Decision of the Competition and Markets Authority

Competition Act 1998 Supply of demolition and related services

Case 50697

12 June 2023

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 infringements in the original version of this Decision have been removed from the published version on the public register. Names have been replaced by a general descriptor of the individual's role.

Contents

Page

1. INTRODUCTION

1.1 By this decision ('*Decision*'), the CMA has concluded that the persons listed below (each a '*Party*', together the '*Parties*') have infringed the Chapter I prohibition of the Competition Act 1998 (the '*Competition Act*'):

(a) Brown and Mason Group Limited ('*BMG*')[1] (as economic successor to the company directly involved in the infringement, Brown and Mason Limited ('*Brown and Mason*')[2]);

(b) Cantillon Limited ('*Cantillon*'),[3] and its parent company, Cantillon Holdings Limited ('*CH*')[4] (together, '*CCH*');

(c) Clifford Devlin Limited ('*Clifford Devlin*');[5]

(d) DSM Demolition Limited ('*DSM*')[6] and its parent companies, DSM SFG Group Holdings Limited ('*DSGH*'),[7] Nobel Midco Limited ('*Nobel Midco*')[8] and Nobel Topco Limited ('*Nobel Topco*')[9] (together, '*DSM Nobel*');

(e) Erith Contractors Limited ('*Erith*')[10] and its parent company Erith Holdings Limited ('*EH*')[11] (together, '*EEH*');

(f) John F Hunt Limited ('*John F Hunt*')[12] and its parent company John F Hunt Group Limited ('*JFH Group*')[13] (together, '*JFHG*');

(g) Keltbray Limited ('*Keltbray*'),[14] and Keltbray Holdings Limited ('*KH*')[15] (as economic successor to Keltbray's parent company Keltbray Group (Holdings) Limited) (together, '*KKH*');

---

[1] BMG is a limited liability company registered in England and Wales, with Company Number 01892133.
[2] Brown and Mason is a limited liability company registered in England and Wales, with Company Number 00686405.
[3] Cantillon is a limited liability company registered in England and Wales, with Company Number 00916538.
[4] CH is a limited liability company registered in England and Wales, with Company Number 05017698.
[5] Clifford Devlin is a limited liability company registered in England and Wales, with Company Number 00719719.
[6] DSM is a limited liability company registered in England and Wales, with Company Number 02266325.
[7] DSGH is a limited liability company registered in England and Wales, with Company Number 10631602.
[8] Nobel Midco is a limited liability company registered in England and Wales, with Company Number 10631201.
[9] Nobel Topco is a limited liability company registered in Jersey, with Registration Number 123184.
[10] Erith is a limited liability company registered in England and Wales, with Company Number 01102060.
[11] EH is a limited liability company registered in England and Wales, with Company Number 02586308.
[12] John F Hunt is a limited liability company registered in England and Wales, with Company Number 01603201.
[13] JFH Group is a limited liability company registered in England and Wales, with Company Number 05804325.
[14] Keltbray is a limited liability company registered in England and Wales, with Company Number 01274344.
[15] KH is a limited liability company registered in England and Wales, with Company Number 12543807.

(h) McGee Group (Holdings) Limited ('*McGee*')[16] and its parent company MFCOIL Limited ('*MFCOIL*')[17] (together '*McGee / MFCOIL')*;

(i) T. E. Scudder Limited ('*Scudder*'),[18] P.J. Carey Plant Hire (Oval) Limited ('*Carey Plant Hire*')[19] and Scudder's parent company, Carey Group Limited ('*Carey*')[20] (together ('*SPC*');

(j) Squibb Group Limited ('*Squibb*').[21]

1.2 The CMA has concluded that each of the 19 infringements described in chapter 4 (the '*Infringements*') amounted to an agreement or concerted practice which had as its object the prevention, restriction, or distortion of competition in relation to the supply of Demolition Services and, in some cases, Asbestos Removal Services[22] in the UK. The Infringements took the form of cover bidding, and in some cases, compensation payment arrangements, by two or more competitors.

1.3 On 20 March 2019, SPC approached the CMA for leniency under the CMA's leniency policy.[23] The CMA signed a leniency agreement with SPC on 15 June 2022.

1.4 On 14 October 2020, McGee / MFCOIL approached the CMA for leniency under the CMA's leniency policy. The CMA signed a leniency agreement with McGee / MFCOIL on 15 June 2022.

1.5 In February 2022, BMG, CCH, Clifford Devlin, DSM Nobel, JFHG, KKH, McGee / MFCOIL and SPC (together, '*the Settling Parties*'):

(a) admitted their involvement in, and liability for, the Infringements as set out in a draft Statement of Objections dated 11 February 2022;

(b) agreed to accept a maximum financial penalty; and

---

[16] McGee is a limited liability company registered in England and Wales, with Company Number 00933689.
[17] MFCOIL is a limited liability company registered in England and Wales, with Company Number 09033010.
[18] Scudder is a limited liability company registered in England and Wales, with Company Number 00605142.
[19] Carey Plant Hire is a limited liability company registered in England and Wales, with Company Number 00941354.
[20] Carey is a limited liability company registered in England and Wales, with Company Number 02644192.
[21] Squibb is a limited liability company registered in England and Wales, with Company Number 01058215.
[22] Demolition Services and Asbestos Removal Services are defined in paragraph 2.2 of this Decision.
[23] OFT1495, *Applications for leniency and no-action in cartel cases, OFT's detailed guidance on the principles and process,* July 2013.

(c) agreed to cooperate in expediting the process for concluding the investigation.

1.6 By this Decision, the CMA is imposing financial penalties under section 36 of the Competition Act.

1.7 Appendix A contains a table of the key abbreviations and defined terms used in this Decision. Appendix B contains a summary table of the Infringements. Appendix C contains summary tables of the penalty calculations.

2. THE RELEVANT MARKET

Industry overview

2.1 The Infringements concern the supply of Demolition Services and Asbestos Removal Services.

2.2 These services are required by building firms and property developers that plan redevelopments on land where obsolete structures exist:[24]

(a) '*Demolition Services*' are services provided for the deconstruction, break down or removal of the whole or part of a building, including: levelling an entire structure or building (total demolition); demolishing the interior of a building while preserving the exterior (selective demolition); soft strip;[25] cut and carve;[26] façade retention; structural alterations; top-down demolition; floor-by-floor demolition; high reach demolition; dismantling; and any services necessary to support demolition work.[27]

(b) '*Asbestos Removal Services*' are services provided for the safe removal of asbestos during demolition work.

2.3 Demolition Services and Asbestos Removal Services are usually supplied via a tender process, either as a standalone project or as part of a package of wider works.[28] The end client (for example, building firm or property developer) may either carry out this procurement exercise itself, or appoint a main contractor or Professional Quantity Surveyor ('*PQS*') to do so on its behalf.

2.4 Typically, only a small number of suppliers are invited to tender for a project. A pre-qualification process is often used to create a shortlist of potential suppliers that are likely to be most appropriate for the particular project.[29]

---

[24] URN7578 F43.110 Demolition in the UK Industry Report (Dec 2020) (see page 9 in particular).
[25] The process of removing all non-structural elements inside and outside of a building to facilitate demolition.
[26] Structural modification: re-engineering the structure of a building in order to accommodate a proposed change or correct a structural defect.
[27] For example, enabling works, temporary works, specialised concrete works (for example cutting/drilling), lifting services, logistics, groundworks, piling, excavation, basement works, underpinning, foundations, slab work, crushing, infilling, steelwork, protection works, specialist engineering, consultancy, survey works, decontamination, remediation, transportation and sorting of waste products, removal of waste, scrap, recycling, disposal of reclaimed material and provision of hoardings.
[28] For example, as one stage of a larger construction and redevelopment project.
[29] URN7098, paragraph 17.

