160
I.	Exclusion	160
II.	Block exemption / Parallel exemption.....	160
III.	Individual exemption.....	161
I.	Attribution of Liability	162
I.	Key legal principles	162
II.	Liability for Infringement	165
III.	Conclusion on joint and several liability	165
J.	Burden and Standard of Proof	166
I.	Burden of proof.....	166
II.	Standard of proof.....	166
5.	The CMA's Action	167
A.	The CMA's Decision	167
B.	Directions.....	168
C.	Financial penalties.....	168
I.	General.....	168
II.	Small agreements	169
III.	Intention/negligence	170
IV.	Calculation of Penalties	172
V.	Payment of penalty.....	183

1. INTRODUCTION AND EXECUTIVE SUMMARY

1.1 This Decision is addressed to Roland (U.K.) Limited (Roland UK) and to its ultimate parent company, Roland Corporation (together, Roland).

1.2 By this Decision,¹ the Competition and Markets Authority (the CMA) has concluded that:

- Roland 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],² one of Roland UK's UK MI Resellers:
 - that [Reseller 1] would not advertise or sell online electronic drum kits and related components and accessories supplied to it by Roland UK (the Relevant Products) below a price specified by Roland 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]; and
- 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 7 January 2011 to 17 April 2018 (the Relevant Period)

(together referred to below as the Infringement).

1.3 The CMA has decided to attribute liability for Roland UK's Infringement also to its ultimate parent company, Roland Corporation, making Roland UK and Roland Corporation jointly and severally liable for the Infringement.

1.4 The CMA has applied Rule 10(2) of the CMA Rules in this case and has addressed this Decision only to the undertakings 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) (the CMA Rules).

² [X].

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

A. Glossary

[illegible]

Term	Definition
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)
Decision	This Decision dated 29 June 2020
EA02	The Enterprise Act 2002
Effect on Trade Guidelines	Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty (2004/C 101/07)
EU	The European Union
February 2019 RFI	RFI issued to Roland UK dated 22 February 2019 (URN C_ROL01540)
First December 2019 RFI	RFI issued to Roland UK dated 4 December 2019 (URN C_ROL01975)
General Court	The General Court of the European Union (formerly the Court of First Instance)
IBISWorld	IBISWorld Limited (Company Number: 07223190)
IBISWorld Report	IBISWorld Industry Report G47.591 <i>Musical Instrument Retailers in the UK</i> (published in March 2019 and February 2020)
Infringement	The infringement of the Chapter I prohibition and/or Article 101 TFEU regarding the Relevant Products, as specified in paragraph 1.2 above
InsiteTrack	Daily online price monitoring reports subscribed to by Roland UK that informed Roland UK if online advertised prices for specified products and resellers fell below the Minimum Price
January 2020 Statement	Statement submitted by Roland UK on 27 January 2020 (URN E_ROL03311)
January 2020 RFI	RFI issued to Roland UK dated 30 January 2020 (URN C_ROL02306)
July 2018 RFI	RFI issued to Roland UK dated 20 July 2018 (URN C_ROL01085)
July 2019 RFI	RFI issued to Roland UK dated 30 July 2019 (URN C_ROL01693)
Leniency Guidance	Guidance on applications for leniency and no-action in cartel cases (OFT1495, July 2013)
MAP	Minimum advertised price
May 2018 Oral Proffer	The oral proffer made by Roland UK, Roland Europe and Roland Corporation on 14 May 2018 (URN E_ROL01720)
May 2019 RFI	RFI issued to Roland UK dated 24 May 2019 (URN C_ROL01626)
Mass Reseller(s)	Resellers who sell a wider range of products than just musical instruments and indeed sell a large variety of products outside of the musical instruments sector. These resellers usually have a very

Term	Definition
	specific selection of products they purchase from Roland.
MI	Musical instruments and music making equipment, that is, instruments and equipment not used solely for the playback of recorded music but used in the creation and/or live playing of music by musicians, including the Relevant Products
MI Reseller(s)	Resellers who sell principally MI, including the Relevant Products and other products sold by Roland UK. MI resellers have a store with showroom capacity and many have an online e-commerce website. These resellers usually stock and sell a broad selection of MI.
Minimum Price	The minimum price(s) specified by Roland UK from time to time in connection with the Roland Pricing Policy
November 2018 Oral Proffer	The oral proffer made by Roland UK, Roland Europe and Roland Corporation on 5 November 2018 (URN E_ROL00211)
October 2019 Oral Proffer	The oral proffer made by Roland UK, Roland Europe and Roland Corporation on 4 October 2019 (URN E_ROL03212)
OFT	The Office of Fair Trading, one of the CMA's predecessor organisations
Penalties Guidance	<i>CMA's guidance as to the appropriate amount of a penalty</i> (CMA73, April 2018)
Relevant Period	7 January 2011 to 17 April 2018
Relevant Products	All electronic drum kits and related components and accessories supplied by Roland UK to its UK MI Resellers during the Relevant Period. Whenever this term is used, it may also refer to any subset of the products described or, as the context requires and, in particular in relation to any finding or conclusion by the CMA from January 2014 to the end of the Relevant Period also to a Relevant Product Bundle.
Relevant Product Bundle(s)	Relevant Products sold together as a bundle, for example, a Roland electronic drum kit sold together with a Roland component and/or accessory and their sale being restricted by Roland UK in stages from January to June 2014 and made subject to the Roland Pricing Policy until the end of the Relevant Period
RFI	A request for information
Roland	Roland UK and Roland Corporation
Roland Corporation or RJA	Roland Corporation (Company Number 0804-01-010213)
Roland Europe or REG	Roland Europe Group Limited (Company Number 08904664), Roland UK's immediate parent company
Roland Group	Roland Corporation (Company Number 0804-01-010213) and other bodies corporate which form part of the same Corporate Group, including subsidiaries, sibling companies and parent companies
Roland Pricing Policy	The arrangements between Roland UK and its UK MI Resellers according to which MI resellers would not advertise or sell the Relevant Products (and from January 2014 Relevant Product Bundles) online at prices below the Minimum Price
Roland UK or RUK	Roland (U.K.) Limited (Company Number 01216941)
RPM	Resale price maintenance

Term	Definition
RRP	Recommended retail price
RSP	Recommended selling price. Often used interchangeably with 'street price' by Roland UK.
s.26 Notice	A notice issued under section 26 of the Act
s.26 Notice to [Reseller 1] dated 17 April 2018	A s.26 Notice issued to [Reseller 1] on 17 April 2018 regarding [Reseller 1]'s and Roland's businesses (URN C_ROL00077)
s.26 Notice to [Reseller 1] dated 4 September 2019	A s.26 Notice issued to [Reseller 1] on 4 September 2019 regarding [Reseller 1]'s company structure, financial data and pricing (URN C_ROL01747)
s.26 Notice to [Reseller 1, Employee 1]	A s.26 Notice to [Reseller 1, Employee 1] issued to him in his individual capacity on 30 January 2020 (URN C_ROL02300)
SDA	Selective Distribution Agreement
Second December 2019 RFI	RFI issued to Roland UK dated 20 December 2019 (URN C_ROL02065)
SO	The Statement of Objections dated 24 March 2020
TFEU	Treaty on the Functioning of the European Union
The 12 Resellers	MI 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 Roland UK by the CMA on 17 April 2018 (URN C_ROL00128.4)
Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018	Transcripts of witness interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2], conducted on 18 and 20 June 2018 and submitted to the CMA by Roland UK and Roland Europe on 4 July 2018 (URN E_ROL01588)
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 On 17 April 2018, the CMA opened a formal investigation under section 25 of the Act into a suspected competition law infringement by Roland UK. The CMA did so having determined that it had reasonable grounds for suspecting that:

- Roland 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 MI Reseller between 1 November 2007 and 17 April 2018;
- these arrangements restricted the price at which MI supplied by Roland UK were advertised online by the reseller/s; and
- 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 evidence-gathering in this investigation on:

- the period from 1 January 2013;³ and
- electronic drums manufactured by and on behalf of Roland UK supplied in the UK.

2.3 On 17 April 2018, the CMA entered Roland 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).⁴ On the same date, the CMA also issued Roland UK with a notice under section 26 of the Act (s.26 Notice) requiring further documents and information to be produced.⁵ Roland UK provided a response to the s.26 Notice later that day.⁶

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 1];⁷
- [Reseller];⁸

³ While the CMA's investigation covers the period 1 November 2007 to 17 April 2018, the CMA initially focused its evidence gathering on the period 1 January 2013 to 17 April 2018. In 2019, the CMA expanded its evidence gathering to also include the period 1 January 2010 to 31 December 2012.

⁴ URN C_ROL00128.4 (the s.27 Notice).

⁵ URN C_ROL00128.1 (s.26 Notice to Roland dated 17 April 2018).

⁶ URN C_ROL00129 (Response dated 17 April 2018 to the s.26 Notice dated 17 April 2018).

⁷ URN C_ROL00077 (s.26 Notice to [Reseller 1] dated 17 April 2018) and URN C_ROL00078 (Annex 4 to s.26 Notice to [Reseller 1]).

⁸ URN C_ROL00065 (s.26 Notice to [Reseller]) and URN C_ROL00069 (Annex 4 to s.26 Notice to [Reseller]).

- [Reseller];⁹
- [Reseller];¹⁰
- [Reseller];¹¹
- [Reseller];¹²
- [Reseller];¹³
- [Reseller];¹⁴
- [Reseller];¹⁵
- [Reseller];¹⁶
- [Reseller]);¹⁷
- [Reseller]).¹⁸

2.5 On 18 April 2018, during the exercise of the s.27 Notice, Roland UK and Roland Europe Group (Roland Europe) indicated by telephone to the CMA that they wished to apply for the CMA's Leniency Programme and the CMA verbally granted a provisional Type B/C leniency marker to Roland UK and Roland Europe.¹⁹

2.6 On 19 April 2018, the CMA conducted voluntary first-account interviews with two Roland UK employees: [Roland UK, Senior Employee 5] [§<]²⁰ and [Roland UK, Employee 1] [§<].²¹

⁹ URN C_ROL00071 (s.26 Notice to [Reseller]) and URN C_ROL00073 (Annex 4 to s.26 Notice to [Reseller]).

¹⁰ URN C_ROL00096 (s. 26 Notice to [Reseller]) and URN C_ROL00098 (Annex 4 to s.26 Notice to [Reseller]).

¹¹ URN C_ROL00028 (s.26 Notice to [Reseller]) and URN C_ROL00030 (Annex 4 to s.26 Notice to [Reseller]).

¹² URN C_ROL00089 (s.26 Notice to [Reseller]) and URN C_ROL00091 (Annex 4 to s.26 Notice to [Reseller]).

¹³ URN C_ROL00083 (s.26 Notice to [Reseller]) and URN C_ROL00085 (Annex 4 to s.26 Notice to [Reseller]).

¹⁴ URN C_ROL00059 (s.26 Notice to [Reseller]) and URN C_ROL00061 (Annex 4 to s.26 Notice to [Reseller]).

¹⁵ URN C_ROL00047 (s.26 Notice to [Reseller]) and URN C_ROL00049 (Annex 4 to s.26 Notice to [Reseller]).

¹⁶ URN C_ROL00034 (s.26 Notice to [Reseller]) and URN C_ROL00036 (Annex 4 to s.26 Notice to [Reseller]).

¹⁷ URN C_ROL00053 (s.26 Notice to [Reseller]) and URN C_ROL00055 (Annex 4 to s.26 Notice to [Reseller]).

¹⁸ URN C_ROL00045 (s.26 Notice to [Reseller]) and URN C_ROL00042 (Annex 4 to s.26 Notice to [Reseller]).

¹⁹ URN C_ROL00146.1 (Email from Roland's legal advisors to the CMA dated 18 April 2018, indicating Roland's intention to apply for leniency).

²⁰ URN E_ROL02988 (Transcript of interview with [Roland UK, Senior Employee 5] dated 19 April 2018).

²¹ URN E_ROL02989 (Transcript of interview with [Roland UK, Employee 1] dated 19 April 2018).

- 2.7 On 20 April 2018 the CMA issued Roland UK with a further s.26 Notice requiring further documents and information to be produced.²² Roland UK submitted a response to the s.26 Notice on 4 May 2018.²³
- 2.8 As part of its application for leniency, Roland UK and Roland Europe provided:
- on 14 May 2018, an oral proffer²⁴ and supporting documents;
 - on 4 July 2018, a written leniency proffer on behalf of Roland UK and Roland Europe, incorporated into which was a summary note of two witness interviews with Roland employees,²⁵ and supporting documents;
 - on 13 and 27 July 2018, additional documentary evidence to support the application;
 - on 3 August 2018, a further oral proffer²⁶ and on 17 August 2018, supporting documents; and
 - on 5 November 2018, a further oral proffer²⁷ and supporting documents.²⁸
- 2.9 The CMA issued the following additional requests for information (RFIs) to Roland UK as part of its investigation:
- On 20 July 2018, the CMA issued Roland UK with an RFI (July 2018 RFI).²⁹ On 30 July 2018, Roland UK submitted a response to the CMA's request.³⁰
 - On 22 February 2019, the CMA issued Roland UK with an RFI (February 2019 RFI).³¹ On 22 March 2019, Roland UK submitted a response to the February 2019 RFI.³²

²² URN C_ROL00128.2 (s.26 Notice to Roland dated 20 April 2018).

²³ URN C_ROL00645 (Response dated 4 May 2018 to the s.26 Notice to Roland dated 20 April 2018).

²⁴ URN E_ROL01720 (May 2018 Oral Proffer).

²⁵ URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018).

²⁶ URN E_ROL02137 (August 2018 Oral Proffer).

²⁷ URN E_ROL00211 (November 2018 Oral Proffer).

²⁸ As a result of these submissions, in December 2019 the CMA took an administrative decision to widen the scope of the investigation to include the period 7 January 2011 to 31 December 2012.

²⁹ URN C_ROL01085 (July 2018 RFI).

³⁰ URN E_ROL01104 (Response dated 30 July 2018 to the July 2018 RFI).

³¹ URN C_ROL01540 (February 2019 RFI).

³² URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI).

- On 25 May 2019, the CMA issued Roland UK with an RFI (May 2019 RFI).³³ On 11 June 2019, Roland UK submitted a response to the May 2019 RFI.³⁴
- On 30 July 2019, the CMA issued Roland Group with an RFI (July 2019 RFI).³⁵ On 15 August 2019, Roland Group submitted a response to the July 2019 RFI by way of an oral statement³⁶ and supporting documents.
- On 4 December 2019, the CMA issued Roland UK with an RFI (First December 2019 RFI).³⁷ Roland provided responses to the First December 2019 RFI in stages between 16 December 2019 and 10 January 2020.
- On 20 December 2019, the CMA issued Roland UK with an RFI (Second December 2019 RFI).³⁸ Roland provided a response to the Second December 2019 RFI on 8 January 2020.³⁹
- On 30 January 2020, the CMA issued Roland UK with an RFI (January 2020 RFI).⁴⁰ On 4 February 2020, Roland submitted a response to the January 2020 RFI.⁴¹
- On 16 April 2020, the CMA issued Roland UK with an RFI (April 2020 RFI).⁴² On 20 April 2020, Roland submitted a response to the April 2020 RFI.⁴³

2.10 On 18 July 2019, the CMA sent a state of play letter to Roland UK, outlining the status of the investigation and proposed administrative steps.⁴⁴

³³ URN C_ROL01626 (May 2019 RFI).

³⁴ URN E_ROL03207 (Response dated 11 June 2019 to the May 2019 RFI).

³⁵ URN C_ROL01693 (July 2019 RFI).

³⁶ URN E_ROL03208 (Response dated 15 August 2019 to the July 2019 RFI).

³⁷ URN C_ROL01975 (First December 2019 RFI).

³⁸ URN C_ROL02065 (Second December 2020 RFI).

³⁹ URN C_ROL02081 (Response dated 8 January 2020 to the Second December 2019 RFI).

⁴⁰ URN C_ROL02306 (January 2020 RFI).

⁴¹ URN C_ROL02320 (Response dated 4 February 2020 to the January 2020 RFI).

⁴² URN C_ROL02491 (April 2020 RFI).

⁴³ URN C_ROL02492 (Response dated 20 April 2020 to the April 2020 RFI).

⁴⁴ URN C_ROL01673 (State of Play Letter dated 18 July 2019).

- 2.11 On 7 August 2019, the CMA sent a letter to [Reseller 1] informing it of the CMA's decision to scope it into the investigation, and its provisional decision to apply Rule 5(3) of the CMA Rules⁴⁵ in the investigation.⁴⁶
- 2.12 On 14 August 2019, the CMA sent a letter to Roland Corporation informing it of the CMA's decision to expand the scope of the investigation to include Roland Corporation as the ultimate parent company of Roland UK.⁴⁷ The CMA extended the grant of the provisional Type B/C leniency marker to Roland Corporation on 22 October 2019.⁴⁸
- 2.13 On 22 August 2019 Roland UK and Roland Corporation confirmed in writing their interest in settling the case.⁴⁹
- 2.14 On 4 September 2019, the CMA issued [Reseller 1] with a s.26 Notice, requesting information on company structure, financial data and retail pricing decisions.⁵⁰ On 17 September 2019, [Reseller 1] submitted a response to the CMA to the s.26 Notice.⁵¹
- 2.15 On 12 September 2019, the CMA sent Roland a letter outlining the CMA's access to file procedure⁵² and a letter requesting clarifications regarding Roland's previous submissions in relation to leniency.⁵³ Roland provided these clarifications on 4 October 2019 by way of an oral proffer.⁵⁴
- 2.16 On 7 and 8 October 2019 respectively, pursuant to its powers under section 26A of the Act, the CMA conducted compulsory interviews with [Reseller 1, Employee 1] [redacted]⁵⁵ and [Reseller 1, Senior Employee 2] [redacted].⁵⁶

⁴⁵ Rule 5(3) of the CMA Rules. It provides that 'where the CMA considers that an agreement infringes the Chapter I prohibition or the prohibition in Article 101(1) the CMA may address that proposed infringement decision to fewer than all the persons who are or were party to that agreement or are or were engaged in that conduct.'

⁴⁶ URN C_ROL01699 (Letter from the CMA to [Reseller 1] dated 7 August 2019).

⁴⁷ URN C_ROL01724 (Letter from the CMA to Roland UK and Roland Corporation dated 14 August 2019).

⁴⁸ URN C_ROL01854 (Letter from the CMA to Roland UK, REG and Roland Corporation dated 22 October 2019, confirming the grant of the provisional Type B/C leniency marker).

⁴⁹ URN C_ROL01743 (Email from [Legal Representative of Roland] to the CMA dated 22 August 2019, confirming that Roland remained interested in settling the case).

⁵⁰ URN C_ROL01747 (s.26 Notice to [Reseller 1] dated 4 September 2019).

⁵¹ URN C_ROL01764 (Response dated 17 September 2019 to the s.26 Notice to [Reseller 1] dated 4 September 2019).

⁵² URN C_ROL01757 (Letter from the CMA to Roland UK and Roland Corporation regarding the access to file procedure dated 12 September 2019).

⁵³ URN C_ROL01758 (Letter from the CMA to Roland UK and Roland Corporation dated 12 September 2019).

⁵⁴ URN E_ROL03212 (October 2019 Oral Proffer).

⁵⁵ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019).

⁵⁶ URN E_ROL03274 (Transcript of interview with [Reseller 1, Senior Employee 2] dated 8 October 2019). When provided with the opportunity to review his responses after the interview, [Reseller 1, Senior Employee 2]

- 2.17 On 13 and 20 January 2020 respectively, the CMA conducted voluntary interviews with two Roland UK employees: [Roland UK, Employee 1]⁵⁷ and [Roland UK, Employee 5].^{58 59} Further to a request by the CMA following these interviews, on 27 January 2020, Roland UK clarified its position on the accounts provided in the interviews (January 2020 Statement).⁶⁰
- 2.18 On 30 January 2020, the CMA issued a s.26 Notice to [Reseller 1, Employee 1] in his/her individual capacity, seeking clarification of statements made in his interview of 7 October 2019.⁶¹ [Reseller 1, Employee 1] provided a response to the RFI on 31 January 2020.⁶²
- 2.19 On 3 March 2020, the CMA wrote to Roland to advise them of the decision to grant leniency and the level of the discount available.⁶³ On the same date, the CMA wrote to Roland to advise them of the settlement timetable and draft Terms of Settlement.⁶⁴
- 2.20 On 9 March 2020, Roland agreed in principle to the settlement of the matter.⁶⁵
- 2.21 On 18 March 2020, the CMA and Roland signed a Leniency Agreement confirming its acceptance of the type of leniency and the level of discount set out by the CMA in its letter of 3 March 2020.⁶⁶
- 2.22 On 24 March 2020, the CMA issued a Statement of Objections (SO)⁶⁷ addressed to Roland UK and Roland Corporation, in which it made a provisional decision that Roland 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 Roland Corporation jointly and severally liable for Roland UK's infringement on the basis that it had been the latter's parent company

provided clarifications to some of his responses. URN E_ROL03275 (Response to Request for Clarification from [Reseller 1, Senior Employee 2]).

⁵⁷ URN C_ROL02449 (Transcript of interview with [Roland UK, Employee 1] dated 13 January 2020).

⁵⁸ [Roland UK, Employee 5] is referred to as [Roland UK, Employee 5] throughout this Decision.

⁵⁹ URN C_ROL02247 (Transcript of interview with [Roland UK, Employee 5] dated 20 January 2020).

⁶⁰ URN E_ROL03311 (January 2020 Statement).

⁶¹ URN C_ROL02300 (s.26 Notice to [Reseller 1, Employee 1] dated 30 January 2020).

⁶² URN C_ROL02310 (Response dated 31 January 2020 to the s.26 Notice to [Reseller 1, Employee 1] dated 30 January 2020).

⁶³ URN C_ROL02469 (Draft leniency agreement letter to Roland UK and Roland Corporation dated 3 March 2020).

⁶⁴ URN C_ROL02468 (Settlement timetable letter to Roland UK and Roland Corporation dated 3 March 2020).

⁶⁵ URN C_ROL02480 (Pre-SO settlement email between Roland UK, Roland Europe, Roland Corporation and the CMA dated 9 March 2020).

⁶⁶ URN C_ROL02479 (Leniency agreement between Roland UK, Roland Corporation and the CMA signed by Roland UK and Roland Corporation on 18 March 2020).

⁶⁷ Subject to Rule 5(2) of the CMA Rules.

throughout the period of the Infringement. In the circumstances of this case, the CMA applied Rule 5(3) of the CMA Rules and addressed the SO only to Roland UK and Roland Corporation and not to the reseller counterparty to the alleged agreement/s and/or concerted practice/s.⁶⁸

- 2.23 Also, on 24 March 2020, the CMA informed [Reseller 1] that it had issued the SO to Roland UK and Roland Corporation and alerted [Reseller 1] to the opportunity for [Reseller 1] to provide representations on the SO. Following a request on 27 March 2020 from [Reseller 1] to see the SO, the CMA provided [Reseller 1] on 3 April 2020 with a copy of the SO. Having seen the SO, [Reseller 1] did not make any representations.
- 2.24 On 16 April 2020, following receipt of the SO, Roland submitted representations to the CMA in relation to manifest factual inaccuracies contained in the SO (the MFIs), and reconfirmed its agreement in principle to settle this case.⁶⁹
- 2.25 Between 4 February and 11 May 2020, Roland submitted representations and information in relation to mitigating factors (including in relation to its proposed new competition law compliance programme) to be taken into account in the calculation of any financial penalty.
- 2.26 On 20 May 2020, following settlement discussions, Roland offered to settle the case. Roland voluntarily, clearly and unequivocally admitted the facts and allegations of the infringement as set out in the SO,⁷⁰ which are now reflected in the Decision, and agreed to co-operate in expediting the process for concluding the case.
- 2.27 On 21 May 2020, the CMA confirmed that it would settle the case with Roland and that it intended to proceed to issue an infringement decision.

⁶⁸ Likewise, the CMA has applied Rule 10(2) of the CMA Rules and addressed this Decision to Roland UK and Roland Corporation only.

⁶⁹ Representations on manifest factual inaccuracies (MFIs) contained in the SO submitted by Roland to the CMA, dated 16 April 2020.

⁷⁰ Subject to representations in relation to MFIs communicated to and agreed by the CMA, see paragraphs 14.8 and 14.14 of *Guidance on the CMA's investigation procedures in Competition Act 1998 cases*, [CMA8](#) (January 2019).

3. FACTS

A. Addressees of the Decision

I. Roland (U.K.) Limited

3.1 Roland UK is a business based in Swansea (West Wales), which is active in the supply of Roland MI in the United Kingdom (UK).

3.2 Roland UK is a private limited company registered at Companies House under company number 01216941.⁷¹ It had a turnover of £24 million in the financial year ending in December 2019 (the most recent year for which Roland UK's published accounts exist).⁷²

3.3 Roland operates two brand divisions:

- the 'Roland' brand – used for MI, such as electronic drum kits and hybrid drum systems, electronic pianos, keyboards and synthesisers, guitar synthesisers, DJ and recording equipment, speakers, and amplifiers for guitar, bass drums, keyboard and vocals; and
- the 'Boss' brand – used for guitar effects, pedals, rhythm/drum machines, and other amplifiers and recording equipment.⁷³

3.4 The Relevant Products fall within the 'Roland' brand.

II. Roland Corporation

3.5 Until 2014, Roland UK was a wholly-owned subsidiary of Roland Corporation, the ultimate parent company of Roland UK. Since 20 February 2014, Roland UK has been a 100% owned subsidiary of Roland Europe, a European holding company which is, in turn, a 100% owned subsidiary of Roland Corporation.^{74 75}

⁷¹ See <https://beta.companieshouse.gov.uk/company/01216941>.

⁷² Roland UK Annual Report and Financial Statements 31 December 2019, p. 6 and p.14, available at <https://beta.companieshouse.gov.uk/company/01216941/filing-history>.

⁷³ See <https://www.boss.info/uk/>.

⁷⁴ URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), p.5.

⁷⁵ See <https://beta.companieshouse.gov.uk/company/08904664>.

- 3.6 Roland Corporation is a global corporation headquartered in Hamamatsu, Japan with company registration number 0804-01-010213.⁷⁶ It had a turnover of just over £[~~8~~] in the financial year ending in December 2018.⁷⁷
- 3.7 Roland Corporation directly owns a number of individual subsidiaries covering Asian, North American, South American and Oceania marketplaces. In contrast, subsidiaries covering the European marketplace are directly owned by Roland Europe. Roland Europe and Roland UK are both registered in the UK.⁷⁸

B. Electronic drum sector overview

- 3.8 This Section provides an overview of the aspects of the electronic drum sector that are relevant to this investigation.

I. UK electronic drum sector

- 3.9 The market research company, IBISWorld Ltd (IBISWorld), estimates that the musical instrument sector in the UK was worth £428 million in 2019/20.⁷⁹ IBISWorld does not report sales of electronic drums separately but estimates that percussion instruments made up [0-10]% (approx. £[30-40] million) of the musical instrument sector in 2019/20, of which the majority of revenue is derived from sales of drum kits.⁸⁰

II. Roland UK's involvement in the UK electronic drum sector

- 3.10 Roland UK sells:
- electronic drum kits (branded as 'V-Drum' kits);
 - components for electronic drum kits (e.g. pads, cymbals); and
 - accessories for electronic drum kits (e.g. headphones, cases/bags).

⁷⁶ URN C_ROL00645 (Response dated 4 May 2018 to the s.26 Notice to Roland dated 20 April 2018), p.2.

⁷⁷ URN E_ROL03209 (Annex 1 to Response dated 15 August 2019 to the July 2019 RFI).

⁷⁸ URN C_ROL00657 (Roland Corporation group charts provided in Response dated 4 May 2018 to the s.26 Notice to Roland dated 20 April 2018).

⁷⁹ URN E_ROL03331 (IBISWorld Report, February 2020), p.3.

⁸⁰ The following other percussion instruments are included in the sector: shakers, gongs, zithers, triangles and orchestral percussion instruments, such as timpani and marimba. See URN E_ROL03331 (IBISWorld Report, February 2020), p.15.

Electronic drum kits

- 3.11 The majority of Roland UK's revenue for sales of electronic drum products is derived from the sale of its electronic drum kits. In 2018, electronic drum kits accounted for [80-90]% by sales value of Roland UK's sales of Relevant Products.⁸¹ Technological improvements since 2007 have contributed to a growth in sales of electronic drum kits as they have become more accessible, more compact and have a greater range of capabilities and features included.⁸²
- 3.12 Roland specialises in electronic drum kits (it does not supply acoustic drum kits). An electronic drum kit consists of a set of drum pads mounted on a stand or rack in a configuration similar to that of an acoustic drum kit layout but with rubberised or specialised cymbals. The primary sound of electronic drum kits is synthesized. Sensors on the drum pads generate an electronic signal when struck, which is transmitted through cables into an electronic drum module, synthesizer or other device that then produces a sound associated with, and triggered by, the struck pad.⁸³
- 3.13 Drum kits can vary from a simple two-piece 'kick and snare' setup to the eight- or nine-piece setups, with most drummers beginning with a traditional five-piece drum kit.⁸⁴
- 3.14 Roland UK explained that it groups its electronic drum kits into three different categories based on their features, which broadly correspond to price bands: Entry-level, Mid-range and Advanced kits.⁸⁵

⁸¹ URN C_ROL02462.1 (Spreadsheet response dated 2 March 2020 to CMA follow-up questions of 28 February 2020).

⁸² URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), pp.7-8.

⁸³ See https://en.wikipedia.org/wiki/Electronic_drum.

⁸⁴ See <http://www.roland.co.uk/blog/beginners-guide-to-buying-a-drum-kit/>.

⁸⁵ Entry level kits: concept and features are designed for practice, learning and fun with a simple sound module, entry level components, small footprint and lightweight stand. Mid-range kits: authentic playing feel and skill-building tools, high-end playability and quick customisation, mid-range sound module and components and a larger footprint. Advanced kits: designed for professional performance and studio work, flagship sound module and components, sturdy stand and larger footprint. See URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), pp.9-10.

Table 3.1: Roland UK electronic drum kits segments: product, price range and revenue share

Segment	Current Product Range	Price range	Share of revenue generated out of sales of electronic drum kits in 2018
Entry-level electronic drum kits	TD-1K	[£]	[£]
	TD-1KV		
	TD-4KP		
	TD-1KPX2		
Mid-range electronic drum kits	TD-17K-L	[£]	[£]
	TD-17KV		
	TD-17KVX		
	TD-25K		
	TD-25KV		
	TD-25KVX		
Advanced electronic drum kits	TD-50K	[£]	[£]
	TD-50KV		
	TD-50KVX		

Sources: URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), p. 10. URN C_ROL01572.4 (Annex 4 to Response dated 22 March 2019 to the February 2019 RFI)

Components and accessories

- 3.15 Electronic drum kit components are the constituent parts of an electronic drum kit (for example, a snare drum) and are not unique to each electronic drum kit. They are compatible across ranges of electronic drum kits, and drummers can customise electronic drum kits according to their individual preferences.⁸⁶
- 3.16 Electronic drum kit accessories are add-ons to an electronic drum kit (for example, a kick pedal).
- 3.17 In 2018, sales of related components and accessories accounted for [10-20]% of Roland UK's total sales of the Relevant Products by sales value.⁸⁷

⁸⁶ Some of Roland UK's electronic drum kit components are compatible with acoustic drum kits. See URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), pp.9-11 and p.13.

⁸⁷ URN C_ROL02462.1 (Spreadsheet response dated 2 March 2020 to CMA follow-up questions of 28 February 2020).

III. Other UK electronic drum suppliers

- 3.18 According to Roland UK, its main competitors in the UK are: [Competitors].⁸⁸
89 90

IV. UK MI Resellers

- 3.19 MI Resellers in the UK have traditionally specialised in certain MI. There are many small MI Resellers in the UK, most of which only operate from one location.⁹¹
- 3.20 The CMA does not have detailed information on electronic drum MI Resellers specifically. However, IBISWorld reported that in 2019/20 there were [1,500-2,000] enterprises in the UK's MI sector as a whole, a number that declined at a compound annual rate of [less than 1]% in the five preceding years.⁹² This report estimated that four resellers accounted for just under [30-40]% of the total estimated MI retail industry revenue in 2019/20,⁹³ and stated that the industry does not currently have a '*dominant nationwide chain of musical instrument stores*'.⁹⁴ IBISWorld estimated that, by 2021, the number of enterprises in the sector will have dropped to [1,500-2,000].⁹⁵
- 3.21 In addition to being sold through specialised MI Resellers, MI are also sold by certain outlets that do not specialise solely in MI known as Mass Resellers.⁹⁶

V. Roland UK's sales and distribution network

- 3.22 Roland UK primarily supplies its Relevant Products to consumers through resellers. These can be split into two distinct distribution channels: MI Resellers and Mass Resellers.

⁸⁸ [3<] [Resellers].

⁸⁹ [3<] [Reseller], [3<].

⁹⁰ URN C_ROL01572.2 (Annex 2 to Response dated 22 March 2019 to the February 2019 RFI).

⁹¹ URN E_ROL03309 (IBISWorld Report, March 2019), p.6 and p.19.

⁹² Annual rate based on 2014-15 to 2019-20 inclusive: URN E_ROL03331 (IBISWorld Report, February 2020), p.6 and p.32.

⁹³ The top four are listed as J & A Beare Ltd, Gear4music (Holdings) plc, S&T Audio Ltd, and Dawsons Music Ltd. See URN E_ROL03331 (IBISWorld Report, February 2020), p.3, p.20 and p.24.

⁹⁴ URN E_ROL03309 (IBISWorld Report, March 2019), p.19 and URN E_ROL03331 (IBISWorld Report, February 2020), p.20.

⁹⁵ URN E_ROL03331 (IBISWorld Report, February 2020), p.6 and p.32. The CMA notes that the predicted rate of reduction was based on data up to 2019-20 and as such does not reflect the potential impact of the Coronavirus (COVID-19) pandemic.

⁹⁶ URN E_ROL03309 (IBISWorld Report, March 2019), p.6.

MI Resellers

- 3.23 MI Resellers are resellers who sell principally MI, including the Relevant Products and other MI products sold by Roland UK.
- 3.24 Roland UK sells almost exclusively ([90-100]% of its sales revenue of Relevant Products in 2018) through MI Resellers.⁹⁷ Roland UK only sells to MI Resellers who have entered into selective distribution agreements (SDAs) with it. SDAs permit MI Resellers to sell entry-level, mid-range and advanced electronic drum kits, provided that they abide by a number of requirements, including:
- [REDACTED];
 - [REDACTED]:
 - [REDACTED];
 - [REDACTED];
 - [REDACTED];
 - [REDACTED];
 - [REDACTED];
 - [REDACTED];⁹⁸ and
 - [REDACTED]⁹⁹
- 3.25 Roland UK categorises its MI Resellers into ‘tiers’. Tiers are harmonised across Europe by Roland Europe and branded as follows:
- [REDACTED]¹⁰⁰
 - [REDACTED]¹⁰¹

⁹⁷ URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), p.10.

⁹⁸ URN C_ROL00354 ([Reseller 1] Section B of response to s.26 Notice dated 17 April 2018). SDA between Roland UK and [Reseller 1] dated [REDACTED] 2018, pp.3-5.

⁹⁹ URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), p.19.

¹⁰⁰ URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), p.19.

¹⁰¹ URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), pp.19-20.

- [REDACTED]¹⁰²

3.26 The duration of Roland's SDAs varied throughout the Relevant Period. Between 2011-2014, Roland UK's SDAs renewed automatically after one year,¹⁰³ between 2015-2017 Roland UK's SDAs terminated automatically [REDACTED]¹⁰⁴ and the SDA effective from 1 March 2018 terminated [REDACTED].¹⁰⁵ An SDA will terminate immediately if either party breaches the terms of the SDA as stipulated in the agreement and fails to take effective measures to remedy the breach after notice.¹⁰⁶

Mass Resellers

3.27 Mass Resellers are not MI specialists. They are national retail chains, catalogue companies and online retailers (e.g. Argos) and they sell many more products besides MI.

3.28 Roland UK does not generally distribute electronic drum products through Mass Resellers.¹⁰⁷ During the Relevant Period, in September 2017, Roland UK conducted a trial selling the entry-level TD1K electronic drum kit (branded as 'Go Drums') through [Mass Reseller] and [Mass Reseller] (together, [Mass Reseller]). Roland UK's revenue achieved through sales to Mass Resellers during the Relevant Period was negligible ([0-10]% in 2017

¹⁰² URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), p.20.

¹⁰³ URN C_ROL00359 ([Reseller 1] Section B of response to s.26 Notice dated 17 April 2018). SDA between Roland UK and [Reseller 1] dated [REDACTED] 2011, p.4. URN C_ROL00358 ([Reseller 1] Section B of response to s.26 Notice dated 17 April 2018). SDA between Roland UK and [Reseller 1] dated [REDACTED] 2014, p.10. Roland confirmed that the SDAs for 2012 and 2013 are the same as the 2011 one. See URN C_ROL02272 (Response dated 10 January 2020 to the query of 8 January 2020).

¹⁰⁴ URN C_ROL00357 ([Reseller 1] Section B of response to s.26 Notice dated 17 April 2018). SDA between Roland UK and [Reseller 1], dated [REDACTED] 2015, p.10. URN C_ROL00356 ([Reseller 1] Section B of response to s.26 Notice dated 17 April 2018). SDA between Roland UK and [Reseller 1], 2016, p.10, URN C_ROL00355 ([Reseller 1] Section B of response to s.26 Notice dated 17 April 2018). SDA between Roland UK and [Reseller 1], 2017, p.10.

¹⁰⁵ URN C_ROL00354 ([Reseller 1] Section B of response to s.26 Notice dated 17 April 2018). SDA between Roland UK and [Reseller 1] dated [REDACTED] 2018, p.10. Roland UK confirmed that they agree SDAs with resellers on a standard term basis. They do not vary the general terms for individual resellers. See URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), p.19.

¹⁰⁶ URN C_ROL00354 ([Reseller 1] Section B of response to s.26 Notice dated 17 April 2018). SDA between Roland UK and [Reseller 1] dated [REDACTED] 2018, pp.10-11.

¹⁰⁷ Although MI resellers could sell a limited range of Relevant Products that Roland provided on an 'open' basis to third parties such as [Reseller], these are not direct sales by Roland and are therefore not considered in this Decision. See URN E_ROL01854 (Email from [Roland UK, Senior Employee 3] to [Reseller 1, Senior Employee 2] dated 24 December 2012), p.7.

and [0-10]% in 2018 by sales value, and it had no sales via Mass Resellers before 2017).^{108 109}

- 3.29 Mass Resellers were not subject to SDAs during the Relevant Period and instead negotiated individual distribution agreements with Roland UK.¹¹⁰

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

- 3.30 IBISWorld estimates that spending in the MI sector is likely to increase at an annual rate of [less than 1]% to reach £[400-500] million, over the five years through to 2024/25.¹¹¹

- 3.31 In response to the CMA's s.26 Notice dated 17 April 2018,¹¹² 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 2013 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%).¹¹³

- 3.32 MI Resellers compete on several aspects including price, range, customer service location and store promotions.¹¹⁴ Sales are made both through the internet and traditional bricks-and-mortar stores, many of which also sell

¹⁰⁸ The CMA notes that [Roland UK, Senior Employee 2] said in an interview that '*Roland UK started selling a limited range of product sometime after 2010 on [a Mass Reseller] directly. For Roland UK, it was only a very few products [X].*' URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.42. Roland UK submitted that none of the Relevant Products were sold via Mass Resellers before the described trials. See URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), p.18.

¹⁰⁹ URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), p.10.

¹¹⁰ URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), p.1 and pp.8-9.

¹¹¹ URN E_ROL03331 (IBISWorld Report, February 2020), p.8.

¹¹² URN C_ROL00601 ([Reseller 1] Section C of response to the s.26 Notice dated 17 April 2018); URN C_ROL00587 ([Reseller] Section C of response to s.26 Notice dated 17 April 2018); C_ROL00589 ([Reseller] Last 5 Year Financial Info In Store vs Online dated 2 May 2018 in response to Section C of s.26 Notice dated 17 April 2018); URN C_ROL00577 ([Reseller] Section C of response to s.26 Notice dated 17 April 2018); URN C_ROL00603 ([Reseller] Section C of response to s.26 Notice dated 17 April 2018); URN C_ROL00598 ([Reseller] Section C of response to s.26 Notice dated 17 April 2018); URN C_ROL00494 ([Reseller] Section C of response to s.26 Notice dated 17 April 2018); URN C_ROL00594 ([Reseller] Section C of response to s.26 Notice dated 17 April 2018); URN C_ROL00625 ([Reseller] Section C of response to Section C of response to s.26 Notice dated 17 April 2018); URN C_ROL00332 ([Reseller] Section C of response to s.26 notice dated 17 April 2018); URN C_ROL00522 ([Reseller] Section C of response to s.26 Notice dated 17 April 2018); URN C_ROL00557 ([Reseller] Section C of response to s.26 Notice dated 17 April 2018); URN C_ROL01454 ([Reseller] Section C of response to s.26 Notice dated 17 April 2018).

¹¹³ 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.

¹¹⁴ URN E_ROL03309 (IBISWorld Report, March 2019), p.21.

online. Lower overheads have allowed online-only stores to offer a wider product range, at lower prices.¹¹⁵

- 3.33 The CMA considers that the ability to sell or advertise MI at discounted prices on the internet can intensify price competition – not only between online MI Resellers but also between online MI Resellers and bricks-and-mortar resellers – due to the increased transparency and reduced search costs from internet shopping. Greater price competition increases resellers’ incentives to act efficiently and pass on cost savings to consumers in the form of lower retail prices.
- 3.34 Therefore, preventing or restricting MI resellers’ ability to determine their own online resale prices is likely to:
- reduce price competition from online sales of electronic drum kits, related components and accessories;
 - reduce downward pressure on the retail price of electronic drum kits, related components and accessories; and
 - thereby potentially result in higher prices for consumers.

C. Roland Pricing Policy

I. Introduction

Conclusion

- 3.35 The CMA concludes that during the Relevant Period, Roland UK operated and enforced a wide-ranging pricing policy (the Roland Pricing Policy), the purpose of which was to ensure that MI Resellers would not advertise or sell the Relevant Products¹¹⁶ online below a certain minimum price specified by Roland UK from time to time (the Minimum Price).¹¹⁷
- 3.36 In the CMA’s view, Roland UK intended that the Roland Pricing Policy should apply across all or at least the vast majority of its MI Reseller network, including to [Reseller 1]. See paragraphs 4.36 to 4.149 below.

¹¹⁵ URN E_ROL03309 (IBISWorld Report, March 2019), p.5.

¹¹⁶ See Table 3.1 above for a list of the product codes associated with the Relevant Products within Roland’s product range.

¹¹⁷ For the avoidance of doubt, the conclusion is not that there was a formal written policy, but that Roland UK acted with a view to achieving the aims of the Roland Pricing Policy as described in this Section.

Nature of evidence

- 3.37 In reaching its view on the Roland Pricing Policy the CMA has considered the evidence available to it, including contemporaneous documentary evidence and witness interview evidence from Roland UK employees.
- 3.38 In interviews, Roland UK employees provided inconsistent accounts regarding the Roland Pricing Policy. [3<] stated in their accounts that Roland UK staff would contact MI Resellers if their prices were below the Minimum Price to ask them to increase prices in line with the Roland Pricing Policy.¹¹⁸ This evidence, considered alongside the contemporaneous documentary evidence, shows to the CMA that Roland UK expected MI Resellers to follow the Minimum Prices that Roland UK set and contacted MI Resellers to request them to do so. Indeed, one Roland UK employee told the CMA in interview that there was a general expectation that MI Resellers would adopt the Minimum Prices set by Roland UK.¹¹⁹ The evidence also shows that MI Resellers understood there might be consequences if they did not comply with the Roland Pricing Policy as explained further below.
- 3.39 However, four of the five Roland UK staff interview accounts stated that there were no consequences for MI Resellers if they did not comply with requests to increase prices.¹²⁰ The CMA has considered these statements

¹¹⁸ [Roland UK, Senior Employee 3] stated that, in response to a complaint by an MI Reseller reporting non-compliance of another MI Reseller, Roland UK area managers *'would sometimes call and say "have you had the latest price list", "do you realise you may not be making a margin on X product", "is it a mistake?" Dealers do make honest mistakes and will thank you for pointing it out. More historically, "you're not adding Roland value here" or "can you take a look".'* [3<] also stated that, while not all MI Resellers would increase prices in response, *'Historically, [70-80]% would also look at RSP and do something.'* [Roland UK, Senior Employee 2] stated that, in response to a complaint by an MI Reseller reporting non-compliance of another MI Reseller, Roland UK staff would *'in the worst case we asked them to put it up where it needed to be as it is forcing everyone else in the market place to complain'*. URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), pp.18-19 and p.36.

¹¹⁹ When asked, *'Was there any general expectation that -- from Roland, on your side, that resellers would follow the price quoted in the new price lists?'*, [Roland UK, Employee 5] responded, *'At that time, I would imagine so, yes'*. URN C_ROL02447 (Transcript of interview with [Roland UK, Employee 5] dated 20 January 2020), p.54, lines 4-7.

¹²⁰ URN C_ROL02449 (Transcript of interview with [Roland UK, Employee 1] dated 13 January 2020). URN C_ROL02447 (Transcript of interview with [Roland UK, Employee 5] dated 20 January 2020). URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018). URN E_ROL02988 (Transcript of interview with [Roland UK, Senior Employee 5] dated 19 April 2018). URN E_ROL02989 (Transcript of interview with [Roland UK, Employee 1] dated 19 April 2018). For example, [Roland UK, Senior Employee 3] stated that, when contacting MI Resellers, *'there was no force, never any force. It was always up to the dealer, but they may have been asked to have a look at it to make sure that they were not losing margin. But again there was never a consequence, no falling out, the dealer could do whatever they wanted on price'*. [Roland UK, Senior Employee 2] stated that, when contacting MI Resellers, *'There was never any force'*. URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.14 and p.37.

alongside the contemporaneous documentary evidence, and its view is that the weight of evidence shows that the position of the Roland UK staff that the Minimum Price was not enforced is not credible. As set out in more detail at paragraphs 3.40 to 3.43 below, the contemporaneous documentary evidence shows that, when Roland UK staff were faced with MI Resellers who were not pricing at the Minimum Price, they considered imposing sanctions (indeed Roland UK instructed its sales people that certain MI Resellers were under the threat of sanction if they did not adhere to the Roland Pricing Policy) and on occasion contacted MI Resellers to threaten sanctions and/or imposed sanctions on MI Resellers (see paragraphs 3.128 to 3.146 below). Roland UK also explained to the CMA that the accounts provided by certain Roland UK staff were not complete [§<].¹²¹

- 3.40 The CMA also considers the position of these staff unreliable in the light of contemporaneous documentary evidence that shows that Roland UK staff were aware of the potential illegality of the Roland Pricing Policy and took steps to conceal it (see further paragraphs 3.184 to 3.200 below). The concealment extended to the imposition of sanctions for non-compliance. [Roland UK, Senior Employee 2], [§<], stated that *'Over time we became more cautious, particularly on email. The email from a dealer could contain just a link, dealer and a price. This was a code from them for "sort this out" "do something about it". Language changed over time, with more focus being placed on conversations over margins.'*¹²² Therefore, the CMA concludes this awareness of potential illegality may have influenced the accounts provided by the Roland UK staff.
- 3.41 The CMA notes also that, to the extent that the documentary evidence or witness evidence describes compliance with the Minimum Price in respect of advertised prices rather than selling prices,¹²³ in an online market where there are 'click-to-buy' sales, such as the present market, restrictions on the advertised price typically equate to restrictions on the selling price.¹²⁴

¹²¹ URN E_ROL03311 (January 2020 Statement).

