

Stephen Phipson CBE
Chief Executive
Make UK

From: Andrea Coscelli CBE
Chief Executive

Shevaun Haviland
Director General
British Chambers of Commerce

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Dear Stephen and Shevaun

Shipping costs

Thank you once again for your joint letter of 18 October raising your shared concerns on the impact of the increase in shipping costs.

Over recent months we have been working to identify the causes of the price rises to help inform whether any of the underlying issues might be addressed using our legal powers, as well as giving thought to what actions could usefully be taken by others. Following your letter, CMA officials have met with the relevant teams at both BCC and Make UK to take you up on your offer to understand the information, research and intelligence that is held by your respective organisations to further inform our thinking. I am grateful for the information that has been shared to date and look forward to ongoing collaboration. I would be happy to meet you both personally to discuss these matters in more depth.

CMA officials are in regular contact with the UK government, and with other national competition authority counterparts, to discuss the actions that we are respectively taking and to share analysis and intelligence regarding the current situation where we can. We have also recently met with representatives of the shipping industry to raise the issues and understand their perspectives on the causes of disruption and increased prices charged to importers in the UK.

In determining what action the CMA could take, we have looked at the issues through the lens of the different legal powers available to us:

- Competition law enforcement – taking enforcement action against businesses that engage in anti-competitive practices including anti-competitive agreements and cartel behaviour such as price fixing and market sharing.
- Markets tools – launching either a market study or market investigation.
- Advocacy to government – using our statutory function to provide advice to government.

As you note, the CMA is open to investigating evidence of anti-competitive or cartel practices in markets like these where they affect UK companies. Where we find breaches of competition law, we can impose significant financial penalties and apply for director disqualifications. However, for us to open an investigation against any business, we require evidence that businesses may be breaching competition law. While we have received multiple complaints from businesses, we have yet to obtain or find such evidence. Rest assured that we continue to look for evidence of potential breaches and should we find or receive actionable information, we will not hesitate in taking appropriate action.

You will hopefully see that our recent announcement that we have launched an enforcement case in relation to capacity sharing in short strait shipping in the English Channel demonstrates that we will take action where we have evidence of potential breaches of the law.¹

Cartels are generally conducted in secret and they can be hard to detect and prove. For this reason the CMA encourages parties with information about potential breaches of competition law to share that information, and this includes offering financial rewards of up to £100,000 for information that helps with the detection and investigation of cartels.² Significant benefits may also be available to cartel participants that come forward with information, including, for a business which is the first to report a cartel to the CMA, immunity from fines as well as immunity from criminal prosecution and director disqualification for its cooperating directors and employees.³

¹ <https://www.gov.uk/cma-cases/investigation-into-a-capacity-sharing-agreement-between-p-and-o-ferries-and-dfds>

² <https://competitionandmarkets.blog.gov.uk/2019/08/09/working-with-us-to-tackle-cartels/>

³ <https://www.gov.uk/guidance/cartels-confess-and-apply-for-leniency>
<https://www.gov.uk/government/publications/cartels-informant-rewards-policy>

Businesses and individuals who wish to share information directly with the CMA can do so through several different channels which are listed on our website including ringing or emailing our dedicated cartels hotline on 020 3738 6888 and cartelshotline@cma.gov.uk or, for leniency enquiries, ringing our dedicated leniency line on 020 3738 6833.⁴

Our two markets tools (market studies and market investigations) give the CMA important powers to investigate markets in the UK. However, many of the issues at play are international in nature; our ability to gather information held outside the UK has some limitations and any remedies to any issues we do uncover may be constrained in their impact and effectiveness due to jurisdictional reach. If we obtained evidence during the course of a market study or investigation, we could then potentially launch enforcement action, but again our ability to address agreements or practices conducted outside of the UK might still be limited.

Our formal tools for investigation, enforcement and remediation are subject to set processes and procedures which need to be taken into account when assessing their effectiveness when dealing with fast-changing market issues.

By contrast, our statutory function of providing advice to government means we can make recommendations, in public or private, using our knowledge and expertise, without having to conduct a formal market study. This allows us to act more quickly and sometimes with more immediate impact, and we are using this flexibility now to respond to developments as they arise.

As has been widely reported, supply chains and UK-based logistics have been stretched beyond just the impact of disruptions in international shipping. The effects impact businesses, consumers and the economy as a whole. We are therefore considering multiple angles to see if and where the CMA might be able to act to address issues arising from strained infrastructure and supply chains within the UK in addition to international shipping.

Based on the information we have, and subject to our ongoing assessment of available intelligence, our current view is that the price rises in shipping are the product of multiple factors, often international in nature and not able to be addressed unilaterally by the CMA and we are following international developments with interest and we have met with our counterparts in several countries to discuss our respective approaches. We are however, treating this issue as a matter of great importance, and are actively exploring options open to us to make a tangible and timely impact.

⁴ <https://www.gov.uk/guidance/tell-the-cma-about-a-competition-or-market-problem#report-a-business-cartel>

Clearly, these are complex interconnected issues affecting companies and industries across the globe. There are no quick-fixes but the CMA remains vigilant and ready to act where it can within its powers. Furthermore, I am grateful for the continued collaboration between Make UK, the BCC, the CMA and the UK government, which helps ensure that the right information and messages are being received and understood at the correct level at the right time.

Yours sincerely

Andrea Coscelli CBE
Chief Executive