2.5 The CMA has been told that it is in a supplier's interest to tender for projects which are high value or prestigious, or which involve clients that they may wish to work for in the future, as this maintains their reputation and prospects of securing future work.[30]

2.6 Following the submission of bids, revised tenders may be submitted, for example, because the scope of the project has been refined, because a narrower group of preferred bidders have been identified, or as the result the post tender query process. The post tender query process enables, among others, the end client to clarify any problems, so as to understand better the competence of the bidders and assess whether the bids submitted properly take account of the work required.[31]

The relevant market

Introduction

2.7 The CMA has formed a view of the relevant market in order to calculate the Parties' '*relevant turnover*' in the market affected by the Infringements, for the purposes of establishing the level of any financial penalties in this case.[32]

---

[30] URN3045, page 30; URN7099, paragraph 96.

[31] URN3181, page 88; URN6560, pages 50 to 51.

[32] *Guidance as to the appropriate amount of a penalty* (CMA73, 18 April 2018), paragraphs 2.1 and 2.3 to 2.15; *Guidance as to the appropriate amount of a penalty* (CMA73, 16 December 2021), paragraphs 2.1 to 2.13. EEH has made representations that the CMA has not met its obligation to conduct a reasoned market definition assessment: URN8354, paragraph 3.28. See also representations made by Squibb: URN8351, paragraphs 8 to 9 and 33 to 44. The CMA is not persuaded by these representations and considers that its view of the relevant market is sufficiently reasoned for the purposes of establishing the level of any financial penalties, noting that, when assessing the relevant market for these purposes, it is not necessary to carry out a formal analysis: the relevant market may properly be assessed on a broad view of the particular trade affected by the infringement in question: *Argos Limited and Littlewoods Limited v OFT and JJB Sports plc v OFT* [2006] EWCA Civ 1318, paragraphs 169 to 173 and 189; *Argos Limited and Littlewoods Limited v OFT* [2005] CAT 13, paragraphs 176 to 178. See also *Volkswagen AG v Commission*, T-62/98, EU:T:2000:180, paragraph 230 and *SPO and Others v Commission,* T-29/92, EU:T:1995:34, paragraph 74, on the circumstances in which market definition is required.

Relevant product market

2.8 The process of defining the relevant market starts with the focal product or products that are the subject of the investigation;[33] in this case, the focal products are Demolition Services[34] and Asbestos Removal Services.

2.9 The CMA has therefore considered whether Demolition Services and Asbestos Removal Services are:

(a) in the same product market as each other; and

(b) part of a wider product market of services provided by demolition companies – to include the supply of Explosive Demolition Services,[35] and Decommissioning Services.[36]

2.10 The Parties are active in the supply of all, or almost all, of the demolition services identified above.[37]

2.11 Nevertheless, taking a conservative approach and for the purpose of determining the level of any financial penalty in this case, the CMA is of the view that Demolition Services and Asbestos Removal Services are neither in the same market as each other, nor part of a wider market.

2.12 In reaching its conclusion, the CMA notes the following:

(a) in order to supply Asbestos Removal Services, companies require asbestos-specific plants, specific expertise, and a qualified labour force. Thus, from a supply side perspective, a company providing other

---

[33] The CMA considers that the market should not be defined more narrowly than this because, as the Infringements show, end clients tender for demolition work packages, rather than single services.
[34] Squibb has made representations that the CMA's definition of 'Demolition Services' is too broad, noting, in particular, that contractors often specialise in certain types of demolition services such that they are able to offer certain services but not others: URN8351, paragraphs 45 to 55. Responses to the CMA's section 26 requests show that the Parties (with the exception of Brown and Mason) provide all Demolition Services (URN6512; URN6518; URN6521; URN6522; URN6526; URN6528; URN6531; URN6537; URN6541; URN6611; URN6640; URN6641), and, as noted above, the CMA considers that the market should not be defined more narrowly than this given that end clients tender for demolition work packages rather than single services.
[35] That is: the deconstruction, break down or removal of a structure using explosives, along with the services necessary to deliver and support delivery of explosive demolition.
[36] That is: the deconstruction of power plants, nuclear power plant stations, associated nuclear facilities and petrochemical facilities, along with the services necessary to deliver and support delivery of decommissioning works.
[37] URN6512; URN6518; URN6521; URN6522; URN6526; URN6528; URN6531; URN6537; URN6541; URN6611; URN6640; URN6641.

demolition services cannot easily switch to supplying Asbestos Removal Services;[38]

(b) similarly, Explosive Demolition Services have a '*highly specialised nature*':[39]

(i) as Squibb has explained:[40]

> '*Explosive demolition requires a particular level of expertise, experience and accreditation that are distinct from those required to provide general demolition services. For example, a company providing this service would require the relevant staff to be a member of the Institute of Explosive Engineers. Since explosive demolition is not tendered for frequently and also requires a different type of insurance, only a few companies offer this service*'; and

(ii) an independent Industry Report highlights that '*contractors that offer explosive demolition services must adhere to the Explosive Regulations 2014*';[41]

(c) as regards Decommissioning Services, an independent Industry Report explains that '*the complexity of some high-value projects, such as decommissioning services involving hazardous materials in power stations, command an exceptional level of expertise*'[42] and that '[o]*perators that provide decommissioning services must comply with stringent rules under the COSHH Regulations*[43] *due to the high risk of contamination*'.[44] This is consistent with Scudder's view that decommissioning is '*highly regulated and this would be a significant barrier to commencing operations*'.[45]

Relevant geographic market

2.13 The Infringements took place in a number of locations, but predominantly in London and the South East of England. In considering the boundaries of the

---

[38] URN6512; URN6518; URN6521; URN6526; URN6528; URN6531; URN6541; URN6611.
[39] URN6512.
[40] URN6531.
[41] URN7578 F43.110 Demolition in the UK Industry Report (Dec 2020), page 56.
[42] URN7578 F43.110 Demolition in the UK Industry Report (Dec 2020), page 43.
[43] COSHH basics - COSHH (hse.gov.uk).
[44] URN7578 F43.110 Demolition in the UK Industry Report (Dec 2020), page 56.
[45] URN6537.

geographic market, the CMA has therefore considered whether the market is regional, national, or wider than national.

2.14 The evidence in this respect is somewhat mixed, but for the reasons set out below, on balance, the CMA is of the view that the scope of the geographic market is not split along regional or national lines and is no wider than the UK.[46]

2.15 There is evidence that demolition companies differ substantially in size and geographic scope. There are large national suppliers as well as smaller scale demolition firms that compete on a regional basis. An independent Industry Report, explains that:[47]

'*despite active large demolition contractors such as Keltbray, Erith Contractors and select multi-faceted construction and demolition firms like the Brown and Mason Group or John F Hunt, the industry is relatively fragmented. The industry is mainly composed of smaller-scale contractors that compete on a regional basis in tight local construction markets* […] *smaller industry players generally focus on small work packages in a particular geographical region to limit operational costs and capture initial market share*'.