¹²² URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.36.

¹²³ For example, when asked if there was an expectation that Roland UK could take action in response to MI Reseller complaints, [Roland UK, Senior Employee 3] stated, *'Yes, not for what product is sold for what is advertised for.'* URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.19.

¹²⁴ *Online resale price maintenance in the commercial refrigeration sector (Commercial refrigeration)*, Case CE/9856/14, 24 May 2016, paragraph 6.5.2. MI Resellers also told the CMA that, in the electronic drum market, advertised prices tended to equate to sold prices. For example, [Reseller] indicated that [90-100]% of sales would be at the price displayed on screen, URN C_ROL00590 ([Reseller] Section C questions 1-9 of response to s.26 Notice dated 17 April 2018), response to question 4(b), p.2. Similarly, [Reseller] indicated that about [90-100]% of

- 3.42 More generally, the CMA notes that the design and operation of the Roland Pricing Policy was such that Roland UK rarely needed to contact MI Resellers about the policy (in writing or otherwise) when MI Resellers were complying with it. This is because the Minimum Price that MI Resellers were required to follow – referred to in price lists as the Recommended Retail Price (RRP) until approximately February 2015 and from then as the Recommended Street Price (RSP) – was clearly displayed on Roland UK’s price lists relating to the Relevant Products.¹²⁵ This limited the need for communication about the Roland Pricing Policy and therefore the amount of written evidence relating to it.
- 3.43 Nevertheless, as noted above, the CMA has uncovered contemporaneous documentary evidence demonstrating the existence of the Roland Pricing Policy as set out in more detail below.

People involved: roles and reporting lines

- 3.44 Tables 3.2 and 3.3 below set out the names and roles of key Roland UK and [Reseller 1] employees referred to in this Decision to make it easier to understand the context to the evidence set out in the following Sections.

Table 3.2: Relevant Roland UK employees (as at 2 March 2020)¹²⁶

Employee	Area of Responsibility and Dates
[Roland UK, Senior Employee 1]	[REDACTED]
[Roland UK, Senior Employee 2]	[REDACTED]
[Roland UK, Senior Employee 3]	[REDACTED]
[Roland UK, Senior Employee 4]	[REDACTED]
[Roland UK, Senior Employee 5]	[REDACTED]
[Roland UK, Senior Employee 6]	[REDACTED]

sales would be at the advertised price, URN C_ROL00522 ([Reseller] Section C questions 1-9 of response to s.26 Notice dated 17 April 2018), response to question 4(b). [Reseller] noted that '[REDACTED]' of sales would not be at the price displayed on screen. URN C_ROL00598 ([Reseller] Section C questions 1-9 of response to s.26 Notice dated 17 April 2018), response to question 4(b), p.2. [Reseller 1] estimated that less than [0-10]% of its online sales of Relevant Products would be not be made at the price initially displayed to consumers, URN C_ROL01765 (Response dated 17 September 2019 to the s.26 Notice to [Reseller 1] dated 4 September 2019), response to question 8, p.2.

¹²⁵ URN C_ROL02135 (Roland UK Price list dated 14 September 2015).

¹²⁶ Roland employees who are mentioned in the evidence below are listed.

Employee	Area of Responsibility and Dates
[Roland UK, Employee 1]	[3<]
[Roland UK, Employee 2]	[3<]
[Roland UK, Employee 3]	[3<]
[Roland UK, Employee 4]	[3<]
[Roland UK, Employee 5]	[3<]
[Roland UK, Employee 6]	[3<]
[Roland UK, Employee 7]	[3<]
[Roland UK, Employee 8]	[3<]
[Roland UK, Employee 9]	[3<]
[Roland UK, Employee 10]	[3<]
[Roland UK, Employee 11]	[3<]
[Roland UK, Employee 12]	[3<]
[Roland UK, Employee 13]	[3<]
[Roland UK, Employee 14]	[3<]
[Roland UK, Employee 15]	[3<]
[Roland UK, Employee 16]	[3<]
[Roland UK, Employee 17]	[3<]
[Roland UK, Employee 18]	[3<]
[Roland UK, Employee 19]	[3<]

Sources: URN C_ROL01572.1 (Response dated 22 March 2019 to the February 2019 RFI), Annex 1.
URN C_ROL02461.1 (Response dated 2 March 2020 to CMA follow up questions of 27 February

2020) URN C_ROL02485 (Response dated 16 March 2020 to CMA follow up questions of 9 March 2020) Information supplemented with interview evidence.¹²⁷

Table 3.3 [Reseller 1] employees (as at 17 April 2018)

Employee	Area of Responsibility and Dates
[Reseller 1, Senior Employee 2]	[§<]
[Reseller 1, Senior Employee 3]	[§<]
[Reseller 1, Employee 1]	[§<]
Reseller 1, Senior Employee 4]	[§<]
[Reseller 1, Employee 2]	[§<]
[Reseller 1, Employee 3]	[§<]
[Reseller 1, Employee 4]	[§<]

Source: URN C_ROL00351 (Company organogram provided by [Reseller 1] in response to 17 April 2018 s.26 Notice).¹²⁸

Structure of the rest of Section 3.C.

3.45 The remainder of this Section sets out the relevant factual background to the Roland Pricing Policy as shown by the evidence, including:

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

¹²⁷ URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018). URN E_ROL02988 (Transcript of interview with [Roland UK, Senior Employee 5] dated 19 April 2018) and URN E_ROL02989 (Transcript of interview with [Roland UK, Employee 1] dated 19 April 2018).

¹²⁸ URN C_ROL00077 (s.26 Notice to [Reseller 1] dated 17 April 2018).

II. Commercial aims, content and communication, scope and duration

Commercial aims

- 3.46 The evidence shows that Roland UK's commercial aims for introducing the Roland Pricing Policy were at least twofold:
- it was designed to enable Roland UK's MI Resellers to achieve attractive margins through the maintenance of high and stable pricing, thus increasing the attractiveness of the Roland brand and encouraging MI Resellers to stock and sell the Relevant Products; and
 - in doing so, it aimed to help Roland UK secure, maintain and/or improve its UK market position in the Relevant Products relative to its competitors, in particular by maintaining the brand value of the Relevant Products.
- 3.47 [Roland UK, Senior Employee 3], [REDACTED], stated in interview that:
- 'Over time Roland has tried to influence its retailers to be profitable for two reasons, no 1 to purely try and stop the level of pressure and aggression from its retailers which sometimes can be very challenging, and no 2 we believe that we need a retail network that is profitable and sustainable so that our products can be demonstrated in store. If these disappear, it is more challenging for end users to experience our products.'¹²⁹

Protection of UK MI Reseller margins

- 3.48 The evidence shows that one reason why Roland UK introduced the Roland Pricing Policy was in an attempt to protect the profitability of UK MI Resellers.
- 3.49 Roland UK submitted to the CMA that from 2005, the growth of e-commerce and in particular the influence of resellers based in other EU Member States selling online into the UK was increasingly putting pressure on UK MI Resellers' margins. Roland UK submitted that since around 2005, there '*has been the rise of online retail sales, both inside and outside the UK, which RUK understands has put significant pressure on UK bricks and mortar retailers and steadily increases the number of cross-border sales, in particular into the UK from [EU member state]*'.¹³⁰
- 3.50 Similarly, [Roland UK, Senior Employee 2] stated in an interview that:

¹²⁹ URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.13.

¹³⁰ URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), p.8, lines 8-11.

'In the early 2000s, the internet was small but there has been huge growth particularly since 2005. 2005 springs to mind particularly in respect of [Reseller] (a [X] distributor who sells into UK). (...) Originally there were no European dealers selling in to the UK and no UK dealers selling out, but this has now changed.'¹³¹

3.51 [Roland UK, Senior Employee 2] further stated that *'In around 2005 [Reseller] began to sell aggressively. (...) [Reseller] would sell in the UK for a massively lower price, amplified by changes to the exchange rate. The retailer would come to Roland and say, "what are you going to do". It is all very well to set guideline [sic], but they were unable to achieve the suggested margin.'*¹³²

3.52 [Roland UK, Senior Employee 2] also noted in interview that once one MI Reseller changed its price, changes by other MI Resellers would follow *'immediately'* as, due to the internet, it would spark a *'chain reaction across Europe'*.¹³³

3.53 The evidence shows that UK MI Resellers would complain to Roland UK if MI Resellers based in other EU Member States undercut their prices and would pressure Roland UK to help protect their margins. For example, an email in May 2012 from [Roland UK, Senior Employee 5] to [Roland UK, Senior Employee 2] shows the pressure from a UK MI Reseller on Roland UK to consider asking MI Resellers in other EU Member States to increase their price:

'Hi [X], just had a conversation with [Employee of Reseller] and [Employee of Reseller] re what they need to do to protect their business. In order for them to keep a hold on their UK business they now feel that they need to compete with [Reseller]. They have sent me a list of the prices they will need to hit, this also shows the effect on their margin. I have asked them not to respond and they have agreed to hold off. They have asked if we could do the following:

- Ask our European partners to increase their price into the UK
- Ask Japan for a better price for the UK

¹³¹ URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.28.

¹³² URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.33.

¹³³ URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.37. The CMA understands that the *'chain reaction across Europe'* is a reference to prices moving downwards rather than upwards.

I have explained that this is a currency issue that is out of our hands, however they now feel that this is jeopardising their business and position in the UK if it is allowed to continue as it is. I think are [sic] only option currently is to re affirm that we are in [sic] the not in control of currency and as such we will be unable to implement any changes. We would have to except [sic] that in these circumstances their business may slow down (and their ability to pay us on time)'.¹³⁴

Roland UK maintained the aims of the Roland Pricing Policy with the support of Roland Corporation and Roland Europe

- 3.54 The evidence shows that Roland Corporation, and in turn Roland Europe, supported the Roland Pricing Policy.
- 3.55 While Roland UK had ultimate responsibility for setting trade prices (and in turn the Minimum Price) between 2011 and 2016, Roland UK submitted to the CMA that individuals from Roland Corporation had responsibility to provide suggestions to Roland UK on the Minimum Price for Relevant Products with a view to avoiding significant pricing differences across the EU in order to incentivise local purchasing.¹³⁵
- 3.56 From 2016, Roland UK submitted that *'Responsibility for setting prices for the Relevant Products moved from Roland UK to REG as Roland Corporation was trying to get price harmonisation across Europe and stop resellers in some EU countries from receiving an unfair advantage over other resellers due to currency fluctuations and VAT rules'*.¹³⁶ Roland UK explained the process more particularly as follows:

'Between 2016-2018, the price for Relevant Products was set as follows: the Roland Corporation R&D team responsible for drums recommended a 'street price' ("RSP") to REG. The [?] of REG and the REG sales operations team would then calculate the trade price based on a financial model that ensured

¹³⁴ URN E_ROL00837 (Email from [Roland UK, Senior Employee 5] to [Roland UK, Senior Employee 2], dated 21 May 2012) and attachment E_ROL00838 (Spreadsheet titled 'Copy of Roland Boss [Reseller] Match May 2012.xlsx'). [Text in square brackets added by the CMA].

¹³⁵ Roland UK stated that *'Until 2016, RUK determined its pricing autonomously for the UK, albeit subject to suggestions from Roland Corporation'*. URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), p.5, lines 8-9. Roland UK also stated that *'Prior to 2016, the price for Relevant Products was set as follows: the Roland Corporation R&D team responsible for drums would suggest a recommended resale price (RRP) to RUK'*. Specifically, [Roland Corporation, Employee 1] and [Roland Corporation, Employee 2] each partly had responsibility *'to try and coordinate the resale prices of Roland's Sales Units to try and avoid significant pricing differences across the EU'*. URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), pp.3-4.

¹³⁶ URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), p.4.

that REG was making a reasonable margin. RRP's would be discussed with the [§<] of the European sales units during weekly sales calls or at [§<] meetings to ensure that the suggested RRP would work across Europe.¹³⁷

- 3.57 Roland UK further submitted that the '*RRP, RSP and trade price were then included on price lists for each European subsidiary, including Roland UK, adjusted by exchange rates for each different currency zone across Europe.*'¹³⁸

Content and Communication

- 3.58 The following paragraphs outline the CMA's findings regarding the content of the Roland Pricing Policy and the way in which it was communicated to MI Resellers.
- 3.59 Even though the Roland Pricing Policy does not appear to have been written down, it was communicated through price lists Roland UK sent to its MI Resellers from time to time, which revealed the content of the Roland Pricing Policy. Roland UK's price lists:
- specified the trade price at which MI Resellers could expect to purchase the Relevant Products from Roland UK; and
 - set out the Minimum Price at or above which MI Resellers were expected to advertise and sell the Relevant Products online (thereby revealing the margin a MI Reseller could expect to make).
- 3.60 As explained further below, Roland UK staff would frequently call MI Resellers after issuing a price list to check MI Resellers understood the content.

The Minimum Price

- 3.61 The evidence shows that Roland UK used a number of terms interchangeably during the Relevant Period to refer to the Minimum Price.
- 3.62 At the start of the Relevant Period, Roland UK referred solely to the RRP in price lists, which constituted the Minimum Price. The CMA's understanding is that from approximately February 2015 price lists additionally included an

¹³⁷ URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), p.3.

¹³⁸ URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), p.3.

RSP alongside the RRP, which constituted the Minimum Price.¹³⁹ The RRP was broadly 10-15% higher than the RSP.¹⁴⁰

- 3.63 The CMA understands that RRP's were retained on the price lists to enable MI Resellers to benchmark their prices or sell at the higher RRP price. [Roland UK, Senior Employee 3] stated in interview that *'There is no real need for two prices'* but that in some cases there would be *'dealers who sell at one price and others who sell at a higher price, for example, [Reseller] used to sell at a higher price as they used RRP.'*¹⁴¹
- 3.64 At various times during the Relevant Period, in communications between Roland UK and MI Resellers, the Minimum Price was also referred to as the 'web advertised price' (WAP), 'minimum advertised price' (MAP), 'suggested retail price' (SRP) and 'suggested street price' (SSP).¹⁴² The fact that terms were used interchangeably is demonstrated by an email between Roland UK and [Reseller], an MI Reseller, in which [Employee of Reseller] asked [Roland UK, Employee 5] in response to receiving a new price list, *'So just to check, the RSP is the map?'* [Roland UK, Employee 5] replied at 14:22, *'Yep'*.¹⁴³
- 3.65 As Roland UK became more cautious as to what it wrote down and how it communicated with its MI Resellers regarding the Roland Pricing Policy, it used the term 'Roland Value' in email and oral communications with MI Resellers as a code for pricing at the Minimum Price. This is explained in internal Roland UK communications.¹⁴⁴

¹³⁹ URN C_ROL02087 (Response dated 8 January 2020 to the First December 2019 RFI), response to question 4(a), p.3. The CMA has received some evidence that shows that RSPs (or another term for Minimum Price) were included in price lists prior to February 2015, for example: (i) a price list dated 20 October 2011 sent to [Reseller 1] contains both an RRP and 'Street' price which the CMA understands is the Minimum Price, URN C_ROL02229 (Roland UK Price list dated 20 October 2011); (ii) [Roland UK, Senior Employee 2] explained in an interview that around 2013, Roland UK introduced RSP to its price lists. URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.33. However, taking the evidence in the round, the CMA considers that RSPs become common in Roland UK's price lists only from approximately February 2015.

¹⁴⁰ URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), p.5, lines 16-19.

¹⁴¹ URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.14.

¹⁴² Roland UK stated that *'WAP (...) was used primarily in an online context from early 2009 onwards to refer to the recommended advertised price of a product online. It was used interchangeably with the phrase 'MAP'.* URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), response to question 6, p.5.

¹⁴³ URN E_ROL01031 (Email exchange between [Roland UK, Employee 5] and [Employee of Reseller] dated 27 February 2017), p.1.

¹⁴⁴ Roland UK submits that the term 'Roland Value' was also designed and understood by Roland UK as a broader concept going beyond pricing. The CMA considers that while this term may initially have had a broader meaning, it was understood by [Reseller 1] and/or other MI Resellers to be a code for retail prices under the

- 3.66 For example, on 23 December 2011, [Roland UK, Employee 1] emailed [Roland UK, Employee 20], copying in [Roland UK, Senior Employee 3], in relation to a MI Reseller ([Reseller]) who had been reported by another MI Reseller to Roland UK for not complying with the Roland Pricing Policy. In his email, he stated:
- ‘These guys have changed but are 1p out. I know it’s trivial however they are doing this on purpose so that they show up on the google search as the cheapest. Can you help?’.
- 3.67 [Roland UK, Employee 20] responded:
- ‘I’ve not done this kind of thing before. What do I actually say?’.
- 3.68 [Roland UK, Employee 1] replied to [Roland UK, Employee 20]:
- ‘I normally send them an email asking them to continue to offer Roland Value on a certain product however **prior to the email I have made them aware of what Roland Value is**. I.e. adding value to the brand buy [sic] working with us in a partnership to **ensure the brand isn’t devalued**. Does that make sense? I’ve attached a current ‘Roland Value’ document FYI.’¹⁴⁵
- 3.69 The attachment set out Roland products and ‘street prices’ (i.e. Minimum Prices) for those products.¹⁴⁶
- 3.70 In the CMA’s view, this communication shows that the term ‘Roland Value’ was synonymous with pricing at the Minimum Price considering the context of [Roland UK, Employee 1]’s request to help with a MI Reseller who was pricing ‘1p out’ (which the CMA considers means below the Minimum Price), and the “*Roland Value*” document’ that set out Minimum Prices.
- 3.71 In addition, Roland UK, Senior Employee 3]stated in interview that when Roland UK staff called MI Resellers about their pricing they would often say “*you’re not adding Roland value here*”.¹⁴⁷

Roland Pricing Policy. If Roland UK had issues to raise with its MI Resellers regarding, for example, product presentation or service quality, it is not clear to the CMA why Roland UK staff would not just have referred to them explicitly (given that it was not illegal to do so) as opposed to using an unspecific umbrella term which may not have been understood.

¹⁴⁵ URN E_ROL00702 (Internal Roland UK email from [Roland UK, Employee 1] to [Roland UK, Employee 20] dated 23 December 2011), p.1. [Emphasis added by the CMA].

¹⁴⁶ Attachment to email: URN E_ROL00703 (Spreadsheet titled ‘STR Nov’11.xlsx’).

¹⁴⁷ URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.18.

Communication

- 3.72 The evidence shows that Roland UK communicated the Minimum Price for the Relevant Products to its MI Resellers through the circulation of price lists.¹⁴⁸ Price lists were therefore an integral part of the Roland Pricing Policy.
- 3.73 Price lists were circulated frequently by Roland UK throughout the Relevant Period. Roland UK submitted that the price lists were circulated '*typically two to three times a year*' but that they were '*revised from time to time, for example when there was a currency fluctuation or products were added or discontinued.*'¹⁴⁹ The CMA's review of the evidence has found that price lists were circulated on average 8 times a year in email communications.¹⁵⁰ The price list revisions often accounted for currency fluctuations that impacted the Minimum Price that Roland UK intended MI Resellers to adopt.
- 3.74 The evidence shows that the price lists would occasionally include a time by which prices had to change. For example, on 8 September 2015, [Roland UK, Employee 3] sent an email titled '*Roland UK – New Price list*' to [Reseller 1, Employee 1] and other [Reseller 1] employees stating, '*I have attached your [Reseller 1] price list, I have also attached our standard price list which shows the changes in column K. The agreed time for all prices to change is this Friday (11th) at 5pm. All prices on Roland's system will be amended as of 8am Monday 14th.*'¹⁵¹
- 3.75 Where an MI Reseller benefited from a discount from the trade price, a bespoke price list would be issued reflecting this discount from the trade

¹⁴⁸ The price lists also detailed the trade price (the price at which an MI Reseller could purchase a product from Roland UK).

¹⁴⁹ URN C_ROL02087 (Response dated 8 January 2020 to the First December 2019 RFI), pp.3-4. In interview, [Roland UK, Senior Employee 3] said '*There is a formal communication when the price list is sent out. The list can be sent out twice or three times a year. Historically the price list would change with either exchange rate fluctuations or new products being released. But this is changing, the central price list will be generated within the group. This will be sent all in one go to all dealers.*' '*Exchange rates can move wildly and so the price lists can be moved more often when necessary and when we launch new products – usually 2 or 3 times a year.*' URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.14.

¹⁵⁰ This calculation is an approximation based on the number of times that Roland UK sent a price list to [Reseller 1] during the Relevant Period. URN C_ROL02087.1 (Response dated 9 January 2020 in response to question 4(d) to the First December 2019 RFI).

¹⁵¹ URN E_ROL00109 (Email from [Roland UK, Employee 3] to [Reseller 1, Employee 1], [Reseller 1, Senior Employee 3] and various others at [Reseller 1], copying [Roland UK, Employee 4] dated 8 September 2015) and attachments URN E_ROL00110 (Spreadsheet titled '*Roland – [Reseller 1] Price list Sept 14th 2015*') and E_ROL00111 (Spreadsheet titled '*Sept 14th price list*').

price.¹⁵² The Minimum Price was nevertheless the same for all MI Resellers.¹⁵³ As explained further at paragraphs 3.123 to 3.125 below, these discounts were also used as a means to enforce the Roland Pricing Policy.

- 3.76 Roland UK staff would call or visit MI Resellers after a new price list was issued as part of its relationship management with MI Resellers and these communications included monitoring compliance with the Roland Pricing Policy, as explained further at paragraphs 3.97 to 3.99 below.

Scope of the Roland Pricing Policy

- 3.77 The following paragraphs outline the CMA's view regarding the scope of the Roland Pricing Policy. As set out below,¹⁵⁴ the evidence shows that the Roland Pricing Policy:

- applied to online pricing of the Relevant Products;
- applied to all the Relevant Products;
- applied to MI Resellers and not Mass Resellers; and
- from January 2014, included additional restrictions on resale prices set when two Relevant Products were sold together as a bundle, for example, a Roland electronic drum kit sold together with a Roland component and/or accessory (Relevant Product Bundle).

Scope: applied to online pricing

- 3.78 The evidence shows that Roland UK focused enforcement of the Roland Pricing Policy on online pricing, even though the Minimum Price included in price lists did not distinguish between prices set in-store and online.¹⁵⁵
- 3.79 For example, as explained in more detail at paragraphs 3.110 to 3.113 below, for almost all of the Relevant Period, Roland UK monitored online advertised prices through InsiteTrack (a daily automated online price

¹⁵² Roland UK had various discount schemes in place with its MI Resellers, for example, the 'Roland Value Rebate', the 'Quality and Performance Bonus' and the 'quality bonus'. URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), p.5. URN C_ROL02087 (Response dated 8 January 2020 to the First December 2019 RFI), pp.5-6. URN C_ROL02320 (Response dated 4 February 2020 to the January 2020 RFI), pp.5-6.

¹⁵³ [Roland UK, Senior Employee 3] stated that '*The trade price would change but RSP would be all the same for all retailers.*' URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.21.

¹⁵⁴ See paragraphs 3.78 to 3.90 below.

¹⁵⁵ Roland submitted to the CMA that '*Price lists applied equally to in-store and online prices.*' URN C_ROL02087 (Response dated 8 January 2020 to the First December 2019 RFI), response to question 5(c), p.5.

monitoring report service) and would contact MI Resellers if their online prices were identified as being below the Minimum Price.¹⁵⁶ [Roland UK, Senior Employee 3] also stated in interview that there was no equivalent way to get pricing information for in-store prices.¹⁵⁷

- 3.80 Therefore, the CMA concludes that Roland UK would not in practice have been able to enforce the Roland Pricing Policy as effectively in-store (the CMA notes in this context that monitoring in-store prices is likely to be much more resource intensive than monitoring online prices only).
- 3.81 On this basis, the CMA concludes that the scope of the Roland Pricing Policy was limited to online prices only.

Scope: applied to all Relevant Products

- 3.82 As noted at paragraph 3.42 above, the price lists formed an integral part of Roland's Pricing Policy and were sent to all MI Resellers. Price lists included prices for all the Relevant Products (i.e. electronic drum kits, related components and accessories) and therefore each MI Reseller received a Minimum Price for all Relevant Products.¹⁵⁸
- 3.83 The evidence shows that Roland UK intended that MI Resellers should follow the Minimum Prices specified in price lists for all the Relevant Products and acted in accordance with this:
- As explained at paragraph 3.38 above, [Roland UK, Employee 5] stated in interview that Roland UK had a general expectation that MI Resellers would follow the Minimum Prices specified in the price lists (which set Minimum Prices for all of the Relevant Products).
 - Roland UK staff would contact MI Resellers after a new price list was issued, which, as explained further at paragraphs 3.96 to 3.97 below, the CMA considers was with a view to ensuring MI Resellers applied the relevant new Minimum Price as set out in the price list.

¹⁵⁶ See further paragraphs 3.38 and 3.83 below.

¹⁵⁷ In an interview, [Roland UK, Senior Employee 3] was asked, '*[w]ere there equivalent ways of getting this information for in-store prices?*' [Roland UK, Senior Employee 3] replied, 'No'. URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.21.

¹⁵⁸ URN C_ROL02087 (Response dated 8 January 2020 to the First December 2019 RFI), response to question 5(b), p.5.

- Roland UK on occasion monitored and enforced against MI Resellers that priced electronic drum kit components and accessories below the Minimum Price.¹⁵⁹
- Roland UK additionally expressly restricted the price at which MI Resellers could sell accessories when sold as a Relevant Product Bundle from January 2014 until the end of the Relevant Period, as explained further at paragraphs 3.89 to 3.90 below.

3.84 This conclusion is further supported by evidence the CMA has obtained from one MI Reseller who understood it had to comply with the Roland Pricing Policy in respect of all the Relevant Products.¹⁶⁰

Scope: applied to all Roland MI Resellers and excluded Mass Resellers

3.85 During the Relevant Period, Roland UK distributed to [REDACTED] Mass Reseller, [REDACTED].¹⁶¹

3.86 Roland UK submitted to the CMA that its price lists were sent to all of Roland UK's MI Resellers during the Relevant Period.¹⁶² Roland UK told the CMA that [REDACTED].¹⁶³ Therefore, the CMA considers that [Mass Reseller], [REDACTED] Mass Reseller of Relevant Products during the Relevant Period, was not subject to the Roland Pricing Policy.

¹⁵⁹ See paragraphs 3.259 to 3.262 below.

¹⁶⁰ [Reseller 1, Employee 1] told the CMA that he understood [Reseller 1] needed to adopt Roland's new price lists in their entirety each time a new price list was issued. He explained that [Reseller 1] would 'upload' each new price list 'as a matter of course' throughout the Relevant Period for all Relevant Products listed in the price list because if [Reseller 1] 'advertised Roland Products at less than the suggested retail price [Reseller 1] would lose some of the discounts from [sic] Roland': URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.194, lines 13-25 and p.195, lines 1-2. [Text in square brackets added by the CMA]; and URN C_ROL02310 (Response dated 31 January 2020 to the s.26 Notice to [Reseller 1, Employee 1] dated 30 January 2020), p.1. See also paragraphs 3.235 to 3.236 below.

¹⁶¹ Roland UK submitted to the CMA that during the Relevant Period it '[REDACTED]', a limited number of TD-1K electronic kits branded as "Go Drums" were sold to [Mass Reseller] and [Mass Reseller]. URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), p.17, line 26 to p.18, lines 1-9.

¹⁶² URN C_ROL02087 (Response dated 8 January 2020 to the First December 2019 RFI), response to question 5(b), p.5.

¹⁶³ Additionally, Roland UK stated that '[REDACTED] was not subject to Roland's standard SDA (as it would not meet the necessary criteria to be a Roland authorised dealer). Instead, RUK contracted with [REDACTED] based on [REDACTED] standard Vendor Agreement.' URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), response to question 15(a), p.9.

Bundling restrictions introduced from January 2014

3.87 The evidence shows that, as part of the Roland Pricing Policy, Roland UK restricted the discounts that could be offered on Relevant Product Bundles.¹⁶⁴

3.88 The evidence shows that the restrictions on Relevant Product Bundles were introduced in stages between January 2014 and June 2014:

- The restrictions were likely first communicated orally to MI Resellers in January 2014. In an email note to himself dated 15 January 2014, [Roland UK, Employee 5] stated, *'Got dealers in line by February 24th. Bundles and Pricing – soft launch All good news for dealers Big guys in the past will be nailed. Bundling_ what hav ewe [sic] missed ie stool, drumstick etc. ask the dealers. Priceless for dealers – Dealers can sell at any price they want as long as they're making 20%.'*¹⁶⁵ The CMA considers this email indicates that there was some communication to MI Resellers regarding the restrictions on Relevant Product Bundles although the exact content of what was communicated, and to which MI Resellers, is unclear;
- The restrictions were then adjusted and communicated by [Roland UK, Employee 5] at least to some MI Resellers in writing in March 2014. [Roland UK, Employee 5] stated in an email to one MI Reseller, *'As of 17th March Roland have decided that bundles on line [sic] with Roland product will be stopped. This is great news for you as it helps protect your margin moving forward.'*¹⁶⁶ [Roland UK, Employee 5] explained that Roland UK's aim behind the policy was that *'[>], but if they're bundled, they're bundled at RSP.'*¹⁶⁷ and
- The restrictions were fully developed by June 2014 and were sent to MI Resellers in writing. For example, in June 2014 [Roland UK, Senior Employee 3] emailed [Reseller] a PowerPoint presentation setting out the restrictions on Relevant Product Bundles that stated:

¹⁶⁴ The CMA has seen some evidence that indicates that the bundling restrictions also prevented MI Resellers bundling Roland and non-Roland products. This is not explored in this Decision as these restrictions would not constitute RPM.

¹⁶⁵ URN E_ROL02238 (Email from [Roland UK, Employee 5] to himself dated 15 January 2014).

¹⁶⁶ URN E_ROL01833. (Email from [Roland UK, Employee 5] to [Employee of Reseller] dated 13 March 2014), p.2.

¹⁶⁷ URN C_ROL02447 (Transcript of interview with [Roland UK, Employee 5] dated 20 January 2020), p.167, lines 16-17.

‘The price advantage of a bundle can be up to a **maximum of 15%** on the accessories only (compared to the single price of each accessory). **Any discount on the Instrument is not allowed**, e.g. TD11K is £829, a Throne is £39, a Pedal is £39, minimum bundle price is $(2 \times 39 - 15\% + 829) = £895.30$.’¹⁶⁸

3.89 The June 2014 document shows that the restrictions on Relevant Product Bundles required MI Resellers to:

- Sell the main item (for example the drum kit) at the Minimum Price; and
- Sell the accessory at a price that was no more than 15% off the Minimum Price that would otherwise apply according to the relevant price list.

3.90 The evidence shows that the restrictions on Relevant Product Bundles applied to all Relevant Products and lasted from January 2014 until the end of the Relevant Period.¹⁶⁹

Duration

3.91 On the basis of the evidence, the CMA finds that the Roland Pricing Policy began on 7 January 2011¹⁷⁰ and continued until 17 April 2018. The CMA concludes that this was as a result of the launch of the CMA’s investigation on 17 April 2018.¹⁷¹

¹⁶⁸ URN E_ROL00991 (Email from [Roland UK, Senior Employee 3] to [Employee of Reseller] dated 10 June 2014) and attachment to email: URN E_ROL01069 (PowerPoint presentation titled ‘SDA Bundles’). Also on 10 June 2014, [Roland UK, Senior Employee 3] sent a similar email under the subject line ‘SDA Bundles.pptx’ to [Reseller 1] attaching the same document that set out Roland UK’s policy on bundling. URN E_ROL01480 (Email from [Roland UK, Senior Employee 3] to [Reseller 1, Senior Employee 3] dated 10 June 2014) and attachment to email: URN E_ROL01481 (PowerPoint presentation titled ‘SDA Bundles’). On 10 June 2014, [Roland UK, Employee 5] sent an email to [Reseller 1] attaching a document titled ‘SDA Bundles’ this stated, ‘To promote the quality of all accessories that are sold in combination with Roland/Boss products we ask you to respect the following rules: ‘(...) Drums, Synths, Stage Piano, BK, Multi Effects, Octapad, SPD-SX All dealers can make bundles with accessories like e.g. Sticks, Pedal, Throne, Bag, Case, Headphone etc. The price advantage of a bundle can be up to a maximum of 15% on the accessories only (compared to the single price of each accessory). Any discount on the Instrument is not allowed, e.g. TD11K is £829, a Throne is £39, a Pedal is £39, minimum bundle price is $(2 \times 39 - 15\% + 829) = £895.30$.’ URN E_ROL02373 (Email from [Roland UK, Employee 5] to [Reseller 1, Employee 11], [Reseller 1, Employee 7] and [Reseller 1, Employee 1] dated 10 June 2014) and attachment to email: URN E_ROL02377 (PowerPoint presentation titled ‘SDA Bundles.pptx’).

¹⁶⁹ [Reseller 1, Employee 1] explained that the restrictions were in place for ‘at least a couple of years’. URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.203, line 8.

¹⁷⁰ See paragraphs 3.207 to 3.272 and 4.38 to 4.143 below.

¹⁷¹ In reaching this view, the CMA took into account that: (i) documentary evidence set out in the agreement Section which demonstrates an understanding between [Reseller 1] and Roland UK that [Reseller 1] had to comply with the Roland Pricing Policy as late as 20 March 2018 (see paragraphs 4.141 to 4.143 below); (ii) evidence from [Reseller 1, Employee 1] in which he confirmed that he understood that [Reseller 1] had to comply with the Roland Pricing Policy throughout the Relevant Period (i.e. up to and including 17 April 2018) (URN C_ROL02310 (Response dated 31 January 2020 to the s.26 Notice to [Reseller 1, Employee 1] dated 30 January 2020)); and (iii) Roland UK did not otherwise inform MI Resellers that the Roland Pricing Policy was no longer in

III. Monitoring and enforcement of the Roland Pricing Policy

Overview

- 3.92 The evidence shows that Roland UK sought to monitor the Roland Pricing Policy during the Relevant Period by:
- regularly issuing new price lists and contacting MI Resellers with a view to ensuring compliance with the relevant new Minimum Price;
 - monitoring resale prices reactively, through MI Resellers reporting where other MI Resellers were not adhering to the Roland Pricing Policy; and
 - monitoring resale prices on a regular and proactive basis, through a subscription to InsiteTrack pricing reports.¹⁷²
- 3.93 In each instance of monitoring noted above, the evidence shows that Roland UK would enforce the Roland Pricing Policy by contacting MI Resellers directly who were found or suspected not to be adhering to the Roland Pricing Policy and encourage them to increase their prices to at least the Minimum Price.
- 3.94 This Section sets out Roland UK's monitoring and enforcement activities with some examples. Further illustrative examples of Roland UK's monitoring and enforcement throughout the Relevant Period are set out in Section 3.C.VI below.
- 3.95 Roland UK also considered imposing sanctions on MI Resellers, instructed its salespeople to threaten certain MI Resellers, and actually threatened and/or imposed sanctions on MI Resellers for not adhering to the Roland Pricing Policy, as explained in Section 3.C.IV.

force – Roland UK submitted that RSPs (i.e. Minimum Prices) were not removed from price lists until May 2018. URN C_ROL02087 (Response dated 8 January 2020 to the First December 2019 RFI), response to question 4(e), p.4. Roland UK also submitted that it did not otherwise directly inform MI Resellers that Roland had stopped enforcing the Roland Pricing Policy, '*Roland was of the view that it was not necessary to instruct its Resellers to no longer follow RSPs given that RSPs ceased to feature on RUK's price lists from May 2018 onwards*'. URN C_ROL02320 (Response dated 4 February 2020 to the January 2020 RFI), response to question 1, p.2. The CMA therefore considers that the earliest MI Resellers could have become aware that the Roland Pricing Policy was no longer in force was after the launch of the CMA's investigation on 17 April, i.e. from 18 April onwards.

¹⁷² The CMA notes that some MI Resellers may have considered that it was in their commercial interests to adhere to and assist in policing the Roland Pricing Policy in order to achieve higher margins.

Roland UK regularly issued new price lists and Roland UK staff contacted MI Resellers after issuing new price lists with a view to ensuring compliance

- 3.96 As explained at paragraph 3.72 above, price lists were integral to the Roland Pricing Policy. Roland issued new price lists frequently, not only when new products were launched but also to account for currency fluctuations that would affect the Minimum Price. The CMA considers that price lists were circulated on average 8 times a year.¹⁷³
- 3.97 Roland UK would call or visit MI Resellers when new price lists were issued. In an interview, [Roland UK, Senior Employee 3] stated that *'If it is a general update, the price list comes from HQ. Area managers would then talk to the dealer, either over the phone or in person, to make sure they had received the latest price list and ask if they have any questions.'*¹⁷⁴ If MI Resellers did not adopt the prices in the new price list, [Roland UK, Senior Employee 3] stated that Roland UK staff would ask the relevant MI Reseller, *"have you had the latest price list", "do you realise you may not be making a margin on X product", "is it a mistake?"*.¹⁷⁵
- 3.98 [Roland UK, Employee 5] also stated in an interview with the CMA that there was a general expectation that MI Resellers would follow the Minimum Price specified in the new price lists.¹⁷⁶ [Roland UK, Employee 5] said that this general expectation was reached further to communications with MI Resellers in which Roland UK staff *'would generally call our customers (...) and just have a discussion about, the fact they were (...) losing money on product; and then they would (...) look to change the product price.'* [Roland UK, Employee 5] said, *'that's how the conversation would go, but, you know, the end result would be that they [MI Resellers] would change their, their price.'* [Roland UK, Employee 5] further explained that such changes would be in line with the Minimum Price in the new price lists.¹⁷⁷
- 3.99 The CMA considers that this evidence shows that the purpose of these calls was to check that MI Resellers understood what the new Minimum Price was and would comply with it, particularly when assessed against the

¹⁷³ See footnote 150 above.

¹⁷⁴ URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.14.

¹⁷⁵ URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.18.

¹⁷⁶ When asked, *'Was there any general expectation that -- from Roland, on your side, that resellers would follow the price quoted in the new price lists?'*, [Roland UK, Employee 5] responded, *'At that time, I would imagine so, yes.'* URN C_ROL02447 (Transcript of interview with [Roland UK, Employee 5] dated 20 January 2020), p.54, lines 4-7.

¹⁷⁷ URN C_ROL02447 (Transcript of interview with [Roland UK, Employee 5] dated 20 January 2020), p.54, lines 11-24 and p.73, lines 3-18. [Text in square brackets added by the CMA].

background of sanctions considered and instructions given as to the threat of sanctions, sanctions actually threatened and/or imposed by Roland UK as explained at paragraphs 3.134 to 3.146 below.

3.100 The CMA has obtained evidence that shows that if a MI Reseller did not comply with the new Minimum Price, Roland UK would contact the relevant MI Reseller to instruct them to adjust their price to the new Minimum Price. For example:

- On 5 April 2012, [Roland UK, Employee 1] wrote an email to [Reseller] stating, *'Could you please help with the below by close of business today?'*¹⁷⁸ and listed a number of Relevant Products. [Employee of Reseller] responded, *'Hi [Roland UK, Employee 1]...I assume this is due to the new price list you have also sent, I was a bit worried to think we had all those prices wrong, I am sure [Employee of Reseller] will sort them out for you, I would but as you know I don't have mt1 so I am afraid [Employee of Reseller] gets the short straw!'* [Employee of Reseller] instantaneously responded, *'Done it'* (adding a smiley face).¹⁷⁹
- Similarly, on 19 March 2015, [Roland UK, Employee 4] emailed [Employee of Reseller] stating, *'New RSP's as of 5.30 pm tomorrow: TD 15k 1279 TD 15kv 1849'* (both Relevant Products). The following day, [Roland UK, Employee 4] emailed again: *'Dude, see below'*. [Employee of Reseller] replied, *'They should have changed mate'*. [Roland UK, Employee 4] responded, *'Yes dude, all cool, have a good weekend'*.¹⁸⁰

3.101 The CMA considers that these examples show MI Resellers increased their prices to the Minimum Price further to monitoring and enforcement by Roland UK staff. Further illustrative examples are included in Section 3.C.VI.

Roland UK reacted to MI Resellers reporting non-compliance

[Reseller] pricing reports

3.102 Roland UK submitted to the CMA that from at least 15 December 2008 to February 2014, Roland UK received pricing reports from [Reseller] with varying degrees of regularity, identifying MI Resellers not pricing at the

¹⁷⁸ The recipients of this email are unclear however given that [Employee of Reseller] has responded to the email, this shows that the email is external to Roland UK.

¹⁷⁹ URN E_ROL00824 (Email exchange between [Roland UK, Employee 1] and [Employee of Reseller] and [Employee of Reseller] dated 5 April 2012).

¹⁸⁰ URN E_ROL01200 (Email exchange between [Employee of Reseller] and [Roland UK, Employee 4] dated 19-20 March 2015).

Minimum Price.¹⁸¹ The pricing reports were sent to key [Employees] at Roland UK including [Roland UK, Employee 1], [Roland UK, Employee 5], [Roland UK, Senior Employee 5] and Roland's UK then [3<] [Roland UK, Senior Employee 2]. [Roland UK, Employee 1] explained in interview that [Reseller] aimed to get Roland UK *'to speak to these retailers, to make sure that they were aware that they were, like I said before, losing margin.'*¹⁸²

- 3.103 The [Reseller] pricing reports covered a wide range of Roland UK's MI Resellers. Roland UK told the CMA that it cannot exclude that *'all or almost all Resellers could in principle have been within the scope of these alerts.'*¹⁸³
- 3.104 The evidence shows that Roland UK contacted those MI Resellers identified as not complying with the Roland Pricing Policy further to a [Reseller] report to instruct them to revert to the Minimum Price. For example, on 5 August 2011 further to receipt of a [Reseller] report listing several MI Resellers as pricing below the Minimum Price on various Roland Relevant Products, [Roland UK, Senior Employee 3] forwarded the email to several Roland UK staff. In doing so, he stated, *'Better but not good enough! Get onto your dealers now! I want our side clean by midday otherwise there [sic] off!'*¹⁸⁴ Further illustrative examples are included in Section 3.C.VI.

Monitoring by other MI Resellers

- 3.105 The evidence shows that other MI Resellers also proactively policed each other's pricing and emailed weblinks¹⁸⁵ to Roland UK in order to alert Roland UK as to when other MI Resellers were pricing below the Minimum Price.¹⁸⁶
- 3.106 In an interview, [Roland UK, Senior Employee 2] explained that *'The email from a dealer could just contain a link, dealer and a price. This was code from them for "sort this out" "do something about it". Language changed over*

¹⁸¹ URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), pp.7-8. The CMA notes that it is unclear how often these reports were sent to Roland UK. Roland UK submitted that these reports appear to have been sent by [Reseller] on an intermittent and irregular basis, although this irregularity may be due to the limited available data. The gaps between price reports identified by Roland UK range from less than one day to many days and sometimes several months.

¹⁸² URN C_ROL02449 (Transcript of interview with [Roland UK, Employee 1] dated 13 January 2020), p.77.

¹⁸³ URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), response to question 13(e), p.8.

¹⁸⁴ URN E_ROL00405 (Email chain from [Employee of Reseller], forwarded by [Roland UK, Senior Employee 2] to [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 5] and circulated internally by [Roland UK, Senior Employee 3] to [Roland UK, Employee 18], [Roland UK, Employee 11], [Roland UK, Employee 5] and [Roland UK, Employee 13] dated 5 August 2011). The CMA notes the threat of a potential sanction mentioned in this email: *'otherwise there [sic] off!'*.

¹⁸⁵ For example, see below Section 3.C.VI: Illustrative examples of Roland's monitoring and enforcement and paragraphs 4.56 to 4.143 below.

¹⁸⁶ See footnote 172 above.

*time, with more focus being placed on conversations over margins. Why are you supplying dealer B etc.'*¹⁸⁷

3.107 [Roland UK, Senior Employee 2] further explained that *'If there was a situation where dealer A rings you, we would look at it, sometimes ignore it, but then would go to dealer B and ask them to check it was the right price, and in the worst case we asked them to put it up where it needed to be as it is forcing everyone else in the market place to complain.'*¹⁸⁸

3.108 The evidence shows that Roland UK did contact those MI Resellers identified as not complying with the Roland Pricing Policy by another MI Reseller to instruct them to revert to the Minimum Price. For example:

- On 30 September 2011, [Employee of Reseller] emailed [Roland UK, Employee 1] and [Roland UK, Senior Employee 5] under the subject heading *'td9kx2 under map on ebay', '[Reseller] and [Reseller]. Way under and weekend is here. Td9kx2 at 1805 should 1839'* and attached a single weblink to the ebay website advertising a Relevant Product TD9KX2. Approximately an hour later, [Roland UK, Employee 5] responded stating, *'Spoken to both and they are changing now!'*¹⁸⁹
- On 9 December 2013, [Reseller] emailed Roland ([Roland UK, Senior Employee 5], [Roland UK, Employee 1]) under the subject *'Every bloody time it's [Reseller]....'* with only a weblink of a MI Reseller listing on play.com, with no further explanation. [Roland UK, Employee 1] forwarded this to [Roland UK, Employee 12]. [Roland UK, Employee 12] replied on 10 December 2013, *'All sorted'*, to which [Roland UK, Employee 1] said, *'Thanks'*.¹⁹⁰

3.109 Further illustrative examples are included in Section 3.C.VI below.

Roland UK improved its monitoring through a subscription to InsiteTrack pricing reports

3.110 From November 2011 to 14 October 2018, Roland UK paid for a subscription to InsiteTrack, which provided bespoke automated daily pricing reports

¹⁸⁷ URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.36.

¹⁸⁸ URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.36. [Emphasis added by the CMA].

¹⁸⁹ URN E_ROL00489 (Email exchange between [Employee of Reseller] and [Roland UK, Employee 1] and [Roland UK, Senior Employee 5] and then forwarded internally within Roland UK dated 30 September 2011).

¹⁹⁰ URN E_ROL02223 (Email from [Roland UK, Employee 1] to [Roland UK, Employee 12] dated 10 December 2013).

identifying MI Resellers who were pricing below the Minimum Price.¹⁹¹ The evidence shows that:

- The aim of the subscription was to improve upon Roland UK's monitoring and enforcement (which prior to November 2011 had relied on MI Reseller reporting as noted above);
- The design of the InsiteTrack reports was tailored to enable swift enforcement by Roland UK; and
- The scope of the monitoring was to cover the most important MI Resellers and/or those who at times did not comply with the Roland Pricing Policy, and covered higher-end products with a view to incentivising compliance more generally across all the Relevant Products due to the threat of being 'caught'.

Aims

- 3.111 [Roland UK, Senior Employee 2] stated in an interview that the reason for subscribing to InsiteTrack was to '*get ahead*' of MI Reseller complaints. [Roland UK, Senior Employee 2] further stated that Roland UK introduced InsiteTrack because '*one of the dealers who are no longer around, [Reseller], started sending pricing information to us. They wanted to make Roland aware of what was going on. It was deemed not appropriate that they would send us this so we started our own tracker.*'¹⁹²
- 3.112 The documentary evidence shows that Roland UK used the InsiteTrack reports for more than just monitoring complaints. Internal Roland communications show that Roland UK's aim in subscribing to InsiteTrack was also to improve enforcement of the Roland Pricing Policy.
- 3.113 On 11 May 2011, [Roland UK, Senior Employee 4] emailed [Roland UK, Senior Employee 5] copying in [Roland UK, Senior Employee 3] and [Roland UK, Employee 21] about setting up an online demonstration of InsiteTrack and asked the recipients to propose 20 products and six MI Resellers to pass to InsiteTrack for the purposes of the demonstration. [Roland UK, Senior Employee 3] stated that it '*would be good to get involved in this – I also have a few dealers who are funky online.*' [Roland UK, Senior Employee 4] asked, '*Do you think for a demo it would be quite good to pick some*

¹⁹¹ URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), response to question 12, pp.6-7.

¹⁹² URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.35.

dealers who have the greatest potential not to comply with pricing guidelines?'. [Roland UK, Senior Employee 3] responded stating, 'Yep – for me the majority of the bigger players normally comply – it's the smaller ones who have gone under the radar before...'.¹⁹³

Design

3.114 The InsiteTrack reports were bespoke to Roland UK.¹⁹⁴ In the CMA's view, Roland UK specified the contents of the reports to enable it to identify quickly those MI Resellers who were not adhering to the Roland Pricing Policy and to enable it to take swift enforcement action against those MI Resellers. In particular:

- The InsiteTrack reports were sent **daily** to all key individuals at Roland UK involved in the monitoring and enforcement of the Roland Pricing Policy, including the salespeople and the [redacted].¹⁹⁵ The CMA considers that this provided Roland UK staff with regular updates on the level of compliance with the Roland Pricing Policy. It also enabled Roland UK to react swiftly to cases of non-compliance with the Roland Pricing Policy with a view to ensuring the aims of the Roland Pricing Policy were not undermined; and
- The InsiteTrack reports also identified **exactly by how much** the MI Reseller was below the Minimum Price by setting out the Minimum Price, the MI Resellers' price and the percentage discrepancy between their price and the Minimum Price. In addition, it specified **which products** (including the Relevant Products) were below the Minimum Price.

Scope

3.115 The CMA concludes that the scope of the InsiteTrack reports enabled Roland UK to target the enforcement of the Roland Pricing Policy with a view to achieving compliance more generally across its MI Resellers and across all Relevant Products.

¹⁹³ URN E_ROL00350 (Email from [Roland UK, Senior Employee 4] to [Roland UK, Senior Employee 5] copying [Roland UK, Senior Employee 3] and [Roland UK, Employee 21] dated 11 May 2011). In an interview, [Roland UK, Senior Employee 3] explained that the InsiteTrack reports 'tracked maybe 30' resellers. URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.16.

¹⁹⁴ The InsiteTrack reports were tailored to Roland UK's requirements. Roland UK specified which of its resellers and which of its products (including Relevant Products) would be included in the price monitoring reports.

¹⁹⁵ URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), pp.6-7.

- 3.116 In terms of coverage of Roland UK's MI Resellers, as noted above, Roland UK targeted those MI Resellers with a history of non-compliance with the Roland Pricing Policy. Roland UK provided to the CMA an indicative list¹⁹⁶ of the MI Resellers which Roland UK requested to be monitored on the InsiteTrack pricing reports, stating that it '*only monitored a limited number of resellers (generally those who **sold more online**)*'.¹⁹⁷
- 3.117 While Roland UK submitted that these MI Resellers represented a maximum of [20-30]% of Roland UK's MI Resellers of Relevant Products by number,¹⁹⁸ the CMA notes that the MI Resellers set out in the indicative list accounted for a much higher share of Roland UK's revenue (approximately up to [60-70]% of Roland UK's total sales of Relevant Products in 2017).¹⁹⁹
- 3.118 In terms of coverage of Roland UK's Relevant Products, Roland UK submitted that the InsiteTrack reports were designed to focus on higher value Roland UK products i.e. they did not cover all Relevant Products.²⁰⁰
- 3.119 The CMA concludes that monitoring and enforcement through InsiteTrack was targeted with a view to improving compliance with the Roland Pricing Policy across all Relevant Products, albeit with a focus on higher value products.²⁰¹ Once there was active enforcement on the back of InsiteTrack monitoring of certain of the Relevant Products, in the CMA's view, MI Resellers were more likely to comply across all Relevant Products for fear of sanctions, as explained further at paragraphs 4.45 to 4.52 below. Indeed, one MI Reseller, [Reseller 1], noted that its understanding was that all Relevant Products were covered by the Roland Pricing Policy.²⁰²
- 3.120 The CMA notes the importance of InsiteTrack reports as a monitoring and enforcement tool as they could highlight price reductions quickly and so allow for swifter intervention by Roland UK to enforce the Roland Pricing

¹⁹⁶ URN E_ROL00835 (Email from [Roland UK, Employee 27] to [Roland UK, Senior Employee 3] dated 17 May 2012) and attachment E_ROL00836 (Spreadsheet titled '*Webrat emails and reports.xls*').

¹⁹⁷ Roland UK explained that it has not been able to identify a full list of resellers who it requested to be monitored during the Relevant Period, as the list may have evolved over time. URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), response to question 12(f), p.7.

¹⁹⁸ URN C_ROL02320 (Response dated 4 February 2020 to the January 2020 RFI), response to question 3(a), p.7.

¹⁹⁹ 2017 is the most recent year for which the CMA has been provided with this revenue information. This calculation is based on the revenue figures provided by Roland UK on 9 January 2020, URN [§].

²⁰⁰ Representing approximately [20-30]% of Roland UK's catalogue. URN C_ROL02320 (Response dated 4 February 2020 to the January 2020 RFI), response to question 3(b), p.7.

²⁰¹ The Relevant Products included in InsiteTrack reports were generally higher value ones including higher value components and accessories.

²⁰² URN C_ROL02310 (Response dated 31 January 2020 to the s.26 Notice to [Reseller 1, Employee 1] dated 30 January 2020).

Policy. This point was underlined by [Roland UK, Senior Employee 2] when he stated in interview that once one MI Reseller changed its price, changes by other MI Resellers would follow '*immediately*' as, due to the internet, it would spark a '*chain reaction across Europe*'.²⁰³

- 3.121 The evidence shows that InsiteTrack reports were regularly used to aid enforcement of the Roland Pricing Policy. For example, on 5 April 2012, upon receipt of an InsiteTrack report, [Roland UK, Senior Employee 3] forwarded the report to several Roland UK staff and stated, '*Guys As agreed yesterday please have all your dealers back in-line by tomorrow morning. Any dealers not in-line will not receive allocation of our new products landing this month.*'²⁰⁴ Roland UK staff would then contact the relevant MI Reseller and request them to increase their prices to the Minimum Price, as illustrated in more detail in Section 3.C.VI.

IV. Consequences for MI Resellers of non-compliance with the Roland Pricing Policy

- 3.122 The contemporaneous documentary evidence set out in this Section shows that:

- Roland UK considered imposing sanctions on MI Resellers, and senior Roland UK staff instructed Roland UK sales managers to impose sanctions on MI Resellers for non-compliance with the Roland Pricing Policy;
- Roland UK threatened MI Resellers with sanctions for non-compliance with the Roland Pricing Policy; and
- Roland UK did on occasion impose sanctions on MI Resellers for non-compliance with the Roland Pricing Policy.

- 3.123 Sanctions related typically to the removal of key discounts off the trade price that Roland UK offered MI Resellers. The evidence shows this applied to the 'Roland Value Rebate' (RVR) until it was phased out during 2014 and the 'Quality Bonus' that then took the place of RVR.²⁰⁵

²⁰³ URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.37. As noted at footnote 133 above, the CMA understands that the '*chain reaction across Europe*' is a reference to prices moving downwards rather than upwards.

²⁰⁴ URN E_ROL00820 (Email from [Roland UK, Senior Employee 3] to [Roland UK, Employee 7], [Roland UK, Employee 1] and others of Roland UK dated 5 April 2012).

²⁰⁵ URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), p.6; URN C_ROL02320 (Response dated 4 February 2020 to the January 2020 RFI), p.6.

- 3.124 As noted at paragraphs 3.65 to 3.71 above, Roland UK staff used the term ‘Roland Value’ synonymously with pricing at the Minimum Price. This term was linked to the RVR discount as the evidence shows below. Roland UK submitted that RVR was *‘included on internal price lists (...) and from these price lists it appears to offer an additional discount of approximately [10-20]% from the trade price.’*²⁰⁶ The CMA considers this to be a sizeable discount for MI Resellers that MI Resellers would have been concerned about losing when faced with the threat, or imposition, of a sanction to remove it.
- 3.125 When RVR was phased out, the evidence shows that Roland UK used ‘Quality Bonus’ in a similar manner with a view to avoiding direct communications relating to the Minimum Price. On 1 December 2014, [Roland UK, Senior Employee 3] wrote an email note to himself under the subject line ‘SDA’, stating, *‘Some dealers we won’t be singing [sic] up again (...) **We won’t be talking about pricing - it’s about quality bonus**’*. Shortly after, he added, *‘We are not taking [sic] about price anymore - we want to raise the performance of the network? Do you won’t [sic] to be part of this or not?’*.²⁰⁷ The CMA concludes that the reference to *‘talking about pricing’* in this context shows that discussions with MI Resellers regarding compliance with the Minimum Price would use the term ‘quality bonus’. Roland UK described the ‘Quality Bonus’ as a *‘[5-15]% discount to the standard trade price’*;²⁰⁸ the CMA considers this to be a sizeable discount for MI Resellers that MI Resellers would have been concerned about losing when faced with the threat, or imposition, of a sanction to remove it.
- 3.126 The evidence shows that sanctions were threatened in writing and/or imposed at the beginning of the Relevant Period. As compliance with the Roland Pricing Policy remained high until the end of the Relevant Period the CMA considers that MI Resellers understood by this time that the threat of sanctions was credible and therefore Roland UK no longer needed to make its threats explicit (see further Section 3.C.VI on illustrative examples of monitoring and enforcement below). The CMA also considers it possible that sanctions were threatened orally and/or imposed in the light of Roland UK’s attempts to conceal the Roland Pricing Policy (see Section 3.C.V: Roland UK’s awareness about illegality of implementing and enforcing the Roland Pricing Policy, below).²⁰⁹

²⁰⁶ URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), p.6.

²⁰⁷ URN E_ROL02542 (Email note from [Roland UK, Senior Employee 3] to himself dated 1 December 2014). [Emphasis added by the CMA].

²⁰⁸ URN C_ROL02320 (Response dated 4 February 2020 to the January 2020 RFI), p.6.

²⁰⁹ See footnote 172 to paragraph 3.92 above.

- 3.127 Further to the evidence, including contemporaneous documentary evidence, set out below, and as noted at paragraph 3.122 above, the CMA therefore concludes that the statements made by certain Roland UK staff that sanctions were never threatened and/or imposed are not credible.

Sanctions considered and/or instructed

- 3.128 Roland UK regularly considered imposing sanctions on MI Resellers for non-compliance with the Roland Pricing Policy. Senior Roland UK staff also often instructed Roland UK sales managers to threaten or impose sanctions on MI Resellers who were pricing below the Minimum Price. The CMA concludes that this evidence shows that the threat of sanctions was credible.
- 3.129 Contemporaneous documents available to the CMA from before the start of the Relevant Period provide context for Roland UK's view of how to use sanctions to enforce the Roland Pricing Policy. On 23 March 2010, a note prepared by [Roland UK, Employee 1] forwarded to [Roland UK, Senior Employee 5] for review states, *'If you advertise less than MAP - told off once ... if you do it again then product invoiced at standard trade on next purchase without warning.'*²¹⁰
- 3.130 During the Relevant Period, on 19 September 2011, an internal Roland UK email between [Roland UK, Employee 18] and [Roland UK, Employee 1] shows that the use of sanctions was considered to enforce the Roland Pricing Policy. This email was sent in the latter part of a chain of emails, including ones relating to the pricing of a Relevant Product (SPD30, an Octapad) at [Reseller], in relation to which [Roland UK, Employee 1] stated, *'They still [sic] messing around [Roland UK, Employee 18], do we need to be tougher with them?'* to which [Roland UK, Employee 18] responded, *'Yes, we probably do....the RVR stick will come out and I won't let them buy the [X] until its sorted.'*²¹¹
- 3.131 In the CMA's view, the words *'the RVR stick will come out'* show a potential sanction in the form of removal of the RVR discount and the words *'I won't let them buy the [X] until its sorted'* indicates that Roland UK would threaten

²¹⁰ URN E_ROL00255 (Email from [Roland UK, Employee 1] to [Roland UK, Senior Employee 5] dated 23 March 2010) and attachment to email: URN E_ROL00256 (A note titled *'Settlement.doc'* prepared by [Roland UK, Employee 1] to [Roland UK, Senior Employee 5] dated 24 March 2010).

²¹¹ URN E_ROL00473 (Email exchange between [Employee at Reseller] and [Roland UK, Employee 18], which was forwarded internally to [Roland UK, Employee 1] and [Roland UK, Senior Employee 3] and to which [Roland UK, Employee 1] responded to it internally, dated 18 August 2011 to 19 September 2011), pp.1-2. [Emphasis added by the CMA].

to withhold supply of another Roland product (an [3<]) if [Reseller] did not price at the Minimum Price.²¹²

3.132 The evidence shows that on several occasions [Roland UK, Senior Employee 3] instructed Roland UK [Employees] to consider and/or threaten sanctions in relation to MI Resellers who did not comply with the Roland Pricing Policy:

- On 12 August 2011, [Roland UK, Senior Employee 3] emailed several Roland UK [Employees], forwarding a report from [Reseller] that showed several MI Resellers pricing below the Minimum Price. [Roland UK, Senior Employee 3] stated, '[Reseller] and [Reseller] have lost RVR - [Reseller] are about to lose there's [sic] if [Roland UK, Employee 5] can't get this sorted in the next half an hour!... [Roland UK, Employee 13] - can I suggest you get [Reseller], [Reseller] and [Reseller] sorted within the next half an hour as **they will also lose RVR if it's not sorted**'.²¹³ The CMA notes '[Reseller]', '[Reseller]' and '[Reseller]' were under threat of the sanction of losing RVR. In the CMA's view, Roland UK did or threatened to do this, or actively considered doing so because those MI Resellers were not adhering to the Roland Pricing Policy. Later, on 19 October 2011, [Roland UK, Senior Employee 3] emailed again stating, '*This is getting past a joke! ... no more chances - please sort this first job tomorrow and if need be **remove RVR***'.²¹⁴
- On 27 January 2012, [Roland UK, Senior Employee 3] wrote to Roland UK [Employees] stating, '*Any reports on Monday/over the weekend of dealers not inline - **RVR will be removed***'.²¹⁵
- On 5 April 2012, [Roland UK, Senior Employee 3] forwarded an InsiteTrack report showing Relevant Products being priced below Minimum Price to Roland UK [Employees] stating, '*Guys As agreed yesterday please have all your dealers back in-line by tomorrow morning*'.

²¹² The CMA notes that although the [3<] is not a Relevant Product, the possible sanction in relation to other products would likely increase compliance with regard to the Relevant Products.

²¹³ URN E_ROL00423 (Email from [Employee of Reseller] to [Roland UK, Senior Employee 2], which was forwarded to [Roland UK, Senior Employee 3], who then forwarded it to other Roland UK employees, dated 12 August 2011). [Emphasis added by the CMA].

²¹⁴ URN E_ROL00515 (Email chain from [Employee of Reseller] to [Roland UK, Employee 1] and [Roland UK, Senior Employee 5], which was forwarded internally to [Roland UK, Senior Employee 3] and [Roland UK, Employee 7], and [Roland UK, Senior Employee 3], subsequently forwarded it on to several other Roland UK employees, dated 19 October 2011). [Emphasis added by the CMA].

²¹⁵ URN E_ROL00773 (Email from [Roland UK, Senior Employee 3] to [Roland UK, Employee 18], [Roland UK, Employee 11], [Roland UK, Employee 5] and [Roland UK, Employee 1] dated 27 January 2012), p.2. [Emphasis added by the CMA].

Any dealers not in-line will not receive allocation of our new products landing this month.²¹⁶

- 3.133 The CMA concludes that this evidence shows that sanctions by Roland UK were considered and Roland UK's [Employees] were made aware of MI Resellers who were under threat of sanction if they did not revert to the Minimum Price. Therefore, the threat of sanctions was credible.

Sanctions threatened

- 3.134 The evidence shows that Roland UK threatened MI Resellers with sanctions explicitly.
- 3.135 Emails to MI Resellers before the start of the Relevant Period provide context on the threats that were made to MI Resellers. The CMA also considers that these threats created an impression with MI Resellers of Roland UK's expectation of compliance with the Roland Pricing Policy, which continued into the Relevant Period.
- 3.136 For example, on 23 December 2010, in an email from [Roland UK, Employee 7] (addressed to himself but which the CMA considers was sent to MI Resellers because it was then forwarded to [Roland UK, Employee 1] stating, '*sent this one before the break*'), [Roland UK, Employee 7] told MI Resellers:

'Can I remind you that the 'Roland Value Rebate' discount that you may receive is entirely discretionary. **Can I request that your Christmas activities continue to add 'Roland Value'?** I will be checking the internet regularly over the festive period.'²¹⁷

- 3.137 In the CMA's view, '*checking the internet regularly*' meant that MI Resellers' online retail prices would be checked.
- 3.138 On 30 December 2010, in an email from [Roland UK, Employee 7] to unspecified MI Resellers, [Roland UK, Employee 7] stated that:

'It has become apparent that during this holiday period a number of our Retail partners are offering less in the way of Roland Value than we would like ... any of our retail partners that are not offering FULL Roland Value on the morning of the 4th of January will not receive a Roland Value Rebate for

²¹⁶ URN E_ROL00820 (Email from [Roland UK, Senior Employee 3] to [Roland UK, Employee 7], [Roland UK, Employee 1] and others of Roland UK dated 5 April 2012), p.1. [Emphasis added by the CMA].

²¹⁷ URN E_ROL00281 (Email from [Roland UK, Employee 7] to [Roland UK, Employee 1] dated 6 January 2011, forwarding an email that [Roland UK, Employee 7] sent to himself on 23 December 2010).

a considerable period of time. We will be conducting a full analysis of Roland Value on the morning of 4th January.’²¹⁸

3.139 In the CMA’s view, the phrases ‘*less in the way of Roland Value*’ and ‘*not offering FULL Roland Value*’ show that Roland Value includes compliance with the Minimum Price (it is difficult to suggest that ‘less’ in this context refers only to the quality of the listing).

3.140 On 7 January 2011, [Roland UK, Employee 1] wrote to several MI Resellers²¹⁹ using similar wording to the 30 December 2010 email:

‘We are very keen to achieve full European harmonisation before we leave for NAMM show and would ask you to make sure that you are offering FULL Roland Value at your earliest convenience. Please be re-assured that another Roland Value assessment will take place on the morning of Monday 10th and any of our retail partners who are offering less in the way of Roland Value than we would like will lose any discretionary discounts that they might otherwise receive.’²²⁰

3.141 [Roland UK, Employee 1] subsequently confirmed at interview that the above email was a ‘*Roland company message*’ sent to all of Roland UK’s MI Resellers. Therefore, [Roland UK, Employee 1] stated that ‘*I would imagine that that [email] has been sent to the network, not just me sending that email. I would imagine, if you checked through all the emails from other [3<], that that’s gone out too, the same words.*’²²¹

3.142 When asked at interview what ‘*offering FULL Roland value*’ meant, [Reseller 1, Employee 1] told the CMA that ‘*if you weren’t selling at the SRP, that you would lose some discounts.*’²²² In this context, ‘SRP’ refers to the suggested retail price, in other words the Minimum Price. Therefore, the CMA concludes that the phrase ‘offering FULL Roland Value’ meant those MI Resellers pricing at the Minimum Price, with the threat of losing their RVR discount if they did not do so.

²¹⁸ URN E_ROL00280 (Email from [Roland UK, Employee 7] to himself, copying in [Roland UK, Senior Employee 5] and [Roland UK, Employee 21] dated 30 December 2010, which was forwarded by [Roland UK, Employee 7] to [Roland UK, Employee 1] on 6 January 2011).

²¹⁹ The MI Resellers were [Reseller 1], [Reseller], [Reseller], [Reseller], [Reseller], [Reseller], [Reseller] and [Reseller].

²²⁰ URN E_ROL00282 (Email from [Roland UK, Employee 1] to [Reseller 1, Employee 1] and multiple MI Resellers dated 7 January 2011).

²²¹ URN C_ROL02449 (Transcript of interview with [Roland UK, Employee 1] dated 13 January 2020), p.61, lines 19-22 and p.62, lines 1-7. [Text in square brackets added by the CMA].

²²² URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.72, lines 18-19.

Sanctions imposed

3.143 The evidence shows that sanctions were imposed on MI Resellers who did not comply with the Roland Pricing Policy.

3.144 In 2011, Roland UK imposed sanctions on several MI Resellers:

- On 11 August 2011, [Roland UK, Senior Employee 2] received a [Reseller] report, which indicated that certain MI Resellers were advertising Roland products below Minimum Price. [Roland UK, Senior Employee 2] forwarded this report to [Roland UK, Senior Employee 3], who contacted [Roland UK, Employee 13], stating, '[Roland UK, Employee 13], *the sales guys are working very hard at getting this inline with a couple of accounts losing RVR today! Can you contact [Reseller]/[Reseller]*'.²²³ The CMA considers that this shows that Roland UK had imposed sanctions on certain MI Resellers as a result of being identified in the [Reseller] report as pricing below Minimum Price.
- On 12 August 2011, [Roland UK, Senior Employee 3] wrote to various Roland UK employees stating that '*[t]he dealers that **have lost RVR**/going to lose RVR ... have had the time to fix this but decided not to ... [o]nce they have come back in line we can (if we feel is the right things to do) [sic] introduce RVR straight away*'.²²⁴ In the CMA's view, '*come back in line*' is a reference to reverting to the Minimum Price and that Roland UK had imposed sanctions on certain MI Resellers because they had failed to adhere to the Roland Pricing Policy.
- On 22 September 2011, [Roland UK, Employee 14] emailed [Employee of Reseller] stating that '*This order has been temporarily held*' and asking [Reseller] to call its sales representative '*regarding an RVR issue.*' [Reseller] responded stating, '*Can you release this PO (...) the only reason we would lower our prices is to follow the lead of [Reseller], [Reseller], [Reseller] etc.*'.²²⁵ In the CMA's view, this shows that a sanction

²²³ URN E_ROL00422 (Email chain from [Reseller] to [Roland UK, Senior Employee 2], forwarded by [Roland UK, Senior Employee 2] to [Roland UK, Senior Employee 3], and subsequently forwarded by [Roland UK, Senior Employee 3] to other Roland UK employees, dated 11 August 2011).

²²⁴ URN E_ROL00425 (Email from [Roland UK, Senior Employee 3] to [Roland UK, Employee 5], [Roland UK, Employee 11], [Roland UK, Employee 18], [Roland UK, Employee 1], [Roland UK, Employee 7], [Roland UK, Employee 3], [Roland UK, Employee 4], [Roland UK, Senior Employee 5] and [Roland UK, Employee 16] dated 12 August 2011). [Emphasis added by the CMA].

²²⁵ URN E_ROL00481 (Email exchange between [Employee of Reseller], [Roland UK, Employee 14] and [Roland UK, Employee 18], which was forwarded internally to [Roland UK, Senior Employee 3] and [Roland UK, Employee 1] dated 22 September 2011).

was imposed on [Reseller] for non-compliance with the Roland Pricing Policy described as an '*RVR issue*'.

- On 12 August 2011, [Roland UK, Senior Employee 3] emailed several Roland UK [Employees] forwarding a report from [Reseller] that showed several MI Resellers pricing below the Minimum Price. [Roland UK, Senior Employee 3] stated, '*Guys ... [Reseller] & [Reseller] **have lost RVR** - [Reseller] are about to lose there's [sic] if [Roland UK, Employee 5] can't get this sorted in the next half an hour!... [Roland UK, Employee 13] - can I suggest you get [Reseller], [Reseller] and [Reseller] sorted within the next half an hour as **they will also lose RVR if it's not sorted***'.²²⁶ In the CMA's view, this communication records that Roland UK imposed a sanction on [Reseller] and '[Reseller]' by removing RVR. Roland UK may have also imposed the same sanction on '[Reseller]'.

3.145 The CMA concludes that, in light of these emails showing Roland UK had imposed a sanction on [Reseller] and confirming that it had imposed a sanction on [Reseller] after they had been identified in the [Reseller] report as pricing below the Minimum Price, the imposition of such sanctions likely led MI Resellers to fear further sanctions throughout the Relevant Period.

Conclusions on the consequences for MI Resellers of non-compliance with the Roland Pricing Policy

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

- Roland imposed sanctions on MI Resellers on several occasions for non-compliance with the Roland Pricing Policy;²²⁷ and
- irrespective of whether sanctions were imposed, they were a credible threat as they were regularly considered internally, salespeople were made aware of the threat of sanctions to MI Resellers who priced below the Minimum Price and sanctions were actually threatened by Roland UK, directly or indirectly (including in relation to [Reseller 1]).²²⁸

²²⁶ URN E_ROL00423 (Email from [Employee of Reseller] to [Roland UK, Senior Employee 2], which was forwarded to [Roland UK, Senior Employee 3], who then forwarded it to other Roland UK employees, dated 12 August 2011). [Emphasis added by the CMA].

²²⁷ See paragraphs 3.143 to 3.145 above.

²²⁸ See paragraphs 3.134 to 3.142 above.

V. Roland UK's awareness about illegality of implementing and enforcing the Roland Pricing Policy

3.147 The evidence shows that Roland UK understood that its communications and interactions with its network of UK MI Resellers pertaining to the Roland Pricing Policy were not legal. The CMA sets out examples in this Section of the evidence which show that:

- Roland UK's staff knew that the implementation and enforcement of the Roland Pricing Policy was illegal;
- MI Resellers had alerted Roland UK to the possibility that the implementation and enforcement of the Roland Pricing Policy was illegal; and
- Roland UK's staff, in the light of their knowledge of the illegality of their conduct, undertook measures to conceal it whereby they:
 - tried to avoid creating written records and either communicated with MI Resellers orally or used coded language to conceal communications regarding the Roland Pricing Policy; and
 - at times, deleted written communications from MI Resellers relating to the Roland Pricing Policy.

Roland UK's staff knew that the implementation and enforcement of the Roland Pricing Policy was illegal

3.148 Evidence available to the CMA and set out below shows that Roland UK staff, including senior individuals such as the [§<] and [§<], had an awareness that the Roland Pricing Policy was not legal. The contemporaneous documents show an awareness from the outset of the Relevant Period.

3.149 On 26 January 2011, [Roland UK, Senior Employee 2], [§<], wrote to [Reseller 1, Senior Employee 1] regarding two issues that had been briefly discussed on the phone. On the issue of protecting [Reseller 1]'s margins, [Roland UK, Senior Employee 2] stated:

‘Our new SDA goes many steps further to enhance the value good dealers such as [Reseller 1] clearly deliver on the high street. Please don't hesitate to call me if any of the new SDA points are unclear. **A key area, Retail Price**

Maintenance is not directly referred to, for legal reasons, but I can bring you up to speed on this.'²²⁹

3.150 In the CMA's view, [Roland UK, Senior Employee 2]'s explanation for why '*Retail Price Maintenance*' was '*not directly referred to*' in the new SDA ('*for legal reasons*') shows Roland UK's understanding of the reason for its exclusion, namely its illegality, and Roland UK's efforts to conceal the conduct by not writing it down, as further explained in paragraphs 3.184 to 3.195 below.

3.151 Other senior Roland UK staff were aware of the illegality of the Roland Pricing Policy. On 14 March 2013, [Roland UK, Senior Employee 1], [REDACTED] sent an email under the subject line '*SDA*' to various Roland staff (EMEA). He stated:

'(...) we will NEVER stop dealers from selling below our WAP if they decide to. We can ask them to observe WAP but we cannot force them. **Indeed if any JV was to threaten a dealer with penalties or closure of their account if they sell below our WAP, that JV would be acting illegally and would be risking all Roland group to action from EU competition law.**'²³⁰

3.152 In the CMA's view, this email shows that Roland UK was aware that restricting the retail price set by its MI Resellers, and in particular applying force through threatening or imposing sanctions, was contrary to competition law.

3.153 Two months later, on 16 May 2013, [Roland UK, Senior Employee 1] sent another internal Roland email under the subject line '*CF*' to [Roland, Employee 2] (copying [Roland UK, Senior Employee 2], [Roland, Employee 1], [Roland, Employee 3] and [Roland Corporation, Employee 1]). In it, [Roland UK, Senior Employee 1] stated:

'I am as frustrated as you are about this issue (...) My position - and the position of [Roland Corporation, Senior Employee] and RJA is that we have to accept some flexibility and price 'rounding' as I said before, [0-10]%-[0-10]% is acceptable but **we now have to be very, very careful in talking to dealers about WAP and what we call 'discriminatory' pricing (or CF)**

²²⁹ URN E_ROL00304 (Email from [Roland UK, Senior Employee 2] to [Reseller 1, Senior Employee 1] dated 26 January 2011), p.4. [Emphasis added by the CMA].

²³⁰ URN E_ROL00973 (Internal Roland email from [Roland UK, Senior Employee 1] to [Roland, Employee 2], [Roland, Employee 3], [Roland, Employee 1], [Roland, Employee 4], [Roland UK, Employee 25], [Roland, Employee 5], [Roland, Employee 6], [Roland, Employee 7], [Roland, Employee 9], [Roland, Employee 10], [Roland Europe, Employee], [Roland Corporation, Employee 1] and [Roland, Employee 8] dated 14 March 2013), p.1. [Emphasis added by the CMA].

because we are leaving ourselves wide open for an investigation by the competition authorities.

Further, my position is and also [Roland Corporation, Senior Employee] and RJA's position is that we do not want a serious confrontation with a hugely important dealer like [Reseller] (and also [Reseller]) over a pricing issue. It is too dangerous. We want them to respect our SDA of course, but we want to discuss with logic and friendly relationship, not confrontation or threats of closing the account. These key accounts are too important to Roland Corporation and of course we know it is frustrating to you and [Roland, Employee 3] but we want dialogue with them, not confrontation and threats. (...) **I am not copying this message more widely - it is too dangerous due to the sensitive content.**²³¹

3.154 In the CMA's view the comment '*we need to be very, very careful in talking to dealers about WAP (...) because we are leaving ourselves wide open for an investigation by the competition authorities*' shows an awareness that talking to MI Resellers about their resale prices, including advertised prices, was potentially illegal. Additionally, the CMA considers that [Roland UK, Senior Employee 1]'s decision not to copy his message more widely and his description of the email as 'sensitive' further shows Roland UK's understanding that the conduct was potentially illegal.

3.155 Documents in 2014 continue to show Roland UK's awareness of the potential illegality of the Roland Pricing Policy. On 31 January 2014, in an email sent to [Roland UK, Senior Employee 2], [Roland Europe, Employee] stated:

'Asking for a minimum of value per bundle is dangerous because it is illegal and we can be sure that there will be permanent moves. The most obvious conclusion is that we will spend our time on the phone for discussions we should never have. So, for us, no bundle is a perfect policy.'²³²

3.156 In the CMA's view, this document shows a clear understanding on Roland's side that asking for a minimum bundle price was illegal, and also shows Roland's understanding that the implementation of a decision to ask for a minimum bundle price would require efforts to conceal the conduct by

²³¹ URN E_ROL01890 (Internal Roland email from [Roland UK, Senior Employee 1] to [Roland, Employee 2], [Roland, Employee 3], [Roland, Employee 1], [Roland UK, Senior Employee 2] and [Roland Corporation, Employee 1] dated 16 May 2013), p.2. [Emphasis added by the CMA]. Roland confirmed to the CMA in an email dated 18 June 2020 that the '[Reseller]' referred to in this document is MI Reseller.

²³² URN E_ROL02265 (Internal Roland email from [Roland Europe, Employee] to [Roland UK, Senior Employee 2] dated 31 January 2014).

communicating orally with MI Resellers (see further paragraphs 3.184 to 3.200 below).

- 3.157 In around February 2014, Roland UK amended its SDA to remove a clause that had appeared in its 2011, 2012 and 2013 SDAs and which prevented ‘*below-cost*’ pricing in circumstances of termination.²³³ The CMA understands, further to Roland UK’s explanation, that this prevented MI Resellers from selling below the trade price to get rid of remaining stock and was removed from the SDA from 2014 onwards as a result of ‘*following external legal advice and with a view to ensuring competition law compliance*’.²³⁴
- 3.158 The CMA concludes that the reason for its removal was that the clause restricted the resale price, amounting to RPM, and therefore Roland UK knew that restrictions on the price at which an MI Reseller could sell were illegal.²³⁵
- 3.159 In 2015, [Roland UK, Senior Employee 3] sent an internal Roland UK email on 8 January 2015, under the subject line ‘*SDA 2015 Project Files*’ to [Roland UK, Senior Employee 5] and other Roland UK colleagues. [Roland UK, Senior Employee 3] attached an internal Roland PowerPoint presentation, about which he stated, ‘*Confidential do not share!*’. On the second slide of the attached presentation, under the heading ‘*Key Goals*’, was written in a red box: ‘***Never discuss or try and change the end-user price EVER!***’ Alongside this, in a green box, was written: ‘*Maintain Strong Dealer Network & protect Roland and Dealer Margin*’. Written underneath both these boxes was: ‘*Zero Risk*’ with a tick symbol.²³⁶ The CMA considers that the document shows that Roland UK understood that it should not be setting the resale price of MI Resellers (the ‘*end-user*’), as not doing so

²³³ URN C_ROL00359 ([Reseller 1] Section B of response to s.26 Notice dated 17 April 2018). SDA between Roland UK and [Reseller 1] dated [§<] 2011), Clause 8.3, pp.6-7. Exact date of amendment not known but the CMA estimates the change took place around February 2014 based on the 2014 SDA with [Reseller 1] dated [§<] 2014 (URN C_ROL00358 ([Reseller 1] Section B of response to s.26 Notice dated 17 April 2018). (SDA between Roland UK and [Reseller 1] dated [§<] 2014)).

²³⁴ URN C_ROL02320 (Response dated 4 February 2020 to the January 2020 RFI), response to question 6, p.8.

²³⁵ URN E_ROL01068 (SDA between [Reseller] and Roland UK dated [§<] 2013), Clause 8.3, pp.6-7 and URN C_ROL00358 ([Reseller 1] Section B of response to s.26 Notice dated 17 April 2018). SDA between Roland UK and [Reseller 1] dated [§<] 2014).

²³⁶ URN E_ROL02567 (Internal Roland email from [Roland UK, Senior Employee 3] to [Roland UK, Senior Employee 5], [Roland UK, Employee 4], [Roland UK, Employee 11], [Roland UK, Employee 1], [Roland UK, Employee 5], [Roland UK, Employee 3] and [Roland UK, Employee 19] dated 8 January 2015) and attachment to email: URN E_ROL02568 (Internal Roland presentation titled ‘*SDA 2015 Project File.pdf*’), p.2. [Emphasis added by the CMA].

would incur ‘zero risk’. This again shows Roland UK was aware that RPM was illegal.

3.160 In March 2017, Roland held a Europe-wide [X] meeting at which [Roland UK, Senior Employee 2] and [Roland UK, Senior Employee 3] were in attendance.²³⁷ Competition law compliance was discussed at this meeting and an extract of the presentation used at the meeting noted a European Commission investigation into RPM, which was described in the presentation as ‘*when a manufacturer and a distributor agree on selling a product at a certain price*’.²³⁸ In the CMA’s view, this shows that Roland UK staff at the most senior level were aware that RPM was illegal.

3.161 The evidence shows that [Roland UK, Senior Employee 3] communicated to Roland UK staff that communications with MI Resellers about resale prices, sometimes discussed in terms of margins, was illegal. In interview, [Roland UK, Senior Employee 3] stated:

‘They [area managers] can and have ignored pressure or complaints from the network [about pricing by MI Resellers] and pretended to try and influence another retailer but nothing actually happened. Historically at other times calls have been made to make dealers aware of potential margin erosion. **In November last year, in Birmingham, I made it very clear to the UK business that any kind of communication or behaviour like this has to stop.**’²³⁹

3.162 The CMA concludes that Roland UK staff more widely were made aware of the illegality of the Roland Pricing Policy.

Roland UK was alerted to the possibility that the implementation and enforcement of the Roland Pricing Policy was illegal by MI Resellers and members of the public

3.163 On five occasions between 2013 and 2018 Roland UK was alerted to the possibility that its conduct was illegal by MI Resellers and by members of the public. The emails exchanged on each occasion are set out below.

2013 – [Reseller]

3.164 On 9 September 2013, a member of the public sent an email to [Employee of Reseller]. In this email he stated:

²³⁷ URN C_ROL02036 (Response dated 18 December 2019 to the First December 2019 RFI).

²³⁸ URN C_ROL02035 (Annex 2 to the response dated 18 December 2019 to the First December 2019 RFI).

²³⁹ URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.15. [Text in square brackets added by the CMA] [Emphasis added by the CMA].

'I am interested in the Roland Integra-7 but I am a [sic] hesitant because Roland seem to be price fixing, as do all participating stores. Every store I have contacted so far have said that Roland insist that they sell the Intergra-7 [sic] for no less that [sic] £1199 inc VAT and will not let them reduce the price below that. That is price fixing and is illegal in the UK, because none of the dealers are able to compete with each other on price! Eventually, the law will catch up with this and so I will wait till that happens.'

- 3.165 This email was forwarded by [Employee of Reseller] to [Roland UK, Employee 8], stating, '*You might want to share this with the powers that be*'. That same day, [Roland UK, Employee 8] forwarded the above email chain to [Roland UK, Senior Employee 3], stating, '*Just had this from [Employee of Reseller].*' The next day, [Roland UK, Senior Employee 3] forwarded this communication to [Roland UK, Senior Employee 2] and [Roland UK, Senior Employee 4], stating, '*FYI – another email to follow*'.²⁴⁰
- 3.166 In the CMA's view, the email alerted Roland UK to the fact that the Roland Pricing Policy was illegal as it clearly spells out that in insisting that its dealers do not sell below a certain price, Roland UK engaged in illegal anticompetitive conduct. The CMA considers that in forwarding [Employee of Reseller]'s email internally, including to the most senior staff within Roland UK, Roland UK was fully aware of the nature and seriousness of the allegation and was, therefore, aware of the illegality of its conduct.

2014 – [Reseller]

- 3.167 On 17 October 2014, solicitors for [Reseller] wrote to Roland UK to allege that Roland UK had operated a policy of imposing upon retailers, including [Reseller], a minimum advertised price for online sales and marketing in respect of Roland's products since 2009.
- 3.168 The letter was addressed to [Roland UK, Senior Employee 2], [X], and stated that [Reseller]'s solicitors are '**confident Roland is aware, the MAP policy is a form of resale price maintenance (RPM), which is in breach of Article 101(1) TFEU and the Chapter 1 prohibition in the Competition Act 1998 (...)**' and added that '**MAP effectively took away the ability of [[Reseller]] to control its own prices.**'²⁴¹

²⁴⁰ URN E_ROL01907 (Emails between [a member of the public], [Employee of Reseller] and [Roland UK, Employee 8], [Roland UK, Senior Employee 3], [Roland UK, Senior Employee 2] and [Roland UK, Senior Employee 4] dated 8-10 September 2013).

²⁴¹ URN E_ROL02514 (Letter from [Legal Representative of Reseller] to [Roland UK, Senior Employee 2] dated 17 October 2014), pp.1-2. [Emphasis added by the CMA].

3.169 The following day, 18 October 2014, [Employee of Reseller] sent an email to [Roland UK, Employee 5], in which he stated:

‘In short, your **illegal MAP policies** have had a detrimental effect upon [Reseller] and via your **unlawful** dealership terms Roland is controlling [Reseller] without any stake holding in it, which is a complete conflict of interest.’²⁴²

3.170 The correspondence reached [Roland UK, Senior Employee 3], who acknowledged the concerns raised by [Reseller] in internal Roland UK communications. [Roland UK, Senior Employee 3] emailed [Roland UK, Employee 5] and [Roland UK, Employee 1] stating, ‘*Can you call [Employee of Reseller] and ask him to also send me this letter? Ideally today? [X] also call me please.*’²⁴³

3.171 In the CMA’s view, in stating that ‘*Roland is aware [that] the MAP policy is a form of resale price maintenance (RPM), which is in breach (...)*’²⁴⁴ of competition law, the letter sent by [Reseller]’s solicitors alerted Roland UK to the possibility that the implementation and enforcement of the Roland Pricing Policy was illegal. Roland UK was also alerted to this effect by [Employee of Reseller]’s email which followed the letter, where he referred to Roland UK’s ‘*illegal MAP policies*’. In the CMA’s view, by discussing the correspondence with [Reseller] and its solicitors internally, Roland UK was fully aware of the nature and seriousness of the allegation and, therefore, aware of the illegality of its conduct.

2016 – Member of the public ([X])

3.172 On 23 May 2016, a member of the public wrote to [Roland UK, Employee 15] and [Roland UK, Employee 16]. In the email the potential customer stated:

‘I would like to buy a roland spd sx. I am concerned that every where [sic] I try to buy it from retailers it at exactly the same price. This does not seem right to me. It seems like the price of 539 pounds has been fixed which is anticompetitive and in breach of competition law. Before I take my complaint about this any further, I wanted to give you an opportunity to remedy this. Please [sic] let me know what you can [sic] do to help. I will be buying a spd

²⁴² URN E_ROL002003 (Email from [Employee of Reseller] to [Roland UK, Employee 5] dated 18 October 2014). [Emphasis added by the CMA].

²⁴³ URN E_ROL02507 (Internal Roland UK email from [Roland UK, Senior Employee 3] to [Roland UK, Employee 5] dated 18 October 2014).

²⁴⁴ [Text in square brackets added by the CMA].

sx on Wednesday this week. If I have to pay 539 for it I will be getting in touch with trading standards about what appears to me to be price fixing.’²⁴⁵

- 3.173 [Roland UK, Employee 16] forwarded this email to [Roland UK, Senior Employee 3], asking if there was *‘some sort of official response that we could use moving forward?’* The following day, 24 May 2016, [Roland UK, Senior Employee 3] replied to [Roland UK, Employee 16], *‘It’s not illegal to recommend an RSP, that’s all our dealers are doing. Our retailers will / can sell for any price they decide, this has nothing to do with us.’*²⁴⁶
- 3.174 [Roland UK, Senior Employee 3] also emailed [Roland UK, Senior Employee 5] and asked: *‘Can you call this guy for me (no email) and explain to him that we publish an RSP however it’s a guide and nothing more! (...) It may also help to try and find out who his local dealer is and maybe contact them and sort something for him on his behalf (worst case scenario)’.*
- 3.175 [Roland UK, Senior Employee 5] replied later that day, *‘spoke with the customer explained the situation, also threw in the fact that SPDSX is hot we are out of stock so product is in high demand. Suggested he ring his favourite dealer - [Reseller 1] [§<], and haggle. Spoke with [§<] to communicate with [Reseller 1], to do a tweak if necessary, if they get a call.’*²⁴⁷
- 3.176 [Roland UK, Senior Employee 3] then replied asking [Roland UK, Senior Employee 5], *‘did he [the complainant] understand?’*, to which [Roland UK, Senior Employee 5] responded, *‘He understood what I was saying, however he still thinks it is suspicious. He didn’t threatened [sic] me with any action’.*²⁴⁸
- 3.177 In the CMA’s view, in alleging that Roland UK has engaged in price fixing, *‘which is anticompetitive and in breach of competition law’*, [Member of the public] alerted Roland UK to the possibility that the implementation and enforcement of the Roland Pricing Policy was illegal.

²⁴⁵ URN E_ROL02744 (Email from [Member of the public] to [Roland UK, Employee 15], circulated and discussed internally between [Roland UK, Employee 16], [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 5], dated 23-24 May 2016), p.3.

²⁴⁶ URN E_ROL02744 (Email from [Member of the public] to [Roland UK, Employee 15], circulated and discussed internally between [Roland UK, Employee 16], [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 5], dated 23-24 May 2016), pp.1-2.

²⁴⁷ URN E_ROL02744 (Email from [Member of the public], to [Roland UK, Employee 15], circulated and discussed internally between [Roland UK, Employee 16], [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 5], dated 23-24 May 2016), p.1.

²⁴⁸ URN E_ROL02745 (Internal Roland UK email from [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 5] dated 24-25 May). 2016), p.1. [Text in square brackets added by the CMA].

- 3.178 The CMA also considers that this correspondence shows that Roland UK took steps to prevent further action against Roland UK by requiring [Reseller 1] to adjust the price of the Relevant Product on this particular occasion to appease the customer and remove suspicion.
- 3.179 The CMA notes that [Roland UK, Senior Employee 3]'s position that RSP prices were guidance only is inconsistent with the evidence the CMA has uncovered as described above (see in particular Section 3.C.IV regarding the consequences for MI Resellers of non-compliance with the Roland Pricing Policy).

2017 – [Reseller]

- 3.180 On 27 February 2017 [Roland UK, Employee 5] sent an email to [Employee of Reseller], titled '*Roland Jan 2017 Prices*', the content of which was a price list showing a number of the Relevant Products. [Employee of Reseller] responded asking, '*So just to check, the RSP is the map?*' [Roland UK, Employee 5] replied, '*[y]ep*'; [Employee of Reseller] then replied, '*#notallowedtomapbutkindado*'.²⁴⁹
- 3.181 In the CMA's view, the final response from [Employee of Reseller] above, which the CMA understands to read in plain language '*not allowed to map but kinda do*', alerted Roland UK to the possibility that the implementation and enforcement of the Roland Pricing Policy was illegal.

2018 – [Reseller]

- 3.182 On 10 February 2018, [Employee of Reseller] sent an email to [Roland UK, Employee 9] and [Roland UK, Senior Employee 3], which was forwarded onto [Roland UK, Employee 1], [Roland UK, Senior Employee 5] and [Roland UK, Senior Employee 6]. [Employee of Reseller]'s email read:
- '[Reseller] have now started to receive invoices from Roland (UK) Ltd without the [0-10]% 'performance bonus'. (...) If Roland (UK) Ltd had allowed [Reseller] to sell at the price we chose, we may have hit our performance bonus target and kept the [0-10]%. Roland (UK) (the supplier) imposed the price [Reseller] (the re-seller) advertised and subsequently charged to customers. (...) **As I am sure you and the senior management team at Roland (UK) Ltd will know, The EU has strict rules protecting free competition. Under these rules, certain practices are prohibited so I trust that EVERY Roland (UK) Ltd dealer that has not hit their 2017**

²⁴⁹ URN E_ROL01031 (Email exchange between [Roland UK, Employee 5] and [Employee of Reseller] dated 27 February 2017), p.1.

target has lost the [0-10]% performance bonus. I would like you to reinstate the [0-10]% off invoice discount and lower our 2018 to the more realistic target of £[~~8~~]²⁵⁰.

- 3.183 In the CMA's view, in stating that Roland UK did not allow [Reseller] to sell at the price it chose, [Employee of Reseller] alerted Roland UK to the possibility that the implementation and enforcement of the Roland Pricing Policy was illegal. In the CMA's view, by forwarding [Employee of Reseller]'s email internally, Roland UK was fully aware of the nature and seriousness of the allegation and, therefore, aware of the illegality of its conduct.

Roland UK's staff, in the light of their knowledge of the illegality of their conduct, undertook concealment measures.

- 3.184 The evidence shows that Roland UK staff, in the light of their knowledge of the illegality of the Roland Pricing Policy (see paragraphs 3.148 to 3.183 above), undertook certain concealment measures. These measures took two forms: first, at least at times, Roland UK staff avoided creating written records related to the Roland Pricing Policy and communicated to MI Resellers either orally or through 'code'. Second, on occasions, they deleted written communications relating to the Roland Pricing Policy.