2.16 The CMA has been told that, during the Relevant Periods, Demolition Services and Asbestos Removal Services could, in principle, be supplied UK wide,[48] noting in particular that the cost and logistics of transporting specialist machinery and equipment is not prohibitive. For example:

---

[46] EEH has made representations that the CMA's case on geographic market definition is insufficient: URN8354, paragraph 3.27. Squibb has made representations that the geographic market is split along regional lines, with distinct Zone 1, London and Scottish markets (noting that (i) the location of a demolition project will dictate, to a large degree, what sort of demolition company will tender for the work given, for example, logistical costs; and (ii) the provision of demolition services in Scotland is a '*closed shop*', with most demolition work tendered through the Scottish Government to companies listed in '*Scottish Excel'* (a form of prequalification)): URN8351, paragraphs 56 to 81, see also paragraphs 319 to 321. The CMA is not persuaded by these representations. As set out in the following paragraphs, although there is evidence of some barriers to supplying Demolition Services and Asbestos Removal Services throughout the UK, most of the Parties have said that there is nothing, in principle, to stop them from doing so, and a number of the Parties (including EEH) have stated that they do supply, and have supplied, such services throughout the UK. Further, although higher costs and particular features (for example, the retention of facades, installation of basement boxes, narrow worksites and the ability to act as a 'one stop shop') may be prevalent in Zone 1, London, almost all of the Parties (including Squibb) work both inside and outside Zone 1, London; see: URN6512; URN6518; URN6521; URN6522; URN6526; URN6528; URN6531; URN6537; URN6541; URN6611; URN6640; URN6641. Finally, the CMA notes that English companies may be (and are) included on '*Scottish Excel*'.

[47] URN7578 F43.110 Demolition in the UK Industry Report (Dec 2020), page 33.

[48] URN6518; URN6521; URN6528; URN6531; URN6541; URN6611.

(a) Cantillon has said that '*the characteristics of these services (e.g. transport costs) do not in principle prevent or restrict* […] *from providing the services in a particular location*';[49]

(b) Brown and Mason has said that it supplies its services across the UK from a head office located in Dartford and a service depot located in Broadstairs, and that it '*take*[s its] *equipment wherever it is needed*';[50]

(c) Erith has said that it supplies its services anywhere in the UK or Ireland: '*using its own equipment, Erith will transport it (using low loader lorries) from its sites in Kent to the relevant project site*';[51]

(d) Squibb has said that it provides its services across the UK from one location (Stanford-le-Hope) and '*can transport its equipment across the UK*';[52]

(e) John F Hunt has said that it has worked, and would continue to work, anywhere in the UK, if the project were sufficiently attractive;[53]

(f) Cantillon, DSM and Scudder have noted that equipment can either be transported directly or hired locally;[54] and

(g) Keltbray has said that it would be '*available to conduct demolition nationwide if required*'.[55]

2.17 The CMA further notes that:

(a) although Cantillon and Scudder do not supply their services across the UK, they have said that this is a function of their business models and strategic decision making;[56] and

---

[49] URN6518. The information provided by Cantillon relates to Cantillon and all other entities within the same corporate group or undertaking.
[50] URN6611. The information provided by Brown and Mason relates to Brown and Mason and all other entities within the same corporate group or undertaking.
[51] URN6521. The information provided by Erith relates to Erith and all other entities within the same corporate group or undertaking.
[52] URN6531.
[53] URN6640.
[54] URN6518; URN6528; URN6537. The information provided by Cantillon, DSM and Scudder relates to Cantillon, DSM and Scudder, and all other entities within each respective corporate group or undertaking.
[55] URN6541. The information provided by Keltbray relates to Keltbray and all other entities within the same corporate group or undertaking.
[56] URN6518; URN6537. The information provided by Cantillon and Scudder relates to Cantillon and Scudder, and all other entities within each respective corporate group or undertaking.

(b) although Clifford Devlin and McGee have said that barriers associated with moving skilled labour away from the area in which they are based prevent them from being active outside of London and the South East, McGee has noted that it would be possible to hire local supervisors and drivers.[57]

2.18 Finally, an independent Industry Report has said that:[58]

'*The Demolition industry has a low level of globalisation. All demolition firms operating in the UK market are wholly owned by UK contractors and limit their service spectrum to the domestic market*'.[59]

Conclusion on the relevant market

2.19 For the reasons set out above, the CMA finds that, for the purpose of determining the level of the financial penalties in this case, the relevant markets are:

(a) the supply of Demolition Services in the UK; and

(b) the supply of Asbestos Removal Services in the UK.

[57] URN6512; URN6526. The information provided by Clifford Devlin and McGee relates to Clifford Devlin and McGee, and all other entities within each respective corporate group or undertaking.
[58] URN7578 F43.110 Demolition in the UK Industry Report (Dec 2020), page 44.
[59] The CMA notes that only Erith has said that it (and / or other entities within the Erith corporate group or undertaking) supplies regions outside of the UK: URN6512; URN6521; URN6526; URN6528; URN6531; URN6537; URN6541; URN6611; URN6640.

3. THE LAW

3.1 This chapter sets out the key legal principles, including references to relevant case law and primary and secondary legislation, applied in this Decision.[60]

The Chapter I prohibition

3.2 The CMA's findings are made by reference to the Chapter I prohibition,[61] which prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices, which may affect trade within the UK and have as their object or effect the prevention, restriction, or distortion of competition within the UK.[62]

The form of the Infringements

3.3 The Infringements concern cover bidding and, in some cases,[63] compensation payment arrangements, within a selective tendering process.

3.4 Tendering procedures are designed to provide structured competition, including in areas where it might otherwise be absent. An essential feature of this system is that prospective suppliers prepare and submit tenders independently of each other.[64]

3.5 Cover bidding occurs when a company submits a price in a tender process which is not designed to win the contract, and which has been decided upon in conjunction with a competitor in the process, in order to give the appearance of competition.[65]

3.6 Compensation payment arrangements occur where bidders agree that the winning party will pay the losing party an agreed sum of money. They may occur with or without cover bidding. Compensation payments may be expressed by the parties as a payment to compensate for lost tendering

---

[60] Following the UK's exit from the EU, the UK no longer has jurisdiction to apply Article 101 TFEU. However, EU case law applying Article 101 remains relevant pursuant to section 60A of the Competition Act.
[61] Section 2(1) of the Competition Act.
[62] References to the UK are to the whole or part of the UK: section 2(7) of the Competition Act.
[63] Infringements 1, 2, 3, 5 and 6.
[64] *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4, paragraph 208.
[65] See for example cases T-204/08 and T-212/08, *Team Relocations NV and others v European Commission* ECLI:EU:T:2011:286, paragraph 13; *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4, paragraphs 208 and 209.

costs; and the parties may expressly agree to add the level of compensation to the final tender bids.

3.7 In both cover pricing and compensation payment arrangements, tenders are not prepared and submitted independently of each other and, as a result the tendering process is distorted. As the CAT has recognised, this is even more so where the tendering process is selective:[66]

'*When the tendering process is selective rather than open to all potential bidders, the loss of independence through knowledge of the intentions of other selected bidders can have an even greater distorting effect on the tendering process. In a selective tendering process the contractors invited to tender will in general be those considered most likely to have the required specialist skills…since the selective tendering process by its nature has a restricted number of bidders, any interference with the selected bidders' independence can result in significant distortions of competition*'.

Legal principles for establishing the Chapter I prohibition

3.8 When considering whether cover bidding and / or compensation payment arrangements amount to an infringement of the Chapter I prohibition, the following legal principles apply.

Undertakings

3.9 For the purposes of the Chapter I prohibition, the term '*undertaking*' covers *'every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed*'.[67] 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'.*[68] The concept covers an economic unit, even if in law that unit consists of several natural or legal persons.[69]

---

[66] *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4, paragraphs 210 and 211.
[67] C-41/90 *Klaus Höfner and Fritz Elser v Macrotron GmbH*, EU:C:1991:161, paragraph 21.
[68] C-118/85 *Commission v Italian Republic*, EU:C:1987:283, paragraph 7.
[69] C-97/08 P *Akzo Nobel NV and Others v Commission*, EU:C:2009:536, paragraph 55 and the case law cited; *Sainsbury's v Mastercard* [2016] CAT 11, paragraphs 352 to 357 and 363. The undertaking that committed the infringement can therefore include legal entities other than the legal entity whose representatives were directly involved in the infringing activities.