Roland UK staff avoided creating written records and either communicated with MI Resellers orally or used code to conceal communications regarding the Roland Pricing Policy

- 3.185 As noted above, in relation to the 2011 SDA, [Roland UK, Senior Employee 2] explained that '*A key area, Retail Price Maintenance is not directly referred to, for legal reasons*'. [Roland UK, Senior Employee 2] went on to say '*but I can bring you up to speed on this*'.²⁵¹
- 3.186 The CMA considers the statement that '*I can bring you up to speed on this*' shows that [Roland UK, Senior Employee 2] sought to explain the Roland Pricing Policy without generating a written evidence trail, potentially in oral communications over telephone or in meetings. [Roland UK, Senior Employee 2] explained in interview that Roland UK became cautious with written communication:

'As time went on, we had great concerns about the legitimacy of this action in the market place. We had some understanding and knowledge and there

²⁵⁰ URN E_ROL02952 (Email from [Employee of Reseller] to [Roland UK, Employee 9] and [Roland UK, Senior Employee 3] dated 10 February 2018). [Emphasis added by the CMA].

²⁵¹ URN E_ROL00304 (Email from [Roland UK, Senior Employee 2] to [Reseller 1, Senior Employee 1] dated 26 January 2011).

was also a fear of anti-competitive behaviour. **Over time we became more cautious, particularly on email.**'²⁵²

- 3.187 As a means to conceal the Roland Pricing Policy, Roland UK staff used the term 'Roland Value' as code for pricing at the Minimum Price when communications had to take place over email. As explained at paragraphs 3.66 to 3.70 above, [Roland UK, Employee 1] explained in an internal Roland UK email dated 23 December 2011 that when communicating with an MI Reseller regarding pricing at the Minimum Price, he explained to MI Resellers what 'Roland Value' meant:

'I normally send them an email asking them to continue to offer Roland Value on a certain product however **prior to the email I have made them aware of what Roland Value is.** I.e. adding value to the brand buy [sic] working with us in a partnership to **ensure the brand isn't devalued.** Does this make sense? I've attached a current 'Roland Value' document FYI.'²⁵³

- 3.188 Roland UK's efforts to conceal the conduct by avoiding written communications and communicating orally continued in 2014. On 17 January 2014, [Roland UK, Senior Employee 5] sent himself an email note stating:

'New- 25% margin for dealer, UK it will be 20%
Eg 100€ calculate divide by 0.75. Then add local VAT. This would be the lowest price to sell. (this would be a 25% margin for dealer)
New- no bundle ing of 3rd party unless approved by Roland
(...)
New- strong enforcement of SDA
(...)
Communication nothing in writing!!!!
(...)
Guidelines- **explain verbally**, and give reasons'.²⁵⁴

- 3.189 In the CMA's view the statements '*Communication nothing in writing!!!!*' and '*explain verbally*' in the context of SDAs, and the references to '*lowest price*

²⁵² URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.36. [Emphasis added by the CMA].

²⁵³ URN E_ROL00702 (Internal Roland UK email from [Roland UK, Employee 1] to [Roland UK, Employee 20] dated 23 December 2011). [Emphasis added by the CMA]. Attachment to email: URN E_ROL00703 (Spreadsheet titled '*STR Nov'11.xlsx*').

²⁵⁴ URN E_ROL02245 (Email note from [Roland UK, Senior Employee 5] to himself dated 17 January 2014). [Emphasis added by the CMA].

to sell' in the email note, show Roland UK avoiding the creation of written records and an evidence trail relating to the Roland Pricing Policy.

- 3.190 On 9 September 2014, [Roland UK, Employee 1] sent an email setting out the restrictions on Relevant Product Bundles, as described in paragraphs 3.87 to 3.90 above, stating, *'Please do not forward on to any dealer. **This is for your information only, share verbally.***²⁵⁵
- 3.191 In the CMA's view the requirement to *'share verbally'* was an attempt to avoid producing written records and an evidence trail relating to the Roland Pricing Policy.
- 3.192 As noted at paragraph 3.125 above, on 1 December 2014, [Roland UK, Senior Employee 3] wrote an email note to himself under the subject line 'SDA', stating, *'Some dealers we won't be singing [sic] up again[.] **We won't be talking about pricing - it's about quality bonus***'. Shortly after, he added, *'We are not taking [sic] about price anymore - we want to raise the performance of the network? Do you won't [sic] to be part of this or not?'*²⁵⁶
- 3.193 In the CMA's view, the statement *'We won't be talking about pricing'* is evidence of Roland UK avoiding the creation of written records relating to the Roland Pricing Policy and using coded language – the *'quality bonus'* – to communicate and enforce the Roland Pricing Policy.
- 3.194 An internal Roland UK document dated 2 February 2015, produced by [Roland UK, Senior Employee 5] and titled *'Sales Meeting'*, that appears to be a sales meeting agenda, stated, *'Admin - Reiterate - Delete all Text messages/emails. **No more emails re price.***²⁵⁷ In the CMA's view, the note to have *'no more emails re price'* shows that Roland UK staff wanted to avoid written records and creating an evidence trail relating to the Roland Pricing Policy.
- 3.195 The evidence shows that Roland UK's efforts to avoid direct written communication regarding the Roland Pricing Policy later extended to avoiding direct oral communication and the use of coded language. On 1 March 2016, [Roland UK, Senior Employee 5] sent an internal Roland UK iMessage to [Roland UK, Employee 11], stating, *'Hi [✂], **we can hear you***

²⁵⁵ URN E_ROL01001 (Internal Roland UK email from [Roland UK, Employee 1] to [Roland UK, Senior Employee 3] dated 9 September 2014) and attachment to email: URN E_ROL01002 (Internal Roland UK presentation titled *'SDA Bundles'*). [Emphasis added by the CMA].

²⁵⁶ URN E_ROL02542 (Email note from [Roland UK, Senior Employee 3] to himself dated 1 December 2014). [Emphasis added by the CMA].

²⁵⁷ URN E_ROL02579 (Internal Roland UK notes dated 2 February 2015). [Emphasis added by the CMA].

talking to your dealers telling them to change their prices. Could you change your language.’ [Roland UK, Employee 11] replied, ‘Yes’.²⁵⁸

Roland UK staff took steps to have written communications relating to the Roland Pricing Policy deleted in order to conceal evidence and avoid creating an evidence trail

- 3.196 The evidence shows that Roland UK also concealed the Roland Pricing Policy by instructing staff to delete communications related to it.
- 3.197 On 1 February 2011, [Roland UK, Senior Employee 5] sent an internal Roland UK email to [Roland UK, Employee 7] and [Roland UK, Employee 1], in relation to a [Reseller] report that had been sent to Roland UK earlier that day. The report showed [Reseller 1] advertising a number of Relevant Products below the Minimum Price. In the email, [Roland UK, Senior Employee 5] stated, *‘Hi Guys, I know it’s a pain, can you get these last few sorted, I will be and you will be nagged everyday until it’s clean. **Then please delete this email.**’*²⁵⁹
- 3.198 On 29 March 2011, [Roland UK, Employee 24] ([Roland UK, Senior Employee 2] at the time) forwarded a [Reseller] report from 2011 to [Roland UK, Employee 1]. The report showed 19 instances of MI Resellers advertising below the Minimum Price. In her email (marked ‘Confidential’) [Roland UK, Employee 24] requested, *‘Please can you speak to your dealers ref these prices. **Please can you delete this email after you have dealt with it.**’*²⁶⁰
- 3.199 As noted at paragraph 3.194 above, an internal Roland UK document dated 2 February 2015, stated, ***‘Admin - Reiterate - Delete all Text messages/emails. No more emails re price.’***²⁶¹
- 3.200 In the CMA’s view, the request to delete all text ‘messages/emails’ together with the statement ‘No more emails re price’, shows that Roland UK staff were instructed to delete emails or text messages relating to

²⁵⁸ URN E_ROL00174 (iMessage exchange between [Roland UK, Senior Employee 5] and [Roland UK, Employee 11] dated 1 March 2016). [Emphasis added by the CMA]. The CMA assumes that ‘[Roland UK, Employee 11]’ in this context is [Roland UK, Employee 11].

²⁵⁹ The report listed [Reseller 1] pricing for Relevant Products including: CY12RC (12” crash/ride cymbal), CY5 (Dual-trigger cymbal pad, 8”), TD12KX (V-Drums V stage series), TD20KX (Electronic drum kit), TDM20 (Large drum mat), TMC6 (Drum trigger midi convertor) and VH12 (Dual trigger virtual Hi-hat). URN E_ROL00299 (Internal Roland UK email from [Roland UK, Senior Employee 5] to [Roland UK, Employee 7] and [Roland UK, Employee 1] dated 1 February 2011), p.1. [Emphasis added by the CMA].

²⁶⁰ URN E_ROL02658 (Internal Roland UK email from [Roland UK, Employee 24] to [Roland UK, Employee 1] dated 29 March 2011), p.1. [Emphasis added by the CMA].

²⁶¹ URN E_ROL02579 (Internal Roland UK notes dated 2 February 2015). [Emphasis added by the CMA].

communications with MI Resellers regarding pricing at the Minimum Price in order to hide any incriminating evidence trail.²⁶²

Conclusion

3.201 In the light of the evidence set out above, the CMA concludes that:

- Roland UK knew that the implementation and enforcement of the Roland Pricing Policy was illegal, including through reports from MI Resellers and members of the public; and
- Roland UK undertook measures to conceal the Roland Pricing Policy whereby it avoided written communications (communicating orally or in ‘code’) and on occasions deleted communications in relation to the Roland Pricing Policy.
- Roland UK and its sales staff had a clear understanding that enforcing the Roland Pricing Policy was anticompetitive and despite this carried out the Infringement in the knowledge that it constituted illegal RPM.

VI. Illustrative examples of Roland UK’s monitoring and enforcement

3.202 The Roland Pricing Policy operated mainly on a verbal basis and so generated a limited amount of documentary evidence. The primary reasons for this were that Roland UK staff went to considerable lengths to conceal the Roland Pricing Policy (as explained in paragraphs 3.184 to 3.200 above) and MI Resellers were able to implement the Roland Pricing Policy without needing to routinely communicate with Roland UK about it.

3.203 Notwithstanding these efforts to conceal the conduct, the CMA has obtained contemporaneous documentary evidence which shows Roland UK’s monitoring and enforcement of the Roland Pricing Policy.

3.204 Below are some illustrative examples of communications involving Roland UK and certain of its MI Resellers. In the CMA’s view, these examples demonstrate the widespread application of and adherence to the Roland Pricing Policy in relation to all Relevant Products across Roland UK’s network of MI Resellers during the Relevant Period.

3.205 More specifically, these communications demonstrate that:

²⁶² The CMA considers this an attempt by Roland UK to get rid of any digital evidence and so hide the evidence trail.

- the Roland Pricing Policy was intended to apply to all or at least the vast majority of MI Resellers of the Relevant Products as noted at paragraph 3.36 above;
- the Roland Pricing Policy was intended to apply to all Relevant Products as noted at paragraph 3.82 above;
- Roland UK monitored MI Resellers accounting for the vast majority of its UK sales at least throughout the Relevant Period in order to enforce the Roland Pricing Policy – Roland UK monitored its MI Resellers’ prices through:
 - MI Resellers reporting to Roland UK, either by email or verbally, where other MI Resellers were not adhering to the Roland Pricing Policy;
 - its own daily monitoring through its subscription to the automated price monitoring services offered by InsiteTrack as noted at paragraph 3.79 above; and
- Roland UK enforced the Roland Pricing Policy by contacting MI Resellers directly who were found or suspected not to be adhering to the Roland Pricing Policy with a view to agreeing that they would increase their prices to at least the Minimum Price.

3.206 Based on the evidence from the Relevant Period set out below, the CMA has reasonable grounds for suspecting that at least 24 MI Resellers selling the Relevant Products were subject to the Roland Pricing Policy.²⁶³ However, the CMA makes no findings in respect of any MI Resellers of the Relevant Products other than [Reseller 1].

²⁶³ URN E_ROL00175, p.65 ([Reseller]); URN E_ROL00168, pp.21-23 ([Reseller]); URN E_ROL00187 pp.10 and 14 ([Reseller]), [Reseller 1]; URN E_ROL00883 ([Reseller]*) ([Reseller]); URN E_ROL00405 ([Reseller]); URN E_ROL01031 ([Reseller]); URN E_ROL002283 ([Reseller]); URN E_ROL00066 and URN E_ROL002283 ([Reseller]); URN E_ROL01200 ([Reseller]); URN E_ROL00824 ([Reseller]); URN E_ROL02240 ([Reseller]); URN E_ROL00745 ([Reseller]); URN E_ROL002924 ([Reseller]); URN E_ROL002283 ([Reseller]); URN E_ROL00175, p.47 ([Reseller]); URN E_ROL00958 ([Reseller]); URN E_ROL00902 ([Reseller]); URN E_ROL00526 ([Reseller]); URN E_ROL00978 ([Reseller]*); URN E_ROL00168, p.22 ([Reseller]); URN E_ROL00978 ([Reseller]); URN E_ROL002283 ([Reseller]); and URN E_ROL02510 ([Reseller]). *denotes entities that are no longer trading as at the date of issue of this Decision. For example, the illustrative examples set out below involve Roland and 12 of the top 20 resellers listed by Roland in C_ROL00135 (Spreadsheet of Roland UK’s top 20 resellers provided in response to the s.26 Notice to Roland dated 18 April 2018). These MI Resellers and [Reseller 1] taken together accounted for approximately [60-70]% of Roland UK’s sales of Relevant Products in 2017 (the most recent year for which the CMA has been provided revenue information). This calculation is based on the revenue figures provided by Roland UK on 9 January 2020, URN [Redacted].

2011 examples of monitoring and enforcement of the Roland Pricing Policy

August 2011: Various Relevant Products – [Reseller]

- 3.207 On 5 August 2011, [Roland UK, Senior Employee 2] forwarded to [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 5] a [Reseller] report listing a number of MI Resellers that were pricing below [Reseller] on various Relevant Products. [Roland UK, Senior Employee 3] forwarded the email to internal Roland UK colleagues, stating, *‘Better but not good enough! Get onto your dealers now! I want our side clean by midday otherwise there [sic] off!’*²⁶⁴
- 3.208 This email shows that [Reseller] alerted Roland UK to MI Resellers who were not pricing at the Minimum Price. In the CMA’s view, it shows that [Reseller] understood that the application of the Roland Pricing Policy meant it (and other MI Resellers) would not sell or advertise the Relevant Products below the Minimum Price.

September 2011: PD-105BK (V-Pad drum) – [Reseller]

- 3.209 On 16 September 2011, [Roland UK, Employee 1] emailed [Employee of Reseller], stating, *‘Can you please continue to offer Roland Value on these products?’*. [Employee of Reseller] responded stating, *‘All sorted, but [Reseller] are not! Fairs fair’* and added a smiley face.²⁶⁵
- 3.210 As explained at paragraph 3.65 above, *‘Roland Value’* was used as code to refer to pricing at the Minimum Price. In the CMA’s view, *‘All sorted’* shows that [Reseller] had changed its price for the Relevant Product to the Minimum Price following Roland UK’s request.
- 3.211 In the CMA’s view, the email shows that [Reseller] understood that the application of the Roland Pricing Policy meant it (and other MI Resellers, including [Reseller]) would not advertise or sell the Relevant Products below the Minimum Price.

October 2011: HD1 (V-drums lite kit), TD4KX2 (V-drums kit) and TD4K2 (V-drums kit) – [Reseller]

- 3.212 On 19 October 2011, [Employee of Reseller] emailed [Roland UK, Employee 1] and [Roland UK, Senior Employee 5] and copied [Employee of Reseller]

²⁶⁴ URN E_ROL00405 (Email chain from [Employee of Reseller], forwarded by [Roland UK, Senior Employee 2] to [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 5] and circulated internally by [Roland UK, Senior Employee 3] to [Roland UK, Employee 18], [Roland UK, Employee 11], [Roland UK, Employee 5] and [Roland UK, Employee 13], dated 5 August 2011), pp.2-3.

²⁶⁵ URN E_ROL00464 (Email exchange between [Roland UK, Employee 1] and [Employee of Reseller] dated 16 September 2011).

with the subject 'amazon [sic] *people under map – URGENT*'. In the email he stated, '*[p]lease sort these Amazon people out. You will notice [Reseller], [Reseller], [Reseller], [Reseller] have all come to light again ignoring your online MAP.*' He included links or screenshots for three Relevant Products - HD1, TD4KX2 and TD4K2 on the Amazon website. [Roland UK, Employee 1] then forwarded the email internally, including to [Roland UK, Employee 11]. The next day [Roland UK, Employee 11] responded to [Roland UK, Employee 1], stating, '*I've spoken to all mine and they are all changing*'.²⁶⁶

- 3.213 This email shows that [Reseller] alerted Roland UK to other MI Resellers who were not pricing at the Minimum Price. In the CMA's view, the email shows that [Reseller] understood that the application of the Roland Pricing Policy meant it (and other MI Resellers, including [Reseller], [Reseller], [Reseller] and [Reseller]) would not sell or advertise the Relevant Products below the Minimum Price.

November 2011: TD4KX2 (V-Drums) and TD4K2 (V-Drums) and HD-1 (V-Drum lite kit) – [Reseller] and [Reseller]

- 3.214 On 5 November 2011, [Employee of Reseller] sent an internal email to [Reseller] colleagues with the subject, '*please send this to roland [Reseller] under map again!!!!*'. [Employee of Reseller] forwarded the email to [Roland UK, Employee 1] and stated, '*Regards*'. [Roland UK, Employee 1] forwarded the email internally to [Roland UK, Employee 7], copying [Roland UK, Senior Employee 5] and stated, '*[Reseller] playing around again*'.²⁶⁷
- 3.215 This email shows that [Reseller] alerted Roland UK to other MI Resellers who were not pricing at the Minimum Price. In the CMA's view, it shows that [Reseller] understood that the application of the Roland Pricing Policy meant it (and other MI Resellers, including [Reseller]) would not advertise or sell the Relevant Products below the Minimum Price.

²⁶⁶ URN E_ROL00526 (Email exchange between [Employee of Reseller] and [Roland UK, Employee 1] and [Roland UK, Senior Employee 5], forwarded internally to [Roland UK, Employee 11], [Roland UK, Employee 1], [Roland UK, Senior Employee 3], [Roland UK, Employee 5], [Roland UK, Employee 18], [Roland UK, Employee 7] and [Roland UK, Senior Employee 5], dated 19-20 October 2011).

²⁶⁷ URN E_ROL00597 (Email exchange between [Employee of Reseller] and [Employee of Reseller], [Employee of Reseller] and [Employee of Reseller], all of [Reseller], forwarded by [Employee of Reseller] to [Roland UK, Employee 1], and circulated internally by [Roland UK, Employee 1] to [Roland UK, Employee 7], [Roland UK, Senior Employee 5], [Roland UK, Employee 5] and [Roland UK, Senior Employee 3], dated 5-7 November 2011).

2012 examples of monitoring and enforcement of the Roland Pricing Policy

January 2012: HD1 (V-Drums lite kit) – [Reseller] and [Reseller]

- 3.216 On 11 January 2012, [Employee of Reseller]²⁶⁸ emailed [Roland UK, Employee 1] with the subject '[Reseller] *under map*' providing a link to a Relevant Product on [Reseller]'s website. [Roland UK, Employee 1] forwarded the email to [Roland UK, Senior Employee 3] and asked, '*Can you help with the below?*'. [Roland UK, Senior Employee 3] responded, '*Done – won't update until tomorrow 11.00am though.*'²⁶⁹
- 3.217 The CMA considers that the statement '*Done – won't update until tomorrow*' shows that [Reseller] would be changing its price for the Relevant Product to the Minimum Price. In the CMA's view, it shows that [Reseller] and [Reseller] understood that the application of the Roland Pricing Policy meant they would not sell or advertise the Relevant Products below the Minimum Price.

April 2012: HD-3 (V-Drums lite kit), TD30KV (V-Pro series drum kit) – [Reseller]

- 3.218 On 5 April 2012, [Roland UK, Employee 1] sent an email to [Reseller] stating, '*Could you please help with the below by close of business today?*'²⁷⁰ and listed several Roland products including the HD-3 and TD30V which are Relevant Products. [Employee of Reseller] responded, stating, '*Hi [X] I assume this is due to the new price list you have also sent, I was a bit worried to think we had all those prices wrong, I am sure [Employee of Reseller] will sort them out for you, I would but as you know I dont [sic] have mt1 so I am afraid [Employee of Reseller] gets the short straw!*'. [Employee of Reseller] instantaneously responded to the email chain confirming, '*Done it*' (adding a smiley face).²⁷¹
- 3.219 The statement by [Employee of Reseller], '*Done it*' shows that [Reseller] changed the prices of two Relevant Products to the Minimum Price set out in the price list. In the CMA's view, it shows that [Reseller] understood that the application of the Roland Pricing Policy meant it would not sell or advertise the Relevant Products below the Minimum Price.

²⁶⁸ The CMA understands that the reference to '[Employee of Reseller]' is [Employee of Reseller].

²⁶⁹ URN E_ROL00745 (Email exchange between [Employee of Reseller] and [Roland UK, Employee 1], forwarded by [Roland UK, Employee 1] to [Roland UK, Senior Employee 3], dated 11 January 2012).

²⁷⁰ The recipients of the email are unclear but it is believed to be external to Roland UK.

²⁷¹ URN E_ROL00824 (Email exchange between [Roland UK, Employee 1] and [Employee of Reseller] and [Employee of Reseller] dated 5 April 2012).

August 2012: SPD-SX (Sampling pad 2GB memory) – [Reseller]

- 3.220 On 21 August 2012, [Roland UK, Employee 1] sent an email to [Employee of Reseller] entitled '*Roland Value*' and listed six Roland products including the SPD-SX which is a Relevant Product. [Employee of Reseller] responded stating, '*Thanks mate, sorted.*'²⁷²
- 3.221 The CMA considers that [Employee of Reseller]'s statement '*sorted*' shows that he had changed the online price of the Relevant Product to the Minimum Price. In the CMA's view, it shows that [Reseller] understood that the application of the Roland Pricing Policy meant it would not sell or advertise the Relevant Products below the Minimum Price.

August 2012: CY12C (V-Cymbal, crash, 12"), PDX-8 (V-Pad, dual-trigger, 8" mesh head with 10" rim), VH-12 (Dual trigger virtual Hi-hat) – [Reseller] and [Reseller]

- 3.222 On 21 August 2012, [Employee of Reseller] emailed [Roland UK, Employee 4] and [Roland UK, Employee 1] a [Reseller] pricing report showing several MI Resellers pricing below the Minimum Price on the CY12C, PDX-8 and VH-12 (all Relevant Products). [Roland UK, Employee 1] forwarded the pricing report to internal Roland UK colleagues, stating, '*This might be a little easier to view. [X] – I've sorted [Reseller].*' The pricing report included [Reseller] advertising a Relevant Product below the Minimum Price.²⁷³
- 3.223 This email shows that [Reseller] alerted Roland UK to MI Resellers who were not pricing at the Minimum Price. In the CMA's view, the statement '*I've sorted [Reseller]*' shows that [Reseller] changed its price for the Relevant Product to at least the Minimum Price.
- 3.224 In the CMA's view, the email shows that [Reseller] and [Reseller] understood that the application of the Roland Pricing Policy meant they (and other MI Resellers) would not sell or advertise the Relevant Products below the Minimum Price.

September 2012: HD-1 (V-Drums lite kit) – [Reseller] and [Reseller]

- 3.225 On 21 September 2012, [Roland UK, Senior Employee 5] sent an email to [Roland UK, Employee 1] forwarding a [Reseller] report, with the subject '*RE: ROLAND - STILL CAN'T COMPETE ON [a Relevant Product] HD-1, SONIC*

²⁷² URN E_ROL00885 (Email exchange between [Roland UK, Employee 1] and [Employee of Reseller] dated 21 August 2012).

²⁷³ URN E_ROL00883 (Email from [Employee of Reseller] to [Roland UK, Employee 4] and [Roland UK, Employee 1], forwarded internally by [Roland UK, Employee 1] to [Roland UK, Employee 5], [Roland UK, Employee 11] and [Roland UK, Employee 7], dated 21 August 2012).

CELL ETC???' He stated, 'Hi [Reseller], could you help? [Reseller] is sorting [Reseller]'[Reseller]. [Roland UK, Employee 1] responded later that day stating, '[Reseller] sorted, [Reseller] spoke with [Employee of Reseller] this morning, [Reseller] – couldn't get hold of [Employee of Reseller] but have emailed...FYI - [Reseller] are on Ebay, [Reseller]. Plus small accounts on google shopping which [Employee of Reseller] will email me no doubt'.²⁷⁴

3.226 This email shows that [Reseller] alerted Roland UK to MI Resellers that were not pricing at the Minimum Price. This email also shows that [Reseller], and possibly [Reseller], changed their prices to the Minimum Price following a request to do so from Roland UK.

3.227 In the CMA's view, the emails show that [Reseller], [Reseller] and possibly [Reseller] understood that the application of the Roland Pricing Policy meant they (and other MI Resellers) would not sell or advertise the Relevant Products below the Minimum Price.

December 2012: TD15KV (V Tour Series), TD15K (V Tour series), TD15 (Drum module), TD11KV (V -Compact series) – [Reseller]

3.228 On 17 December 2012, [Roland UK, Senior Employee 5] emailed [Employee of Reseller] with the subject 'Roland Value', setting out a table listing certain products, including the TD15KV, TD15K, TD15 and TD11KV (all Relevant Products), together with [Reseller]'s advertised price.²⁷⁵ [Roland UK, Senior Employee 5] stated, 'Hi [Employee of Reseller], could you sort these today, I'm getting grief from various parties as it has jumped up over the week end'. About five hours later, [Employee of Reseller] responded to [Roland UK, Senior Employee 5] stating, 'Hi [Reseller], All of the prices on this list have now been amended as per your email.' [Roland UK, Senior Employee 5] subsequently forwarded the email to [Roland UK, Employee 6] stating, 'FYI'.²⁷⁶

3.229 The CMA considers that this email shows that [Reseller] changed the price of the Relevant Products to the Minimum Price following Roland UK's request to do so. In the CMA's view, it shows that [Reseller] understood that

²⁷⁴ URN E_ROL00902 (Email exchange between [Employee of Reseller] and Roland UK employees, forwarded on by [Roland UK, Senior Employee 5] to [Roland UK, Employee 1], dated 21 September 2012). [Text in square brackets added by the CMA].

²⁷⁵ [Reseller]'s advertised price was shown alongside a higher price which the CMA considers is Roland's Minimum Price given the context of the document.

²⁷⁶ URN E_ROL00958 (Email exchange between [Roland UK, Senior Employee 5], [Employee of Reseller] and [Employee of Reseller], forwarded by [Roland UK, Senior Employee 5] to [Roland UK, Employee 6], dated 17 December 2012).

the application of the Roland Pricing Policy meant it would not sell or advertise the Relevant Products below the Minimum Price.

2013 examples of monitoring and enforcement of the Roland Pricing Policy

March 2013: TD30KV (V-Pro Series drum kit) – [Reseller]

- 3.230 On 22 March 2013, [Employee of Reseller] sent an email with the subject '*URGENT Fwd:TD30K [a Relevant Product] street price*' to [Roland UK, Employee 11] with a link to the [Reseller] website stating, '*Check this out...I look forward to hearing [sic] from you*'. [Roland UK, Employee 11] then forwarded the email to [Roland UK, Employee 1] asking, '*Can you please sort ASAP*'.²⁷⁷
- 3.231 This email shows that [Reseller] alerted Roland UK to another MI Reseller who was not pricing at the Minimum Price. In the CMA's view, it shows that [Reseller] understood that the application of the Roland Pricing Policy meant it (and other MI Resellers, including [Reseller]) would not sell or advertise the Relevant Products below the Minimum Price.

June 2013: TD11KV (V-Compact Series) and HD (TD11KV and HD-3) Drums lite kit) – [Reseller] and [Reseller]

- 3.232 On 10 June 2013, [Employee of Reseller] sent an email to [Roland UK, Employee 5] providing three links to Relevant Products on [Reseller]'s website stating, '*[Reseller] are dropping prices below MAP over the weekend then correcting for Monday morning. With the systems we have I can easily do this across your entire product range to drive sales every Saturday and Sunday. Please sort or I will be forced to react*'. [Roland UK, Employee 5] responded to [Employee of Reseller] on the same day stating, '*Thanks for bringing this to my attention. I have had a word regarding this and suffice to say it won't be happening again*.' [Employee of Reseller] stated, '*Thanks, please do as this can cause chaos [sic]*'.²⁷⁸
- 3.233 The CMA considers that the statement by [Employee of Reseller] '*Please sort or I will be forced to react*' shows that [Reseller] would reduce its prices below the Minimum Price if Roland UK was not able to persuade [Reseller] to adhere to the Roland Pricing Policy. The CMA also considers that the

²⁷⁷ URN E_ROL02159 (Email chain from [Employee of Reseller] to [Roland UK, Employee 11], forwarded to [Roland UK, Employee 1] and [Roland UK, Senior Employee 3], dated 22 March 2013). [Text in square brackets added by the CMA].

²⁷⁸ URN E_ROL00978 (Email exchange between [Employee of Reseller] and [Roland UK, Employee 5] dated 10 June 2013).

phrase *'it won't be happening again'* shows that [Reseller] changed the price of the Relevant Products (TD11KV and HD-3) to the Minimum Price.

- 3.234 In the CMA's view, the emails show that [Reseller] and [Reseller] understood that the application of the Roland Pricing Policy meant it (and other MI Resellers) would not sell or advertise the Relevant Products below the Minimum Price.

2014 examples of monitoring and enforcement of the Roland Pricing Policy

January 2014: SPD-SX (Sampling Pad), SPD-30 (Octapad eight pads), HPD-10 (Handsonic D-beam 10 pads), HPD-20 (Handsonic hand percussion pads) – [Reseller]

- 3.235 On 14 January 2014, [Roland UK, Employee 17] sent an email to undisclosed recipients with the subject *'Price Comparisons'*, stating *'Here are todays competitor deals'*. He included a series of links to certain MI Resellers websites for four Relevant Products the SPD-SX, SPD-30, HPD-10 and HPD-20. It appears that [Employee of Reseller] was one of the recipients as he replied to [Roland UK, Employee 17] on 16 January 2014, copying various [Reseller] colleagues and [Roland UK, Employee 1], stating, *'All up to date and sorted now'*.²⁷⁹

- 3.236 The CMA considers that the statement that prices were *'All up to date and sorted now'* shows that [Reseller] changed its price to the Minimum Price. In the CMA's view, the emails show that [Reseller] understood that the application of the Roland Pricing Policy meant it would not sell or advertise the Relevant Products below the Minimum Price.

February 2014: Relevant Products²⁸⁰ – [Reseller], [Reseller], [Reseller], [Reseller], [Reseller] and [Reseller]

- 3.237 On 5 February 2014, [Roland UK, Senior Employee 3] emailed [Roland UK, Employee 4] copying in other Roland UK colleagues, identifying a list of MI Resellers who should be contacted that day stating, *'[Reseller], [Reseller] & [Reseller] should be inline [sic] today'*. The next day [Roland UK, Employee 4] responded stating, *'[Reseller], [Reseller], [Reseller] (other than one) have changed...I'll do the few left from [Reseller], can [Reseller], [Reseller] and*

²⁷⁹ URN E_ROL02240 (Email exchange between [Roland UK, Employee 17] and [Employee of Reseller] dated 14-16 January 2014).

²⁸⁰ URN C_ROL02255 (C_ROL02255.1). The CMA understands from Roland UK's response that this email communication relates to the Relevant Products. URN C_ROL02255.1 (Spreadsheet response to question 5 submitted by Roland UK to the First December 2019 RFI).

[Reseller] *get sorted ASAP as well*. [Roland UK, Employee 12] later added, *'I shall sort out [Reseller], [Reseller] and [Reseller].'*²⁸¹

- 3.238 The CMA considers that the statement '[Reseller], [Reseller], [Reseller] (*other than one*) *have changed*' shows that these MI Resellers had changed their price to the Minimum Price following Roland UK's request to do so. The statement '[Reseller], [Reseller] & [Reseller] *should be inline* [sic] *today*' shows that these MI Resellers would revert to the Minimum Price that day. The statement '*shall sort out* [Reseller], [Reseller] *and* [Reseller]' shows an expectation on the part of Roland UK that the named MI Resellers would revert to the Minimum Price shortly.
- 3.239 In the CMA's view, the emails show that at least [Reseller], [Reseller], [Reseller], [Reseller], [Reseller] and [Reseller] understood that the application of the Roland Pricing Policy meant they would not sell or advertise the Relevant Products below the Minimum Price.

April 2014: TD-4KP (portable drum kit) – [Reseller], [Reseller] and [Reseller]

- 3.240 On 4 April 2014, [Employee of Reseller] emailed [Roland UK, Employee 4] with the subject '*FYI - TD-4KP bundles* [a Relevant Product Bundle]'. [Employee of Reseller] stated, '*Hi [X], I assume this is all fine:*' and included a link for Relevant Products on each of [Reseller] and [Reseller]'s websites. This email was forwarded to [Roland UK, Senior Employee 5] and on 4 April 2014 he replied to [Roland UK, Employee 4], copying in [Employee of Reseller] stating, '*Sorted*'.²⁸²
- 3.241 This email shows that [Reseller] alerted Roland UK to other MI Resellers who were not adhering to the Roland Pricing Policy (specifically the restrictions on Relevant Product Bundles). [Roland UK, Senior Employee 5]'s reply '*Sorted*' shows that both [Reseller] and [Reseller] agreed to revert to the Minimum Price in accordance with the Roland Pricing Policy.
- 3.242 In the CMA's view, the emails show that [Reseller], [Reseller] and [Reseller] understood that the application of the Roland Pricing Policy meant it would not sell or advertise the Relevant Products, including Relevant Product Bundles, below the Minimum Price.

²⁸¹ URN E_ROL002283 (Email exchange between [Roland UK, Senior Employee 3] and [Roland UK, Employee 4], copying in [Roland UK, Employee 1], [Roland UK, Employee 11], [Roland UK, Senior Employee 5] and [Roland UK, Employee 12] dated 5-6 February 2014).

²⁸² URN E_ROL002331 (Email exchange between [Employee of Reseller], [Roland UK, Employee 4] and [Roland UK, Senior Employee 5] copying [Employee of Reseller], dated 4 April 2014). [Text in square brackets added by the CMA].

October 2014: TD11K+P (V-Compact series), TD11KV+P (V-Compact series), TD15K+P (V-Tour series), TD15KV+P (V-Tour series), TD30K (V-Pro series), TD30KV (V-Pro series drum kit) and TD4KP+P (portable drumkit) – [Reseller]

- 3.243 On 18 October 2014, [Employee of Reseller], [3<] emailed [Roland UK, Employee 11], copying [Reseller]’s Accounts department and [Employee of Reseller] under the heading ‘*October PO*’ and stated, ‘*Also see attached file - [Reseller] have dropped Roland Kit prices. Please look in to it.*’ This attachment listed seven Relevant Products.
- 3.244 [Roland UK, Employee 11] forwarded the email to [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 5] and attached a document titled ‘[Reseller] *Roland Kit prices 18-10-2014*’, stating, ‘*Please see [Reseller] have dropped prices yesterday on all drum kits pre weekend*’.²⁸³
- 3.245 This email shows that [Reseller] alerted Roland UK to another MI Reseller who was not pricing at the Minimum Price. In the CMA’s view, the emails show that [Reseller] understood that the application of the Roland Pricing Policy meant it (and other MI Resellers, including [Reseller]) would not sell or advertise the Relevant Products below the Minimum Price.

2015 examples of monitoring and enforcement of the Roland Pricing Policy

March 2015: TD-15K (V Tour series) – [Reseller]

- 3.246 On 19 March 2015, [Roland UK, Employee 4] emailed [Employee of Reseller] stating, ‘*New RSP’s as of 5.30 pm tomorrow: TD 15k 1279 TD 15kv 1849*’ (both Relevant Products). The following day, [Roland UK, Employee 4] emailed again: ‘*Dude, see below*’ referring to his previous email with the new RSPs. [Employee of Reseller] replied, ‘*They should have changed mate*’. [Roland UK, Employee 4] responded, ‘*Yes dude, all cool, have a good weekend*’, to which [Employee of Reseller] said: ‘*You need to relax more buddy*’.²⁸⁴
- 3.247 The CMA considers that the statement ‘*They should have changed mate*’ together with ‘*Yes dude, all cool*’ shows that [Reseller] had changed its price for the Relevant Products to the Minimum Price.

²⁸³ URN E_ROL02510 (Email from [Employee of Reseller] to [Roland UK, Employee 11], which was forwarded internally to [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 5], dated 18 October 2014).

²⁸⁴ URN E_ROL01200 (Email exchange between [Employee of Reseller] and [Roland UK, Employee 4] dated 19-20 March 2015).

- 3.248 In the CMA's view, the emails show that [Reseller] understood that the application of the Roland Pricing Policy meant it would not sell or advertise the Relevant Products below the Minimum Price.

October 2015: TD30K (V-Pro Series), TD11K (V-Compact series) – [Reseller]

- 3.249 On 18 October 2015, [Employee of Reseller] emailed [Roland UK, Employee 4], [Roland UK, Senior Employee 5] and [Roland UK, Senior Employee 3] with the title '[Reseller] - *help please...*' [Employee of Reseller] inserted four links to [Reseller]'s website advertising three Relevant Products TD30K, TD11K and TD30KV.²⁸⁵
- 3.250 The CMA considers that the statement '*help please*' shows that [Reseller] was alerting Roland UK to [Reseller] pricing below the Minimum Price. In the CMA's view, the emails show that [Reseller] understood that the application of the Roland Pricing Policy meant it (and other MI Resellers, including [Reseller]) would not sell or advertise the Relevant Products below the Minimum Price.

2016 examples of monitoring and enforcement of the Roland Pricing Policy

August 2016: TD4KP (portable drumkit) – [Reseller]

- 3.251 On 30 August 2016, [Roland UK, Employee 5] sent an iMessage,²⁸⁶ stating, '*Anyone know who [Reseller] are? TD4KP [a Relevant Product] Amazon Ta*'. Within a few minutes, [Roland UK, Employee 11] responded, '*Mine and done*'.²⁸⁷
- 3.252 The statement '*Mine and done*' shows that [Reseller] had changed the price of the TD4KP to the Minimum Price following a request from Roland UK. In the CMA's view, the emails show that [Reseller] understood that the application of the Roland Pricing Policy meant it would not sell or advertise the Relevant Products below the Minimum Price.

November 2016: TD-50KV (Drum kit) – [Reseller] and [Reseller]

- 3.253 On 24 November 2016, [Employee of Reseller] sent an email to [Roland UK, Senior Employee 3] and [Roland UK, Employee 4] that contained a screen shot of a Twitter advert from [Reseller] in [3<] stating, '*Our Black Friday sale starts today!!! 10% off all items with exclusive [sic] deals in store and on our*

²⁸⁵ URN E_ROL002677 (Email from [Employee of Reseller] of [Reseller] to [Roland UK, Employee 4], [Roland UK, Senior Employee 5] and [Roland UK, Senior Employee 3] dated 18 October 2015).

²⁸⁶ iMessages are messages between Apple products and are encrypted.

²⁸⁷ URN E_ROL00187 (iMessage chat between [Roland UK, Employee 5] and [Roland UK, Employee 11] dated 30 August 2016), p.14. [Text in square brackets added by the CMA].

website.....' and including a discount code for customers. [Employee of Reseller] forwarded the email to [Roland UK, Senior Employee 3] and [Roland UK, Employee 4] with a screen shot of an Amazon pre-order listing for a Relevant Product the TD-50KV V-Drums Pro Electronic Drum Kit applying the discount code stating, *'This is on everything....'*²⁸⁸

- 3.254 [Roland UK, Senior Employee 3] then forwarded the email internally to Roland UK colleagues and [Roland UK, Employee 5] replied, *'Spoke to him last night. Will be amended.'* [Roland UK, Senior Employee 3] asked, *'When??'*. [Roland UK, Employee 5] replied within 15 minutes, *'Just spoke to [Employee of Reseller] The artwork will be amended at 10am. The code may be later this afternoon. Their Web guy has left the business so it'll need to be a manual change per product which will take time.'*²⁸⁹
- 3.255 This email shows that [Reseller] alerted Roland UK to another MI Reseller who was not pricing at the Minimum Price and seeking to circumvent the Roland Pricing Policy through use of discount codes. The email also shows that [Reseller] would be changing its price to the Minimum Price for the TD-50KV following a request to do so from Roland UK (*'Will be amended'*).
- 3.256 In the CMA's view, the emails show that [Reseller] and [Reseller] understood that the application of the Roland Pricing Policy meant they (and other MI Resellers) would not sell or advertise the Relevant Products below the Minimum Price.

2017 examples of monitoring and enforcement of the Roland Pricing Policy

February 2017: Various Relevant Products – [Reseller]

- 3.257 On 27 February 2017, [Roland UK, Employee 5] sent an email to [Employee of Reseller], titled *'Roland Jan 2017 Prices'*. [Roland UK, Employee 5] attached a price list showing a number of Relevant Products. [Employee of Reseller] responded asking, *'So just to check, the RSP is the map?'* [Roland UK, Employee 5] replied at 14:22, *'Yep'*. [Employee of Reseller] replied, *'#notallowedtomapbutkindado lol x'*²⁹⁰ [Employee of Reseller] further stated,

²⁸⁸ URN E_ROL00066 (Email chain between [Employee of Reseller] and [Roland UK, Senior Employee 3] and [Roland UK, Employee 4] dated 24 November 2016).

²⁸⁹ URN E_ROL002793 (Email from [Employee of Reseller] to [Roland UK, Senior Employee 3] and [Roland UK, Employee 4], which was forwarded internally to [Roland UK, Employee 5], [Roland UK, Employee 1] and [Roland UK, Senior Employee 5], dated 24 November 2016). The CMA understands that the reference to '[Employee of Reseller]' in this email is a reference to [Employee of Reseller]'s store manager.

²⁹⁰ URN E_ROL01031 (Email exchange between [Roland UK, Employee 5] and [Employee of Reseller] dated 27 February 2017).

'Should be all done. Let me know if you come across anything else dude.'

[Roland UK, Employee 5] responded stating, *'Cheers dude'*.²⁹¹

- 3.258 The CMA considers that [Employee of Reseller]'s question *'the RSP is the MAP?'* and the statement *'Should all be done'* shows that [Reseller] changed the price of the Relevant Products to the Minimum Price. In the CMA's view, the email shows that [Reseller] understood that the application of the Roland Pricing Policy meant it would not sell or advertise the Relevant Products below the Minimum Price.

March 2017: Various Relevant Products (Accessories)²⁹² – [Reseller], [Reseller] and [Reseller]

- 3.259 On 2 March 2017, [Roland UK, Employee 5] sent an iMessage²⁹³ that stated, *'Accessories are all over the place on Amazon/google. It seems to be the same 7. From me [Reseller] and [Reseller]. I have spoken to them this morning and they are being sorted today. The other dealers are [Reseller], [Reseller], [Reseller], [Reseller] and [Reseller]. Can you have a word?'*
- 3.260 Later in the iMessage exchange, [Roland UK, Employee 19] asked *'are the [Reseller] products all accessories?'* to which [Roland UK, Employee 5] responded, *'all the accessories are out according to the pricelist....For all 7 dealers'*. [Roland UK, Employee 19] responded, *'[Reseller] done.'* [Roland UK, Employee 5] replied, *'That was quick.'*²⁹⁴
- 3.261 The CMA considers that the statement *'they are being sorted today'* shows that [Reseller] and [Reseller] would be changing their prices of Relevant Products to at least the Minimum Price and the statement *'[Reseller] [sic] done'* shows that [Reseller] had changed its price of Relevant Products to the Minimum Price too.
- 3.262 In the CMA's view, the email shows that [Reseller], [Reseller] and [Reseller] understood that the application of the Roland Pricing Policy meant they would not sell or advertise the Relevant Products below the Minimum Price.

June 2017: TD30K (V-Pro series) – [Reseller]

²⁹¹ URN E_ROL01032 (Email exchange between [Roland UK, Employee 5] and [Employee of Reseller] dated 27 February 2017).

²⁹² The CMA understands from Roland UK's response that this email communication relates to the Relevant Products. URN C_ROL02255.2 (Spreadsheet response to question 5 submitted by Roland UK to the First December 2019 RFI).

²⁹³ iMessages are messages between Apple products and are encrypted.

²⁹⁴ URN E_ROL00168 (iMessage chat between [Roland UK, Employee 4], [Roland UK, Employee 11] and [Roland UK, Employee 5] dated 2 March 2017), pp.21-23.

- 3.263 On 26 June 2017, [Roland UK, Employee 2] posted on a Roland UK WhatsApp chatroom, ‘*Can we get on top of the new TD-30K [a Relevant Product] price guys?.*’ A couple of minutes later, [Roland UK, Employee 5] responded stating, ‘*Spoke to [Reseller] ref TD30K and he has changed it. May take a little time to update.*’²⁹⁵
- 3.264 The statement ‘*he has changed it*’ shows that [Reseller] had changed the price of the TD30K to the Minimum Price following a request from Roland UK to do so. In the CMA’s view, the email shows that [Reseller] understood that the application of the Roland Pricing Policy meant it would not sell or advertise the Relevant Products below the Minimum Price.

July 2017: TD30K (V-Pro series) – [Reseller]

- 3.265 On 4 July 2017, on a Roland UK WhatsApp chatroom, [Roland UK, Employee 5] stated, ‘*Any idea on [Reseller] and [Reseller] on TD30K [a Relevant Product]? [Reseller] have 8 in stock are they realistically going to sort?.*’ to which [Roland UK, Employee 4]²⁹⁶ responded, ‘*Yes, they will sort now.*’²⁹⁷
- 3.266 The CMA considers that the statement by [Roland UK, Employee 4] in the above paragraph ‘*Yes, they will sort now*’ shows that [Reseller] has communicated to Roland UK that it would change its price of the TD30K.
- 3.267 In the CMA’s view, the email shows that [Reseller] understood that the application of the Roland Pricing Policy meant it would not sell or advertise the Relevant Product below the Minimum Price.

2018 examples of monitoring and enforcement of the Roland Pricing Policy

January 2018: TD25KV (V-Drums) – [Reseller]

- 3.268 On 17 January 2018 at 17:16, [Employee of Reseller]²⁹⁸ emailed [Roland UK, Employee 23] with the subject ‘*TD25KV*’ (a Relevant Product) stating:
- ‘Just emailing in regards of some funny prices on the internet. Websites such as [Reseller] and [Reseller] are selling the TD25KV’s @ £2018 inc vat. [Reseller]’

²⁹⁵ URN E_ROL00175 (WhatsApp message between [Roland UK, Employee 2] and [Roland UK, Employee 5] dated 26 June 2017), p.47. [Text in square brackets added by the CMA].

²⁹⁶ Although the sender of the message is ‘[Reseller]’, the CMA understands that the telephone number belonged to [Roland UK, Employee 4] as identified in URN E_ROL02137 (August 2018 Oral Proffer). [Text in square brackets added by the CMA].

²⁹⁷ URN E_ROL00175 (WhatsApp message from [Roland UK, Employee 5] and [Roland UK, Employee 4] dated 4 July 2017), p.65.

²⁹⁸ Surname not provided.

3.269 [Roland UK, Employee 23] forwarded the email to [Roland UK, Employee 1] the following day, asking, ‘*Can you please email the reply I should send to him?*’²⁹⁹

3.270 This email shows that [Reseller] alerted Roland UK to other MI Resellers who were not pricing at the Minimum Price. In the CMA’s view, the email shows that [Reseller] understood that the application of the Roland Pricing Policy meant it (and other MI Resellers, including [Reseller] and [Reseller]) would not sell or advertise the Relevant Products below the Minimum Price.