Agreements between undertakings and concerted practices

3.10 It is not necessary to distinguish between agreements and concerted practices, or to characterise conduct as exclusively an agreement or a concerted practice.[70]

Agreements

3.11 The Chapter I prohibition is intended to catch a wide range of agreements.[71] The key question 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*'.[72]

3.12 While it is essential to show the existence of a joint intention to act on the market in a specific way in accordance with the terms of the agreement, it is not necessary to establish a joint intention to pursue an anti-competitive aim.[73]

Concerted practices

3.13 A concerted practice is '*a form of 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*'.[74]

3.14 Each economic operator must determine independently the policy it intends to adopt on the market.[75] This principle precludes any direct or indirect contact between undertakings the object or effect of which is to create conditions of

---

[70] *Argos, Littlewoods and JJB*, paragraphs 21 and 22. See also, for example, C-49/92 P *Commission v Anic Partecipazioni*, EU:C:1999:356, paragraphs 81, 131 and 132.
[71] *ACF Chemiefarma v Commission* C-41/69, EU:C:1970:71, paragraphs 106 to 114; *Bayer AG v Commission* T-41/96, EU:T:2000:242, paragraph 71; *Commission v Anic Partecipazioni* C-49/92 P, EU:C:1999:356, paragraph 81; *Argos Limited and Littlewoods Limited v OFT* [2004] CAT 24, paragraph 658.
[72] *Dresdner Bank v Commission* cases T-44/02 etc, EU:T:2006:271, paragraph 55, citing *Bayer v Commission* T-41/96, EU:T:2000:242, paragraph 69 (upheld on appeal in *BAI and Commission v Bayer*, joined cases C-2/01 P and C-3/01 P, EU:C:2004:2, paragraphs 96 and 97) and *Hercules Chemicals v Commission* T-7/89, EU:T:1991:75, paragraph 256.
[73] *GlaxoSmithKline Services Unlimited v Commission* T-168/01, EU:T:2006:265, paragraph 77 (upheld on appeal in *GlaxoSmithKline Services Unlimited v Commission* joined cases C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610).
[74] *ICI v Commission* C-48/69, EU:C:1972:70, paragraph 64.
[75] *Suiker Unie and Others v Commission* joined cases 40 to 48, 50, 54 to 56, 111, 113 and 114-73, EU:C:1975:174, paragraph 173.

competition which do not correspond to the normal conditions of the market in question.[76]

3.15 As regards cover bidding, the CAT has stated that:[77]

'*The tendering process is designed to identify the most cost-effective bid. The competitive tendering process may be interfered with if the tenders submitted are not the result of individual economic calculation but of knowledge of the tenders by other participants or concertation between participants. Such behaviour by undertakings leads to conditions of competition which do not correspond to the normal conditions of the market*'.

3.16 Where an undertaking participating in a concerted practice remains active on the market, there is a presumption that it will take account of information exchanged with its competitors when determining its own conduct on the market.[78]

Object of preventing, restricting or distorting competition

3.17 Agreements and concerted practices that have the object of preventing, restricting or distorting competition are those forms of coordination between undertakings that can be regarded, by their very nature, as being harmful to the proper functioning of competition.[79]

3.18 It is settled law that cover bidding and compensation payment arrangements, may amount to an agreement or concerted practice that infringes the Chapter I prohibition by object.[80] As set out further below, this is not affected by the

---

[76] See, for example, *Züchner v Bayerische Vereinsbank* C-172/80, EU:C:1981:178, paragraph 14; *Suiker Unie and Others v Commission* joined cases 40 to 48, 50, 54 to 56, 111, 113 and 114-74, EU:C:1972:70, paragraph 174; *Commission v Anic Partecipazioni* C-49/92 P, EU:C:1999:356, paragraph 117; *Balmoral Tanks Limited v Competition and Markets Authority* [2017], CAT 23, paragraph 41.

[77] *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4, paragraph 209.

[78] *Commission v Anic Partecipazioni,* EU:C:1999:356, paragraph 121. See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraphs 206(x) and 221. The burden is on the parties concerned to adduce evidence to rebut this presumption: *Dole Food Co. v Commission (Bananas),* C-286/13 P, EU:C:2015:184, paragraph 127.

[79] See, for example, *Groupement des cartes bancaires v Commission* C-67/13 P, EU:C:2014:2204, paragraph 50; *Allianz Hungária Biztosító* and Others, C-32/11, EU:C:2013:160, paragraph 35 and the case law cited.

[80] *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4; *Bid rigging in the Construction Industry*, OFT Decision CA98/02/2009 of 21 September 2009; *GF Tomlinson Group Limited v OFT* [2011] CAT 7, paragraph 97; *Design, construction and fit-out services*, CMA Decision Case 50481 of 16 April 2019. Squibb has made representations that the Infringements to which it was party amounted to '*simple cover bidding*' involving a minority of the bidders in the tender process. As such, Squibb argues that these Infringements '[did] *not reveal a sufficient degree of harm to be categorised as restrictions by object*'; and that a compensation payment

parties' subjective intentions, or whether or not the arrangement was implemented.

Cover bidding

3.19 Cover bidding arrangements manipulate the tendering procedure and restrict price competition in a number of ways: first, the party receiving a cover price submits a price to the customer that has been determined or influenced directly or indirectly by the party that gave it a cover price; second, the party giving a cover price determines its own price in the knowledge that the party to whom it provided a cover price will be submitting a high bid not intended to win the tender.[81]

3.20 As observed by the European Commission:[82]

'*the submission of cover quotes to customers is a manipulation of the tendering procedure. The manipulation consists in the fact that the companies involved, except the one which is the lowest bidder, have no intention of winning the contract* […]*. This means that the customer is confronted with a false choice and that the prices quoted in all the bids which he receives are deliberately higher than the price of the company which is "the lowest bidder", and at all events higher than they would be in a competitive environment*'.

3.21 Cover bidding is a serious restriction of competition and has been found to be a form of price fixing and market sharing.[83]

3.22 The CMA considers cover bidding to be a serious infringement of competition law, by object, even if not all of the parties in the tender process are party to the cover bidding arrangement.[84] At least one of the objects of any cover bidding arrangement is to distort competition by deceiving the customer as to the level of competition: the submission of even one cover bid reduces uncertainty and deprives the customer of an opportunity to make an informed decision as to whether to obtain a competitive bid elsewhere; and the

---

arrangement by itself would not be '*sufficient to convert a simple cover bidding arrangement from an effects infringement to a restriction by object*': URN8351, paragraphs 28 and 140; see also paragraphs 4 to 12, 24 to 29, 82 to 184, 188 to 210 and 253 to 258. The CMA is not persuaded by these representations. As set out in this section, the CMA considers both cover bidding, and cover bidding in conjunction with a compensation payment arrangement, to be an infringement by object, including where such arrangements involve a minority of bidders.

[81] *Bid rigging in the Construction Industry*, OFT Decision CA98/02/2009 of 21 September 2009, paragraph 119.

[82] Commission decision in Case COMP/38.543, *International Removal Services*, paragraph 358.

[83] C-440/11 P *Stichting Administratiekantoor Portielje*, ECLI:EU:C:2013:514, paragraph 111; *GF Tomlinson Group Limited v OFT* [2011] CAT 7, paragraph 282.

[84] *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4, paragraphs 115 to 131; *Design, construction and fit-out services*, CMA Decision Case 50481 of 16 April 2019, paragraphs 5.78 to 5.91, and 5.98 to 5.101.

potential effects of cover pricing may extend beyond the confines of the specific contract being tendered and create an atmosphere of collusion. As stated by the CAT, cover bidding arrangements:[85]

(a) reduce the number of competitive bids submitted in respect of a particular tender;

(b) deprive the tenderee of the opportunity of seeking a replacement (competitive) bid;

(c) prevent other contractors wishing to place competitive bids in respect of that particular tender from doing so; and

(d) give the tenderee a false impression of the nature of competition in the market, leading at least potentially to future tender processes being similarly impaired.

Compensation payment arrangements

3.23 It has been held that cover bidding arrangements in conjunction with compensation payments are more serious than arrangements where no such inducement is offered as, '*the supplier of the cover and the compensation payment is at least incentivised to recover the cost of that payment by further inflating his tender price in addition to any inflation due to reduced competition from the provision of a cover price*'.[86]

3.24 Where a compensation payment arrangement does not include cover bidding, both parties may still hope to win the tender, and the identity of the winning party may not be known at the time of entering into the compensation arrangement. Nevertheless, such arrangements:[87]

(a) distort the normal tendering process, in which each bid should be independently formulated in order to provide the benefits of competition;

(b) reduce uncertainty, enabling each party to set its commercial strategy knowing, at least to some extent, how the other was likely to behave, and

---

[85] *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4, paragraph 251. See also *North Midland Construction* [2011] CAT 14, paragraphs 55 to 58.
[86] *Bid rigging in the Construction Industry*, OFT Decision CA98/02/2009 of 21 September 2009, paragraph 130. See also: Commission decision in Case COMP/38.543, *International Removal Services*, paragraph 297.
[87] *Bid rigging in the Construction Industry*, OFT Decision CA98/02/2009 of 21 September 2009, paragraphs III.143, III.156 and III. 157.

resulting in less downward pressure on prices than would otherwise be expected;

(c) reduce incentives to compete for the relevant tender, as the risks of wasting tender costs as a result of losing a competitive tender are substituted by the certainty of a payment to cover all or part of those costs.

3.25 An agreement whereby the agreed level of compensation is added to the level of a final tender bid has been found to be price fixing: it '*restricts competition between undertakings as regards their calculation costs*' and '*leads to an increase of prices*'.[88]

Subjective intentions

3.26 The object of an agreement or concerted practice is to be identified primarily from an examination of objective factors, such as the content of its provisions, its objectives, and the legal and economic context of which it forms part.[89]

3.27 The object of an agreement or concerted practice is not assessed by reference to the parties' subjective intentions when they enter into it.[90] Anti-competitive subjective intentions on the part of the parties can be taken into account in the assessment, but they are not a necessary factor for a finding that the object of the conduct was anti-competitive.[91]

3.28 As regards cover bidding, the CAT has found that it is irrelevant that a party may have submitted a cover bid so as not to risk being excluded from future tender lists; this is because:[92]

'*Concertation the object of which is to deceive the tenderee into thinking that a bid is genuine when it is not, plainly forms part of the mischief which section 2*

---

[88] Case T-29/92 *SPO v Commission* [1995] ECR II-289, paragraph 156 (see also paragraphs 140 to 158). The concept of price fixing includes fixing a component of the price: Cases T-45/98 etc *Krupp Thyssen* [2001] ECR II-3757, paragraph 157; COMP IV/34.503 *Ferry Operators – Currency Surcharges* OJ 1997 L 26/23, paragraphs 55 to 58.

[89] See, for example, *Allianz Hungária Biztosító and Others* C-32/11, EU:C:2013:160, paragraph 36; *Groupement des cartes bancaires v Commission* C-67/13 P, EU:C:2014:2204, paragraph 53.

[90] *Compagnie Royale Asturienne des Mines SA and Rheinzink GmbH v Commission*, joined cases 29/83 and 30/83, EU:C:1984:130, paragraphs 25 and 26. *Competition Authority v Beef Industry Development Society and Barry Brothers* C-209/07, EU:C:2008:643, paragraph 21.

[91] *Allianz Hungária Biztosító and Others* C-32/11, EU:C:2013:160, paragraph 37 and *Groupement des cartes bancaires v Commission* C-67/13 P, EU:C:2014:2204, paragraph 54.

[92] *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4, paragraphs 249 and 250. See also *Richard W Price (Roofing Contractors) Limited v OFT [2005]* CAT 5, paragraph 54.

of the [Competition] *Act is seeking to prevent. The subjective intentions of a party to a concerted practice are immaterial where the obvious consequence of the conduct is to prevent, restrict or distort competition*'.

3.29 Moreover, even if a company does not wish to win a particular contract, it does not need to collude with its competitors in order to put in a high quotation. As the OFT stated:[93]

'*A competitive bid is one which reflects the bidder's own perception of the potential risks and rewards involved in the project and the wider marketplace. Whilst a bidder might unilaterally submit a high bid in the hope of not winning a tender, in doing so it will take into account the risk that the bid could be so low as to win the job, or so high as to damage its credibility. Where a bidder submits a cover price, however, this risk is curtailed as the price has simply been obtained from a competitor. In this way, a bidder submitting a cover price deliberately substitutes practical cooperation for the risks of the competitive process* […] *and the bid cannot, therefore be regarded as "genuine" or "competitive"*'.

3.30 An agreement may be regarded as having a restrictive object even if it does not have the restriction of competition as its sole aim.[94]

3.31 The fact that the parties may not have considered the anti-competitive nature of their conduct, and therefore may not have appreciated that the object or effect of that conduct was anti-competitive, is not a relevant consideration when considering the existence of an infringement.[95]

3.32 There is no need to take account of the concrete effects of an agreement once it appears that it has as its object the prevention, restriction or distortion of competition.[96]

---

[93] *Bid rigging in the Construction Industry*, OFT Decision CA98/02/2009 of 21 September 2009, paragraph III.101.

[94] For example, *NV IAZ International Belgium and others v Commission of the European Communities*, joined cases 96-102, 104, 105, 108 and 110/82, EU:C:1983:310, paragraphs 22 to 25; *Competition Authority v Beef Industry Development Society and Barry Brothers* C-209/07, EU:C:2008:643, paragraph 21: '… *even supposing it to be established that the parties to an agreement acted without any subjective intention of restricting competition, but with the object of remedying the effects of a crisis in their sector, such considerations are irrelevant for the purposes of applying that provision. Indeed, an agreement may be regarded as having a restrictive object even if it does not have the restriction of competition as its sole aim but also pursues other legitimate objectives*'.

[95] *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4, paragraph 253.

[96] *Consten and Grundig v Commission* joined cases C-56/64, C-58/64, EU:C:1966:41, page 342; *Groupement des cartes bancaires v Commission* C-67/13 P, EU:C:2014:2204, paragraph 50. See also *Cityhook Limited v OFT*, paragraph 269.

Implementation

3.33 Parties cannot avoid liability for an infringement by arguing that they played a limited part in setting up an agreement or concerted practice; that they were not (or were not always) fully committed to the agreement or concerted practice; that the agreement or concerted practice was never implemented or put into effect by them; or that they 'cheated' on the agreement or concerted practice.[97]

Appreciable restriction of competition

3.34 An agreement or concerted practice will not infringe the Chapter I prohibition if its impact on competition is not appreciable.[98] An agreement that has an anti-competitive object constitutes an appreciable restriction on competition by its nature and independently of any concrete effect that it may have.[99]

Effect on trade within the UK

3.35 The CAT has held that this is a purely jurisdictional test to demarcate the boundary line between the application of EU competition law and national competition law, and that there is no requirement that the effect on trade within the UK should be appreciable.[100]

---

[97] *Dole v Commission*, T-588/08, EU:T:2013:130, paragraph 484; *Miller v Commission*, C-19/77, ECR, EU:C:1978:19, paragraph 7; *Hasselblad v Commission*, Case 86/82, ECR, EU:C:1984:65, paragraph 46; *Cimenteries CBR v Commission*, T-25/95 ECR, EU:T:2000:77 ('Cimenteries'), paragraphs 1389 and 2557 (this judgment was upheld on liability by the CJEU in *Aalborg Portland and Others v Commission*, joined cases C-204/00 P etc., EU:C:2004:6); *Anic Partecipazioni*, paragraphs 79 and 80; *Sandoz v Commission*, C-277/87, EU:C:1990:6 ('Sandoz'), paragraph 3.