3.271 On 17 February 2018, [Employee of Reseller] forwarded an internal [Reseller] email with the subject ‘*Silly Roland price*’ to [Roland UK, Senior Employee 5]. This email states, ‘*Hey guys.....had this bought [sic] to my attention by a customer today.....*’ and attached two links to [Reseller]’s and [Reseller]’s websites in relation to a Relevant Product TD50K pro V drums.³⁰⁰

3.272 This email shows that [Reseller] alerted Roland UK to other MI Resellers who were not pricing at the Minimum Price. In the CMA’s view, the email shows that [Reseller] understood that the application of the Roland Pricing Policy meant it (and other MI Resellers) would not sell or advertise the Relevant Product below the Minimum Price.

3.273 Based on the evidence from the Relevant Period set out above, the CMA concludes that it has reasonable grounds for suspecting that at least 24 MI Resellers selling the Relevant Products were subject to and complied with the Roland Pricing Policy.³⁰¹

D. Market Definition

3.274 As set out below, the CMA finds that the relevant market in this case is the supply in the UK of electronic drum kits, related components and accessories through the MI Reseller and Mass Reseller channels, with the exception of sales to education customers.

I. Purpose of and framework for assessing the relevant market

3.275 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.³⁰²

3.276 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.³⁰³

3.277 Nonetheless, the CMA has formed a view of the relevant market as a conclusion on this may be required in order to calculate Roland UK's 'relevant turnover' in the market affected by the Infringement, should this be required for the purposes of establishing an effect on trade between Member States and/or the level of any financial penalty that the CMA may decide to impose on Roland UK.

II. Relevant product market

3.278 The CMA's starting point for assessing the relevant product market is the focal products which are subject to the Infringement. The CMA then assesses whether the product market should be broadened based on demand-side and supply-side substitutability with other products.

3.279 Roland UK supplies electronic drum kits, related components and accessories. Roland UK categorises its electronic drum kits further by product segments as set out in Table 3.1 above – Entry-level, Mid-range and Advanced. For each of these three product segments, there are differences

³⁰² 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.

³⁰³ See also *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, in which the CAT held, at 176, that in Chapter I cases 'determination of the relevant market is neither intrinsic to, nor normally necessary for, a finding of infringement'.

identified by Roland UK based on price and type of customer.³⁰⁴ For example, the price points across the three segments vary and are usually in the region of the estimated retail price ranges identified by Roland UK, as set out in Table 3.1 above.

- 3.280 The evidence shows that the Roland Pricing Policy in general and the Infringement more specifically applied to the full range of electronic drum kits, related components and accessories supplied by Roland UK.
- 3.281 Given that the Infringement and the Roland Pricing Policy more generally applied to each of the Relevant Products, all electronic drum products are focal products (i.e. electronic drum kits, related components and accessories). It would make no difference for the calculation of any potential relevant turnover if the CMA separated out different segments/ranges between or within electronic drum kits, related components and accessories into multiple separate product markets or aggregated the turnover of all the products into a single market.
- 3.282 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 ranges within electronic drum kits, related components and accessories in a single product market.
- 3.283 With regard to electronic drum kits specifically, Roland UK submitted that there are no additional segments supplied by other electronic drum manufacturers.³⁰⁵ It also submitted that some of its main competitors produce competing electronic drum kits across the Entry-Level, Mid-range and Advanced ranges which, from a supply-side perspective, would be consistent with a single market for all electronic drum kits.³⁰⁶
- 3.284 Roland UK also submitted that some manufacturers supply acoustic drum kits as well as electronic drum kits.³⁰⁷ Roland UK submitted that although it does not manufacture acoustic drums it nevertheless competes with manufacturers of acoustic drum kits. Roland UK submitted that acoustic drum kits are substitutable with electronic drum kits. According to Roland UK, acoustic drum kits *'perform many of the same functions and can be used in the same environment.'*³⁰⁸

³⁰⁴ URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), pp.9-10 and p.12.

³⁰⁵ URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), p.12.

³⁰⁶ URN C_ROL01572.2 (Annex 2 to Response dated 22 March 2019 to the February 2019 RFI).

³⁰⁷ URN C_ROL01572.2 (Annex 2 to Response dated 22 March 2019 to the February 2019 RFI).

³⁰⁸ Roland refers to the Commission Decision 16 July 2003 *PO/Yamaha* (COMP/37.975) and the Commission's approach to the market definition as regards the drum sector and agrees with the Commission's assessment

3.285 However, the CMA considers that there are limitations to the extent to which acoustic drum kits could be substituted with electronic drum kits. In particular:

- Acoustic drum kits are not exact equivalents of electronic drum kits. Electronic drum kits are smaller and more compact and can be transported more easily than acoustic drum kits. The size of acoustic drum kits and the amount of space they occupy means that they are not always suitable to be played in small spaces. Roland UK's own websites states that *'if you've got an acoustic kit, you're tied to its location unless you're prepared to laboriously break it down for transport.'*³⁰⁹
- Electronic drum kits have volume-control capabilities which allow them to be played in areas where loud noise could be a nuisance for others whereas acoustic drum kits are far more limited in the extent to which it is possible to control the volume at which they are played. Roland UK itself submits that *'electronic drum kits have allowed consumers to drum silently in environments where it previously may have been less practical to use a traditional acoustic drum kit.'*³¹⁰ Roland UK also states that the noise level *'puts plenty of potential buyers off inviting a traditional acoustic kit into their home.'*³¹¹
- There is limited competitive overlap between acoustic and electronic drum kits. According to information provided by Roland UK about its competitors, only two out of 19 other electronic drum kit manufacturers sell both acoustic and electronic drum kits.³¹² This would be consistent with the lack of constraint from supply-side substitution from acoustic drum manufacturers on the pricing of Roland UK electronic drum kits.

3.286 On this basis the CMA finds that the relevant product market for the purpose of this case excludes acoustic drum kits and considers that the relevant product market is the supply of electronic drum kits, related components and accessories only.

which suggests a drum sector consisting of acoustic drums and electronic drums. See URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), p.9 and p.16.

³⁰⁹ See <http://www.roland.co.uk/blog/should-i-learn-on-an-electronic-or-acoustic-kit/>.

³¹⁰ URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), p.8, lines 1-3.

³¹¹ See <http://www.roland.co.uk/electronic-drums-buyers-guide/>.

³¹² URN C_ROL01572.2 (Annex 2 to Response dated 22 March 2019 to the February 2019 RFI).

III. Sales through different distribution channels

3.287 Roland UK primarily supplies its electronic drum products to consumers through resellers – which can be split into two distribution channels: MI Resellers and Mass Resellers.³¹³

MI and Mass Reseller channels

3.288 A very small proportion of Roland UK's sales of Relevant Products during the Relevant Period ([0-10]% in 2017 and [0-10]% in 2018 by sales value, and no sales via Mass Resellers before 2017)³¹⁴ were made through the Mass Reseller channel.³¹⁵ These relate to a mass-market trial in which Roland UK sold on an [X] basis an Entry-level TD1K electronic drum kit (branded as 'Go Drums')³¹⁶ through [a Mass Reseller].³¹⁷

3.289 The CMA has considered whether the Roland UK products sold in [a Mass Reseller] are likely to be seen by customers as demand-side substitutes for similar Entry-level products sold through MI Resellers. In this regard, Roland UK has submitted that the functionality of TD1K Entry-level electronic drum kits is the same as the Go Drums sold through [a Mass Reseller].³¹⁸ Therefore, the CMA considers that Go Drums are likely to be substitutable with other TD1K Entry-level products.

3.290 Since Go Drums are substitutable with other Entry-level products sold by MI Resellers, the CMA considers that there is scope for competition between the MI Reseller channel and Mass Reseller channel. Therefore, the CMA considers that the Infringement is likely to have had an impact on pricing across the market for electronic drum kits sold through both of these distribution channels in the UK.

³¹³ A very small proportion ([0-10]%) of Roland UK's sales of Relevant Products were direct sales.

³¹⁴ As mentioned in footnote 108, the CMA notes that [Roland UK, Senior Employee 2] said in an interview that *'Roland UK started selling a limited range of product sometime after 2010 on [a Mass Reseller] directly. For Roland UK, it was only a very few products [X].'* See URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.42. Roland UK submitted that none of the Relevant Product were sold via Mass Resellers before the described trials. See URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), p.18.

³¹⁵ URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), p.10.

³¹⁶ URN E_ROL02138 (Response dated 22 March 2019 to the February 2019 RFI), pp.17-18. The trials were in September 2017 and July 2018 (although July 2018 falls outside the Relevant Period).

³¹⁷ As explained in paragraph 3.29, Roland confirmed that [a Mass Reseller] is not subject to SDAs but the two companies contracted under [a Mass Reseller]'s standard Vendor Agreement Roland also confirmed that price lists were not circulated to [a Mass Reseller], nor was [a Mass Reseller] provided with RSPs by other means and Roland did not monitor [a Mass Reseller]'s retail prices. See URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), p.9. The CMA has no evidence that Roland attempted to include [a Mass Reseller] in the Roland Pricing Policy.

³¹⁸ URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), p.9

Education channel

3.291 Sales to education customers can be supplied both directly by Roland UK and indirectly via MI Resellers. The CMA considers that such sales to education customers are likely to be made at a price that is based on a discount [0-10]-[10-20]%) from the trade price that Roland UK charges to its MI Resellers. The CMA also notes, that some of these sales were subject to negotiation, and the resulting prices were likely to be significantly different from those charged by MI Resellers to other customers. Therefore, sales to these customers are unlikely to fall within the same market as products sold through the MI Reseller and Mass Reseller channels. Therefore, the CMA considers that sales made through the education channel fall outside the scope of the Relevant Market.

Direct sales to professional artists

3.292 A small proportion of Roland UK's sales of the Relevant Products during the Relevant Period (c.[0-10]% of sales value in 2017) were direct sales made to professional artists.

3.293 The CMA has considered whether direct sales to these customers are likely to form part of the same relevant market as sales through MI Resellers and Mass Resellers. These direct sales were made with [3<] discounts relative to the prices prevailing in the MI Reseller and Mass Reseller channels, including [3<].³¹⁹ As such, the conditions of competition were likely to be sufficiently different from those facing customers of the MI Reseller and Mass Reseller channels such that these sales would not be part of the same relevant market.

Direct sales to Roland UK staff and its staff's family and friends

3.294 A very small proportion of Roland UK's sales of the Relevant Products during the Relevant Period ([less than 1%] of sales value in 2017) were direct sales made to Roland UK's staff and its staff's family and friends.

3.295 The CMA has considered whether direct sales to these customers are likely to form part of the same relevant market as sales through MI Reseller and Mass Resellers. Some of these sales were made with [3<] discounts relative to the prices that prevailed in the MI Reseller and Mass Reseller channels, while some sales were made at [3<]. Given that these customers were staff of Roland UK, and their friends and family, it is unlikely that they would display the same 'shopping around', consumer search or price-comparison

³¹⁹ Where products were paid for, discounts averaged in the region of [3<] from RRP in 2017.

behaviour as customers of MI Resellers or Mass Resellers. Given these factors, it is likely that the conditions of competition were sufficiently different from those facing customers of the MI Reseller and Mass Reseller channels such that these sales would not be part of the same relevant market.

Conclusion on sales through different distribution channels

3.296 The CMA considers that the conditions of competition are sufficiently similar between MI Resellers and Mass Resellers that, for the purposes of this case, there is no need to further sub-divide the relevant market by reseller type or channel and that the evidence indicates a single market for these two channels, with the exception of sales to education customers through MI Resellers. For the reasons set out above, the CMA considers that Roland UK's sales via the education channel and Roland UK's direct sales to artists to its own staff, to family and friends of its staff, are not likely to form part of the same relevant market, for the purposes of this case.

IV. Relevant geographic market

3.297 The CMA has considered whether the market is likely to be narrower or wider than the whole of the United Kingdom (UK).

3.298 Roland UK's pricing and product availability appears to be the same across all UK regions. Based on the fact that the Roland Pricing Policy applied to the whole of the UK – and, in particular, applied to online sales of UK MI Resellers, which could be made to any UK location – the CMA concludes that for the purposes of this case the relevant geographic market is not narrower than the UK.

3.299 The CMA has also considered whether the relevant geographic market may be wider than the UK. Roland UK has explained that before 2016 Roland UK had autonomy with regard to its pricing, albeit Roland Corporation provided suggestions to Roland UK on the Minimum Price for the Relevant Products with a view to avoiding significant pricing differences across the EU. However, from 2016 the Minimum Price was set by Roland Europe with a view to seeking alignment across Europe.³²⁰

3.300 The CMA considers the fact that Roland UK's prices were not aligned with prices set in other EU countries before 2016³²¹ indicates that, at least for the earlier part of the Relevant Period, there was a separate relevant geographic market for the sale of electronic drum kits, related components and

³²⁰ URN C_ROL02033 (Response dated 18 December 2019 to the First December 2019 RFI), p.3.

³²¹ URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.15.

accessories in the UK. However, the evidence also shows that MI Resellers based on mainland Europe (i.e. outside the UK) also sold Roland UK products to UK customers and competed intensely with UK-based resellers.³²²

- 3.301 The CMA considers that the evidence on Roland UK's approach to setting different prices in the UK, relative to other counties is mixed. In light of this, the CMA concludes for the purpose of this case that the geographic market is not narrower than the whole of the UK.

V. Conclusion on market definition

- 3.302 In view of the foregoing, the CMA finds that the relevant market for the purposes of this case is the supply in the UK of electronic drum kits, related components and accessories, through the MI Reseller and Mass Reseller channels with the exception of sales to education customers (the Relevant Market).

4. LEGAL ASSESSMENT

A. Introduction

- 4.1 This Section sets out the CMA's legal assessment of Roland UK's agreement and/or concerted practice with [Reseller 1], one of its MI Resellers, that [Reseller 1] would not advertise or sell online the Relevant Products below a certain Minimum Price specified by Roland UK from time to time, in accordance with the Roland Pricing Policy.
- 4.2 As set out above, the CMA has reasonable grounds for suspecting that at least 24 other UK MI resellers of the Relevant Products³²³ were subject to the Roland Pricing Policy, and that MI Resellers generally complied with Roland UK's requests to adhere to the Minimum Price.
- 4.3 However, for reasons of administrative efficiency, in accordance with its Prioritisation Principles,³²⁴ the CMA has decided to focus its findings on

³²² URN E_ROL00433 (Email from [Employee of Reseller] to [Roland UK, Employee 1], which was forwarded internally to [Roland UK, Senior Employee 5], dated 10-16 August 2011). This resulted in complaints to Roland UK from UK-based resellers concerned at being undercut by their counterparts on mainland Europe. Under pressure from its UK MI Resellers, Roland UK monitored the prices of some mainland Europe-based resellers, including [EU Member State]-based [Reseller] and [Reseller], located in [EU Member State]. URN E_ROL00837 (Email from [Roland UK, Senior Employee 5] to [Roland UK, Senior Employee 2] dated 21 May 2012). In some instances, Roland UK made direct contact with a mainland Europe-based reseller with a view to ensuring compliance with the Roland Pricing Policy.

³²³ See paragraph 3.206 above.

³²⁴ Available at <https://www.gov.uk/government/publications/cma-prioritisation-principles>.

[Reseller 1] as one of the numerous MI Resellers of the Relevant Products in order to show the existence of an agreement and/or concerted practice with Roland UK.

4.4 While the CMA has concluded that [Reseller 1] is a party to an infringing agreement and/or concerted practice with Roland UK, the CMA has decided not to address this Decision to [Reseller 1].³²⁵ The evidence shows that the Roland Pricing Policy was operated as a standard policy applicable to all or at least the vast majority of Roland UK's MI Resellers. The CMA therefore considers it reasonable and proportionate to apply Rule 10(2) of the CMA Rules in this case and address this Decision only to Roland UK and its parent company, Roland Corporation, identified in paragraph 3.5 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.³²⁶ The prohibition imposed by section 2 of the Act is referred to as 'the Chapter I Prohibition'.
- 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.
- Under the European Union (Withdrawal Agreement) Act 2020, section 2(1) of the European Communities Act 1972 (under which EU law has effect in the UK's national law) is 'saved' until the end of the Transition Period.³²⁷ This means that directly applicable EU law, including Articles

³²⁵ Under Rule 10(2) of the CMA Rules, the CMA may address an infringement decision to fewer than all the persons who are or were party to that agreement or are or were engaged in that conduct.

³²⁶ Section 2(1) and (7) of the Act.

³²⁷ Section 1A, Withdrawal Act (as introduced by section 1, Withdrawal Agreement Act).

101 and 102 TFEU, Regulation 1/2003³²⁸ and the Vertical Block Exemption Regulation³²⁹ will continue to apply in the UK during the Transition Period.

- 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.³³⁰ The CMA must, in addition, have regard to any relevant decision or statement of the European Commission (the Commission).³³¹

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.³³²
- 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*'.³³³

³²⁸ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, Official Journal L 1, 4.1.2003, pp. 1–25.

³²⁹ The 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).

³³⁰ 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).

³³¹ 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.

³³² Case C-41/90 *Klaus Höfner and Fritz Elser v Macrotron GmbH*, EU:C:1991:161, paragraph 21.

³³³ Case C-118/85 *Commission v Italian Republic*, EU:C:1987:283, paragraph 7.

- 4.10 The term ‘undertaking’ also designates an economic unit, even if in law that unit consists of several natural or legal persons.³³⁴

II. Conclusion on undertakings

- 4.11 Roland UK was (and still is) engaged in the marketing and sale of electronic drum kits, related components and accessories. [Reseller 1] was (and still is) engaged in the retail sale of MI and accessories.
- 4.12 The CMA therefore concludes that both Roland UK and [Reseller 1] were, and still are, engaged in an economic activity and constitute 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 Roland UK and [Reseller 1] entered into an agreement and/or concerted practice that [Reseller 1] would not advertise or sell the Relevant Products online below the Minimum Price in accordance with the Roland 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.³³⁵ 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.³³⁶

³³⁴ Case C-97/08 P *Akzo Nobel NV and Others v Commission*, EU:C:2009:536, paragraph 55.

³³⁵ Case C-8/08 *T-Mobile Netherlands BV and others v NMa*, EU:C:2009:343, paragraph 23 (citing Case C-49/92 P *Commission v Anic Participazioni, SpA* EU:C:1999:356, paragraph 131). See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, [206(ii)].

³³⁶ Case C-382/12 P, *MasterCard Inc. v. European Commission*, EU:C:2014:2201, paragraph 63 and the case law cited therein. 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: ‘[i]n 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

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’.³³⁷ 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.³³⁸ An agreement may also consist of either an isolated act, or a series of acts, or a course of conduct.³³⁹

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.’³⁴⁰

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* (...).’³⁴¹

4.17 However, it is not necessary to establish a joint intention to pursue an anti-competitive aim.³⁴² 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.³⁴³

4.18 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

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.’

³³⁷ Case C-41/69 *ACF Chemiefarma NV v Commission*, EU:C:1970:71, in particular, paragraphs 106–114.

³³⁸ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24, [658]. See also Commission Decision 2003/675/EC *Video Games, Nintendo Distribution and Omega-Nintendo* (COMP/35.587 etc) [2003] OJ L255/33, paragraph 247.

³³⁹ Case C-49/92 P *Commission v Anic Partecipazioni SpA*, EU:C:1999:356, paragraph 81.

³⁴⁰ 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).

³⁴¹ Case T-7/89 *SA Hercules Chemicals NV v Commission*, EU:T:1991:75, paragraph 256.

³⁴² 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).

³⁴³ *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.³⁴⁴

- 4.19 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.'³⁴⁵

- 4.20 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.'³⁴⁶

- 4.21 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.³⁴⁷

- 4.22 The Chapter I Prohibition and Article 101 TFEU apply to agreements irrespective of whether they were ever implemented.³⁴⁸ 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.³⁴⁹ In addition, the fact that a party does not respect the agreement at all times or comes to

³⁴⁴ 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).

³⁴⁵ Vertical Guidelines, paragraph 25(a).

³⁴⁶ Vertical Guidelines, paragraph 25(a).

³⁴⁷ Case C-260/09 P *Activision Blizzard Germany GmbH v Commission*, EU:C:2011:62, paragraph 77.

³⁴⁸ Commission decision of 29 September 2004 *French Beer* (Case COMP/C.37.750/B2), para 64.

³⁴⁹ Case 86/82 *Hasselblad v Commission* EU:C:1984:65, paragraph 46; and Case C-277/87 *Sandoz v Commission*, EU:C:1990:6, paragraph 3.

recognise that it can 'cheat' on the agreement at certain times does not preclude the finding that an agreement existed.³⁵⁰

4.23 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.³⁵¹

4.24 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.³⁵²

III. Concerted Practice

4.25 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.³⁵³

4.26 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).³⁵⁴ The Court of Appeal has observed that:

³⁵⁰ 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 10-16.

³⁵¹ *OFT401* (December 2004), at paragraph 2.8. See also, for example: Case C-49/92P *Commission v Anic Partecipazioni SpA* 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, paragraph 40.

³⁵² See, for example: Case 19/77 *Miller v Commission*, EU:C:1978:19, paragraphs 7 and 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* OJ [1978] L232/26.

³⁵³ 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 and Allsports Limited v Office of Fair Trading* [2004] CAT 17, [151]–[153]; and Commission Decision 82/367/EEC *Hasselblad* (IV/25757) [1981] L161/18, (*Hasselblad*), recital 47, in which the Commission stated (in a vertical context) that: '[f]or 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.'

³⁵⁴ 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 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 examples include: Commission Decision 72/403/CEE *Pittsburgh Corning Europe* (IV/26894) [1972] OJ L272/35 (where a concerted practice was found between a supplier and a distributor); and Commission Decision

‘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.’³⁵⁵

4.27 In the context of vertical discussions between a manufacturer and a retailer, the Competition Appeal Tribunal (CAT) has stated that:

‘It is (...) plain that an undertaking may be passively party to an infringement of the Chapter I prohibition. That is so, in particular, where it had taken part in a meeting or other contacts and has done nothing to distance itself from the matters discussed. In those circumstances the undertaking is taken to have tacitly approved of the unlawful initiative, unless it has publicly distanced itself or informed the OFT.’³⁵⁶

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

Roland UK’s communication of the Roland Pricing Policy

4.28 As set out in Section 3.C above, the CMA has found that as part of the Roland Pricing Policy, during the Relevant Period, Roland UK:

- instructed its MI Resellers, including [Reseller 1], not to advertise or sell the Relevant Products online below the Minimum Price which it adjusted from time to time.³⁵⁷ This policy applied to the Relevant Products sold separately and in Relevant Product Bundles from January 2014;³⁵⁸
- monitored MI Resellers and contacted those, including [Reseller 1], who offered the Relevant Products for sale online at a price below the Minimum Price from time to time and required that any price below the Minimum Price was increased to comply with the Roland Pricing Policy;³⁵⁹ and

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).

³⁵⁵ *Argos Limited and Others v Office of Fair Trading* [2006] EWCA Civ 1318, [28].

³⁵⁶ *JJB Sports plc and Allsports Limited v Office of Fair Trading* [2004] CAT 17, at [1043].

³⁵⁷ See paragraphs 3.79 to 3.81 above.

³⁵⁸ See paragraphs 3.87 to 3.90 above.

³⁵⁹ See paragraphs 3.92 to 3.95 above.

- considered, instructed its salespeople to threaten certain MI Resellers and actually threatened and/or imposed sanctions on MI Resellers for not adhering to the Roland Pricing Policy, including the threat of sanctions in relation to [Reseller 1] insofar as explained below.³⁶⁰

MI Resellers' adherence to the Roland Pricing Policy

- 4.29 The CMA has reasonable grounds for suspecting that at least 24 MI Resellers were subject to, and generally agreed to adhere to the Roland Pricing Policy.³⁶¹ 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 Roland UK which infringed competition law on one MI Reseller only, namely [Reseller 1].
- 4.30 Nonetheless the CMA considers that the Roland Pricing Policy could only be effective in its aim of protecting MI Resellers' margins³⁶² if there was general adherence to it by the vast majority of MI Resellers making online sales of the Relevant Products.
- 4.31 While some MI Resellers occasionally sold the Relevant Products online below the Minimum Price specified by the Roland Pricing Policy, the evidence in the CMA's possession shows that overall, adherence to the Roland Pricing Policy by MI Resellers was high.³⁶³
- 4.32 Based on this evidence, the CMA considers that many MI Resellers were willing to comply with the Roland Pricing Policy and other MI Resellers who may have wanted to discount online to remain competitive on price, had little choice but to comply.³⁶⁴ However, the CMA makes no findings in respect of MI Resellers of the Relevant Products, other than [Reseller 1].

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

- 4.33 [Reseller 1] started advertising and selling the Relevant Products online well before the start of the Relevant Period, potentially as early as [§<].³⁶⁵

³⁶⁰ See paragraphs 3.128 to 3.145 above.

³⁶¹ See paragraph 3.206 above.

³⁶² See paragraphs 3.48 to 3.53 above.

³⁶³ See paragraphs 3.206 to 3.273 above.

³⁶⁴ See paragraph 3.206 above.

³⁶⁵ URN C_ROL00601 ([Reseller 1] Section C of response to the s.26 Notice dated 17 April 2018), response to question 3(a)(i)) and 3(b)(i), p.1. [§<].

Throughout the Relevant Period [X] it sold the Relevant Products online via its website, [X].³⁶⁶

4.34 [Reseller 1] considered [X].³⁶⁷ [Reseller 1] told the CMA that Roland UK was its *'the most important supplier percussion-wise'*.³⁶⁸

4.35 [Reseller 1]'s relationship with Roland UK during the Relevant Period was based on an SDA for all of the Relevant Products.³⁶⁹ However, neither the SDA nor any other written contractual agreement between Roland UK and [Reseller 1] in the CMA's possession mention the restrictions which formed the basis of the Roland Pricing Policy.³⁷⁰

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

4.36 The CMA concludes that Roland 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 during the Relevant Period. This agreement and/or concerted practice applied to the Relevant Products sold separately during the Relevant Period and in relation to Relevant Product Bundles from January 2014.³⁷¹

4.37 This was based on the joint understanding that the Roland Pricing Policy applied to the vast majority of Roland UK's UK MI Resellers, and that Roland UK would take steps to ensure that other MI Resellers of the Relevant Products also maintained their prices at or above the Minimum Price. To this end, [Reseller 1] would monitor other MI Resellers' prices of Relevant Products during the Relevant Period and report those advertising below the

³⁶⁶ URN C_ROL00601 ([Reseller 1] Section C of response to the s.26 Notice dated 17 April 2018), response to question 3(a)(ii), p.1. [X].

³⁶⁷ The other brands that [Reseller 1] cited as being important were '[X]'. URN C_ROL00601 ([Reseller 1] Section C of response to the s.26 Notice dated 17 April 2018), response to question 8, p.5.

³⁶⁸ URN E_ROL03273 (Transcript of interview with [Reseller 1], Employee 1] dated 7 October 2019), p.26, line 15.

³⁶⁹ See for example URN C_ROL00359 ([Reseller 1] Section B of response to s.26 Notice dated 17 April 2018). SDA between Roland UK and [Reseller 1] dated [X] 2011 and URN C_ROL00358 ([Reseller 1] Section B of response to s.26 Notice dated 17 April 2018). SDA between Roland UK and [Reseller 1] dated [X] 2014).

³⁷⁰ In interview, [Roland UK, Senior Employee 3], who has been employed by Roland for '[X]', explained, *'The SDA covers all products except open products and Pro-Av products. Open products sit outside of the SDA and can be sold on third party platform and non-MI retailers, e.g. [a Mass Reseller].'* In this interview conducted by Roland's legal representative, the legal adviser said to [Roland UK, Senior Employee 3] that *'the SDA is signed by resellers yearly, but you talk to dealers daily'* and when he/she asked [Roland UK, Senior Employee 3] how pricing was discussed with resellers over the years, [Roland UK, Senior Employee 3] stated that *'[w]e discuss prices daily but these are not linked to SDA. The schedule and stocking terms are in the SDA but the price is not.'* Roland submits that [Roland UK, Senior Employee 3]'s reference to discussing 'prices daily' may relate primarily to trade or promotional prices and not just to Minimum Prices pursuant to the Roland Pricing Policy. URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.10 and p.12.

³⁷¹ See paragraphs 3.87 to 3.90 above.

Minimum Price to Roland UK in the expectation that Roland UK would contact such MI Resellers and instruct them to revert to the Minimum Price.

- 4.38 In the CMA's view, the agreement and/or concerted practice between Roland UK and [Reseller 1] lasted from 7 January 2011 to 17 April 2018.

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

- 4.39 As explained at paragraphs 3.72 to 3.76 above, the evidence shows that Roland UK communicated the Minimum Price of the Relevant Products in price lists which were circulated to [Reseller 1] (and other MI Resellers) frequently throughout the Relevant Period.
- 4.40 The CMA notes that price list revisions were sent on average 8 times a year.³⁷² As explained in paragraphs 4.39 to 4.44 below, [Reseller 1] generally complied with the Minimum Prices set out in the price lists.
- 4.41 The evidence shows that Roland UK would actively monitor [Reseller 1]'s compliance with the Minimum Prices set out in the price lists, including through use of the [Reseller] reports and then the daily automated price tracking service offered by InsiteTrack.³⁷³
- 4.42 Notwithstanding Roland UK's efforts to conceal its communications concerning the Roland Pricing Policy,³⁷⁴ the evidence shows that on many occasions throughout the Relevant Period, Roland UK instructed [Reseller 1] verbally or via email to adjust its online prices to the Minimum Price and [Reseller 1] complied with such requests.³⁷⁵
- 4.43 Roland UK's instructions to [Reseller 1] to price at the Minimum Price included Roland UK setting the level of discounts either for specified Relevant Products (for example, if they were on promotion) or, from January 2014, setting restrictions on the maximum discount which could be offered

³⁷² As detailed at paragraph 3.73 above.

³⁷³ See paragraphs 4.61, 4.62, 4.72, 4.73, 4.75, 4.78, 4.80, 4.85, 4.86, 4.90 and 4.104 below.

³⁷⁴ See paragraphs 3.184 to 3.200 above.

³⁷⁵ For example, when [Reseller 1, Employee 1] was asked in interview what he understood [Roland UK, Employee 5] meant by emailing [Reseller 1] with pricing information in relation to certain Relevant Products and stating, "[c]an you let me know when they're sorted?", [Reseller 1, Employee 1] responded to the interviewer, 'I would take to mean it would be a request for us [Reseller 1] to change the price to those that he's mentioned in the email (...) [and] [w]e would have changed it.' URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.89, lines 12, 17-18 and 23. For more details on how Roland UK communicated with [Reseller 1] using such words as 'sorted', see footnote 393 below. [Text in square brackets added by the CMA].

on a Relevant Product when sold as part of a Relevant Product Bundle.³⁷⁶ In so doing, Roland UK prevented [Reseller 1] from independently setting the overall price of the Relevant Product Bundle.

- 4.44 The CMA has also seen evidence of instances of [Reseller 1] requesting information on the correct Minimum Price from Roland UK or confirming the correct Minimum Price with Roland UK. The CMA considers that this shows that [Reseller 1] understood its obligations under the Roland Pricing Policy and was trying to ensure it complied with them. The CMA considers that [Reseller 1] adjusted its prices as a result of Roland UK's instructions to do so because it feared that Roland UK would impose sanctions if it did not comply. The CMA concludes that [Reseller 1] regarded the threat of sanctions as credible.

Threat of sanctions from Roland UK for non-compliance with the Roland Pricing Policy and [Reseller 1]'s fear of sanctions

- 4.45 While Roland UK staff denied that there were ever any 'consequences' for MI Resellers who did not adhere to the Roland Pricing Policy,³⁷⁷ the weight of evidence shows that [Reseller 1]'s compliance was due to a credible threat of sanctions that persisted throughout the entire Relevant Period.
- 4.46 To that end, in the CMA's view, Roland UK made a general threat of sanctions early in the Relevant Period, using coded wording to refer to the Roland Pricing Policy. On 7 January 2011, [Roland UK, Employee 1] emailed [Reseller 1] and other MI Resellers and stated that '*any of our retail partners who are offering less in the way of Roland Value than we would like will lose any discretionary discounts that they might otherwise receive*'.³⁷⁸ For the reasons explained at paragraphs 3.65, 3.123 to 3.125 above, the CMA concludes that the term '*Roland Value*' was synonymous with pricing at the Minimum Price.
- 4.47 The CMA notes that [Reseller 1, Employee 1] explained in interview that [Reseller 1] was not one of the '*retail partners*' (MI Resellers) referred to in [Roland UK, Employee 1]'s email as pricing below Minimum Price at that time.³⁷⁹ However, in the CMA's view, while this means that [Reseller 1] was complying with the Roland Pricing Policy and agreeing to price at or above

³⁷⁶ See paragraphs 3.87 to 3.90 above.

³⁷⁷ See paragraph 3.39 above.

³⁷⁸ URN E_ROL00282 (Email from [Roland UK, Employee 1] to [Reseller 1, Employee 1] and multiple MI Resellers dated 7 January 2011).

³⁷⁹ [Reseller 1, Employee 1] said, '*No, we weren't.*' when asked if [Reseller 1] was one of the unidentified retailers. URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.73, lines 10-13.

the Minimum Price at this point in the Relevant Period, the threat of the sanction of losing valuable discounts if it did not continue to adhere to the Roland Pricing Policy was not lost on [Reseller 1]. [Reseller 1, Employee 1] explained to the CMA that he understood this email to mean that *'if you weren't selling at the SRP, that you would lose some discounts'*.³⁸⁰

- 4.48 In accordance with Roland UK's efforts to conceal its communications concerning the Roland Pricing Policy,³⁸¹ [Reseller 1, Employee 1] told the CMA that sanctions were rarely made explicit. [Reseller 1, Employee 1] explained that *'there was never anything specifically laid out and not a word of any consequences that were ever applied if we did. (...), but I -- I think there was always an implied, erthat [sic] there could be consequences if we didn't, whether that be, possible retros or bonuses'*.³⁸²
- 4.49 [Reseller 1, Employee 1] confirmed to the CMA that this fear of sanctions persisted throughout the Relevant Period. [Reseller 1, Employee 1] told the CMA, *'It was my understanding that between the period 2011 – 2018 that if we advertised Roland products at less than the suggested retail price we would lose some of the discounts from Roland.'*³⁸³ [Reseller 1, Employee 1] also explained in interview that *'we always understood that the retail price was something that we possibly had to stick to.'*³⁸⁴
- 4.50 [Reseller 1, Employee 1] and Roland UK told the CMA that [Reseller 1] benefited from a *'quality bonus'*. Roland UK described it as a *'[5-15]% discount to the standard trade price'*³⁸⁵ and while [Reseller 1, Employee 1] could not recall the size of the discount, he confirmed that it was of a sufficient value that losing it would be problematic to [Reseller 1]. The CMA notes that the substantial size of this discount lends credence to the adverse commercial impact that losing it would have had on [Reseller 1]'s business.

³⁸⁰ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.72, lines 18-19.

³⁸¹ See paragraphs 3.184 to 3.200 above.

³⁸² URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.46, lines 2-5.

³⁸³ URN C_ROL02310 (Response dated 31 January 2020 to the s.26 Notice to [Reseller 1, Employee 1] dated 30 January 2020), p.1.

³⁸⁴ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.46, lines 25-26.

³⁸⁵ URN C_ROL02320 (Response dated 4 February 2020 to the January 2020 RFI), response to question 2(a), p.6.

The evidence also shows that [Reseller 1]'s fear of sanctions extended to Roland UK's restrictions on discounts on Relevant Product Bundles.^{386 387}

- 4.51 Explaining further background to [Reseller 1]'s fear of sanctions from Roland UK, [Reseller 1, Employee 1] described in interview that he considers Roland UK to be '*the most important supplier percussion-wise*'.³⁸⁸ [Reseller 1, Employee 1] also confirmed that if Roland UK was to have stopped supplying [Reseller 1], the commercial consequences would have been '*quite considerable*'.^{389 390} In the CMA's view, that this exacerbated [Reseller 1]'s fear of sanctions from Roland UK throughout the Relevant Period.
- 4.52 The CMA therefore concludes that the threat of sanctions was credible as was [Reseller 1]'s fear of such sanctions. This persisted throughout the Relevant Period and meant that [Reseller 1] generally complied with the Roland Pricing Policy.

[Reseller 1] monitoring and reporting other MI Resellers who did not comply with the Roland Pricing Policy during the Relevant Period

- 4.53 As set out below,³⁹¹ [Reseller 1] monitored its competitors' online pricing. During the Relevant Period, [Reseller 1] reported other MI Resellers to Roland UK for advertising or selling the Relevant Products online below the Minimum Price. In the CMA's view, this, too, shows that [Reseller 1] understood there to be an agreement and/or concerted practice with Roland UK in relation to the Roland Pricing Policy which meant that it (and other MI Resellers) would not advertise or sell the Relevant Products below the Minimum Price.
- 4.54 The evidence shows that Roland UK would respond to [Reseller 1] when it complained to Roland UK about other MI Resellers pricing below the

³⁸⁶ URN C_ROL02310 (Response dated 31 January 2020 to the s.26 Notice to [Reseller 1, Employee 1] dated 30 January 2020), p.1.

³⁸⁷ When [Reseller 1, Employee 1] was asked in interview if there was an implicit understanding that if [Reseller 1] did not keep to the bundling guidelines that there was a risk that [Reseller 1] would lose its quality bonus, [Reseller 1, Employee 1] answered affirmatively. URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.203, line 1.

³⁸⁸ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.26, line 15.

³⁸⁹ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.26, lines 20-23.

³⁹⁰ In interview, [Reseller 1, Senior Employee 2] described how, '[>]'. URN E_ROL03274 (Transcript of interview with [Reseller 1, Senior Employee 2] dated 8 October 2019), p.18, lines 23-25; URN E_ROL03275 (Response to Request for Clarification from [Reseller 1, Senior Employee 2]).

³⁹¹ See the detailed evidence of [Reseller 1] actively monitoring its competitors' online pricing starting with evidence dating from 8 August 2011 (at paragraph 4.68 below) and continuing up to the end of the Relevant Period (at paragraph 4.143 below).

Minimum Price, using words such as ‘*on to it*’ or ‘*you should see movement over the next few days*’.³⁹² [Reseller 1] [Σ<].³⁹³

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

- 4.55 The CMA notes that, based on the evidence, Roland UK staff were careful not to write anything down in connection with the Roland Pricing Policy.³⁹⁴ Notwithstanding this, the CMA sets out below contemporaneous documentary and witness evidence (set out separately for each year during the Relevant Period) which support the CMA’s finding that there was an agreement and/or concerted practice between Roland UK and [Reseller 1] that [Reseller 1] would adhere to the Roland Pricing Policy.
- 4.56 The evidence shows that the agreement and/or concerted practice between Roland UK and [Reseller 1] began on 7 January 2011 and continued until the date when the CMA launched its formal investigation on 17 April 2018. This is supported by [Reseller 1, Employee 1]’s evidence that the Roland Pricing Policy applied and was enforced throughout the Relevant Period.³⁹⁵

2011

- 4.57 In 2011, the supporting evidence comprises:
- Roland UK threatening MI Resellers with sanctions for non-compliance with the Roland Pricing Policy and [Reseller 1] subsequent credible fear of sanctions in the event it ceased to adhere to the Roland Pricing Policy;
 - Roland UK monitoring [Reseller 1] (and other MI Resellers’) compliance with the Roland Pricing Policy and [Reseller 1] increasing its prices following instructions by Roland UK staff to revert to the Minimum Price; and
 - [Reseller 1] monitoring other MI Resellers’ prices and reporting non-compliance with the Roland Pricing Policy to Roland UK.

³⁹² For example, see URN E_ROL00122 (Email from [Roland UK, Employee 4] to [Reseller 1, Senior Employee 2] dated 16 October 2017). See also footnote 419 (‘*we have all been on to it*’).

³⁹³ For example, when [Reseller 1, Senior Employee 2] emailed [Roland UK, Senior Employee 3] a screenshot of [a competitor’s] [Reseller]’s listing of a bundle offering that was not in compliance with Roland UK’s bundle guidelines, he described in interview how he interpreted [Roland UK, Senior Employee 3]’s response of ‘*[w]e’ll sort*’ as [Σ<].’ URN E_ROL03274 (Transcript of interview with [Reseller 1, Senior Employee 2] dated 8 October 2019), p.71, lines 14-15. For more details, see paragraph 4.96 below.

³⁹⁴ See paragraphs 3.184 to 3.200 above.

³⁹⁵ See paragraph 4.49 above.

Roland UK's threat and [Reseller 1] credible fear of sanctions throughout the Relevant Period

4.58 As explained at paragraphs 4.45 to 4.52 above, Roland UK threatened [Reseller 1], alongside other MI Resellers, with sanctions if it did not comply with the Roland Pricing Policy.³⁹⁶ On 7 January 2011, [Roland UK, Employee 1] wrote to various MI Resellers stating:

'Dear friends, I am aware that many of our retail partners [MI Resellers] are communicating **mixed messages regarding Roland Value** to their customers, and I must thank you for your patience and understanding. We are very keen to achieve full European harmonisation before we leave for NAMM show and would ask you to **make sure that you are offering FULL Roland Value** at your earliest convenience. Please be re-assured that **another Roland Value assessment will take place** on the morning of Monday 10th and any of our retail partners who are **offering less in the way of Roland Value than we would like will lose any discretionary discounts** that they might otherwise receive.'³⁹⁷

4.59 In interview, [Reseller 1, Employee 1] explained his understanding of this email as follows:

- he understood the aim of the email '*was obviously they're bringing out a new price list and the expectation is that people would change their selling prices to match prices on the price list*'. He explained that Roland UK's concern regarding '*mixed messages*' and '*Roland Value*' meant that Roland UK had identified '*deviations from the SRP*' (in other words, the Minimum Price) and '*Roland Value*' meant '*the value of their product in terms of selling price*';
- he understood the request from Roland UK, which was framed in terms of offering '*FULL Roland Value*', meant that Roland UK was '*asking people to change their prices*'; and
- he understood that Roland UK was seeking to enforce the request through a '*Roland Value assessment*', which meant that Roland UK would be '*checking people's prices on the Monday (...) to see what they're actually selling for*', and he understood from the final sentence of the email that '*if you weren't selling at the SRP, that you would lose some discounts*'. [Reseller 1, Employee 1] noted in respect of this sentence in

³⁹⁶ See also paragraphs 3.39, 3.40 and 3.122 to 3.146 above.

³⁹⁷ URN E_ROL00282 (Email from [Roland UK, Employee 1] to [Reseller 1, Employee 1] and multiple MI Resellers dated 7 January 2011). [Text in square brackets added by the CMA] [Emphasis added by the CMA].

[Roland UK, Employee 1]'s email that *'the implications of that are clear'*.³⁹⁸

- 4.60 In the CMA's view, the email of 7 January 2011, and [Reseller 1]'s understanding of the email, show that there was a clear understanding between Roland UK and [Reseller 1], as a result of this communication, that [Reseller 1] had to comply with the Roland Pricing Policy or face sanctions in the form of loss of discounts. As noted in paragraph 4.47 above, in the CMA's view, [Reseller 1, Employee 1]'s interview evidence shows [Reseller 1] was not one of the MI Resellers that would be at risk of losing discounts because [Reseller 1] was complying with the Roland Pricing Policy at this point in the Relevant Period. However, the CMA concludes that the threat of the sanction of losing valuable discounts if it did not continue to adhere to the Roland Pricing Policy was not lost on [Reseller 1].
- 4.61 Roland UK's communications with [Reseller 1] in 2011 regarding its SDA also show an understanding between Roland UK and [Reseller 1] that [Reseller 1] agreed to follow the Minimum Prices set by Roland UK from time to time, in accordance with the Roland Pricing Policy. In addition, they show [Reseller 1]'s understanding that enforcement of the Roland Pricing Policy by Roland UK against MI Resellers was of importance.
- On 26 January 2011, [Roland UK, Senior Employee 2] emailed [Reseller 1, Senior Employee 1], and stated on the issue of protecting [Reseller 1]'s margins that *'Our new SDA goes many steps further to enhance the value good dealers such as [Reseller 1] clearly deliver on the high street. Please don't hesitate to call me if any of the new SDA points are unclear. A key area, Retail Price Maintenance is not directly referred to, for legal reasons, but I can bring you up to speed on this.'*³⁹⁹
 - Further to receipt of the SDA, [Reseller 1, Senior Employee 1] emailed [Roland UK, Senior Employee 2] on 4 February 2011 stating, *'I have read your new main contract and was disappointed. I am quite happy to sign it but it does not seem to me to give you the teeth you need to make dealers do what you want. This is no doubt advice from European lawyers. What a shame that it can not [sic] be tougher.'* In response,

³⁹⁸ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), pp.68-72.

³⁹⁹ URN E_ROL00304 (Email from [Roland UK, Senior Employee 2] to [Reseller 1, Senior Employee 1] dated 26 January 2011), p.4. [Emphasis added by the CMA].

[Roland UK, Senior Employee 2] replied, '*Clearly I need to talk thru [sic] the detail with you on this. What teeth is it missing?*'.⁴⁰⁰

- 4.62 In referring directly to '*Retail Price Maintenance*', which is described as a '*key area*', the CMA concludes that this exchange, together with other contemporaneous documentary evidence set out below, shows that there was an understanding between Roland UK and [Reseller 1] that RPM was in place at the time pursuant to the Roland Pricing Policy, despite not being expressly covered in the SDA.
- 4.63 In the CMA's view [Reseller 1]'s response that it is '*a shame that it can not [sic] be tougher*' shows its agreement with and endorsement of the Roland Pricing Policy. It also shows [Reseller 1] expectation that Roland UK would take steps to enforce the Roland Pricing Policy against other MI Resellers, who were subject to the same SDA.

Roland UK monitoring and contacting [Reseller 1] in relation to prices of Relevant Products below the Minimum Price

- 4.64 Further evidence in the form of internal Roland UK communications shows that Roland UK was actively monitoring [Reseller 1]'s online prices with a view to enforcing compliance with the Roland Pricing Policy. In response to requests from Roland UK staff following such monitoring, [Reseller 1] agreed (albeit it appears not always immediately) to increase its prices to the Minimum Price for Relevant Products. For example:
- On 31 January 2011, [Roland UK, Senior Employee 3] sent an internal Roland UK email to [Roland UK, Employee 18] and [Roland UK, Employee 13] in response to a [Reseller] report that had been forwarded to him earlier that morning that showed [Reseller 1] advertising below the Minimum Price on seven Relevant Products.⁴⁰¹ [Roland UK, Senior Employee 3] stated, '*Roland products still not sorted! Midday is cut off or*

⁴⁰⁰ URN E_ROL00304 (Email chain between [Roland UK, Senior Employee 2] and [Reseller 1, Senior Employee 1], later copying in [Reseller 1, Senior Employee 2] and [Reseller 1, Employee 13], and was forwarded by [Roland UK, Senior Employee 2] to [Roland UK, Senior Employee 3], dated 26 January to 7 February 2011), pp.2-3.

⁴⁰¹ The Relevant Products listed in the report included the following: CY-12RC (12" crash/ride cymbal), CY-5 (Dual-trigger cymbal pad, 8"), TD12KX (Drum stand), TD20KX (Electronic drum kit), TDM20 (Large drum mat), TMC6 (Drum trigger midi convertor) and VH12 (Dual trigger virtual Hi-hat). URN E_ROL00290 (Email from [Roland UK, Senior Employee 3] to [Roland UK, Employee 18] and [Roland UK, Employee 13] dated 31 January 2011).

*they lose RVR Can't stress this enough,⁴⁰² they need to be sorted by midday.'*⁴⁰³ 404 405

- Following a new [Reseller] report on 1 February 2011, several internal email exchanges then followed between Roland UK staff in which [Roland UK, Senior Employee 3] instructed Roland UK staff to '*call the dealers*' who had not yet reverted to the Minimum Price as indicated by the new [Reseller] report. [Reseller 1]'s pricing of the seven Relevant Products still appeared on the report, indicating that it had not yet reverted to the Minimum Price.⁴⁰⁶
- By 7 February 2011, [Roland UK, Senior Employee 3] received a new [Reseller] report showing which MI Resellers were not at the Minimum

⁴⁰² The CMA notes the potential sanctions mentioned in [Roland UK, Senior Employee 3]'s email.