[98] *Franz Völk v S.P.R.L. Ets J. Vervaecke*, Case 5/69, EU:C:1969:35. See also *North Midland Construction plc v OFT* [2011] CAT 14, paragraphs 45 and 52ff and *Expedia Inc. v Autorité de la concurrence and Others*, C-226/11, EU:C:2012:795, paragraph 16.

[99] *Expedia Inc. v Autorité de la concurrence and Others* C-226/11, EU:C:2012:795, paragraph 37; and European Commission Notice on agreements of minor importance [2014] OJ C291/01, paragraphs 2 and 3. In accordance with section 60A(2) of the Competition Act, this principle applies *mutatis mutandis* in respect of the Chapter I prohibition. See also *Carewatch Care Services Limited v Focus Caring Services Limited and Others* [2014] EWHC 2313 (Ch), paragraph 148.

[100] *Aberdeen Journals v Director General of Fair Trading* [2003] CAT 11, paragraphs 459 and 460 and the case law cited. The CAT considered this point also in *North Midland Construction plc v. OFT* [2011] CAT 14, paragraphs 48 to 51 and 62 but considered that it was '*not necessary* […] *to reach a conclusion*'.

4. CONDUCT AND LEGAL ASSESSMENT

4.1 This chapter sets out the evidence found by the CMA of contacts between the relevant companies for each Infringement, and the CMA's legal assessment of that conduct.[101]

Undertakings

4.2 The CMA concludes that the companies directly involved in the Infringements, specifically, Brown and Mason, Cantillon, Clifford Devlin, DSM, Erith, John F Hunt, Keltbray, McGee, Scudder and Squibb, each form, or during the Relevant Periods formed, an undertaking or part of an undertaking for the purposes of the Chapter I prohibition.[102]

4.3 Chapter 5 sets out the CMA's conclusion as regards the entities that it has found to be jointly and severally liable for the Infringements. To the extent that these entities were not themselves directly involved in the Infringement, the CMA has concluded that they either exercised control over a company that was directly involved in the Infringement or are an economic successor. The CMA considers that these entities form part of the undertakings with which they share liability, or in relation to which they are liable as economic successor.[103]

Standard of proof and evidence

4.4 The CMA has applied the civil standard of proof to the evidence, that is: whether the evidence is sufficient to establish that an infringement has occurred on the balance of probabilities.[104] As regards establishing concertation, the CAT has said that '*cartels are by their nature hidden and secret; little or nothing may be committed to writing. In our view even a single item of evidence, or wholly circumstantial evidence, depending on the*

---

[101] The CMA finds that none of the exclusions or exemptions from the Chapter I prohibition apply to any of the Infringements: section 3 of the Competition 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. Section 10 of the Competition Act provides for parallel exemptions from the Chapter I prohibition. Section 6 of the Competition Act provides for block exemptions from the Chapter I prohibition. The Parties have not argued that the arrangements between them in each instance are exempt from the Chapter I prohibition by operation of section 9 of the Competition Act.

[102] During the Relevant Periods, each company was engaged in an economic activity, including the supply of Demolition Services and Asbestos Removal Services.

[103] There are, in some cases, other entities which also form or formed part of these undertakings but which the CMA has not decided to hold jointly and severally liable for the Infringements.

[104] *Tesco Stores Limited and Others v OFT* [2012] CAT 31, paragraph 88.

particular context and the particular circumstances, may be sufficient to meet the required standard'.[105]

4.5 The CMA finds that the evidence is sufficient to establish, on the balance of probabilities, that each of the Infringements occurred.

4.6 The CMA has given particular weight to contemporaneous documentary evidence in reaching its decision. However, it has also taken into account information from individuals directly involved in the Infringements. The CMA acknowledges that witness and interview evidence is subjective in nature and may be to some extent inconsistent. It has therefore considered carefully the credibility and reliability of the evidence provided by each witness. Further to this assessment, the CMA has relied on witness and interview evidence in this Decision only to the extent that the CMA considers it to be sufficiently clear, internally consistent, and corroborated by other witness evidence or contemporaneous documentary evidence.

4.7 Among the evidence relied upon are two documents that the CMA finds to be records of compensation payment arrangements:[106]

(a) an extract from a notebook belonging to [Director A] (Cantillon) found on [Director A]'s (Scudder) hard drive, which sets out a list of projects under the heading '*Scudder*', and notes certain monies '*owed*'.[107] In interview, [Director A] (Cantillon) said that the handwriting on this document was his, that [Director A] (Scudder) '*might have taken a picture*' of it, and that certain entries related to compensation payments;[108]

(b) an extract from a notebook belonging to [Employee] (Scudder), which sets out a list of projects, with monetary figures and the names of contractors next to them.[109] [Employee] (Scudder) explained:[110]

'*The document lists payments owed to or owed by Scudder on various projects. It is, for want of a better word, a 'scorecard' or a 'slate' of*

---

[105] *JJB Sports plc and Allsports Limited v Office of Fair Trading* [2004] CAT 17, paragraph 206. See also *Claymore Dairies Ltd and Express Dairies plc v The Office of Fair Trading* [2003] CAT 18, paragraphs 3 to 10; *Aalborg Portland and Others v Commission*, joined cases C-204/00 P etc., EU:C:2004:6, paragraphs 55 to 57; *Total Marketing Services v Commission*, C-634/13 P EU:C:2015:614 paragraph 26; *Durkan* [2011] CAT 6, paragraph 96; and *Quarmby Construction* [2011] CAT 11, paragraph 86.
[106] These documents are referred to in Infringements 2, 5 and 6.
[107] URN1393.
[108] URN3191, pages 57 to 94.
[109] URN1993.
[110] URN7099, paragraphs 114, 118 and 120.

agreements in relation to anti-competitive behaviour and compensation that may have been made for that behaviour …

'*… If the amounts owed changed due to amounts being paid or other amounts became owed, it would just be added to or subtracted from the numbers…*

'*… I believe the left-hand page is what Scudder owed and the right-hand page is what Scudder was owed by others*'.

Infringement 1 – Bishop Centre, Taplow: Erith and Scudder

4.8 Infringement 1 concerns conduct by Erith and Scudder in relation to the supply of Demolition Services and Asbestos Removal Services for the Bishop Centre, Taplow.[111]

4.9 Invitations to tender were issued to Erith, Scudder, [demolition contractor], [demolition contractor] and [demolition contractor] on 14 December 2012, with an initial tender return date of 9 January 2013.[112]

4.10 After receipt of the initial tenders (by 9 January 2013) the contract was rescoped and Erith, Scudder and [demolition contractor] were asked to re-bid. Following the submission of revised bids, Erith and Scudder (the two lowest bidders) were asked to identify a sum for early commencement works and asbestos risk. Details of the bids submitted are set out in the table below.[113]

Name	Initial submission date	Value	Revised value	Further revised value
Erith	9 January 2013	£1,210,901.00	£1,088,959.00	£1,094,959.00
Scudder	9 January 2013	£1,321,624.00	£1,112,302.00	£1,117,302.00
[demolition contractor]	9 January 2013	£1,348,869.00	N/A	N/A
[demolition contractor]	9 January 2013	£1,311,322.75	N/A	N/A
[demolition contractor]	9 January 2013	£1,284,224.00	£1,164,000.00	N/A

[111] The contract was tendered as one package for asbestos removal, soft strip, demolition and cut and fill works. The tender process was managed by [tender manager] on behalf of the end client, LS Taplow Limited c/o Land Securities Plc: URN5766.
[112] URN5766.
[113] URN5766.