⁴⁰³ On 31 January 2011 at 5:11 PM, [Roland UK, Senior Employee 3] emailed [Roland UK, Employee 18] and [Roland UK, Employee 13] again, this time in response to a second [Reseller] report that had been forwarded to him earlier that afternoon. In this email, he stated, '*Nearly there guys, can you just finish up as these will be oversights Thanks Good job guys.....*'. This latest report lists the same seven Relevant Products in relation to [Reseller 1] that had been flagged up in the morning report, which suggests that [Reseller 1] had not raised its prices. URN E_ROL00294 (Email from [Roland UK, Senior Employee 3] to [Roland UK, Employee 18] and [Roland UK, Employee 13] dated 31 January 2011).

⁴⁰⁴ In interview, when [Roland UK, Senior Employee 2] was asked about Roland UK's monitoring what resellers were '*selling at*', he stated, '*one of the dealers who are no longer around, [Reseller], started sending pricing information to us. They wanted to make Roland aware of what was going on. It was [later] deemed not appropriate that they would send us this so we started our own tracker [InsiteTrack reports].*' URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.35. [Text in square brackets added by the CMA].

⁴⁰⁵ URN E_ROL00290 (Email from [Roland UK, Senior Employee 3] to [Roland UK, Employee 18] and [Roland UK, Employee 13] dated 31 January 2011).

⁴⁰⁶ On 1 February 2011, [Roland UK, Senior Employee 3] sent an internal Roland UK email to [Roland UK, Employee 18] and [Roland UK, Employee 13], in relation to the [Reseller] report that he received earlier that morning. The same seven [Reseller 1] Relevant Products (CY-12RC, CY-5, TD12KX, TD20KX, TDM20, TMC6 and VH12) that had been included in the [Reseller] reports from the day before were still listed as advertising below the Minimum Price. In his email, [Roland UK, Senior Employee 3] stated, '*We have done a great job with this and we need to thank our dealers for helping us with this. We have a few more products to sort which will be oversights, can you call the dealers in question today and talk them through the last few products? Thanks*'. URN E_ROL00296 (Email from [Roland UK, Senior Employee 3] to [Roland UK, Employee 18] and [Roland UK, Employee 13] dated 1 February 2011), p.1. Also on 1 February 2011 (16:36:16), [Roland UK, Senior Employee 5] sent an internal Roland UK email to [Roland UK, Employee 7] and [Roland UK, Employee 1], forwarding the [Reseller] report that had been received on 31 January 2011 at 2:20pm, which showed [Reseller 1] was still advertising the same seven Relevant Products below the Minimum Price. [Roland UK, Senior Employee 5] stated: '*Hi Guys, I know it's a pain, can you get these last few [Reseller] sorted, I will be and you will be nagged everyday until it's clean. Then please delete this email.*' URN E_ROL00299 (Internal Roland UK email from [Roland UK, Senior Employee 5] to [Roland UK, Employee 7] and [Roland UK, Employee 1] dated 1 February 2011), p.1.

Price. The CMA notes that [Reseller 1]’s pricing of the seven Relevant Products was no longer listed.⁴⁰⁷

- 4.65 In the CMA’s view, this exchange shows that, following [Roland UK, Senior Employee 3]’s instruction, Roland UK staff contacted [Reseller 1] between 31 January 2011 and 6 February 2011. The evidence shows that [Reseller] reports only include the prices of Relevant Products being advertised by MI Resellers below the Minimum Price.⁴⁰⁸ Despite initially appearing not to comply, it is clear from the fact that [Reseller 1] no longer appeared on [Reseller] report dated 7 February 2011⁴⁰⁹ that [Reseller 1] had increased its prices to the Minimum Price by then. In the CMA’s view, this shows a shared understanding between Roland UK and [Reseller 1] about the application of the Roland Pricing Policy to [Reseller 1].
- 4.66 Later in 2011, internal Roland UK communications show that [Reseller 1] continued to agree to raise its prices to the Minimum Price on instruction from Roland UK:
- On 26 October 2011, [Roland UK, Senior Employee 2] forwarded an email enclosing a [Reseller] report that he had received earlier that morning to [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 5], which showed [Reseller 1] pricing below the Minimum Price on the TD9K+P Rubber He5 Kit V-Drums Electronic Drum Kit (a Relevant Product). [Roland UK, Senior Employee 5] forwarded this email internally to [Roland UK, Employee 7] and [Roland UK, Employee 1] with no message. Later on the same day, [Roland UK, Employee 1] responded, ‘*[m]ine are all done. (...)*’.⁴¹⁰ The CMA considers that [Roland UK, Employee 1]’s statement, ‘*[m]ine are all done*’, means that [Reseller 1] had reverted to the Minimum Price and thereby continued to adhere to the Roland Pricing Policy.

⁴⁰⁷ [Roland UK, Senior Employee 3] sent an internal Roland UK email to [Roland UK, Employee 18] and [Roland UK, Employee 5] in response to internal emails concerning a [Reseller] report that had been emailed to Roland UK earlier that morning. Under the subject heading ‘*Roland Boss, still can’t compete with [Reseller], [Reseller 1] etc?*’, [Roland UK, Senior Employee 3] stated, ‘*Hi both Still a couple of dealers on there – can you call me? Thanks*’. URN E_ROL00303 (Email from [Roland UK, Senior Employee 3] to [Roland UK, Employee 18] and [Roland UK, Employee 5] dated 7 February 2011).

⁴⁰⁸ In interview, [Roland UK, Senior Employee 2] explained that [Reseller] sent pricing information ‘*everyday (...) showing discrepancies (...) against the RSP*’. URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.35.

⁴⁰⁹ The CMA considers [Reseller] reports only listed Relevant Products of MI Resellers whose prices were lower than the Minimum Price.

⁴¹⁰ URN E_ROL00566 (Email from [Roland UK, Employee 1] to [Roland UK, Senior Employee 5] and [Roland UK, Employee 7] dated 26 October 2011).

- On 14 November 2011, [Roland UK, Senior Employee 2] sent an internal Roland UK email to [Roland UK, Employee 1] forwarding a [Reseller] report that he had received that morning, which showed [Reseller 1] pricing below the Minimum Price on a Relevant Product, the TD9K+P Rubber Head Kit V-Drums Electronic Drum Kit (a Relevant Product). Later that afternoon, [Roland UK, Employee 1] responded, '*done*'.⁴¹¹

4.67 In the CMA's view, both these communications show that Roland UK staff contacted [Reseller 1] to instruct it to raise its prices to the Minimum Price. The CMA concludes that the response '*done*' shows that [Reseller 1] had agreed to follow such instruction in accordance with the Roland Pricing Policy.

[Reseller 1] monitoring the prices of other MI Resellers and reporting those below the Minimum Price to Roland UK

- 4.68 The evidence in 2011 also shows that [Reseller 1] monitored other MI Resellers of the Relevant Products and reported non-compliance with the Roland Pricing Policy to Roland UK.
- 4.69 The evidence shows that [Reseller 1] typically reported non-compliance to Roland UK by emailing it screenshots or links to other MI Resellers' websites without further explanation. As explained in paragraph 3.106 above, Roland UK staff generally understood this to mean that the MI Reseller in question wanted Roland UK to intervene and ensure that the relevant MI Reseller reverted to the Minimum Price.⁴¹² The CMA has obtained the following examples in 2011:
- On 8 August 2011, [Reseller 1, Employee 1] sent an email with the subject '*http://www.[Reseller]/product~name~Roland-TD-20-K~ID~5603.asp*' to [Roland UK, Employee 1] saying, '*[b]it cheeky, advertising a TD20K*' (a mid-range electronic drum kit). [Roland UK, Employee 1] replied on 10 August 2011, stating, '*[t]his has now been sorted [s<]*'.⁴¹³ In interview, [Reseller 1, Employee 1] stated that his

⁴¹¹ URN E_ROL00618 (Email from [Roland UK, Employee 1] to [Roland UK, Senior Employee 2] dated 14 November 2011).

⁴¹² RPM systems which operated in a similar way (monitoring of resellers' prices by both the manufacturer and resellers themselves and 'complaints' by resellers if any of their competitors did not stick to the 'agreed' minimum prices) were described in the recent Commission decisions of 24 July 2018, e.g. Case AT.40465 *Asus* (e.g. at paragraph 60 and paragraph 78) and Case AT.40181 *Philips* (e.g. at paragraph 38). See to this effect also CMA decision *Commercial refrigeration*, paragraph 5.116.8.

⁴¹³ URN E_ROL00418 (Email from [Roland UK, Employee 1] to [Reseller 1, Employee 1] dated 11 August 2011), p.2. In his interview with the CMA, [Reseller 1, Employee 1] stated that his remark, '*bit cheeky*', was probably a reference to '*a discounted price* [for the TD20K advertised by [Reseller]] *that's considerably lower than what we*

remark, *'bit cheeky'*, was probably a reference to *'a discounted price [for the TD20K advertised by [Reseller]] that's considerably lower than what we [[Reseller 1]] were able to selling [sic] for.'*⁴¹⁴ [Reseller 1, Employee 1] explained that his reason for contacting [Roland UK, Employee 1] on 8 August 2011 was to *'find out what the correct [online] price should be.'*⁴¹⁵ [Reseller 1, Employee 1] also stated that he understood [Roland UK, Employee 1]'s reference to *'[t]his has now been sorted'* to mean that *'they've [Roland UK has] spoken to somebody'*, and this MI Reseller had *'changed their price.'*⁴¹⁶

- On 11 August 2011, [Reseller 1, Employee 1] emailed [Roland UK, Employee 1] with details of a new complaint, *'FYI [X] had to do a price match on HD1 [an entry-level electronic drum kit] at £509 yesterday, seems there are quite a few still at £509.'*⁴¹⁷ In a later email that same morning, [Roland UK, Employee 1] replied stating, *'[t]hey [Reseller 1]'s [X] spoke to me yesterday regarding that [the pricing of the HD1].'*⁴¹⁸ *We have all been on to it so it shouldn't be an issue moving forward.'*⁴¹⁹ In interview, [Reseller 1, Employee 1] explained that that his comment about how [Reseller 1]' [X] had to do a price match on the HD1, was a price match *'down'* from the online price of another MI Reseller. [Reseller

[[Reseller 1]] were able to selling [sic] for.' URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.75, lines 22-23. [Text in square brackets added by the CMA]. In interview, [Roland UK, Senior Employee 3] said that *'[a]ll dealers complain, some are more vocal'*. He cited [Reseller 1] as one of several who complained to Roland UK about its competitors' pricing, and stated, *'They [MI Resellers] contact other Roland employees and myself.'* [Roland UK, Senior Employee 3] also stated that *'larger ones [MI Resellers] are more vocal as they have more to lose. But even smaller ones would complain, about the bigger ones.'* URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), pp.15 and 17. [Text in square brackets added by the CMA].

⁴¹⁴ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.75, lines 19 and 22-23. [Text in square brackets added by the CMA].

⁴¹⁵ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.79, lines 7-8. [Text in square brackets added by the CMA].

⁴¹⁶ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.77, lines 9 and 11-12, and p.78, line 3. [Text in square brackets added by the CMA].

⁴¹⁷ This shows that [Reseller 1] was reporting to Roland UK that it had to match (in this case in-store) another MI Reseller ([Reseller]) who was not pricing at the Minimum Price. It also indicates that [Reseller 1] itself was generally adhering to the Roland Pricing Policy, both in-store and online. [Text in square brackets added by the CMA].

⁴¹⁸ When [Roland UK, Senior Employee 3] was asked in interview to describe how *'a typical discussion of this nature would go – Reseller A calls you'* to complain about a competitor's pricing, he responded, *'Depends who it is and how direct, there would be a few swear words. Various angles thrown in would be, "what is X doing?" "He is destroying your product." "We can't compete like this." "We won't buy anymore, we have staff to pay for." Sometimes "can you do anything?" "Are you doing anything?" "Why don't you stop selling to them?" Sometimes they would not ask for anything, they would just call to rant.'* URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.17. [Text in square brackets added by the CMA].

⁴¹⁹ URN E_ROL00418 (Email from [Roland UK, Employee 1] to [Reseller 1, Employee 1] dated 11 August 2011).

1, Employee 1] confirmed that he understood *'it shouldn't be an issue moving forward'* to mean that that MI Reseller would not be discounting or charging below the Minimum Price going forward.⁴²⁰

- 4.70 The CMA concludes that these communications confirm that [Reseller 1] understood there to be an agreement and/or concerted practice in relation to the Roland Pricing Policy which meant it would not sell or advertise the Relevant Products below the Minimum Price. The CMA further concludes that [Reseller 1, Employee 1] understood that if [Reseller 1] complained to Roland UK about other MI Resellers' prices being below the Minimum Price, Roland UK would contact those MI Resellers to ensure they reverted to the Minimum Price in accordance with the Roland Pricing Policy.

2012

- 4.71 In the CMA's view, the evidence for 2012 continues to show that [Reseller 1] agreed with, and/or generally adhered to, the Roland Pricing Policy.

- 4.72 In 2012, the supporting evidence comprises:

- Roland UK monitoring [Reseller 1]'s (and other MI Resellers') compliance with the Roland Pricing Policy and [Reseller 1] adjusting its prices further to instructions by Roland UK staff.

Roland UK monitoring and contacting [Reseller 1] in relation to prices of Relevant Products below the Minimum Price

- 4.73 For example, on 5 April 2012, [Roland UK, Senior Employee 3] received an InsiteTrack report⁴²¹ that showed [Reseller 1] pricing four Relevant Products – HD3, TD30K, TD30KV and SPDSX⁴²² – below the Minimum Price. [Roland UK, Senior Employee 3] forwarded this report to [Roland UK, Employee 5]⁴²³

⁴²⁰ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.78, line 18; p.79, lines 21-22; and p.82, lines 10-12 and 14.

⁴²¹ In interview, [Roland UK, Senior Employee 3] stated, *'We [Roland UK] have been using InsiteTrack for eight/nine/ten years... We give an excel list of products to be tracked with RSP, they do it daily – not sure how many dealers are tracked maybe 30. It tracks just Roland & Boss prices and only RSPs not RRP. We also get the report for dealers outside of UK.'* When asked whether there is an algorithm, he responded affirmatively and explained that *'a spider/algorithm...trolls the websites, just online RSPs, product details etc.'* Later in the interview, [Roland UK, Senior Employee 3] said that Roland UK is *'still receiving [these price comparison reports] today.'* URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), pp.16 and 21. [Text in square brackets added by the CMA].

⁴²² The following Relevant Products were listed in the report: HD-3 (V-Drums lite kit), TD30K (V-Pro series), TD30KV (V-Pro series drum kit) and SPDSX (Sampling pad 2GB memory).

⁴²³ In interview, when [Roland UK, Employee 5] was asked about [Roland UK, Senior Employee 3]'s 5 April 2012 email, he described how Roland UK would use the InsiteTrack reports *'And then what we used to do, as discussed, is call, call the dealers and discuss why there were at, that price and why they have decided to drop*

and other Roland UK colleagues, stating, *'Guys As agreed yesterday please have all your dealers back in-line by tomorrow morning. Any dealers not in-line will not receive allocation of our new products landing this month.'*⁴²⁴ The InsiteTrack report on the following day no longer showed [Reseller 1] as pricing the four Relevant Products below the Minimum Price.⁴²⁵

- 4.74 The CMA concludes that, further to [Roland UK, Senior Employee 3]'s email, Roland UK staff contacted [Reseller 1] and instructed them to increase their price to the Minimum Price. To this end, the CMA notes that Roland UK staff had been instructed that if [Reseller 1] did not revert to the Minimum Price then it would *'not receive allocation of our new products landing this month'*. The CMA concludes that the fact that the four [Reseller 1] Relevant Products were not listed on the InsiteTrack report the next day shows that [Reseller 1] agreed to Roland UK's request in accordance with the Roland Pricing Policy.⁴²⁶
- 4.75 Similarly, on 10 August 2012, in response to that morning's InsiteTrack report, [Roland UK, Employee 1] sent an email under the subject line *'You maybe loosing [sic] margin'* to [Reseller 1, Employee 1] and [Reseller 1, Employee 13].⁴²⁷ In it, [Roland UK, Employee 1] listed products and corresponding retail prices advertised by [Reseller 1], including the TD30K and TD30KV Digital Drum Kits – [X] Bundles, both Relevant Products. No message, apart from the subject line, was included.⁴²⁸

from RSP, with the end goal being to get them up to RSP.' Later in the interview, when the interviewer asked [Roland UK, Employee 5] if the *'BM price'* would equate to the latest pricelist, he responded, *'[y]es. It should do.'* URN C_ROL02447 (Transcript of interview with [Roland UK, Employee 5] dated 20 January 2020), p.102, lines 17-20; p.103, lines 1-5, and p.107, lines 21-22 and 24.

⁴²⁴ URN E_ROL00820 (Email from [Roland UK, Senior Employee 3] to [Roland UK, Employee 7], [Roland UK, Employee 1] and others of Roland UK dated 5 April 2012), p.1. The CMA also notes the potential sanction mentioned in [Roland UK, Senior Employee 3]'s email.

⁴²⁵ URN C_ROL02081.514 (Email from InsiteTrack Email Alert to [Roland UK, Employee 1] dated 6 April 2012). The CMA notes that MI Resellers only appeared on InsiteTrack reports when the prices of their Relevant Products were below the Minimum Price.

⁴²⁶ The CMA notes that MI Resellers only appeared on InsiteTrack reports when the prices of their Relevant Products were below the Minimum Price.

⁴²⁷ In interview, [Roland UK, Employee 1] described how Roland UK's conversations with resellers about Roland UK's pricelists were *'frequent'* and *'always (...) about our pricelist'*, and also stated how the communications were *'driven by the retail price, which is driven by the InsiteTrack report'*. URN C_ROL02449 (Transcript of interview with [Roland UK, Employee 1] dated 13 January 2020), p.50, lines 7 and 11-12, and p.51, lines 3-4. In interview, [Roland UK, Senior Employee 3] stated, *'[h]istorically... calls have been made [by Roland UK] to make dealers aware of potential margin erosion. In November last year, in Birmingham, I made it very clear to the UK business that any kind of communication or behaviour like this has to stop.'* [Text in square brackets added by the CMA]. URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.15.

⁴²⁸ URN E_ROL00862 (Email from [Roland UK, Employee 1] to [Reseller 1, Employee 1] and [Reseller 1, Employee 13] dated 10 August 2012). When [Roland UK, Senior Employee 3] was asked in interview about

- 4.76 Later that same morning, [Roland UK, Employee 1] sent an internal Roland UK email to [Roland UK, Employee 4], [Roland UK, Employee 5], [Roland UK, Employee 11], [Roland UK, Employee 6], [Roland UK, Senior Employee 5] and [Roland UK, Senior Employee 3] that forwarded the InsiteTrack report he had received earlier that morning stating, *'FYI – all of my guys have been contacted today regarding this and have the list of products and the 'right' prices.'*⁴²⁹ An InsiteTrack report dated 13 August 2012 no longer showed⁴³⁰ [Reseller 1] advertising the TD30K and TD30KV Digital Drum Kits – [X] Bundles below the Minimum Price.⁴³¹
- 4.77 As explained at paragraph 3.106 above, Roland UK staff often used a phrase in communications about the MI Reseller in question losing *'margin'* to mean that the MI Reseller should increase its prices to the Minimum Price. Therefore, in the CMA's view, [Reseller 1] understood the email to be an instruction to increase its prices to the Minimum Price. The CMA also concludes from [Roland UK, Employee 1]'s reference to *'right prices'* that this was a coded message communicating that [Reseller 1] and other MI Resellers had been instructed to raise their prices to the Minimum Price in accordance with the Roland Pricing Policy. In addition, the CMA concludes that the communications taken together show that [Reseller 1] increased its prices to the Minimum Price following instruction to do so by Roland UK, showing that there was an understanding between Roland UK and [Reseller 1] that [Reseller 1] was required to price at the Minimum Price.
- 4.78 Further, on 25 December 2012 (Christmas Day), [Roland UK, Senior Employee 2] received an InsiteTrack report which showed that [Reseller 1] was pricing two Relevant Products (Roland TD30 V-Drums sound module and SPD-SX Sampling pad) below the Minimum Price. [Roland UK, Senior Employee 2] forwarded this email to Roland UK colleagues and stated, *'Hi Guys - unacceptable from [Reseller 1] I think?'*. That afternoon, [Roland UK, Employee 1] replied to [Roland UK, Senior Employee 2] (copying [Roland

whether Roland UK has any bundles or packages discounts, he said, *'I can't remember the detail but there would be a perceived discount of 15% off product, with drum sticks or a stool with a product. This came centrally. The area manager would then have conversations with the dealer [reseller]. They would say this product doesn't come with X, Y, Z but this is 15% off with X thrown in.'* [Text in square brackets added by the CMA]. URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.17.

⁴²⁹ URN E_ROL00866 (Email from [Roland UK, Employee 1] to [Roland UK, Employee 4], [Roland UK, Employee 5], [Roland UK, Employee 11], [Roland UK, Employee 6], [Roland UK, Senior Employee 5], [Roland UK, Senior Employee 3] dated 10 August 2012).

⁴³⁰ The CMA notes that MI Resellers only appeared on InsiteTrack reports when the prices of their Relevant Products were below the Minimum Price.

⁴³¹ URN C_ROL02081.522 (Email from InsiteTrack Email Alert to [Roland UK, Employee 1] dated 13 August 2012).

UK, Senior Employee 5] and [Roland UK, Senior Employee 3]) stating that *'They [[Reseller 1]] always have a sale but usually you have to download the list. This is a bit naughty from them as they all know not to do this.'*⁴³² Two days later, the InsiteTrack report dated 27 December 2012⁴³³ no longer listed [Reseller 1] advertising the Roland TD30 V-Drums sound module and SPD-SX Sampling pad below the Minimum Price.⁴³⁴

- 4.79 When [Roland UK, Employee 1] was asked in interview about the absence of certain [Reseller 1]'s Relevant Products which appeared on the InsiteTrack report dated 25 December 2012, but not on the 27 December InsiteTrack report, he stated that *'[i]t indicates that I've called them between (...) Christmas and Boxing Day, and said, "Are you aware of X, Y, and Z?", and they've said, "We're not", and they've amended it'*.⁴³⁵
- 4.80 In the CMA's view, the evidence from 2012 shows that Roland UK would contact [Reseller 1] to request it to raise its online prices for Relevant Products to the Minimum Price, and [Reseller 1] complied with these requests in accordance with the Roland Pricing Policy.

2013

- 4.81 In the CMA's view, the evidence for 2013 continues to show that [Reseller 1] agreed with, and/or generally adhered to, the Roland Pricing Policy. In 2013, the supporting evidence comprises of:
- Roland UK monitoring [Reseller 1]'s (and other MI Resellers') compliance with the Roland Pricing Policy and:
 - [Reseller 1] adjusting its prices to the Minimum Price after instructions by Roland UK staff to do so; and
 - [Reseller 1] potentially not raising its prices to the Minimum Price when it had been asked to do so by Roland UK.

⁴³² URN E_ROL00962 (Email from [Roland UK, Employee 1] to [Roland UK, Senior Employee 2], copying [Roland UK, Senior Employee 5] and [Roland UK, Senior Employee 3] dated 25 December 2012). [Text in square brackets added by the CMA].

⁴³³ URN C_ROL02081.486 (Email from InsiteTrack Email Alert to [Roland UK, Employee 1] dated 27 December 2012).

⁴³⁴ The CMA notes that MI Resellers only appeared on InsiteTrack reports when the prices of their Relevant Products were below the Minimum Price.

⁴³⁵ URN C_ROL02449 (Transcript of interview with [Roland UK, Employee 1] dated 13 January 2020), p.129, lines 11-13.

Roland UK monitoring [Reseller 1]’s prices and contacting [Reseller 1] when its prices were below the Minimum Price and instructing it to revert to the Minimum Price

- 4.82 The evidence from 2013 shows that Roland UK continued to monitor [Reseller 1]’s prices and contacted [Reseller 1] when its prices were below the Minimum Price and instructed it to revert to the Minimum Price.
- 4.83 For example, on 7 February 2013, [Roland UK, Senior Employee 2] sent an internal Roland UK email to [Roland UK, Senior Employee 5], forwarding a [Reseller] report and stating, ‘*Tons of stuff here that shouldn’t be on the report??*’. The forwarded report showed [Reseller 1] advertising below the Minimum Price on one Relevant Product (HD3 V-Drums lit kit).⁴³⁶ The InsiteTrack report on 8 February 2013 did not show the Relevant Product (HD3 V-Drums lite kit) as being advertised below the Minimum Price.⁴³⁷
- 4.84 In the CMA’s view, the absence of a mention of [Reseller 1] in relation to this Relevant Product on the 8 February 2013 InsiteTrack report indicates that Roland UK staff had contacted [Reseller 1] to request that it raise its price to the Minimum Price, and [Reseller 1] increased its price to the Minimum Price in accordance with the Roland Pricing Policy.
- 4.85 The CMA has also obtained evidence of Roland UK monitoring [Reseller 1]’s pricing, requesting [Reseller 1] to revert to the Minimum Price and, on this occasion, [Reseller 1] potentially delaying its agreement to do so.
- 4.86 On 2 May 2013, [Roland UK, Employee 5] emailed [Reseller 1, Senior Employee 4], asking, ‘*Can you please look at the below products for me today*’. One of the products listed was a Relevant Product, the SPD30BK (Octapad eight pads). Further to [Reseller 1, Senior Employee 4]’s suggestion, [Roland UK, Employee 5] then emailed [Reseller 1, Employee 1] directly, asking, ‘*Can you help?*’.⁴³⁸ On 4 May 2013, an InsiteTrack report received by [Roland UK, Employee 5] that morning continued to show [Reseller 1] advertising the SPD30BK at £50 below the Minimum Price.⁴³⁹
- 4.87 On 20 May 2013, [Roland UK, Employee 1] forwarded an InsiteTrack report to [Roland UK, Employee 4], [Roland UK, Employee 5] and others of Roland UK, stating, ‘*Some of the [X] guys have picked up on bits of the below, can*

⁴³⁶ URN E_ROL01863 (Email from [Roland UK, Senior Employee 2] to [Roland UK, Senior Employee 5] dated 7 February 2013).

⁴³⁷ URN C_ROL02081.445 (Email from InsiteTrack Email Alert to [Roland UK, Employee 5] dated 8 February 2013).

⁴³⁸ URN E_ROL02173 (Email from [Roland UK, Employee 5] to [Reseller 1, Employee 1] dated 3 May 2013)

⁴³⁹ URN E_ROL03312 (Email from InsiteTrack Email Alert to [Roland UK, Employee 5] dated 4 May 2013).

you all help please? The report showed [Reseller 1] selling the same Relevant Product (SPD30BK - Octapad eight pads) below the Minimum Price. Later that afternoon, [Roland UK, Employee 5] responded, *'Spoken to mine'*. [Roland UK, Employee 1] replied, *'Thanks [X]'*.⁴⁴⁰ However, an InsiteTrack report for 23 May continued to show [Reseller 1] advertising the SPD30BK at £50 below the Minimum Price.⁴⁴¹

4.88 The CMA considers that the above evidence in relation to the Relevant Product SPD30BK may be an example of [Reseller 1] *'cheating'* on the Roland Pricing Policy, albeit potentially due to an oversight rather than as a deliberate action to, for example, gain more sales. [Reseller 1, Employee 1], when asked at interview whether [Reseller 1] may have ignored the email from Roland UK on 2 May 2013 and maintained its lower prices until chased again on 5 September 2013 (see the paragraph below), said, *'It seems a long time. I – it's possible but I would probably say unlikely.'*⁴⁴² The CMA considers that this indicates that [Reseller 1]'s likely unintended non-compliance with the Roland Pricing Policy in this instance was probably short lived. However, in any event, for the reasons cited at paragraph 4.22 above, even occasional and likely temporary *'cheating'* does not mean [Reseller 1] did not understand that it had to comply with the Roland Pricing Policy.

4.89 Notwithstanding the above, Roland UK was again requesting [Reseller 1] to raise its price of the Relevant Product SPD30BK (Octapad, eight pads, 50 kits, over 600 Sounds, phrase looper, USB (black)) to the Minimum Price on 5 September 2013. On 5 September 2013, [Roland UK, Employee 5] emailed [Reseller 1, Employee 1], stating:

'Can you have a look at the below for me please:
SPD30 599
(...)
Can you let me know when they're sorted?'.⁴⁴³

4.90 When asked about this email in interview, [Reseller 1, Employee 1] stated that he understood [Roland UK, Employee 5]'s request as *'asking us [[Reseller 1]] to look at the pricing and amend (...) to their price list.'* He understood [Roland UK, Employee 5]'s message to mean that Roland UK

⁴⁴⁰ URN E_ROL00977 (Email from [Roland UK, Employee 1] to [Roland UK, Employee 5] dated 20 May 2013).

⁴⁴¹ URN C_ROL02351 (Email from InsiteTrack Email Alert to [Roland UK, Employee 1] dated 23 May 2013).

⁴⁴² URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.93, lines 11-16.

⁴⁴³ URN E_ROL02203 (Email from [Roland UK, Employee 5] to [Reseller 1, Employee 1] dated 5 September 2013).

was requesting [Reseller 1] *'to change the price'* to those that [Roland UK, Employee 5] *'mentioned in the email'* and that *'we [[Reseller 1]] would have changed it (...) to reflect the SRP [the Minimum Price]'*.⁴⁴⁴

- 4.91 Immediately following this request [Reseller 1] raised its price to the Minimum Price. The InsiteTrack report dated 6 September 2013 no longer listed [Reseller 1] as advertising the SPD30 below the Minimum Price.⁴⁴⁵ In the CMA's view, this shows that [Reseller 1] reverted to the Minimum Price following a request to do so from Roland UK and that, as a result, [Reseller 1] continued to adhere to the Roland Pricing Policy.

2014

- 4.92 In the CMA's view, the evidence from 2014 continues to show that [Reseller 1] agreed with, and/or generally adhered to, the Roland Pricing Policy. In 2014, the supporting evidence comprises:

- [Reseller 1] adjusting its prices in accordance with the Roland Pricing Policy to the new Minimum Prices issued by Roland UK for the Relevant Products;
- [Reseller 1] monitoring other MI Resellers' prices and reporting non-compliance with the Roland Pricing Policy to Roland UK including [Reseller 1]'s adherence to Roland UK's new policy on Relevant Product Bundles, which formed part of the Roland Pricing Policy; and
- Roland UK monitoring [Reseller 1]'s compliance with the Roland Pricing Policy and [Reseller 1] agreeing to raise its prices to the Minimum Price on instruction from Roland UK;
- [Reseller 1] confirming the Minimum Price with Roland UK with a view to complying with the Roland Pricing Policy.

⁴⁴⁴ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p. 89, lines 1-6 and 17-23, and p.90, lines 2-8. [Text in square brackets added by the CMA].

⁴⁴⁵ URN C_ROL02081.463 (Email from InsiteTrack Email Alert to [Roland UK, Employee 5] dated 6 September 2013). The InsiteTrack report dated 5 September 2013 showed [Reseller 1]'s listed advertised price for the Relevant Product SPD30BK was below the Minimum Price: URN C_ROL02081.465 (Email from InsiteTrack Email Alert to [Roland UK, Employee 5] dated 5 September 2013).

[Reseller 1] adjusting its prices in accordance with the Roland Pricing Policy to the new Minimum Prices issued by Roland UK for the Relevant Products

4.93 Email communications between Roland UK and [Reseller 1] show that [Reseller 1] was quick to adjust its prices in response to updated Minimum Prices received from Roland UK.

4.94 On 10 January 2014, [Roland UK, Employee 22] emailed [Reseller 1, Employee 1] (copying [Reseller 1] and Roland UK colleagues) stating:

‘Please accept our apologies but we have just been advised of a price revision to one of our products for the NAMM release. The product is the Drum KT-10 [a Relevant Product, KT10 – Kick pedal] and the change is as follows:

Product	RRP	Trade	RSP
KT-10	£169	£[§<]	£145’. ⁴⁴⁶

4.95 Later that day, [Reseller 1, Employee 1] replied, ‘[§<] **price amended**’.⁴⁴⁷ In interview, [Reseller 1, Employee 1] confirmed that the price that he amended at Roland UK’s request, was to the ‘RSP’.⁴⁴⁸ The CMA concludes that this shows [Reseller 1]’s continued adherence to the Roland Pricing Policy as [Reseller 1] adjusted its prices to at or above the Minimum Price further to Roland UK’s instructions to do so.

[Reseller 1]’s monitoring of other MI Resellers’ prices and reporting non-compliance with the Roland Pricing Policy to Roland UK including [Reseller 1]’s adherence to Roland UK’s new policy on Relevant Product Bundles

4.96 The evidence also shows that [Reseller 1] adhered to Roland UK’s new policy in relation to Relevant Product Bundles. As explained at paragraphs 3.88 to 3.90 above, Roland UK prevented MI Resellers from independently

⁴⁴⁶ URN E_ROL00112 (Email from [Reseller 1, Employee 1] to [Roland UK, Employee 22], copying various recipients at Roland UK and [Reseller 1] dated 10 January 2014). [Text in square brackets added by the CMA].

⁴⁴⁷ Although this email does not specify what the term ‘[§<]’ referred to, the CMA has seen other evidence that shows [§<]. The CMA therefore considers that ‘[§<] **price amended**’ as meaning the retail price for this Relevant Product was amended. To support this interpretation, one internal [Reseller 1] email dated 26 November 2015 stated, ‘[§<].’ URN E_ROL00120 (Internal [Reseller 1] email from [Reseller 1, Senior Employee 4] to [Reseller 1, Senior Employee 2] dated 26 November 2015). The CMA therefore considers from the 10 January 2014 email that [Reseller 1] agreed to change its actual resale price for the KT10 to match Roland’s retail price. [Emphasis added by the CMA].

⁴⁴⁸ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.104, line 20.

setting the price of Relevant Product Bundles by preventing any discount on the main item in a bundle (e.g. an electronic drum kit) and restricting the discount of any accessory bundled with it to a maximum of 15%. These restrictions formed part of the Roland Pricing Policy and the evidence shows that [Reseller 1] adhered to it through reporting other MI Resellers' non-compliance with it. For example:

- On 27 March 2014, [Reseller 1, Employee 6] emailed [Roland UK, Employee 5] to report, '*Just a heads up that [Reseller] are still giving away free accessories with their V-Drum kits.*' The email included a [Reseller] weblink for Roland UK's TD11K V-compact series electronic drum kit. Later that day, [Roland UK, Employee 5] forwarded this email to his Roland UK colleague [Roland UK, Employee 4], asking, '*Can you have a word please?*'. [Roland UK, Employee 4] replied, '*No worries, [X], I'll get on this today.*'⁴⁴⁹
- On 22 April 2014, [Reseller 1, Employee 7] sent an email to [Roland UK, Senior Employee 3] under the subject line '[Reseller] [[Reseller]] – Bundles'. In it, [Reseller 1, Employee 7] stated, '*Found quite a few....*', in reference to an included link showing [Reseller] advertising Relevant Product Bundles. Twenty minutes later, [Roland UK, Senior Employee 3] replied, '*This will be sorted. Thanks.*'⁴⁵⁰
- On 11 June 2014, [Reseller 1, Employee 8] sent an email under the subject line '*Bundles*' to [Roland UK, Employee 1] and [Roland UK, Employee 3], asking, '*Thought we weren't allowed to sell free stuff with your gear?*'. [Reseller 1, Employee 8] then emailed [Roland UK, Employee 1] and [Roland UK, Employee 3] a link to [Reseller]'s⁴⁵¹ online listing for the Relevant Product Bundle. Later that day, [Roland UK, Employee 1] replied, '*They'll be removed just spoke with the boss.*'⁴⁵²

4.97 In the CMA's view, the above are examples of [Reseller 1] monitoring the prices of other MI Resellers to check whether they were advertising Relevant Product Bundles in accordance with the Roland Pricing Policy. The evidence shows that [Reseller 1] had an expectation that Roland UK would ensure

⁴⁴⁹ URN E_ROL02329 (Email from [Roland UK, Employee 4] to [Roland UK, Employee 5] dated 27 March 2014).

⁴⁵⁰ URN E_ROL02337 (Email from [Roland UK, Senior Employee 3] to [Reseller 1, Employee 7], copying [Reseller 1, Senior Employee 3] and [Reseller 1, Employee 1] dated 22 April 2014). [Text in square brackets added by the CMA].

⁴⁵¹ [X] was a trade name for [Reseller].

⁴⁵² URN E_ROL02382 (Email from [Roland UK, Employee 1] to [Reseller 1, Employee 8] dated 11 June 2014). That evening, [Roland UK, Employee 1] forwarded [Reseller 1, Employee 8]'s email to [Roland UK, Employee 5] and [Roland UK, Senior Employee 3], stating, '*FYI - I've spoken to [[Reseller] employees]*'. [Text in square brackets added by the CMA]

that the MI Resellers concerned would remove the offers for Relevant Product Bundles in accordance with the Roland Pricing Policy. This indicates that [Reseller 1] was complying with the Roland Pricing Policy. It is difficult to see why it would otherwise report other MI Resellers pricing of Relevant Product Bundles to Roland UK.

- 4.98 Roland UK issued written guidance to [Reseller 1] on Relevant Product Bundles in June 2014. On 10 June 2014, [Roland UK, Employee 5] sent an email under the subject line '*SDA Bundles – Effective 11/06/14*' to [Reseller 1, Employee 1] and two other [Reseller 1] employees, which attached a document titled '*SDA Bundles*'. The document stated:

'To promote the quality of all accessories that are sold in combination with Roland/Boss products we ask you to respect the following rules: (...) Drums, Synths, Stage Piano, BK, Multi Effects, Octapad, SPD-SX All dealers can make bundles with accessories like e.g. Sticks, Pedal, Throne , Bag, Case, Headphone etc. The price advantage of a bundle can be up to a maximum of 15% on the accessories only (compared to the single price of each accessory). Any discount on the Instrument is not allowed, e.g. TD11K is £829, a Throne is £39, a Pedal is £39, minimum bundle price is $(2 \times 39 - 15\% + 829) = £895.30$ '.⁴⁵³

- 4.99 In interview, [Reseller 1, Employee 1] explained that:

- he understood that Roland UK '*were limiting it to 15 per cent discount on the accessories (...)*' otherwise '*you could give away £300-worth of, (...), drum accessories quite easily with a drum kit (...)*';⁴⁵⁴
- he understood that these guidelines restricting Relevant Product Bundle prices were in place for '*at least a couple of years*';⁴⁵⁵
- [Reseller 1] '*would've complied with*' the guidelines; and⁴⁵⁶

⁴⁵³ URN E_ROL02373 (Email from [Roland UK, Employee 5] to [Reseller 1, Employee 11], [Reseller 1, Employee 7] and [Reseller 1, Employee 1] dated 10 June 2014) and attachment URN E_ROL02377 (PowerPoint presentation titled '*SDA Bundles.pptx*').

⁴⁵⁴ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.200, lines 20-22.

⁴⁵⁵ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.203, lines 7-8.

⁴⁵⁶ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.201, line 23.

- the reasons for [Reseller 1]’s compliance were, *‘I think again going back to what Roland – the quality bonus and – and the consequences.’*⁴⁵⁷

4.100 In the CMA’s view, the above evidence shows that there was an understanding between [Reseller 1] and Roland UK that it would comply with the restrictions related to Relevant Product Bundles that formed part of the Roland Pricing Policy.

4.101 In addition, the evidence in late 2014 shows that [Reseller 1] continued to monitor other MI Resellers’ prices and would report pricing of Relevant Products (sold individually) below the Minimum Price to Roland UK, which, in the CMA’s view, confirms the understanding between Roland UK and [Reseller 1] that both [Reseller 1] and other MI Resellers should adhere to the Roland Pricing Policy. For example:

- On 12 November 2014, [Reseller 1, Employee 1] sent an email under the subject line *‘TD1K’* to [Roland UK, Employee 5], containing only a weblink to a competitor’s ([Reseller]’s) online listing for the TD1K (V-Drums), a Relevant Product.^{458 459}
- On 24 December 2014, [Reseller 1, Senior Employee 2] sent an email to [Roland UK, Senior Employee 2] and [Roland UK, Senior Employee 3] under the subject line *‘Roland [Reseller] Christmas Sale’*, providing a [Reseller] weblink advertising [Reseller]’s Christmas sale on certain Roland UK MI products, including Relevant Products.⁴⁶⁰

4.102 In interview, [Roland UK, Senior Employee 2] describes how *‘[t]he email from a dealer could contain just a link, dealer and a price. This was a code from them for “sort this out” “do something about it”’*.⁴⁶¹ As explained at paragraphs 3.40 and 3.106 above, the CMA considers that these emails confirm an understanding between Roland UK and [Reseller 1] about the application of the Roland Pricing Policy to MI Resellers. In the CMA’s view,

⁴⁵⁷ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.202, lines 19-25 and p.203, line 1.

⁴⁵⁸ URN E_ROL02534 (Email from [Reseller 1, Employee 1] to [Roland UK, Employee 5] dated 12 November 2014).

⁴⁵⁹ Although not recalling this specific email, [Reseller 1, Employee 1] explained to the CMA in interview: *‘it would be something that would be going against the guidelines that we [[Reseller 1]] had been given by a supplier (...) it could be price (...) it could have been a bundle. They [the competing reseller] could have been giving free things away with it (...) there’d have been something about it [the listing] that would have made it not look right in some way, I suppose.’* URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.140, lines 21-22 and p.141, lines 4-7. [Text in square brackets added by the CMA].

⁴⁶⁰ URN E_ROL02014 (Email from [Reseller 1, Senior Employee 2] to [Roland UK, Senior Employee 2] and [Roland UK, Senior Employee 3] dated 24 December 2014).

⁴⁶¹ URN E_ROL01588 (Transcripts of Interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.36.

[Reseller 1] expected Roland UK to contact those MI Resellers who were pricing Relevant Products below the Minimum Price to ensure their prices reverted to at least the Minimum Price.

Roland UK monitored [Reseller 1]’s compliance with the Roland Pricing Policy and [Reseller 1] agreed to raise its prices to the Minimum Price on instruction from Roland UK

- 4.103 On 21 August 2014, [Roland UK, Employee 4] sent an internal Roland UK email under the subject line '[Reseller 1] *prices*' to [Roland UK, Employee 5] noting that several products, including one Relevant Product (HD3 V-Drums lite kit, an entry-level electronic drum kit), were priced below the Minimum Price. On 24 August 2014, [Roland UK, Employee 5] responded, '*Thanks [Redacted]. I have raised this issue now and will be sorted on Monday. It seems they missed that one so I've had to spoon feed them*'.⁴⁶²
- 4.104 An InsiteTrack report dated 26 August 2014⁴⁶³ did not show [Reseller 1] advertising this Relevant Product below the Minimum Price. In the CMA's view, this evidence shows that Roland UK contacted [Reseller 1] to instruct it to revert to the Minimum Price and [Reseller 1] increased its price to comply with this request, in accordance with the Roland Pricing Policy.

[Reseller 1] confirming the Minimum Price with Roland UK with a view to complying with the Roland Pricing Policy

- 4.105 Further evidence from 2014 shows that [Reseller 1] sought confirmation from Roland UK as to the correct Minimum Price for Relevant Products to ensure it complied with the Roland Pricing Policy.
- 4.106 On 20 August 2014, [Roland UK, Employee 5] forwarded an internal Roland UK email to [Reseller 1, Employee 1] with the subject '*TD1 pricing*'. It set out new '*RRP*' and '*Trade*' prices for two Relevant Products (TD1K (V-Drums) and TD1KV (TD-1KPX kit)). [Reseller 1, Employee 1] replied, '*So the Street prices are £389 and £439?? This makes a significant difference to the split. Call me ASAP*'.⁴⁶⁴
- 4.107 In the CMA's view, this email exchange shows that [Reseller 1] was requesting clarification of what the latest '*street*' prices (i.e. Minimum Price) were. The conversation that [Reseller 1, Employee 1] wanted to have with [Roland UK, Employee 5] ('*Call me ASAP*') shows that [Reseller 1] understood that there was an expectation on Roland UK's part that [Reseller

⁴⁶² URN E_ROL02445 (Email from [Roland UK, Employee 5] to [Roland UK, Employee 4] dated 24 August 2014).

⁴⁶³ URN C_ROL02376 (Email from InsiteTrack Email Alert to [Roland UK, Employee 1] dated 26 August 2014).

⁴⁶⁴ URN E_ROL00113 (Email from [Reseller 1, Employee 1] to [Roland UK, Employee 5] dated 20 August 2014).

1] would comply with '*street prices*' of '£389 and £439' even though [Reseller 1] may have had certain reservations about the '*difference to the split*', thereby confirming that [Reseller 1] adhered to the Roland Pricing Policy.

2015

4.108 In the CMA's view, the evidence continues to show that [Reseller 1] adhered to the Roland Pricing Policy in 2015. The supporting evidence comprises:

- [Reseller 1] adjusting its prices in accordance with the Roland Pricing Policy to the new Minimum Prices issued by Roland UK for the Relevant Products, including in the context of a promotion or sale; and
- [Reseller 1] monitoring other MI Resellers' prices and reporting non-compliance with the Roland Pricing Policy to Roland UK.

[Reseller 1] adjusting its prices in accordance with the Roland Pricing Policy to the new Minimum Prices issued by Roland UK for the Relevant Products, including in the context of a promotion or sale

4.109 On 8 September 2015, [Roland UK, Employee 3] sent an email under the subject line '*Roland UK - New Price list*' to [Reseller 1, Employee 1], [Reseller 1, Senior Employee 3], [Reseller 1, Employee 4], [Reseller 1, Employee 7] and others, with two attached price lists. In his email, [Roland UK, Employee 3] stated:

'We are due to make some further adjustments to our pricing to ensure we are in line with Europe, however, on a more positive note this time the reductions are minimal and a significant number are actually increasing. The changes are as follows:

39 x Products going down.

202 x Products remain the same

143 x Products are going up

I have attached your [Reseller 1] price list, I have also attached our standard price list which shows the changes in column K.

The agreed time for all prices to change is this Friday (11th) at 5pm. All prices on Roland's system will be amended as of 8 am Monday 14th.⁴⁶⁵

⁴⁶⁵ URN E_ROL00109 (Email from [Roland UK, Employee 3] to [Reseller 1, Employee 1], [Reseller 1, Senior Employee 3] and various others at [Reseller 1], copying [Roland UK, Employee 4] dated 8 September 2015) and attachments URN E_ROL00110 (Spreadsheet titled '*Roland - [Reseller 1] Price list Sept 14th 2015*') and E_ROL00111 (Spreadsheet titled '*Sept 14th price list*').