4.11 The contract, dated 26 June 2013, was awarded to Erith.[114]

Contact between Erith and Scudder

4.12 On 17 January 2013, [Director A] (Erith) sent an email to [Director A] (Scudder) attaching '*correspondence re. The Bishop Centre, Taplow*' (including Erith's '*completed tender documentation'* and '*dig & disposal rates*' for certain categories of material).[115] In interview, [Director A] (Erith) explained that this information was sent to Scudder for the purpose of preparing a cover bid: ' [Director A] [(Scudder)] *has said that they would cover …what price we'd submitted for the muck away*'[116] and the information was sent to Scudder '*so that's how they knew … where to be*'.[117] The CMA considers that this information was useful to, and relied upon by, Scudder for the purposes of its revised tender submission,[118] noting that it was shared internally.[119]

4.13 There is also evidence of a compensation payment arrangement. On 30 September 2014, [Director A] (Erith) sent a text to [Director A] (Scudder), saying '*can I invoice you for reading less taplow 75 less 35 is 40k?*' to which [Director A] (Scudder) replied, on 2 October 2014: '*No news on Reading so hold fire also figure was 65k not 75k*'.[120] The CMA infers that, in order to facilitate compensation payments for the Bishop Centre, Taplow and Station Hill, Reading (see paragraphs 4.51(d) and 4.52 below), [Director A] (Erith) asked if he could raise an invoice in which the amount that Scudder owed Erith for Erith submitting a cover bid in relation to Station Hill, Reading would

---

[114] URN5766.

[115] URN0382; URN0383; URN0384; URN0385. This email was sent on [Director A]'s (Erith) behalf, by his personal assistant: URN2936, pages 241 to 243.

[116] URN2936, page 241. '*Muck away*' is the removal of waste or soil from a construction site.

[117] URN2936, page 244; see more generally pages 239 to 249.

[118] URN0385: correspondence between [Director A] (Erith) and [tender manager], dated 16 January 2013, describes the need to carry out further site investigation in order to '*properly ascertain the full extent of soil contamination and to enable a fair and reasonable view with regard to off site disposal*', following the initial tender bids.

[119] URN3997; URN3998; URN3999; URN4000 (the internal forwarding of URN0382 and attachments URN0383; URN0384; URN0385). The CMA's conclusion that this information was shared by Erith with Scudder and then used by Scudder during the continuing tender process is supported by the following. First, [Director A] (Scudder) shared the information within Scudder, with [Employee] (Scudder) which is consistent with [Employee]'s (Scudder) statement that, in his role as the estimator submitting bids, he would be told by either [Director A] (Scudder) or [Director B] (Scudder) which tenders were to be rigged and given guidance as to what price to go in at (URN7099, paragraphs 27, 28 and 29). Second, Scudder submitted two further revised tenders between the initial tender submission date of 9 January 2013 and the date the contract was awarded to Erith on 26 June 2013 so, while the CMA has no direct evidence of the dates of the revised tenders, it is reasonable to infer, in light of the surrounding circumstances, that at least one of these submissions took place on or after 17 January 2013. Further, the CMA has seen no evidence to suggest that the information might have been shared for any other purpose (such as a sub-contracting arrangement).

[120] URN3150 (extract of URN3861).

be reduced by the amount that Erith owed Scudder for Scudder submitting a cover bid in relation to Taplow.

4.14 When shown this text in interview, [Director A] (Erith) said: '*I hadn't remembered it but there must have been* [£35,000 owed] *for me to put that … they would get whatever it is for, for covering me on the muck away at Taplow*'.[121]

4.15 Similarly, [Director A] (Scudder) was unable to recall the Taplow contract but said that [Director A] (Erith) would have been raising an invoice '*for some of the compensation for the quid pro quo values*', that is: for a compensation payment.[122]

Legal assessment

4.16 On the basis of the evidence above, the CMA finds that Erith entered into a cover bidding and compensation payment arrangement with Scudder in relation to the Bishop Centre, Taplow.

4.17 Thus, having regard to the legal principles set out in chapter 3, the CMA considers that on at least 17 January 2013 ('*Relevant Period 1*'), Erith and Scudder infringed the Chapter I prohibition by participating in an agreement or concerted practice in the form of a cover bidding and compensation payment arrangement which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services and Asbestos Removal Services for the Bishop Centre, Taplow.

Infringement 2 – Metropolitan Police Service Training and Operations Centre, Hendon: Cantillon and Scudder

4.18 Infringement 2 concerns conduct by Cantillon and Scudder in relation to the supply of Demolition Services and Asbestos Removal Services for the Metropolitan Police Service Training and Operations Centre, Hendon.[123]

---

[121] URN2936, page 248.

[122] URN3181, pages 147 and 148. In interview, [Director A] (Scudder) explained that he used the phrase '*quid pro quo*', to describe '*compensation schemes*', as follows: '*you would be cancelling out favours with an, appropriate sort of assessment on what they're worth … they put a value on it saying … "It's costing me x to do it", and … as a compensation, we'll say that's worth £5000, and then … if it's reversed the other way we'll knock that £5000 off, so … it's a level playing field*': URN1788, pages 138 to 139.

[123] The tender was for a single package of structural demolition and enabling works. The tender was managed by [tender manager], on behalf of the end client, the Mayor's Office for Policing and Crime, City Hall, London: URN5794.

4.19 Invitations to tender were issued to Scudder, Cantillon, [demolition contractor] and [demolition contractor] on 14 May 2013, with an initial tender return date of 17 June 2013.[124] Following the return of tenders, each bid was subject to a reconciliation process for comparability. According to [tender manager], prices changed at this stage because some bidders had not priced the full scope of works and others had priced items which were not required.[125] Details of the bids submitted are set out in the table below.[126]

Name	Initial submission date	First stage value	Reconciled value
Cantillon	17 June 2013	£1,782,148.60	£1,534,166.00
Scudder	20 June 2013	£1,875,307.10	£1,987,377.65
[demolition contractor]	1 July 2013	£1,499,180.00	£1,591,257.68
[demolition contractor]	19 June 2013	£1,508,048.62	£1,638,191.30

4.20 The contract was awarded to Cantillon.[127]

Cover bidding in conjunction with a compensation payment

4.21 In interview, [Director A] (Cantillon) described a cover bidding and compensation payment arrangement in relation to this contract:[128]

'*Careys* [Scudder] *didn't fancy it at all because of the asbestos risk … So … I agreed with* [Director A] [(Scudder)] *I'll pay him 20 grand to cover his cost, because I really wanted to go for the job…*

'… *we went away and priced it ourselves, and then I would have rang* [Director A] [(Scudder)] *with my price, and he would have covered whatever he saw fit*'.

4.22 The CMA notes that, consistently with such an arrangement being in place, text messages between [Director A] (Scudder) and [Director A] (Cantillon) on

[124] URN5794.
[125] URN5794.
[126] URN5794.
[127] URN5794. In August 2013, unsafe asbestos risks were discovered on site; the end client therefore instructed [tender manager] to update the scope of works and agreed that the revised costs should be based upon the already agreed rates in Cantillon's offer.
[128] URN3191, pages 110 and 113.