- 4.110 In interview, [Reseller 1, Employee 1] explained that he understood from the email that Roland UK wanted MI Resellers *'to change the prices, (...), at that certain time.'*⁴⁶⁶ He explained that [Reseller 1] was *'obliged'* to do this.⁴⁶⁷ He understood there would be consequences for [Reseller 1] if it did not comply with the new Minimum Prices in the form of [Reseller 1] losing its *'quality bonus'*.⁴⁶⁸ Although not explicitly noted in the email, [Reseller 1, Employee 1] described the threat of sanctions as an *'ongoing, implication'*. [Reseller 1, Employee 1] subsequently told the CMA that *'as a matter of course we would implement the suggested retail prices to maintain our discounts'*.⁴⁶⁹
- 4.111 The CMA concludes that this documentary and witness evidence shows that [Reseller 1] continued to comply with the Roland Pricing Policy in 2015, as it did generally during the Relevant Period. The evidence continues to show that throughout the Relevant Period [Reseller 1] considered that it might face sanctions if it did not comply with the Roland Pricing Policy.⁴⁷⁰
- 4.112 In late 2015, the evidence shows that the Roland Pricing Policy extended to Roland UK setting the Minimum Price in relation to promotions and [Reseller 1] understood it had to comply with these Minimum Prices. For example:
- On 20 November 2015, [Roland UK, Senior Employee 3] sent an email under the subject line *'Black Friday'* to [Reseller 1, Senior Employee 2] that attached a price list called *'Black Friday.xlsx'*. In his email, [Roland UK, Senior Employee 3] stated, *'(...) [Roland UK, Employee 4] will send [Reseller 1, Employee 1] / [Reseller 1, Senior Employee 3] further detail inc promotion purchase prices on Monday.'* The attachment listed several Roland products including one Relevant Product, *'TD-30K Set'* [V-Pro series], together with pricing columns titled *'Normal'*, *'Black Friday'* and *'Discount'*.⁴⁷¹

⁴⁶⁶ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.146, lines 18-19.

⁴⁶⁷ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.153, lines 21-23.

⁴⁶⁸ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.154, lines 6-11 and p. 194, lines 1-2.

⁴⁶⁹ URN C_ROL02310 (Response dated 31 January 2020 to the s.26 Notice to [Reseller 1, Employee 1] dated 30 January 2020), p.1.

⁴⁷⁰ See paragraph 4.60 above.

⁴⁷¹ URN E_ROL02031 (Email from [Roland UK, Senior Employee 3] to [Reseller 1, Senior Employee 2] dated 20 November 2015) and attachment URN E_ROL02032 (Spreadsheet titled *'Black Friday'*). The Relevant Product listed in the price list was TD-30K Set (V-Pro series). [Text in square brackets added by the CMA].

- Similarly, on 24 November 2015, [Roland UK, Employee 4] sent an email under the subject line '*Black Friday details*' to [Reseller 1, Employee 1]. In it, he stated:

'Please find attached the pricing details relating to Black Friday.
Here are the TD30K [a Relevant Product] and (...) promo timings:
Start: Thursday 26th November at midnight (Fri 12am)
Finish: Monday 30th November at midnight (Tue 12am).'

⁴⁷²

- 4.113 In interview, [Reseller 1, Employee 1] explained that these two emails were in relation to Black Friday sales. He explained that [Reseller 1] understood it was required to comply with the Minimum Prices and when asked whether [Reseller 1] would have any discretion on the pricing (for example, to offer lower prices to consumers), [Reseller 1, Employee 1] responded, '*Nothing that – from what I recall, nothing was mentioned at the time. It was just... [That's the price] (...) 'Yeah'*'.⁴⁷³
- 4.114 In the CMA's view, [Reseller 1, Employee 1]'s interview evidence shows that [Reseller 1] understood these emails to be instructions from Roland UK regarding the Minimum Price [Reseller 1] should charge under the Roland Pricing Policy. This shows that the Roland Pricing Policy applied, even in relation to promotions or sales: during which Roland UK set the Minimum Prices by means of specifying maximum discounts that could be applied to the '*normal*' Minimum Prices.
- 4.115 Further evidence in 2015 shows that [Reseller 1] understood that it not only had to comply with the Minimum Prices set by Roland UK in relation to promotions, but also had to introduce them at the agreed time. For example, internal [Reseller 1] email communications from 26 November 2015 show that [Reseller 1] was concerned it alone had breached the Roland Pricing Policy by publishing Black Friday prices online at 5pm, seven hours earlier than Roland UK's instructed embargo time of midnight. In light of this, [X] wanted to know if [Reseller 1] could rectify the situation:

⁴⁷² URN E_ROL01521 (Email from [Roland UK, Employee 4] to [Reseller 1, Employee 1], copying [Reseller 1, Employee 2] and [Reseller 1, Senior Employee 3], dated 24 November 2015) and attachment URN E_ROL01522 (Spreadsheet titled '*Black Friday*'). The Relevant Product was TD30K (V-Pro series). [Text in square brackets added by the CMA].

⁴⁷³ The CMA also notes [Reseller 1, Employee 1] stated that the '*email [from Roland UK] went out to every dealer. It wasn't just us that had that kit at that price. It was all Roland dealers.*' URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.169, lines 6-7, and p.171, lines 9-16. [Text in square brackets added by the CMA].

- At 7:08pm, [X] sent an internal [Reseller 1] email under the subject heading '*Roland TD 30k*' [a Relevant Product],⁴⁷⁴ stating, '*FYI - We are the only retailer with the latest prices.*' Three minutes later, [X] responded, '*Everyone else has stuck to the embargo time [of midnight].*' Shortly after, [X] emailed again, '*Is there an option to reverse it or do we just take the flack from Roland?*'.⁴⁷⁵
- At 8:50pm, [Roland UK, Senior Employee 2] forwarded an email to [Reseller 1, Senior Employee 2], copying [Roland UK, Senior Employee 3], with a [Reseller 1] newsletter that contained the subject line '*Black Friday Deals. Starts Now*'. The newsletter advertised, '*Don't miss out on our Black Friday Offers, with savings to be made across a wide range of musical instruments and accessories. With a huge £840 off the Roland TD-30K V-Drums Kit (...) and many, many more offers for you to take advantage of - what are you waiting for?*'. [Roland UK, Senior Employee 2]'s email to [Reseller 1, Senior Employee 2] said '*Outrageous....*'.⁴⁷⁶

4.116 The CMA concludes that these email communications show that there was an understanding between [Reseller 1] and Roland UK that [Reseller 1] would implement the relevant Minimum Prices only at the agreed time as instructed by Roland UK. In the CMA's view, this evidence shows that Roland UK considered [Reseller 1]'s failure to adhere to the embargo set by Roland UK to be contrary to the Roland Pricing Policy ('*outrageous*'). The CMA further concludes that the evidence shows that certain [Reseller 1]'s staff [X].

[Reseller 1] monitoring other MI Resellers' prices and reporting non-compliance with the Roland Pricing Policy to Roland UK

- 4.117 The evidence for 2015 also continues to show [Reseller 1] reporting to Roland UK other MI Resellers who were pricing Relevant Products below the Minimum Price.
- 4.118 On 4 November 2015, [Reseller 1, Senior Employee 3] sent an email under the subject line '*Roland & Boss Discount Day!*' to [Roland UK, Senior Employee 3], [Roland UK, Employee 3] and [Roland UK, Employee 4]. The email forwarded a [Reseller]'s newsletter, dated the same day, which

⁴⁷⁴ The Relevant Product was the TD30K V-Drums electronic drum kit. [Text in square brackets added by the CMA].

⁴⁷⁵ URN E_ROL00120 (Internal [Reseller 1] email from [X] dated 26 November 2015). [Text in square bracket added by the CMA].

⁴⁷⁶ URN E_ROL01548 (Email from [Roland UK, Senior Employee 2] to [Reseller 1, Senior Employee 2], copying [Roland UK, Senior Employee 3], dated 26 November 2015).

advertised promotions on Roland UK's products, including at least two Relevant Products (TD1KV (TD-1KPX Kit) and TD11KV (V-Compact series)). In her email, [Reseller 1, Senior Employee 3] requested, '*Can you please update asap...*'. That afternoon, [Roland UK, Employee 1] emailed [Roland UK, Senior Employee 3] explaining that '[Roland UK, Employee 5] *tells me that they have a new marketing man he's been with them for four months and wasn't aware. [Employee of Reseller] [sic] has apologised (...)*'.⁴⁷⁷

4.119 In the CMA's view, this shows that [Reseller 1] sent this email to Roland UK further to its understanding with Roland UK that it (and other MI Resellers) should comply with the Roland Pricing Policy.

2016

4.120 The evidence for 2016 paints a similar picture in terms of an ongoing agreement and/or concerted practice between Roland UK and [Reseller 1] whereby [Reseller 1] adhered to the Roland Pricing Policy. In 2016, the supporting evidence comprises:

- Roland UK monitoring [Reseller 1] prices and contacting [Reseller 1] when its prices were below the Minimum Price and instructing it to revert to the Minimum Price;
- [Reseller 1] understanding that its discounting of the price of Relevant Products below the Minimum Price was not permitted under the Roland Pricing Policy and it should revert to the Minimum Price; and
- [Reseller 1] confirming the Minimum Price with Roland UK with a view to complying with the Roland Pricing Policy.

Roland UK monitoring [Reseller 1]'s prices and contacting [Reseller 1] when its prices were below the Minimum Price and instructing it to revert to the Minimum Price

4.121 On 6 November 2016, an InsiteTrack report showed that [Reseller 1] was under-pricing five Roland products, including a Relevant Product: the NE10 (Sound isolation board for V-Drums kick pads and hi-hat controllers).⁴⁷⁸ On 7 November 2016, [Roland UK, Employee 4] emailed [Reseller 1, Employee

⁴⁷⁷ URN E_ROL02684 (Email from [Reseller 1, Senior Employee 3] to [Roland UK, Senior Employee 3], [Roland UK, Employee 3] and [Roland UK, Employee 4], forwarding a [Reseller]'s newsletter, which was then forwarded to [Roland UK, Employee 1] and [Roland UK, Senior Employee 5], dated 4 November 2015).

⁴⁷⁸ URN C_ROL02081.65 (Email from InsiteTrack Email Alert to [Roland UK, Senior Employee 3] dated 6 November 2016).

9], *'I've just managed to get a new price list from our HQ.'* The attached price list, titled *'RUK Price List 1st November 2016'*, showed RSP pricing across a wide range of Roland products, including the NE10.⁴⁷⁹ An InsiteTrack report dated 17 November 2016 no longer showed [Reseller 1] advertising the NE10 (or any other Roland products) below the Minimum Price.⁴⁸⁰

- 4.122 In the CMA's view, this email, together with the InsiteTrack report dated 17 November 2016, indicate that [Reseller 1] agreed to revert to the Minimum Price upon instruction from Roland UK by raising its price for the Relevant Product, in accordance with the Roland Pricing Policy.

[Reseller 1]'s understanding that its discounting of the price of Relevant Products below the Minimum Price was not permitted under the Roland Pricing Policy and it should revert to the Minimum Price

- 4.123 The evidence in 2016 continues to show that [Reseller 1] understood there to be an agreement with Roland UK in relation to the Roland Pricing Policy which meant that it (and other MI Resellers) would not advertise or sell the Relevant Products below the Minimum Price.
- 4.124 On 25 November 2016, [X] sent an internal [Reseller 1] email to [X].⁴⁸¹
- 4.125 In the CMA's view, this email shows an internal misunderstanding within [Reseller 1] as to the application of the Roland Pricing Policy. It highlights the importance to [Reseller 1] of complying with the Roland Pricing Policy and underlines the concern [Reseller 1] had of upsetting Roland UK. The internal misunderstanding came to Roland UK's attention. This caused [X] in respect of [Reseller 1]'s agreement and/or concerted practice with Roland UK, whereby [Reseller 1] would adhere to the Roland Pricing Policy. As a consequence, [Reseller 1] took swift action to increase its prices to at least the Minimum Price.

[Reseller 1] confirming the Minimum Price with Roland UK with a view to complying with the Roland Pricing Policy

- 4.126 The evidence in 2016 continues to show that [Reseller 1] sought to ensure it complied with the Roland Pricing Policy by requesting, or checking with Roland UK, the Minimum Prices of the Relevant Products. For example:

⁴⁷⁹ URN E_ROL02781 (Email chain between [Reseller 1, Employee 9] and [Roland UK, Employee 4], copying [Reseller 1, Employee 12], dated 3-7 November 2016) and attachment URN E_ROL02782 (Spreadsheet titled *'RUK Price List 1st November 2016'*).

⁴⁸⁰ URN C_ROL02081.390 (Email from InsiteTrack Email Alert to [Roland UK, Employee 5] dated 8 November 2016).

⁴⁸¹ URN E_ROL01547 (Email from [X] dated 25 November 2016). [Emphasis added by the CMA].

- On 2 February 2016, [Reseller 1, Employee 1] sent an email under the subject line ‘TD-11KVSE [a Relevant Product]’ to [Roland UK, Employee 4] and asked, ‘Do you have pricing and availability on this?’. That afternoon, [Roland UK, Employee 4] replied: ‘Hi [X], Here you go’, followed by TD11KVSE+P’s⁴⁸² pricing and availability details: ‘RSP (£1,299.00), Quality price (£857.34) and DUE (Mar-16)’.⁴⁸³
- Similarly, on 26 February 2016, [Roland UK, Employee 4] emailed [Reseller 1, Senior Employee 3], [Reseller 1, Employee 4] and [Reseller 1, Employee 1], stating, ‘Please find attached the New Roland Price list that comes into effect on Tuesday the 1st of March. On this price list the [0–10]% bonus and [0-10]% settlement is shown in your trade price on every product.’ The pricelist included multiple pricing columns and pricing information in relation to ‘RSP’, ‘Quality Bonus price list’, ‘[Reseller 1] discount’ and ‘[Reseller 1] price list ([X])’. [Reseller 1, Employee 4] replied, ‘Is RSP the selling?’. Two minutes later, [Roland UK, Employee 4] responded, ‘It is indeed’.⁴⁸⁴
- On 17 June 2016, [Reseller 1, Employee 1] sent an email to [Roland UK, Employee 4] and [Reseller 1, Employee 10] and [Reseller 1, Employee 4] requesting the Roland UK price list (‘Hi [X] Would you please send a bespoke [Reseller 1] price list for all products. Thanks’), which Roland UK then provided.⁴⁸⁵

4.127 [Reseller 1, Employee 1] told the CMA that [Reseller 1] would implement new price lists issued by Roland UK ‘as a matter of course’ throughout the Relevant Period ‘to maintain our discounts’.^{486 487} To that end, in the CMA’s

⁴⁸² TD11KVSE+P is a package of products including the Relevant Product TD11KVSE special edition drum kit. [Text in square brackets added by the CMA].

⁴⁸³ URN E_ROL01520 (Email from [Roland UK, Employee 4] to [Reseller 1, Employee 1] dated 2 February 2016). The Relevant Product was TD-11KVSE (Special edition electronic drum kit).

⁴⁸⁴ URN E_ROL01518 (Email from [Roland UK, Employee 4] to [Reseller 1, Senior Employee 3], [Reseller 1, Employee 4] and [Reseller 1, Employee 1] dated 26 February 2016) and attachment URN E_ROL01519 (Spreadsheet titled ‘2016 Mar 1st price list - [X].xlsx’); and URN E_ROL02731 (Email from [Roland UK, Employee 4] to [Reseller 1, Employee 4] dated 26 February 2016).

⁴⁸⁵ URN E_ROL01512 (Email exchange between [Roland UK, Employee 4] and [Reseller 1, Employee 1], [Reseller 1, Employee 10] and [Reseller 1, Employee 4] dated 17 June 2016) and attachment URN E_ROL01513 (Spreadsheet titled ‘2016 Mar 1st price list - [X].xlsx’).

⁴⁸⁶ URN C_ROL02310 (Response dated 31 January 2020 to the s.26 Notice to [Reseller 1, Employee 1] dated 30 January 2020).

⁴⁸⁷ On 9 September 2016, [Roland UK, Employee 4] sent an email under the subject line ‘new product pricelist’ to [Reseller 1, Employee 1], [Reseller 1, Employee 4] and [Reseller 1, Employee 3]. In it, [Roland UK, Employee 4] stated, ‘Please find attached your specific pricelist for the new products. If you have any questions, please let me know’. The attached document was titled ‘Price list - [Reseller 1] ([X]) - New Product Sept 16.xlsx’. The pricelist included Relevant Products and contained the following pricing columns: ‘RRP inc VAT’, ‘RSP’, ‘Quality Bonus

view, these email communications show that there was an understanding between [Reseller 1] and Roland UK that [Reseller 1] had to comply with the Minimum Prices, or there would have been no reason for [Reseller 1] to request new prices from Roland UK and confirm which prices were *'the selling'* price, that is the Minimum Price.

2017

4.128 The evidence for 2017 continues to support the CMA's finding of an ongoing agreement and/or concerted practice between Roland UK and [Reseller 1], whereby [Reseller 1] adhered to the Roland Pricing Policy. In 2017, the supporting evidence comprises:

- [Reseller 1] adjusting its prices in accordance with the Roland Pricing Policy to the new Minimum Prices issued by Roland UK for the Relevant Products, including in the context of a promotion or sale; and
- [Reseller 1] raising its pricing to the Minimum Price, in accordance the Roland Pricing Policy following a request to do so from Roland UK.

[Reseller 1] adjusting its prices in accordance with the Roland Pricing Policy to the new Minimum Prices issued by Roland UK for the Relevant Products, including in the context of a promotion or sale

4.129 The evidence shows that in 2017 [Reseller 1] continued to implement new Minimum Prices set by Roland UK in accordance with the Roland Pricing Policy.

4.130 On 21 December 2016, [Roland UK, Employee 4] emailed a new price list to [Reseller 1, Employee 1], [Reseller 1, Employee 4] and [Reseller 1, Employee 3], stating, *'Please find attached the new Roland pricelist that will become active on our system from the 3rd of January. Although this is active on our system on the 3rd, we understand the challenge that it is the first date back for many retailers, so we expect that retailers will have their systems updated by the 9th of January.'*⁴⁸⁸ On 5 January 2017, [Roland UK, Employee 4] followed up this email with a reminder that, *'Just to confirm, we*

price list', *'Main Dealer price list'*, *'[Reseller 1] discount'* and *'[Reseller 1] price list ([>])'*. URN E_ROL01506 (Email from [Roland UK, Employee 4] to [Reseller 1, Employee 1], [Reseller 1, Employee 4] and [Reseller 1, Employee 3] dated 9 September 2016) and attachment to email: URN E_ROL01507 (Spreadsheet titled *'Price list - [Reseller 1] ([>]) - New Product Sept 16.xlsx'*).

⁴⁸⁸ URN E_ROL02808 (Email from [Roland UK, Employee 4] to [Reseller 1, Employee 1], [Reseller 1, Employee 4] and [Reseller 1, Employee 3] dated 21 December 2016) and attachment URN E_ROL01499 (Spreadsheet titled *'2017 Jan 3rd price list - [>].XLSX'*).

are expecting systems to be updated with this new pricelist at 10:00am on Monday’.⁴⁸⁹

- 4.131 On 9 January 2017, [X] sent an internal [Reseller 1] email [X].⁴⁹⁰
- 4.132 The CMA concludes that [Reseller 1] implemented the new Minimum Prices at the required time, and monitored other MI Resellers’ adherence to them, further to its understanding with Roland UK that it and other MI Resellers would comply with the Roland Pricing Policy. As noted at paragraph 4.49 above, [Reseller 1, Employee 1] told the CMA that *‘It was my understanding that between the period 2011-2018 that if we advertised Roland products at less than the suggested retail price we would lose some of the discounts form [sic] Roland*’.⁴⁹¹
- 4.133 The evidence for late 2017 again shows that the Roland Pricing Policy extended to Roland UK setting the Minimum Price in relation to promotions and that [Reseller 1] understood it had to comply with these Minimum Prices. For example:
- On 1 November 2017, [Roland UK, Employee 4] sent an email under the subject line *‘TD11 promo price’* to [Reseller 1, Employee 1], stating, *‘We are looking to have a push on the TD11K and KV [electronic drum kits] over the next few months, so we have an immediate RSP and trade price change (attached). This can go live now.’* [Roland UK, Employee 4] attached an Excel spreadsheet price list titled *‘RUK Price List - TD-11 Promotion.xlsx’* which contained pricing for the Relevant Products TD11K (V-Compact series electronic drum kit) and TD11KV (also a V-Compact series electronic drum kit) – *‘RRP inc VAT’, ‘RRP Ex VAT’, ‘Promo RSP’* and *‘Dealer Promo Price’*. [X] then forwarded [Roland UK, Employee 4]’s email to [X].^{492 493}

⁴⁸⁹ URN E_ROL01498 (Email from [Roland UK, Employee 4] to [Reseller 1, Employee 1], [Reseller 1, Employee 4] and [Reseller 1, Employee 3] dated 5 January 2017).

⁴⁹⁰ URN E_ROL01495 ([X] of [Reseller 1] dated 9 January 2017) and attachment URN E_ROL01496 (Spreadsheet titled *‘2017 Jan 3rd price list - [X].XLSX’*).

⁴⁹¹ URN C_ROL02310 (Response dated 31 January 2020 to the s.26 Notice to [Reseller 1, Employee 1] dated 30 January 2020).

⁴⁹² URN E_ROL02889 (Email from [Reseller 1, Senior Employee 2] to [Roland UK, Senior Employee 3] dated 1 November 2017) and attachment URN E_ROL02887 (Spreadsheet titled *‘RUK v - TD11 Promotion.xlsx’*). [Emphasis added by the CMA] [Text in square brackets added by the CMA].

⁴⁹³ When asked about this email in interview, [Reseller 1, Employee 1] stated that he had notified [Reseller 1]’s website manager, of the price changes because she would have to *‘change the price on the website, force it through so that it changed as soon as possible, because, obviously, where there’s a price – price decrease like this, you – you want to – you want to get it out to your customers as quickly as possible, to maximise its sales.’* URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.187, lines 22-25; p.188, lines 1-8.

- On 21 November 2017, [Roland UK, Employee 4] emailed [Reseller 1, Employee 1] and [Reseller 1, Employee 3] stating, *'Apologies for the late notice on this, but we will be going live with some black Friday deals (attached). These are products that we have decided upon due to good stocks in Europe. The black Friday pricing runs from Thursday at 4.00pm to Monday Midday, however products can be purchased now at the attached trade. If you have any questions, please let me know.'*⁴⁹⁴ One of the items listed (EC-10M – Cajon Module)⁴⁹⁵ was a Relevant Product.

4.134 As explained at paragraphs 4.110 and 4.127 above, [Reseller 1, Employee 1] told the CMA that *'as a matter of course we would implement the suggested retail prices to maintain our discounts.'*⁴⁹⁶ The CMA concludes that the evidence, including the emails above, shows that [Reseller 1] understood it had to comply by amending the Minimum Price at the required time and for the requested duration in accordance with the Roland Pricing Policy and did so.

[Reseller 1] raising its pricing to the Minimum Price in accordance the Roland Pricing Policy following a request to do so from Roland UK

4.135 As in the previous years,⁴⁹⁷ internal Roland UK communications show that Roland UK monitored [Reseller 1]'s compliance with the Roland Pricing Policy and [Reseller 1] increased its price to the Minimum Price, further to instruction from Roland UK staff. For example:

- On 30 June 2017 at 10:25, [Roland UK, Employee 5] asked his colleagues [Roland UK, Employee 1], [Roland UK, Employee 4], [Roland UK, Employee 11], [Roland UK, Senior Employee 5] and [Roland UK, Employee 19] via a WhatsApp group chat message,⁴⁹⁸ *'Any news on the TD30K guys. [Reseller] sorted no one else yet. Thanks'*. At 11:21 that

⁴⁹⁴ E_ROL02902 (Email from [Reseller 1, Employee 1] to [Roland UK, Employee 4], copying [Reseller 1, Employee 3] dated 21 November 2017).

⁴⁹⁵ Roland UK's website describes a Cajon Module as follows: *'The Cajon Module allows you to explore the wide range of tones available on the EC-10 from your own trusty acoustic Cajon. This is done by attaching the EC10M's Mic to the sound hole of your acoustic cajon so that the module can trigger a range of tones as you play, layering these sounds with the natural tone of your cajon.'*

⁴⁹⁶ URN C_ROL02310 (Response dated 31 January 2020 to the s.26 Notice to [Reseller 1, Employee 1] dated 30 January 2020), response to question 2, p.1.

⁴⁹⁷ See paragraphs 4.64 to 4.67, 4.73 to 4.76, 4.78, 4.79, 4.81, 4.84, 4.86, 4.89 to 4.91, 4.103 and 4.104.

⁴⁹⁸ When [Roland UK, Employee 1] was asked in interview about what Roland UK intended this WhatsApp group to be used for, he explained that it is intended as another way of communication where *'there's a new price list.'* [Roland UK, Employee 1] also stated that the above WhatsApp chat *'is about, "We've got a new pricelist; make sure everyone's aware of our new pricelist"'*. He also explained that the membership of this particular WhatsApp group was made up of all of Roland UK's [§<] in the UK [both the [§<] territories]. URN (Transcript of interview with [Roland UK, Employee 1] dated 13 January 2020), p.137, lines 13-15; p.146, lines 18 and 22, and p.147, line 3. [Text in square brackets added by the CMA].

day, [Roland UK, Employee 4]⁴⁹⁹ stated, '*Spoke to all of my TD30K [V-pro Series electronic drum kit] dealers, and they should be changing now*'.⁵⁰⁰

- Later that day, at 15:05, [Roland UK, Employee 5] messaged to say, '*I really need help with Google*'⁵⁰¹ and listed resellers and products, including a Relevant Product '[Reseller 1] – TD30K'. [Roland UK, Employee 5] later asked, '*Do we know what's happening with [Reseller] and [Reseller 1] on TD30K?*'. Within 30 seconds, [Roland UK, Employee 4] replied, '*I'll chase them again, I've already spoken to them twice today*'.⁵⁰²
- On 2 July 2017 at 16:32:59, [Roland UK, Employee 5], again in the same internal Roland UK WhatsApp group chat, asked, '[Reseller] [Reseller 1] TD30K'.⁵⁰³ By the afternoon of 4 July 2017, he no longer asked about [Reseller 1] on the same product: '*Any idea on [Reseller] and [Reseller] on TD30K?*'.⁵⁰⁴

⁴⁹⁹ URN E_ROL00175 (WhatsApp message exchange between [Roland UK, Employee 5] and other Roland UK colleagues dated 30 June 2017), p. 55. Note that while the device upon which these messages were held is entitled '[Redacted]' Roland UK and Roland Europe explained that it was used by several of its staff, including [Roland UK, Employee 4] whose mobile number is [Redacted]. URN E_ROL02137 (August 2018 Oral Proffer), p.21.

⁵⁰⁰ URN E_ROL00175 (WhatsApp message exchange between [Roland UK, Employee 5] and other Roland UK colleagues dated 30 June 2017), p. 55. The CMA considers this message, listed as being from '[Redacted]', to come from [Roland UK, Employee 4]. [Text in square brackets added by the CMA].

⁵⁰¹ URN E_ROL00175 (WhatsApp message exchange between [Roland UK, Employee 5] and other Roland UK colleagues dated 30 June 2017), pp. 59-60. In the CMA's view, [Roland UK, Employee 5]'s statement, '*I really need help with Google*', shows that Roland UK was actively monitoring its MI Resellers' online advertising and, on this particular morning, [Roland UK, Employee 5] was flagging to his colleagues that [Reseller 1] and other MI Resellers were showing on Google as advertising the TD30K at the old price, and therefore not immediately complying with Roland UK's new price. This interpretation of Roland UK's efforts to have MI Resellers, including [Reseller 1], change their online retail price is supported by contemporaneous email evidence. Around four minutes before the 11:21:26 internal Roland UK WhatsApp message above, [Roland UK, Employee 4] emailed [Reseller 1, Employee 1] stating, '*[ff]rom today the TD30K is going up in price, here are the details.*' This email included the 'RSP' price for this Relevant Product. URN E_ROL02838 (Email from [Roland UK, Employee 4] to [Reseller 1, Employee 1] dated 30 June 2017). The CMA considers these internal Roland UK WhatsApp communications together with [Roland UK, Employee 4]'s email to [Reseller 1] show that Roland UK was actively monitoring and contacting [Reseller 1] to ensure that the new retail price instruction in relation to the TD30K was implemented on 30 June 2017, as requested.

⁵⁰² URN E_ROL00175 (WhatsApp message exchange between [Roland UK, Employee 4] and [Roland UK, Employee 5] dated 30 June 2017), p.64. The Relevant Product was the TD30K V-Pro series. The CMA understands that the message from '[Redacted]@s.whatsapp.net [Redacted]' was sent from [Roland UK, Employee 4]'s mobile phone number +[Redacted].

⁵⁰³ URN E_ROL00175 (WhatsApp message exchange between [Roland UK, Employee 1] and [Roland UK, Employee 5] dated 30 June 2017), p.65.

⁵⁰⁴ URN E_ROL00175 (WhatsApp Messages from [Roland UK, Employee 5] dated 2 July 2017), p.65.

- The CMA notes that an InsiteTrack report dated 2 July 2017 did not show [Reseller 1] advertising the TD30K below the Minimum Price.⁵⁰⁵

4.136 The CMA concludes that these internal Roland UK communications, together with the InsiteTrack report dated 2 July 2017, show that [Reseller 1] agreed to revert to the Minimum Price upon instruction from Roland UK by raising its price for the Relevant Product, in accordance with the Roland Pricing Policy.

2018

4.137 The evidential picture for 2018 continues to support the CMA's finding of an ongoing agreement and/or concerted practice between Roland UK and [Reseller 1], whereby [Reseller 1] adhered to the Roland Pricing Policy. In 2018, the supporting evidence comprises:

- [Reseller 1] adjusting its prices in accordance with the Roland Pricing Policy to the new Minimum Prices issued by Roland UK for the Relevant Products; and
- [Reseller 1] monitoring other MI Resellers' prices and reporting non-compliance with the Roland Pricing Policy to Roland UK.

[Reseller 1] adjusting its prices in accordance with the Roland Pricing Policy to the new Minimum Prices issued by Roland UK for the Relevant Products

4.138 The evidence in 2018 shows that [Reseller 1] and Roland UK continued to have an understanding that [Reseller 1] would comply with the Roland Pricing Policy by implementing new Minimum Prices.

4.139 For example, on 1 March 2018, [Roland UK, Employee 4] sent [Reseller 1, Employee 1], [Reseller 1, Employee 4] and [Reseller 1, Employee 3] a new price list noting that *'Just in case you have not received this, I'm forwarding the below that has our RSP price list that will go live on March the 5th'*.⁵⁰⁶

4.140 In interview, [Reseller 1, Employee 1] told the CMA, when asked about what would have happened if [Reseller 1] had not implemented this pricelist, *'there wouldn't have been anything explicitly said in this. I think by this time it*

⁵⁰⁵ URN C_ROL02081.144 (Email from InsiteTrack Email Alert to [Roland UK, Senior Employee 3] dated 2 July 2017).

⁵⁰⁶ URN E_ROL00101 (Email from [Roland UK, Employee 4] to [Reseller 1, Employee 1], [Reseller 1, Employee 4] and [Reseller 1, Employee 3] dated 2 March 2018) and attachment URN E_ROL00102 (Spreadsheet titled *'RUK Price List 05-Mar-18.xlsx'*).

*was just a matter of course that prices would change, (...), so those prices, we would just have uploaded them.*⁵⁰⁷ As noted above, [Reseller 1, Employee 1] told the CMA that it complied in order not to lose discounts from Roland.⁵⁰⁸

[Reseller 1] monitoring other MI Resellers' prices and reporting non-compliance with the Roland Pricing Policy to Roland UK

- 4.141 [Reseller 1] also continued to monitor other MI Resellers' adherence to the Roland Pricing Policy in 2018. On 20 March 2018, [Reseller 1, Employee 1] sent an email to [Roland UK, Employee 4] which provided a link to a Relevant Product with no accompanying message. The link was to [Reseller]'s website advertising Roland's TD25KV (V-drums).⁵⁰⁹
- 4.142 In interview, when [Reseller 1, Employee 1] was asked why he was sending this email that consisted solely of the link to [Reseller]'s listing for this drum kit, he stated, *'Again, I can only presume that, (...) they were selling this in a manner that was against, (...) what we'd been instructed to'* and that [Reseller] was *'Probably underpricing'* this product.⁵¹⁰
- 4.143 The CMA concludes that this email indicates that [Reseller 1, Employee 1] anticipated that if [Reseller 1] complained to Roland UK about other MI Resellers' prices being below the Minimum Price, Roland UK would contact those MI Resellers to ensure they reverted to the Minimum Price.

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

- 4.144 In view of the foregoing, the CMA concludes that, throughout the Relevant Period:
- [Reseller 1] generally complied with the Roland Pricing Policy due to a credible threat of sanctions;
 - [Reseller 1] understood that, under the Roland Pricing Policy, it was required to amend its prices to at least the Minimum Prices set out within price lists issued by Roland UK from time to time. In order to ensure it was complying with the Roland Pricing Policy, [Reseller 1] occasionally

⁵⁰⁷ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.194, lines 16-18.

⁵⁰⁸ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.195, lines 1-2.

⁵⁰⁹ URN E_ROL02981 (Email from [Reseller 1, Employee 1] to [Roland UK, Employee 4] dated 20 March 2018).

⁵¹⁰ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.196, lines 16-17 and 22-26, and p.198, lines 1-4.

sought to confirm what the Minimum Price was for certain Relevant Products;

- Roland UK monitored [Reseller 1]’s pricing and on the few occasions where [Reseller 1] was not adhering with the Roland Pricing Policy, Roland UK instructed [Reseller 1] to follow the Roland Pricing Policy with regard to the pricing of Relevant Products. [Reseller 1] complied with these instructions (albeit not always immediately). This tended to happen where there was an oversight by [Reseller 1] or on the limited occasions when [Reseller 1] was ‘cheating’; and
- On multiple occasions throughout the Relevant Period, [Reseller 1] reported other MI Resellers to Roland UK for advertising and/or selling the Relevant Products online at a price below the Minimum Price. This further confirms that there was an understanding between [Reseller 1] and Roland UK that the Roland Pricing Policy applied to the vast majority of MI Resellers, including [Reseller 1].

4.145 The CMA has taken into account the context of the arrangements between Roland UK and [Reseller 1], including the evidence that Roland UK staff were aware of the potential illegality of implementing and enforcing the Roland Pricing Policy with MI Resellers, including [Reseller 1], and were careful not to communicate pricing instructions explicitly in writing.

4.146 In addition, the nature of the Roland Pricing Policy was such that Roland 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. This limited the need for written or oral communication about the Roland Pricing Policy (and therefore the amount of written evidence relating to it).

4.147 In light of the above, the CMA finds a concurrence of wills between [Reseller 1] and Roland 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:

- Roland 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 sanctions if [Reseller 1] failed to comply; and
- [Reseller 1]:
 - understood the instructions from Roland UK and the potential consequences if it did not comply; and

- in practice, agreed to abide by and/or implemented Roland 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 Roland UK.

- 4.148 In the CMA's view, this constitutes an agreement for the purposes of the Chapter I Prohibition and/or Article 101 TFEU.
- 4.149 In the alternative, the CMA finds that the arrangements identified above constituted at least a concerted practice between Roland UK and [Reseller 1], on the basis that [Reseller 1] knew Roland UK's wishes as regards the Roland 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 MI Resellers.
- 4.150 The CMA finds that this constitutes a concerted practice for the purposes of the Chapter I prohibition and/or Article 101 TFEU.
- 4.151 In the remainder of this Decision, the agreement and/or concerted practice between Roland 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'.
- 4.152 The CMA finds that the duration of the Agreement was 7 years and 3 months and 10 days (from 7 January 2011 to 17 April 2018).

D. Object of Preventing, Restricting or Distorting Competition

- 4.153 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

- 4.154 The Chapter I Prohibition and Article 101 TFEU prohibit agreements between undertakings which have as their object the prevention, restriction or distortion of competition.
- 4.155 The term 'object' in both prohibitions refers to the sense of 'aim', 'purpose', or 'objective', of the coordination between undertakings in question.⁵¹¹

⁵¹¹ See, for example, respectively: Case 56/64 *Consten & Grundig v Commission*, EU:C:1966:41, p. 343 ('...[s]ince the agreement thus aims at isolating the French market... it is therefore such as to distort

- 4.156 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.⁵¹²
- 4.157 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.⁵¹³ The Court of Justice has characterised as the ‘*essential legal criterion*’ for a finding of anti-competitive object that the coordination between undertakings ‘*reveals in itself a sufficient degree of harm to competition*’ such that there is no need to examine its effects.⁵¹⁴
- 4.158 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.⁵¹⁵
- 4.159 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.⁵¹⁶
- 4.160 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.⁵¹⁷

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.

⁵¹² 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 *Cityhook Limited v Office of Fair Trading* [2007] CAT 18, at 269.

⁵¹³ 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.

⁵¹⁴ *Cartes Bancaires*, paragraphs 49 and 57. See also *Toshiba*, paragraph 26.

⁵¹⁵ *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.

⁵¹⁶ *Cartes Bancaires*, paragraph 54; affirmed in C-286/13 P *Dole v Commission*, EU:C:2015:184, paragraph 118.

⁵¹⁷ *BIDS*, paragraph 21. See also *Ping Europe Limited v CMA* [2018] CAT 13 (*Ping*), paragraphs 101–105, where the CAT confirmed that its approach follows that set out by the Court of Justice in, e.g., *Cartes Bancaires*. More specifically, the CAT stated that ‘*the Tribunal approaches the issue of object infringement on the basis that an*

Resale Price Maintenance

- 4.161 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*’.
- 4.162 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*’.⁵¹⁸ RPM has been found consistently in EU and national decisional practice (including the UK) to constitute a restriction of competition by object.⁵¹⁹ The Court of Justice has also held that the imposition of fixed or minimum resale prices on distributors is restrictive of competition by object.⁵²⁰
- 4.163 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.⁵²¹ 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

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.’

⁵¹⁸ Vertical Guidelines, paragraph 48.

⁵¹⁹ 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, paragraphs 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 *Online resale price maintenance in the bathroom fittings sector (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).

⁵²⁰ 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.

⁵²¹ 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.

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).⁵²²

- 4.164 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],*⁵²³ *threats, intimidation, warnings, penalties or incentives*'.⁵²⁴ This would include, for example, threats to delay or suspend deliveries or to terminate supply in the event that the retailer does not observe a given price level.⁵²⁵ Other measures include the withdrawal of credit facilities, prevailing on other dealers not to supply⁵²⁶ and threatened legal action, pressuring telephone calls and letters.⁵²⁷
- 4.165 RPM can be achieved not only directly, for example, via a contractual provision that directly sets a fixed or minimum resale price,⁵²⁸ but also indirectly.⁵²⁹ 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.⁵³⁰
- 4.166 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

⁵²² Order in Case C-506/07 *Lubricantes y Carburantes Galaicos SL v GALP Energía España SAU*, EU:C:2009:504; 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.

⁵²³ Vertical Guidelines, paragraph 48. [Text in square brackets added by the CMA].

⁵²⁴ 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 Decision 2001/711/EC *Volkswagen* (COMP/F-2/36.693) [2001] OJ L262/4 (which includes warnings against deep discounting).

⁵²⁵ 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.

⁵²⁶ Case 86/82 *Hasselblad (GB) Limited v Commission*, EU:C:1984:65.

⁵²⁷ 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.

⁵²⁸ 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.

⁵²⁹ See Vertical Guidelines, paragraph 48.

⁵³⁰ 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).

price level.⁵³¹ However, the use of such measures does not, in itself, constitute RPM.⁵³²

Price advertising, advertising and other similar restrictions

4.167 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.⁵³³

4.168 The relevant restrictions have taken different forms in different cases, including:

- guidelines issued to retailer requiring them to use (in shops or outside) the supplier's recommended list prices;⁵³⁴
- a contractual requirement not to produce advertising material which includes prices different from the supplier's price list without the supplier's approval;⁵³⁵
- 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);⁵³⁶

⁵³¹ 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.

⁵³² Vertical Guidelines, paragraph 48.

⁵³³ 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](#) (OFT408, December 2004), adopted by the CMA Board, paragraph 3.14.

⁵³⁴ Commission Decision 16 July 2003 PO/Yamaha (COMP/37.975). *Infra*.

⁵³⁵ *Ibid*.

⁵³⁶ 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*.

- 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;⁵³⁷ and
- a prohibition on dealers mentioning discounts or price reductions in any advertising materials, advertisements or promotional campaigns.⁵³⁸

4.169 The *Hasselblad*⁵³⁹ and *Yamaha*⁵⁴⁰ decisions stress the importance of price advertising in terms of communicating with customers and in encouraging price competition.

4.170 In *Yamaha*,⁵⁴¹ 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.

4.171 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.'⁵⁴²

4.172 Meanwhile, the distribution agreement with dealers in Italy prohibited dealers from publishing '*in whichever form*' prices which differed from Yamaha's

⁵³⁷ Case 73/74 *Groupement des Fabricants de Papiers Peints de Belgique and others v Commission* EU:C:1975:160.

⁵³⁸ Agreements between Lladró Comercial SA and UK retailers fixing the price for porcelain and stoneware figures, CP/0809-01, 31 March 2003.

⁵³⁹ Commission Decision 82/367/EEC *Hasselblad* (IV/25.757) [1982] OJ L161/18 (*Hasselblad*).

⁵⁴⁰ Commission Decision 16 July 2003 *PO/Yamaha* (COMP/37.975) (*Yamaha*).

⁵⁴¹ *Ibid.*

⁵⁴² *Ibid.*, paragraphs 125–126. [Text in square brackets added by the CMA].

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 [Yamaha], nor by indicating prices in their shops different from those indicated by [Yamaha]'.⁵⁴³

- 4.173 The Commission concluded that Yamaha's agreements had the object of influencing resale prices, thereby restricting or distorting price competition.
- 4.174 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'.⁵⁴⁴
- 4.175 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 of the restrictions 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'.⁵⁴⁵
- 4.176 In *Hasselblad*, 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*'.⁵⁴⁶ 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:⁵⁴⁷
- 'This extensive right of intervention enables Hasselblad (GB) to prevent actively competing and price-cutting dealers (...) from advertising their

⁵⁴³ *Ibid*, paragraphs 133–135. [Text in square brackets added by the CMA].

⁵⁴⁴ Case 73/74 *Groupeement des Fabricants de Papiers Peints de Belgique and others v Commission*, EU:C:1975:160.

⁵⁴⁵ *Yamaha*, paragraph 125.

⁵⁴⁶ *Hasselblad*, paragraph 38.

⁵⁴⁷ *Ibid*, paragraph 60.

activities, the more so as Hasselblad (GB) is not required to give any justification for its censorship measures.’

- 4.177 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 authorised dealers*’.⁵⁴⁸ 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,⁵⁴⁹ 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.⁵⁵⁰
- 4.178 In *Lladró*,⁵⁵¹ 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 removes 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*’.⁵⁵²
- 4.179 Further, in *Commercial refrigeration*⁵⁵³ 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

⁵⁴⁸ *Ibid*, paragraph 66.

⁵⁴⁹ Case 86/82 *Hasselblad (GB) Limited v Commission*, EU:C:1984:65, paragraph 43.

⁵⁵⁰ 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>.

⁵⁵¹ Agreements between Lladró Comercial SA and UK retailers fixing the price for porcelain and stoneware figures, CP/0809-01, 31 March 2003.

⁵⁵² *Ibid*, paragraph 70.

⁵⁵³ *Commercial refrigeration*, 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 is a clear link between the advertised price and the resale price when goods are purchased online.

determine their online sales price for the relevant products at a price below the MAP.⁵⁵⁴

II. Legal Assessment of the Agreement

4.180 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 set out below of the Agreement's content and objectives as well as the legal and economic context in which it operated.

Content of the Agreement

4.181 As set out above, in the CMA's view:

- The Agreement between Roland 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 Roland Pricing Policy.
- [Reseller 1]'s commitment to adhere to the Roland Pricing Policy was reinforced by measures on the part of Roland UK and that of other MI Resellers to monitor the market and identify MI Resellers who advertised or sold the Relevant Products online below the Minimum Price, including (in case of Roland UK and some MI Resellers) by way of using automated price tracking software. It was also reinforced by a credible threat of sanctions by Roland UK for non-compliance with the Roland Pricing Policy. As set out in Section 3.C.IV and paragraphs 4.45 to 4.52 above, Roland UK threatened [Reseller 1] with certain sanctions (e.g. the threat of losing valuable discounts)⁵⁵⁵ in relation to non-adherence to the Roland Pricing Policy. Such threats were significant to [Reseller 1]'s business: for example, [Reseller 1] considered '*Roland to be the most important supplier percussion wise*' (see paragraph 4.51 above).

4.182 In the CMA's view, insofar as the Agreement related to the price at which [Reseller 1] could advertise the Relevant Products online (in terms 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

⁵⁵⁴ *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.

⁵⁵⁵ Paragraphs 4.58 to 4.63 above.

[Reseller 1] online (i.e. 'click-to-buy' sales), the advertised price was typically the price paid by the customer for the Relevant Products, that is, the sales price.

- 4.183 As set out above, the CMA concludes that the restrictions on [Reseller 1] setting its own resale price for the Relevant Products applied to the sale of Relevant Products by [Reseller 1] (sold individually) during the Relevant Period and, from January 2014 to the end of the Relevant Period, also to the sale of Relevant Product Bundles.
- 4.184 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].
- 4.185 Both at the EU and at the national level (including the UK), RPM has consistently been found to have the object of preventing, restricting or distorting competition.⁵⁵⁶

Objectives of the Agreement

- 4.186 In the CMA's view, the main objective of the Agreement (and the Roland Pricing Policy more generally) was to fix a Minimum Price at which [Reseller 1] (and other MI Resellers adhering to the Roland Pricing Policy) would sell the Relevant Products. 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;⁵⁵⁷
- reduce price competition between [Reseller 1] and other MI Resellers of the Relevant Products who adhered to the Roland Pricing Policy;⁵⁵⁸ and
- stabilise prices within the UK, including in respect of MI Resellers based in other EU Member States selling into the UK,⁵⁵⁹

thereby protecting or improving the margins of MI Resellers of the Relevant Products who adhered to the Roland Pricing Policy, including [Reseller 1].⁵⁶⁰

- 4.187 The CMA concludes that, in the absence of the Agreement, [Reseller 1] would have been able to determine independently its retail prices for the

⁵⁵⁶ See to this effect, for example, the recent Commission decisions of 24 July 2018 in cases AT.40465 *Asus*, (e.g. at paragraph 107); AT.40469 *Denon & Marantz*, (e.g. at paragraph 93 *et seq.*); AT.40181 *Philips*, (e.g. at paragraph 61) and AT. 40182 *Pioneer*, (e.g. at paragraph 152).

⁵⁵⁷ See paragraph 3.34 above.

⁵⁵⁸ See paragraph 3.34 above.

⁵⁵⁹ See paragraph 3.53 and 3.56 above.

⁵⁶⁰ See paragraph 4.30 above.

Relevant Products. In this way, it would have had the freedom to attract and win customers (including by using the internet) by signalling 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.

4.188 As set out in paragraph 3.46 above, the evidence demonstrates that Roland UK's rationale for introducing the Roland Pricing Policy, which formed the basis for the Agreement with [Reseller 1], was at least twofold:

- it was designed to enable Roland UK's MI Resellers to achieve attractive margins through the maintenance of high and stable pricing, thus increasing the attractiveness of the Roland brand and encouraging MI Resellers to stock and sell the Relevant Products; and
- in doing so, it aimed to help Roland UK secure, maintain and/or improve its UK market position in the Relevant Products relative to its competitors, in particular by maintaining the brand value of the Relevant Products.

4.189 The evidence shows that Roland UK was aware that the implementation of the Roland Pricing Policy (the basis for the Agreement) would lead to potentially illegal restrictions on price. Various documents on the CMA's file show that wherever possible, Roland UK assiduously tried to avoid putting instructions to MI Resellers (including [Reseller 1]) or threats regarding potential sanctions explicitly in writing.⁵⁶¹

4.190 The CMA considers that this 'subjective' awareness of the necessary consequences of the Roland 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

4.191 Section 3.B. above provides an overview of the UK electronic drum 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;⁵⁶²

⁵⁶¹ See paragraphs 4.145 above.

⁵⁶² See section 3.B.I above.

- the conditions of the functioning and structure of the market;⁵⁶³ and
- the relevant legal and economic context.⁵⁶⁴

4.192 The CMA considers that the legal and economic context in which electronic drum kits, related components and accessories 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 the fact that product pricing is one of the main factors on which MI Resellers compete.

Conclusion on the object of the Agreement

4.193 For the reasons set out above, the CMA finds that the Agreement had as its object the prevention, restriction or distortion of competition (through RPM) in the supply of the Relevant Products within the UK.

E. Appreciable Restriction of Competition

4.194 For the reasons set out below, the CMA finds that the Agreement appreciably prevented, restricted or distorted competition for the supply of electronic drums 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

4.195 An agreement that is restrictive of competition by ‘object’ will only fall within the Chapter I Prohibition or Article 101 TFEU if its effect on competition is appreciable.⁵⁶⁵

4.196 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.⁵⁶⁶ 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

⁵⁶³ See section 3.B.III and 3.B.V above.

⁵⁶⁴ See section 3.B above.

⁵⁶⁵ 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 [OFT401](#) (December 2004), paragraph 2.15.

⁵⁶⁶ 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.

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 on competition.⁵⁶⁷

II. Legal assessment

4.197 As set out above, the CMA has concluded that the Agreement had the object of preventing, restricting or distorting competition (see paragraph 4.193 above). Given that (in the CMA's view) the Agreement was also capable of affecting trade within the UK (see paragraph 4.207 to 4.214 below), the CMA finds that the Agreement constituted, by its very nature, an appreciable restriction of competition in the retail sale of electronic drum kits, related components and accessories for the purposes of the Chapter I Prohibition and Article 101 TFEU.

F. Effect on Trade between EU Member States

4.198 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

4.199 Article 101 TFEU applies where an agreement or concerted practice may affect trade between EU Member States appreciably.⁵⁶⁸

4.200 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'*.⁵⁶⁹

4.201 When assessing whether an agreement may affect trade between Member States, the CMA will have regard to the approach set out in the Effect on Trade Guidelines.⁵⁷⁰

⁵⁶⁷ See, for example, *Carewatch and Care Services Limited v Focus Caring Services Limited and Others* [2014] EWHC 2313 (Ch), paragraph 148 *et seq.*

⁵⁶⁸ Case 22/71 *Béguelin Import Co. v S.A.G.L. Import Export*, EU:C:1971:113, paragraph 16.

⁵⁶⁹ Case 56/65 *Société Technique Minière v Maschinenbau Ulm GmbH*, EU:C:1966:38, p.249. [Text in square brackets added by the CMA].

⁵⁷⁰ [OFT401](#) (December 2004), paragraph 2.23, and Effect on Trade Guidelines.

- 4.202 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.⁵⁷¹ 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.⁵⁷²
- 4.203 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.⁵⁷³
- 4.204 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.⁵⁷⁴ 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.⁵⁷⁵
- 4.205 There are no general quantitative rules covering all categories of agreements indicating when trade between Member States is capable of being appreciably affected.⁵⁷⁶ However, the Commission holds the view 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

⁵⁷¹ Effect on Trade Guidelines, paragraph 28, citing Case C-250/92 *Gottrup-Klim e.a. Grovvareforeninger v Dansk Landbrugs Grovvarereselskab AmbA*, EU:C:1994:413, paragraph 54.

⁵⁷² Effect on Trade Guidelines, paragraphs 28 and 32.

⁵⁷³ 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 prevailing in other Member States, this price level is only sustainable if imports from other Member States can be controlled.

⁵⁷⁴ Effect on Trade Guidelines, paragraph 45.

⁵⁷⁵ Effect on Trade Guidelines, paragraph 45.

⁵⁷⁶ Effect on Trade Guidelines, paragraph 46.

- 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.⁵⁷⁷

4.206 If an agreement does not fall within the criteria set out above, a case by case analysis is necessary.⁵⁷⁸ 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.⁵⁷⁹

II. Legal assessment

4.207 The CMA finds that the Agreement was capable of appreciably affecting trade between EU Member States. The CMA has based its finding on the following assessment.

Agreement capable of affecting trade between Member States

4.208 As set out above, in the CMA's view, the Agreement restricted the price at which [Reseller 1] could sell the Relevant Products (tradable products) online to consumers in the UK and potentially beyond and therefore led to RPM.⁵⁸⁰ 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.⁵⁸¹ Based on this, the CMA concludes that the Agreement was capable of affecting trade between Member States.

⁵⁷⁷ 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 even 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.

⁵⁷⁸ 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.

⁵⁷⁹ Effect on Trade Guidelines, paragraph 45.

⁵⁸⁰ See paragraph 4.184 above.

⁵⁸¹ Effect on Trade Guidelines, paragraph 88.

Appreciability

4.209 In the CMA's view, the appreciability criterion, which is part of the effect on trade test, is also met in this case.

4.210 The CMA considers 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 rule are not met in this case. While the turnover limb of the NAAT test⁵⁸² is met,⁵⁸³ the market share threshold⁵⁸⁴ is not met since Roland UK's market share in the (upstream) market for the supply of electronic drum kits, related components and accessories was at least [10-15]%⁵⁸⁵ in 2018 and therefore exceeded 5%.

4.211 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: Roland UK holds a significant share of the market in the supply of electronic drum kits, related components and accessories. The CMA estimates Roland's share of supply to be at least [10-15]%;⁵⁸⁶
- in relation to [§<], [Reseller 1] was one of the top 5 resellers of Roland-branded products in the UK;⁵⁸⁷

⁵⁸² Aggregate annual Community turnover of the supplier in the products covered by the agreement not exceeding 40 million euro.

⁵⁸³ In the CMA's view, the correct interpretation of this test is that only the value of sales of the Relevant Products from Roland 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 drums and percussion instruments supplied to [Reseller 1] by Roland UK (for resale) in 2017 was £[§<]. See URN C_ROL00135 (Response dated 17 April 2018 to the RFI dated 17 April 2018). Even if, on the basis of a more liberal interpretation, in calculating the relevant turnover, regard was had to the entirety of Roland UK's turnover in electronic drum kits, related components and accessories in the UK (as the turnover in the type of products covered by the agreement), in 2017 the relevant turnover would be no more than around £[0-10] million – URN C_ROL02490 (Annex 6 to Response dated 20 March 2020 to the First December 2019 RFI)).

⁵⁸⁴ (Aggregate) market share of the parties not exceeding 5% on any relevant market affected by the agreement.

⁵⁸⁵ The CMA does not have any exact market share or market value figures for the (upstream) market for the supply of percussion instruments to UK resellers. The CMA has based this [10-15]% figure on the following assumptions: (1) Roland's 2018 turnover in the Relevant Products was approximately £[0-10] million – URN C_ROL02490 (Annex 6 to Response dated 20 March 2020 to the First December 2019 RFI); (2) percussion instruments accounted for [0-10]% of industry revenue (£440.6m) in 2018/9, making the total revenue of the retail sale of percussion instruments in the UK in 2018/19 approximately £ [30-40] million – URN E_ROL03309 (IBISWorld Report, March 2019), p.13.

⁵⁸⁶ Please see footnote 585 above for how this market share figure has been calculated.

⁵⁸⁷ URN C_ROL00135 (Response dated 17 April 2018 to the RFI dated 17 April 2018).

- there is also evidence that a number of resellers based in other EU Member States were selling the Relevant Products to consumers located in other EU Member States, as well as the UK;⁵⁸⁸
- some UK MI Resellers complained about these MI Resellers in other EU Member States undercutting their own UK prices;⁵⁸⁹
- 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.⁵⁹⁰ In addition, the Commission has previously found evidence of competition across borders in the EEA in relation to MI.^{591 592}

G. Effect on Trade within the UK

4.212 For the reasons set out below, the CMA finds that the Agreement satisfies the test for an effect on trade within the UK.

⁵⁸⁸ URN E_ROL00433 (Email from [Employee of Reseller] to [Roland UK, Employee 1], which was forwarded internally to [Roland UK, Senior Employee 5], dated 10-16 August 2011).

⁵⁸⁹ For example, on 21 May 2012 [Roland UK, Senior Employee 5] sent an email to [Roland UK, Senior Employee 2] under the subject line '[Reseller]', stating,

'Hi [Reseller], just had a conversation with [Employee of Reseller] and [Employee of Reseller] re what they need to do to protect their business. In order for them to keep a hold on their UK business they now feel that they need to compete with [Reseller]. They have sent me a list of the prices they will need to hit, this also shows the effect on their margin. I have asked them not to respond and they have agreed to hold off. They have asked if we could do the following: Ask our European partners to increase their price into the UK [; or] Ask Japan for a better price for the UK'. URN E_ROL00837 (Email from [Roland UK, Senior Employee 5] to [Roland UK, Senior Employee 2] dated 21 May 2012). [Text in square brackets added by the CMA]. See also URN E_ROL01588 (Transcripts of interviews with [Roland UK, Senior Employee 3] and [Roland UK, Senior Employee 2] submitted by Roland on 4 July 2018), p.33: 'In around 2005 [Reseller] began to sell aggressively. (...) [Reseller] would sell in the UK for a massively lower price, amplified by changes to the exchange rate, The retailer would come to Roland and say, "what are you going to do". It is all very well to set guidelines, but they were unable to achieve the suggested margin.'

⁵⁹⁰ See paragraphs 3.48 to 3.49 above.

⁵⁹¹ 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.

⁵⁹² Although there are factors indicating that manufacturers compete to supply electronic drum kits, related components and accessories 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.

I. Key legal principles

- 4.213 The Chapter I Prohibition applies to agreements and concerted practices which may affect trade within the UK.⁵⁹³ 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.⁵⁹⁴
- 4.214 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 respectively. According to the CAT, there is therefore no need to import this concept into domestic competition law.⁵⁹⁵

II. Legal assessment

- 4.215 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 consumers wishing to purchase the Relevant Products from [Reseller 1] throughout the whole of the UK and possibly beyond.
- 4.216 Furthermore, as set out in Section 4.E.II above, the CMA has concluded that the Agreement led to an appreciable restriction of competition. This

⁵⁹³ 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.

⁵⁹⁴ *Agreements and concerted practices*, OFT 401, paragraph 2.25. This guidance was originally published by the OFT and has been adopted by the CMA Board.

⁵⁹⁵ *Aberdeen Journals v Director of Fair Trading* [2003] CAT 11, [459]–[461]. In a subsequent case (*North Midland Construction plc v Office of Fair Trading* [2011] CAT 14, [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.

restriction had its main effect in the UK as the vast majority of [Reseller 1]'s sales were to UK customers. This means that the criterion set out in the CMA's guidance on Agreements and Concerted Practices is also met.⁵⁹⁶

- 4.217 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

- 4.218 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.⁵⁹⁷

- 4.219 The CMA finds that none of the relevant exclusions applies to the Agreements.

II. Block exemption / Parallel exemption

- 4.220 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.

- 4.221 Similarly, pursuant to section 10 of the Act, an agreement is exempt from the Chapter I Prohibition provided that it falls within a category of agreement which is exempt from Article 101(1) TFEU by virtue of a block exemption regulation.⁵⁹⁸

- 4.222 It is for the parties wishing to rely on these provisions to adduce evidence that the exemption criteria are satisfied.⁵⁹⁹ Neither Roland nor [Reseller 1] made any submissions on this point.

- 4.223 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').⁶⁰⁰ 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.⁶⁰¹

⁵⁹⁶ See paragraph 4.213 above.

⁵⁹⁷ 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.

⁵⁹⁸ This is the case irrespective of whether or not it affects trade between EU Member States.

⁵⁹⁹ See by analogy section 9(2) of the Act.

⁶⁰⁰ 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.

⁶⁰¹ See Articles 2–4 of the VABER.

- 4.224 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.'*
- 4.225 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 (i.e. it amounted to RPM).⁶⁰² 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

- 4.226 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.
- 4.227 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;
 - 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.

⁶⁰² See paragraph 4.193 above.

- 4.228 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.⁶⁰³
- 4.229 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).⁶⁰⁴ However, each case ultimately falls to be assessed on its merits.
- 4.230 It is for the party claiming the benefit of exemption to adduce evidence that substantiates its claim.⁶⁰⁵ Neither Roland nor [Reseller 1] made any submissions on this point.

I. Attribution of Liability

I. Key legal principles

- 4.231 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.
- 4.232 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. 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.⁶⁰⁶

⁶⁰³ Commission Notice, *Guidelines on the Application of Article 81(3) of the Treaty* [2004] OJ C101/97 (Article 101(3) Guidelines). See also [OFT401](#) (December 2004), paragraph 5.5.

⁶⁰⁴ Article 101(3) Guidelines, paragraph 46 and Vertical Guidelines, paragraph 47.

⁶⁰⁵ Article 101(3) Guidelines. see paragraphs 51–58; Vertical Guidelines, paragraph 47. See also section 9(2) of the Act.

⁶⁰⁶ 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.

- 4.233 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 a decisive influence over the conduct of its subsidiary.⁶⁰⁷ The Court of Justice has held that where a parent company holds 100% of the capital of an interposed company which, in turn, holds the entire capital of a subsidiary of its group which has committed an infringement of competition law, there is also a rebuttable presumption that that parent company exercises a decisive influence over the conduct of the interposed company and also indirectly, via that company, over the conduct of that subsidiary.⁶⁰⁸
- 4.234 In those circumstances, it is sufficient for the CMA to prove that the subsidiary is wholly owned, either directly or indirectly via an interposed company, 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.⁶⁰⁹
- 4.235 As to the interpretation of ‘decisive influence’, the CAT noted in *Durkan*⁶¹⁰ 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 had when considering the issue of decisive influence ‘*are not limited to commercial conduct but cover a wide range*’.⁶¹¹

⁶⁰⁷ 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.

⁶⁰⁸ See Case C-90/09 P *General Química SA v Commission* EU:C:2011:21, paragraph 88.

⁶⁰⁹ 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. See Case C-90/09 P *General Química SA v Commission* EU:C:2011:21, paragraph 89 in respect of circumstances where there is an interposed company.

⁶¹⁰ *Durkan Holdings Limited and Others v Office of Fair Trading* [2011] CAT 6.

⁶¹¹ *Durkan Holdings Limited and Others v Office of Fair Trading* [2011] CAT 6 [22].

- 4.236 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.⁶¹²
- 4.237 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.⁶¹³ 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 also can be inferred indirectly from the totality of the economic, organisational and legal links between the parent company and the relevant subsidiary.⁶¹⁴ 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.⁶¹⁵
- 4.238 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;⁶¹⁶
 - overlapping senior management;⁶¹⁷
 - the business relationship between the parent company and the subsidiary;⁶¹⁸
 - presence of the parent company in the same business sector;⁶¹⁹

⁶¹² 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.

⁶¹³ T-77/08 *The Dow Chemical Company v Commission* ECLI:EU:T:2012:47 confirmed on appeal C-179/12 *The Dow Chemical Company v Commission* ECLI:EU:C:2013:605.

⁶¹⁴ T-314/01 *Avebe v Commission* ECLI:EU:T:2006:266, paragraph 136 and case-law cited; T-77/08 *The Dow Chemical Company v Commission* ECLI:EU:T:2012:47 paragraph 77; *Durkan v Office of Fair Trading* [2011] CAT 6, paragraphs 19–22.

⁶¹⁵ T-132/07 *Fuji Electric Co. Ltd v Commission* ECLI:EU:T:2011:344, paragraph 183.

⁶¹⁶ Case T-399/09 *Holding Slovenske elektrarne d.o.o. (HSE) v Commission*, EU:T:2013:647, paragraph 38.

⁶¹⁷ Case T-132/07 *Fuji Electric Co. Ltd v Commission*, EU:T:2011:344, paragraph 184.

⁶¹⁸ T-132/07 *Fuji Electric Co. Ltd v Commission* ECLI:EU:T:2011:344, paragraph 184.

⁶¹⁹ Commission Decision 2007/691/EC *Fittings* (COMP/F/38.121) [2007] OJ L283/63.

- sole representation by the parent company in the administrative proceedings;⁶²⁰
- 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;⁶²¹ 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.⁶²²

II. Liability for Infringement

4.239 The legal entity that was directly involved in the Infringement throughout the Relevant Period was Roland UK. Accordingly, the CMA finds Roland UK liable for the Infringement.

4.240 Until 20 February 2014, Roland UK was a wholly-owned subsidiary of Roland Corporation, the ultimate parent company of Roland UK. From 20 February 2014 to the end of the Relevant Period, Roland UK has been a 100% owned subsidiary of Roland Europe, a European holding company which is, in turn, a 100% owned subsidiary of Roland Corporation for the remainder of the Relevant Period.⁶²³

4.241 Based on the legal principles set out in paragraph 4.233 above, this means that:

- Roland Corporation was able to exercise decisive influence over the conduct of Roland UK throughout the Relevant Period; and
- there is a rebuttable presumption that Roland Corporation did in fact exercise decisive influence over the conduct of Roland UK.

III. Conclusion on joint and several liability

4.242 In the light of the above, the CMA concludes that Roland UK and its ultimate parent company, Roland Corporation, formed a single economic unit for the

⁶²⁰ Case C-286/98 *P Stora Kopparbergs Bergslags AB v Commission*, EU:C:2000:630.

⁶²¹ Case T-399/09 *Holding Slovenske elektrarne d.o.o. (HSE) v Commission*, EU:T:2013:647, paragraphs 33–36 and 62–66.

⁶²² *Durkan v Office of Fair Trading* [2011] CAT 6, paragraph 31.

⁶²³ See paragraph 3.5 above.

purposes of the Chapter I Prohibition and/or Article 101 TFEU throughout the Relevant Period. Roland UK and Roland Corporation 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

4.243 The burden of proving an infringement of the Chapter I Prohibition/Article 101 TFEU lies with the CMA.⁶²⁴

4.244 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,⁶²⁵ 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.’⁶²⁶

4.245 The CMA finds that it has discharged its burden of proof in this case.

II. Standard of proof

4.246 The CMA is required to show that an infringement has occurred on the balance of probabilities, which is the civil standard of proof.⁶²⁷ The CAT clarified in the *Replica Football Kit* appeals that⁶²⁸ *‘[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.’*

⁶²⁴ *Napp Pharmaceutical Holdings Ltd and Subsidiaries v Director General of Fair Trading* [2002] CAT 1, [95] and [100]. See also *JJB Sports plc and Allsports Limited 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].

⁶²⁵ 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.

⁶²⁶ *Napp Pharmaceutical Holdings Ltd and Subsidiaries v Director General of Fair Trading* [2002] CAT 1, [110].

⁶²⁷ *Tesco Stores Limited and Others v Office of Fair Trading* [2012] CAT 31 [88].

⁶²⁸ *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].

4.247 The Supreme Court has further clarified that this standard of proof is not connected to the seriousness of the suspected infringement.⁶²⁹ The CAT has also expressly accepted the reasoning in this line of case law.⁶³⁰

4.248 The CMA finds that this standard of proof has been met in relation to the Infringement.

5. THE CMA'S ACTION

A. The CMA's Decision

5.1 On the basis of the evidence set out in this Decision, the CMA finds that Roland 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 7 January 2011 to 17 April 2018.

5.3 The CMA has decided to also attribute liability for Roland UK's Infringement to its ultimate parent company, Roland Corporation, making Roland UK and Roland Corporation jointly and severally liable for the Infringement.

5.4 The remainder of this Section sets out the enforcement action the CMA shall take.

⁶²⁹ *Re S-B (Children)* [2009] UKSC 17 [34]. See also *Re B (Children)* [2008] UKHL 35 [72].

⁶³⁰ *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.⁶³¹

C. Financial penalties

I. General

5.6 Section 36(1) of the Act provides that on making a decision that an agreement⁶³² 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 Roland UK and Roland Corporation (which are part of the same single economic unit) 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 Roland UK and Roland Corporation.

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

5.8 Provided that:

- a. the penalties which the CMA imposes are within the range of penalties permitted by section 36(8) of the Act⁶³³ and the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (the 2000 Order);⁶³⁴ and
- b. the CMA has had regard to its guidance as to the appropriate amount of a penalty (the Penalties Guidance)⁶³⁵ in accordance with section 38(8) of the Act,

⁶³¹ 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.

⁶³² Or, as appropriate, concerted practice or decision by an association of undertakings – see section 2(5) of the Act.

⁶³³ 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).'

⁶³⁴ SI 2000/309, as amended by the Competition Act (Determination of Turnover for Penalties) (Amendment) Order 2004, SI 2004/1259.

⁶³⁵ [CMA's guidance as to the appropriate amount of a penalty](#) (CMA73, 18 April 2018), paragraph 1.10.

the CMA has a margin of appreciation when determining the appropriate amount of a penalty under the Act.⁶³⁶

- 5.9 The CMA is not bound by its decisions in relation to the calculation of financial penalties in previous cases.⁶³⁷ Rather, the CMA makes its assessment on a case-by-case basis,⁶³⁸ having regard to all relevant circumstances and the twin 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 have regard to the seriousness of the infringement and the need to deter both the infringing undertakings and other undertakings that may be considering anti-competitive activities from engaging in them.⁶³⁹

II. Small agreements

- 5.11 Section 39 of the Act provides for limited immunity from penalties in relation to the Chapter I prohibition. In the CMA's view, this does not apply in this case, on the basis that: (a) the combined applicable turnover of Roland UK and [Reseller 1] exceeded the relevant threshold;⁶⁴⁰ and (b) in any event, the

⁶³⁶ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, at [168] and *Umbro Holdings and Manchester United and JJB Sports plc and Allsports Limited v Office of Fair Trading* [2005] CAT 22, at [102].

⁶³⁷ See, for example, *Eden Brown and Others v Office of Fair Trading* [2011] CAT 8, at [78].

⁶³⁸ Penalties Guidance, paragraphs 2.5 and 2.8. See, for example, *Kier Group and Others v Office of Fair Trading* [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*'.

⁶³⁹ The Act, section 36(7A); [Penalties Guidance](#), paragraphs 1.3-1.4.

⁶⁴⁰ Regulation 3 of the Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000 (SI/2000/262) provides that the category of agreements for which no penalty may be imposed under section 39 of the Competition Act comprises '*all agreements between undertakings the combined applicable turnover of which for the business year ending in the calendar year preceding one during which the infringement occurred does not exceed £20 million*'. The combined applicable turnover of Roland UK and [Reseller 1] exceeded £20 million in each of their respective financial years ending in the calendar years 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017. See, for example, reported turnover for the year ended 31 December 2010: URN E_ROL03329 (Roland UK Report and Financial Statements for the year ended 31 December 2010), p.8; URN E_ROL03313 (Roland UK Report and Financial Statements for the year ended 31 December 2011), p.8; URN E_ROL03314 (Roland UK Report and Financial Statements for the year ended 31 December 2012), p.8; URN E_ROL03315 (Roland UK Report and Financial Statements for the year ended 31 December 2013), p.9; URN E_ROL03316 (Roland UK Report and Financial Statements for the year ended 31 December 2014), p.9; URN E_ROL03317 (Roland UK Report and Financial Statements for the year ended 31 December 2015), p.12; URN E_ROL03318 (Roland UK Report and Financial Statements for the year ended 31 December 2016), p.13; URN E_ROL03319 (Roland UK Report and Financial Statements for the year ended 31 December 2017), p.14; URN E_ROL03330 ([Reseller 1] Abbreviated Accounts Statements for the year ended 31 May 2010), p.7; URN E_ROL03321 ([Reseller 1] Report of the Directors and Financial Statements for the year ended 31 May 2011), p.7; URN E_ROL03322 ([Reseller 1] Report of the Directors and Financial Statements for the year ended 31 May 2012), p.7; URN E_ROL03323 ([Reseller 1] Report of the Directors and Financial Statements for the year ended 31 May 2013), p.7; URN E_ROL03324 ([Reseller 1] Report of the Directors and Financial Statements for the year ended 31 May 2014), p.8; URN E_ROL03325 ([Reseller 1] Report of the Directors and Financial Statements for

Infringement amounts to a ‘*price fixing agreement*’.⁶⁴¹ Moreover, section 39 of the Act does not apply in respect of infringements of Article 101 TFEU.

III. Intention/negligence

- 5.12 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.⁶⁴² However, the CMA is not obliged to specify whether it considers the infringement to be intentional or merely negligent for the purposes of determining whether it may exercise its discretion to impose a penalty.⁶⁴³
- 5.13 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’.⁶⁴⁴
- 5.14 This is consistent with the approach taken by the Court of Justice which has confirmed that ‘*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.*’⁶⁴⁵

the year ended 31 May 2015), p.7; URN E_ROL03326 ([Reseller 1] Report of the Directors and Financial Statements for the year ended 31 May 2016), p.7; URN E_ROL03327 ([Reseller 1] Report of the Directors and Financial Statements for the year ended 31 May 2017), p.7; URN E_ROL03328 ([Reseller 1] Report of the Directors and Financial Statements for the year ended 31 May 2018), p.8.

⁶⁴¹ A ‘*price fixing agreement*’ within the meaning of section 39(1) of the Act is ‘*an agreement which has as its object or effect, or one of its objects or effects, restricting the freedom of a party to the agreement to determine the price to be charged (otherwise than as between that party and another party to the agreement) for the product, service or other matter to which the agreement relates*’. By virtue of section 39(1)(b) of the Act, such an agreement is excluded from the benefit of the limited immunity from penalties provided by section 39 of the Act.

⁶⁴² Section 36(3) of the Act.

⁶⁴³ *Napp Pharmaceutical Holdings Ltd and Subsidiaries v Director General of Fair Trading* [2002] CAT 1, [453]–[457]; see also *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, paragraph 221.

⁶⁴⁴ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, paragraph 221. See also *Ping Europe Limited v CMA* [2020] EWCA Civ 13, paragraph 117.

⁶⁴⁵ Case C-280/08 P *Deutsche Telekom v Commission* EU:C:2010:603, paragraph 124.

- 5.15 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.⁶⁴⁶
- 5.16 As set out in previous decisions, the CMA takes the view 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.⁶⁴⁷ In establishing whether or not there was intention, the CMA may also have regard to numerous other factors, including documents generated by the undertaking/s in question and witness evidence.
- 5.17 The CMA notes that there is strong evidence that Roland 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. This includes:
- evidence of Roland UK's deliberate concealment of the Roland Pricing Policy, which formed the basis for the Infringement.⁶⁴⁸ This is strong evidence of an intentional infringement;
 - concrete evidence (set out at paragraphs 3.148 to 3.183 above) indicating that Roland UK was, in fact, aware of the anti-competitive and illegal nature of operating and enforcing the Roland Pricing Policy, which formed the basis of the Infringement;
 - the fact that RPM is a well-established competition law infringement and Roland UK ought to have known that restricting [Reseller 1]'s freedom to determine its own resale prices would reduce price competition between [Reseller 1] and other MI Resellers,⁶⁴⁹ and

⁶⁴⁶ See Case C-681/11 *Bundeswettbewerbsbehörde v Schenker & Co. AG*, EU:C:2013:404, paragraph 38. See also *Ping Europe Ltd v CMA* [2020] EWCA Civ 13, paragraph 117.

⁶⁴⁷ CMA decisions: *Online resale price maintenance in the light fittings sector (Light fittings)*, Case 50343, 3 May 2017: paragraph 5.14; *Bathroom fittings*: paragraph 7.16. *Commercial refrigeration*: paragraph 7.19. *Online resale price maintenance in the digital pianos and digital keyboard sector*, 50565-2, 1 August 2019: paragraph 5.18. *Online resale price maintenance in the guitar sector*, 50565-3, 22 January 2020: paragraph 5.18 (bullet point 4) and *Residential estate agency services*, 50543 17 December 2019: paragraph 7.14.

⁶⁴⁸ See paragraphs 3.184 to 3.200 in relation to the concealment of the Roland Pricing Policy and paragraphs 4.28, 4.36 to 4.38 and 4.189 in relation to the Roland Pricing Policy having underpinned the Infringement.

⁶⁴⁹ See paragraphs 3.148 to 3.183 above.

- finally, the fact that, the Infringement had as its object the prevention, restriction or distortion of competition⁶⁵⁰ supports a view that it was committed intentionally.⁶⁵¹

5.18 The CMA, therefore, finds that Roland UK committed the Infringement intentionally.⁶⁵² This same evidence would also be sufficient to support the CMA's finding that Roland UK committed the Infringement, at the very least, negligently. The CMA finds that the conditions for imposing a penalty on Roland are therefore met.

IV. Calculation of Penalties

5.19 The Penalties Guidance sets out a six-step approach for calculating the penalty. In determining the amount of the penalty in this case the CMA has considered in detail Roland's representations on the draft penalty calculation pursuant to settlement discussions. The six steps and their application in this case are set out below.

Step 1 – the starting point

5.20 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.⁶⁵³

5.21 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

5.22 The CMA will apply a starting point of up to 30% to an undertaking's relevant turnover in order to reflect adequately the seriousness of the particular

⁶⁵⁰ See paragraphs 4.180 and 4.193 above.

⁶⁵¹ Previous CMA decisions where the CMA has concluded 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: *Light fittings*, paragraph 5.14; *Bathroom fittings*, paragraph 7.16; *Commercial refrigeration*, paragraph 7.19; *Design, construction and fit-out services* Case 50481, 16 April 2019, paragraph 6.11, *Supply of productions to the construction industry (pre-cast concrete drainage products)*, Case 50299, 23 October 2019, paragraph 6.16, *Residential estate agency services*, Case 50543, 17 December 2019, paragraph 7.16 and *Online resale price maintenance in the guitar sector*, Case 50565-3, 22 January 2020, paragraph 5.18.

⁶⁵² See paragraphs 5.13 to 5.14 above.

⁶⁵³ Penalties Guidance, paragraphs 2.3 to 2.10.

infringement (and ultimately the extent and likelihood of actual or potential harm to competition and consumers). In applying the starting point, the CMA will also reflect the need to deter the infringing undertaking and other undertakings generally from engaging in that type of infringement in the future.⁶⁵⁴

- 5.23 In making this case-specific assessment, the CMA will first take into account how likely it is for the type of infringement at issue to, by its nature, harm competition.⁶⁵⁵ As set out in the Penalties Guidance, the CMA will generally use a starting point between 21% and 30% of the relevant turnover for the most serious types of infringement. In relation to infringements of the Chapter I prohibition and/or Article 101, this includes cartel activities, such as price-fixing and market-sharing and other, non-cartel object infringements which are inherently likely to cause significant harm to competition.⁶⁵⁶
- 5.24 At the second stage, the CMA will consider whether it is appropriate to adjust the starting point upwards or downwards to take account of the specific circumstances of the case that might be relevant to the extent and likelihood of harm to competition and ultimately consumers.⁶⁵⁷
- 5.25 Finally, the CMA will consider whether the starting point for a particular infringement is sufficient for the purpose of general deterrence.⁶⁵⁸

Nature of the infringement

- 5.26 RPM is a serious by object infringement of the Chapter I prohibition and Article 101 TFEU. However, it is generally less serious than 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.⁶⁵⁹

Specific circumstances relevant to the extent and likelihood of harm to competition in this case

- 5.27 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 shows that almost 40% of the sales of the Relevant Products are

⁶⁵⁴ Penalties Guidance, paragraph 2.4.

⁶⁵⁵ Penalties Guidance, paragraph 2.5.

⁶⁵⁶ Penalties Guidance, paragraph 2.6.

⁶⁵⁷ Penalties Guidance, paragraph 2.8.

⁶⁵⁸ Penalties Guidance, paragraph 2.9.

⁶⁵⁹ Penalties Guidance, paragraph 2.6. See also the CMA's decision in *Light fittings*, paragraph 5.25.

online.⁶⁶⁰ 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.⁶⁶¹

- **The structure of the market including the market share of Roland UK:** There are a number of competitors to Roland UK in the supply of electronic drums in the UK including [Competitors].⁶⁶² Roland has at least a [10-15%] share in the market for the supply of drums as a whole (including acoustic drums)⁶⁶³ and is the major supplier of the Relevant Products: electronic drums, related components and accessories. It has also been described as '*the most important supplier percussion-wise*' by [Reseller 1].⁶⁶⁴
- **The market coverage of the infringement:** The Infringement covered all of the Relevant Products sold by [Reseller 1].⁶⁶⁵ It had a clear effect on [Reseller 1] with Roland UK seeking to prevent or restrict [Reseller 1]'s 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 that the Infringement would likely have had a wider effect in the market: reducing downward pressure on the retail price of the Roland UK's electronic drums more widely, including through both the MI Reseller and Mass market channels.
 - The evidence shows that Roland UK applied the Roland Pricing Policy to its MI Resellers and monitored their compliance, including through the use of online price monitoring software.⁶⁶⁶
 - Additionally, the evidence indicates that some of Roland UK's MI Resellers also used price monitoring software. This served two purposes: (i) to inform their own pricing, by using other MI Resellers' prices as reference points; and (ii) to identify non-compliance with the Roland Pricing Policy, which was then reported to Roland UK.⁶⁶⁷

⁶⁶⁰ See paragraph 3.31 above. The percentage of [Reseller 1]'s total sales that were made online grew steadily from [10-15%] in 2013/14 to [35-40%] in 2017/2018, see URN C_ROL00601 ([Reseller 1] Section C of response to the s.26 Notice dated 17 April 2018)

⁶⁶¹ See paragraphs 3.32 to 3.33 above.

⁶⁶² See paragraph 3.18 above.

⁶⁶³ See paragraphs 4.210 and 4.211 above.

⁶⁶⁴ URN E_ROL03273 (Transcript of interview with [Reseller 1, Employee 1] dated 7 October 2019), p.26, line 15.

⁶⁶⁵ See paragraph 4.36.

⁶⁶⁶ See Section 3.C.III: Monitoring and enforcement of the Roland Pricing Policy above.

⁶⁶⁷ See paragraphs 3.102 to 3.108 and Section 3.C.VI.

- Accordingly, Roland UK's use of price monitoring software, and its use by some of Roland UK's MI Resellers, amplified the impact of the Infringement in two ways: (i) it enabled Roland UK and certain MI Resellers to detect price reductions and secure or seek Roland UK to secure reversion to the Minimum Price more easily and quickly than would otherwise have been the case; and (ii) it also enabled MI Resellers to follow each other's prices, so that when the Roland Pricing Policy impacted the prices of some, others followed suit.

General deterrence

5.28 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 recent years, including in 2018 and 2019.⁶⁶⁸

Relevant Turnover

5.29 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 year.⁶⁶⁹ The 'last business year' is the financial year preceding the date when the infringement ended.⁶⁷⁰

5.30 In this case, the relevant turnover of Roland UK in the Relevant Market⁶⁷¹ for the financial year ending 31 December 2017 was £[<].

Step 2 – adjustment for duration

5.31 The starting point under step 1 may be increased or, in particular circumstances, decreased to take into account the duration of the

⁶⁶⁸ See register of [Warning letters](#) issued by the CMA and register of [Advisory letters](#) issued by the CMA.

⁶⁶⁹ Penalties Guidance, paragraph 2.11. The CMA notes the observation of the Court of Appeal in *Argos Ltd and Littlewoods Ltd v Office of Fair Trading* and *JJB Sports plc and Allsports Limited v Office of Fair Trading* [2006] EWCA Civ 1318, [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.*' At [170]-[173], 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.*'

⁶⁷⁰ Penalties Guidance, paragraph 2.11.

⁶⁷¹ The Relevant Market for the purposes of this Decision is the supply through MI and Mass resellers of electronic drum kits, related components and accessories, in the UK, with the exception of sales to education customers. See paragraph 3.291 above

infringement.⁶⁷² 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.⁶⁷³

5.32 In this case, the Infringement lasted from 7 January 2011 to 17 April 2018. However, as outlined below in paragraph 5.52, Roland was granted full immunity for the period from 7 January 2011 to 31 December 2012. This means that the CMA is imposing a penalty for the period from 1 January 2013 to 17 April 2018: a duration of 5 years, 3 months and 17 days.

5.33 The CMA has therefore applied a multiplier of 5.5 to the starting point.

Step 3 – adjustment for aggravating and mitigating factors

5.34 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.⁶⁷⁴ A non-exhaustive list of aggravating and mitigating factors is set out in the Penalties Guidance.⁶⁷⁵ 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.

Aggravating factor: involvement of directors or senior management

5.35 The involvement of directors or senior management in an infringement can be an aggravating factor.⁶⁷⁶ The CMA has applied an uplift of 15% for this factor.

5.36 Throughout the period of the infringement, two senior employees were actively involved: [Roland UK, Senior Employee 2] and [Roland UK, Senior Employee 3].

5.37 [Roland UK, Senior Employee 2] was [X] (and [X]) prior to the start of the Relevant Period and until [X], when he became the [X]. The evidence shows that from [X] to [X] (the period for which his tenure as a [X] overlaps with the period for which the CMA is imposing a penalty), [Roland UK, Senior Employee 2] was directly involved in the Infringement to the extent that he:

⁶⁷² Penalties Guidance, paragraph 2.16.

⁶⁷³ Penalties Guidance, paragraph 2.16

⁶⁷⁴ Penalties Guidance, paragraph 2.17.

⁶⁷⁵ Penalties Guidance, paragraphs 2.18 and 2.19.

⁶⁷⁶ Penalties Guidance, paragraph 2.18.

- took an active part in the day-to-day monitoring of [Reseller 1] and other MI Resellers' compliance with Roland Pricing Policy. He received and circulated price-tracking software reports which showed resellers' including [Reseller 1]'s non-compliance with the Roland Pricing Policy,⁶⁷⁷ and
- was directly involved in the enforcement of the Infringement by either having contacted [Reseller 1] directly⁶⁷⁸ or prompted staff to take action (i.e. to contact [Reseller 1] and other MI Resellers and have them raise their prices back to the Minimum Price).⁶⁷⁹

5.38 [Roland UK, Senior Employee 3] was a senior employee at Roland UK. At the beginning of [X], [Roland UK, Senior Employee 3] was a [X]. He was promoted to [X] in [X]. The evidence shows that he was directly involved in the Infringement during his time in each of these roles, to the extent that:

- as a [X], he:
 - a. took an active part in monitoring MI Resellers', including [Reseller 1]'s, compliance with the Roland Pricing Policy through receiving and circulating InsiteTrack price reports;⁶⁸⁰ and
 - b. took an active part in imposing sanctions on other MI Resellers for non-compliance with the Roland Pricing Policy,

which formed the basis for the Infringement.⁶⁸¹

- Following his promotion to [X], there is evidence of him:
 - a. implementing the Roland Pricing Policy by explaining the policy in relation to bundles to MI Resellers, including [Reseller 1];⁶⁸²
 - b. approving and circulating price lists to Roland UK's sales staff which included minimum advertised prices to be adhered to by

⁶⁷⁷ See paragraph 4.83 above.

⁶⁷⁸ See paragraph 4.115 above.

⁶⁷⁹ See paragraph 4.83 above.

⁶⁸⁰ See URN E_ROL01894 (Email from [Roland UK, Senior Employee 3] to [Roland UK, Employee 26] dated 19 June 2013).

⁶⁸¹ See URN E_ROL01857 (Email from [Roland UK, Senior Employee 3] to [Roland UK, Employee 5] dated 5 February 2013).

⁶⁸² See paragraph 3.88 and footnote 168.

MI Resellers and which were then issued to MI Resellers including [Reseller 1],⁶⁸³

- c. receiving automated InsiteTrack price alerts, showing non-compliance by MI Resellers, including [Reseller 1] with the Minimum Prices;⁶⁸⁴ and
- d. communicating and directing the enforcement of the Roland Pricing Policy, including in response to [Reseller 1] reporting other MI Resellers for non-compliance.⁶⁸⁵

5.39 Given the nature and impact of the direct involvement of [Roland UK, Senior Employee 2] and [Roland UK, Senior Employee 3], the CMA considers that it is appropriate to apply an uplift of 15% to the penalty for director and senior management involvement.

Aggravating factor: committing the infringement intentionally

5.40 The fact that an infringement was committed intentionally rather than negligently can be an aggravating factor.⁶⁸⁶

5.41 The CAT has determined that an infringement is committed '*intentionally*' for the purposes of section 36(3) of the Competition 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.⁶⁸⁷ As set out in paragraphs 3.147 to 3.201 above, there is a large body of evidence indicating that Roland 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.

5.42 The CMA therefore considers that it is appropriate to apply an uplift of 10% to Roland's penalty for committing the Infringement intentionally.

⁶⁸³ See paragraph 4.112 and URN E_ROL02600 (Email from [Roland UK, Employee 16] to [Roland UK, Senior Employee 5], [Roland UK, Employee 1], [Roland UK, Employee 3] and [Roland UK, Employee 4] dated 20 March 2015).

⁶⁸⁴ See footnotes 478 and 505.

⁶⁸⁵ See paragraphs 3.253 to 3.254, 3.237 and 4.96.

⁶⁸⁶ Penalties Guidance, paragraph 2.18 and footnote 31.

⁶⁸⁷ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, [221]. See also: *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1 [456]: '*...an infringement is committed intentionally for the purposes of the Act if the undertaking must have been aware that its conduct was of such a nature as to encourage a restriction or distortion of competition... It is sufficient that the undertaking could not have been unaware that its conduct had the object or would have the effect of restricting competition, without it being necessary to show that the undertaking also knew that it was infringing the Chapter I or Chapter II prohibition.*'

Mitigating factor: adequate steps having been taken to ensure compliance with competition law

- 5.43 The CMA considers that it is appropriate to grant Roland a 10% discount as Roland has taken adequate steps with a view to ensuring future compliance with competition law, including providing further competition compliance training to Roland's staff in Europe.
- 5.44 Roland has now 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 Roland has fully and publicly committed.⁶⁸⁸
- 5.45 The CMA considers that Roland has 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.
- 5.46 Roland has published an updated statement regarding its public commitment to compliance on its websites.⁶⁸⁹ Roland has also committed to submitting a report to the CMA on its compliance activities every year, for the next five years.

Step 4 – adjustment for specific deterrence and proportionality

- 5.47 At step 4, the CMA will assess whether, in its view, the overall penalty is appropriate in the round.⁶⁹⁰ 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

⁶⁸⁸ Roland submitted representations in relation to compliance between 4 February 2020 and 4 May 2020. On 4 May 2020, Roland set out the numerous steps it has taken since April 2018, and further steps it has committed to take to develop and implement a sufficiently comprehensive competition law compliance programme. The CMA received clear commitment from the boards of Roland UK and Roland Europe Group Limited (Roland Europe) to the swift implementation of this programme, by the deadlines set out in Roland's representations of 4 May 2020, with the oversight of Roland Corporation.

⁶⁸⁹ See the compliance statements on Roland's web pages, updated between 27 and 31 May 2020:

- <https://www.roland.com/uk/company/compliance-1/>;
- <https://www.roland.com/global/company/compliance/>; and
- https://www.roland.com/uk/company/company_policy/competition-law-compliance/.

⁶⁹⁰ Penalties Guidance, paragraph 2.24.

- 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 imposed⁶⁹¹ as well as any other relevant circumstances of the case, such as the nature of the infringement and the impact of the undertaking's infringing activity on competition.⁶⁹²

5.48 The penalty for the Infringement after step 3 is £6,255,189. Taking all the relevant circumstances of this case into account, on balance, the CMA does not consider that an uplift for specific deterrence or a reduction for proportionality are required 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

5.49 The CMA may not impose a penalty for an infringement that exceeds 10% of an undertaking's 'applicable turnover', that is the worldwide turnover of the undertaking in the business year preceding the date of the CMA's decision.⁶⁹³ The CMA has assessed the penalty against this threshold and found there to be no need for any reduction of the penalty at step 5 of the penalty calculation.

5.50 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.⁶⁹⁴ As neither the European Commission nor any body in another

⁶⁹¹ As set out in paragraph 2.20 of the Penalties Guidance, 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. The CMA has considered a range of financial indicators in this regard, based on the last three years' worth of published accounting information and information provided by Roland at the time of calculating the penalty. Those financial indicators included: relevant turnover; worldwide turnover; operating profit; profit after tax; net assets; and dividends.

⁶⁹² Penalties Guidance, paragraph 2.20.

⁶⁹³ 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.

⁶⁹⁴ Penalties Guidance, paragraph 2.28.

Member State has imposed a penalty in this case, no adjustments to avoid double jeopardy were necessary.

Step 6 – application of reduction for leniency and settlement

- 5.51 The CMA will reduce an undertaking's penalty at step 6 where the undertaking has a leniency agreement with the CMA and/or agrees to settle the case with the CMA.⁶⁹⁵

Leniency

- 5.52 As set out in paragraphs 2.5 to 2.8, 2.12, 2.19 and 2.21 above, on the day after the start of the investigation, Roland approached the CMA with an application for leniency. Roland has admitted its involvement in the Infringement and signed a Leniency Agreement with the CMA (dated 18 March 2020). Provided Roland continues to co-operate and comply with the conditions of set out in the CMA's Leniency Guidance, as set out in the Leniency Agreement, Roland will benefit from a leniency discount of:
- 100% for the period 7 January 2011 to 31 December 2012 inclusive, which reflects the CMA's application of the 'but for' test in this case,⁶⁹⁶ and
 - 20% for the period 1 January 2013 to 17 April 2018 inclusive.

Settlement

- 5.53 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.⁶⁹⁷
- 5.54 In this case, the CMA considers it appropriate to grant Roland a 20% discount to reflect the fact that Roland has admitted the Infringement and agreed to cooperate in expediting the process for concluding the Investigation. This discount is granted on condition that Roland continues to comply with the continuing requirements of settlement as set out in the

⁶⁹⁵ Penalties Guidance, paragraphs 2.29 and 2.30.

⁶⁹⁶ This specifies that where the applicant '*has provided evidence of previously unknown facts relevant to the gravity or duration of the infringement, the CMA will not take account of such information to the detriment of the applicant when assessing the appropriate amount of penalties*'. See paragraph 9.6 of the Leniency Guidance

⁶⁹⁷ Penalties Guidance, paragraph 2.30.

settlement agreements between each of Roland UK and Roland Corporation and the CMA.

5.55 This discount has been applied consecutively to the leniency discount, see Figure 5.1 below.⁶⁹⁸

Penalty

5.56 The following table sets out a summary of the penalty calculation and the penalty that the CMA requires Roland to pay in relation to the Infringement.

Figure 5.1: Summary table of final penalty for Roland

Step	Description	Adjustment	Figure
	Relevant turnover		£[>]
1	Starting point	x 19%	£[>]
2	Duration multiplier	x 5.5	£[>]
3	Adjustment for aggravating and mitigating factors	<i>Aggravating: Senior management involvement</i>	+15%
		<i>Aggravating: intent</i>	+10%
		<i>Mitigating: compliance</i>	-10%
		Total after adjustment	+15%
4	Adjustment for specific deterrence or proportionality	None	£6,255,189
5	Adjustment to take account of the statutory maximum penalty	N/A	N/A
	Penalty after Step 5		£6,255,189
6	Leniency discount	-20%	-£1,251,038
	Penalty after leniency discount		£5,004,151
	Pre-SO Settlement discount	-20%	-£1,000,830
Total Penalty Payable			£4,003,321

⁶⁹⁸ Penalties Guidance, paragraph 2.32.

V. Payment of penalty

5.57 In light of the above, the CMA requires Roland to pay a penalty of £4,003,321. The individual figures in the summary table at Figure 5.1 above are rounded to the nearest pound sterling.

5.58 The CMA requires Roland to pay £4,003,321 to the CMA by close of banking business in England and Wales on 1 September 2020⁶⁹⁹ at the latest.⁷⁰⁰

5.59 If that date 1 September 2020 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.⁷⁰¹

SIGNED:

[✂]

dated 29 June 2020

Ann Pope

Senior Director of Antitrust Enforcement

for and on behalf of the Competition and Markets Authority

⁶⁹⁹ The next working day two calendar months from the expected receipt of the Decision.

⁷⁰⁰ Details on how to pay the penalty are set out in the letter accompanying this Decision.

⁷⁰¹ Section 37(1) of the Act.