14 June 2013, show contact in relation to the Hendon contract; for example: '*Scudders have Hendon in not Careys. Ill review and revert on Monday*'.[129]

4.23 As regards the compensation payment arrangement:

(a) a text message sent by [Director A] (Cantillon) to [Director A] (Scudder), on 26 March 2015, says: '*hendon was 20 k*'.[130] In interview, both [Director A] (Cantillon) and [Director A] (Scudder) said that this referred to the compensation payment discussed for this contract;[131]

(b) an extract from a notebook belonging to [Director A] (Cantillon) (see paragraph 4.7(a)) says: '*Scudder…we owe them Hendon 20k*'.[132] In interview, [Director A] (Cantillon) said that this referred to the '*20k*' figure that [Director A] (Scudder) had asked for to cover his estimating costs; he noted, however, that this payment was not in fact made;[133]

(c) an extract from a notebook belonging to [Employee] (Scudder) (see paragraph 4.7(b)) says: '*Hendon = Cantillon £50k*'.[134] The CMA notes that there appears to have been some confusion or disagreement as regards the amount of the compensation payment for Hendon.[135] Nevertheless, the evidence is consistent that a compensation payment was discussed. In his witness evidence, [Employee] (Scudder) said that '*I believe this is in relation to a job in Hendon that we stepped away from. I believe the job was won by Cantillon…I believe the 50k refers to a £50,000 payment*'.[136] He also noted, '*I do not believe we raised any invoices for this payment, I certainly did not raise any…I was generally the person that would raise*

---

[129] URN3154. The CMA infers that this text message is confirming that Scudder (rather than a different entity within the same corporate group, Careys) will do the job; and that Scudder and Cantillon will discuss the tender process (and bids) '*on Monday*'.
[130] URN3155.
[131] URN3191, pages 118 to 122 (although [Director A] (Cantillon) noted that this figure was only owed '*until* [demolition contractor] *got involved*', i.e., [Director A] (Cantillon) said that he refused to pay Scudder's estimating costs given that he had to '*fight all the way down with* [demolition contractor]': see pages 114 to 116); URN3181, pages 105 to 107 (based on [Director A]'s (Scudder) reading of the emails during the interview).
[132] URN1393.
[133] URN3191, pages 110 to 116.
[134] URN1993.
[135] See, for example, URN3146, which contains a series of texts between [Director A] (Scudder) and [Director] (Clifford Devlin), in February and March 2015, in which they discussed how much Scudder owed Cantillon for certain projects, including the following texts from [Director A] (Scudder): '*Spoke to him* [[Director A] (Cantillon)] *needs to refer back to notes Wants to meet to discuss I'm going to say 50'; 'Told him it was 50 but he didn't have his book so needed to spk to* [name/initials]'; '*Not sure if you have met* [Director A] [(Cantillon)] *I rec this txt from him this morning……* [Director A] [(Scudder)] *hendon was 20k'*.
[136] URN7099, paragraphs 129 and 130. [Employee] (Scudder) also said: '*I do not know much about that particular tender, and I cannot recall the scope of the work*'.

invoices in relation to compensation payments so if they were raised, I would expect to be instructed to do it'.[137]

Legal assessment

4.24 On the basis of the evidence above, the CMA finds that Cantillon and Scudder entered into a cover bidding and compensation payment arrangement for the Metropolitan Police Service Training and Operations Centre, Hendon contract.

4.25 Thus, having regard to the legal principles set out in chapter 3, the CMA considers that between at least 14 June 2013 and 20 June 2013 ('*Relevant Period 2*'), Cantillon and Scudder infringed the Chapter I prohibition by participating in an agreement or concerted practice in the form of a cover bidding and compensation payment arrangement which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services and Asbestos Removal Services for the Metropolitan Police Service Training and Operations Centre, Hendon.

Infringement 3 – Southbank, London: McGee, Brown and Mason and Erith

4.26 Infringement 3 concerns conduct by McGee, Brown and Mason and Erith in relation to the supply of Demolition Services at the Southbank, London (also referred to as the 'Shell Building' project).[138]

4.27 Invitations to tender were issued to McGee, Brown and Mason, Erith and [demolition contractor] on 19 April 2013, with an initial tender return date of 3 June 2013. The package as initially tendered comprised predominantly the demolition works together with some enabling works. After initial bids had been submitted, the scope of the package was extended to include various options for constructing some piled foundations and associated works.[139] Revised tender bids were submitted by all the companies by 8 July 2013, with [demolition contractor] and McGee submitting two further bids by 16 August 2013.[140] Details of the bids submitted are set out in the table below.[141]

---

[137] URN7099, paragraph 130.
[138] The tender process was managed by [tender manager], on behalf of the end client, Shell International Petroleum Company Limited: URN6218.
[139] URN6218. The tender was later split for contractual purposes into two awards: the demolition contract and the separation works demolition contract.
[140] URN6218.
[141] URN6218.

Company	Initial submission date	Value	Revised tender bid	Revised tender bid	Final tender offers
McGee	3 June 2013	£15,580,000	£16,726,877	£17,394,427	£19,061,053[142]
Brown and Mason	31 May 2013	£13,450,954	£16,710,954[143]		
Erith	3 June 2013	£16,791,819	£18,804,188[144]		
[demolition contractor]	3 June 2013	£13,814,312	£17,907,363	£18,371,182	£21,193,132

4.28 The contract was awarded to McGee.[145]

Cover bidding in conjunction with a compensation payment

4.29 [Director A] (McGee) has said that he '*initiated the contact*' with Brown and Mason and Erith, in order to put in place a cover bidding arrangement, because McGee '*had no work on whatsoever and were desperate for the job*'.[146] He also said that he '*agreed compensation payments on this contract*' as Brown and Mason and Erith were initially '*reluctant to give it to me*'. He explained: '*the agreement I had with* [Director A] *of Erith was £500,000, and the agreement with Brown and Mason was £600,000. That was the amounts they wanted in order to stand back from the job for me*'.[147]

4.30 Consistently with this:

(a) [Director] (Brown and Mason) explained that, after the submission of initial tender bids, he was '*contacted by* [Director A] [(McGee)]', who '*said that he was in trouble and he wanted the job…he told me the price that the was going to go into the job at and he offered to pay us basically some money to cover him on the job. The price he told me on the job anyway*

[142] Following subsequent discussions with the end client, McGee's final tender figure was £18,400,000: URN6218.
[143] Brown and Mason's bid was not pursued due to resource concerns, programme and / or cost issues: URN6218, page 4.
[144] Erith's bid was not pursued due to resource concerns, programme and / or cost issues: URN6218, page 4.
[145] URN6218. As a result of project delays, the tender was not awarded to McGee until July 2015. The final award position comprised additional scope, inflation programme and other technical issues which resulted in further additions of £2.65 million to McGee's final tender of £18,400,000 to reach the final award value of £21,050,000: URN6218.
[146] URN6189, paragraph 37.
[147] URN6189, paragraph 38.

was after I'd got all my prices in[148] – [it] *was way under what I was looking at, what I was doing with the job … Once they changed the scope it wasn't my bag anyway… I knew I wouldn't win the job, so I accepted what he offered.*[149] *… he basically said, "I'll give you 600,000 if you're … above that number"*";[150]

(b) [Director A] (Erith) said that [Director A] (McGee) told him McGee was '*really desperate for the job'* and asked Erith '*to take a back seat … I think* [Director A] [(McGee)] *would have said to me, "Look, drop out of it or drop away from it and I'll - and I'll look after you," or something*';[151]

(c) [Employee A] (McGee) said: '*I can't recall at what point I was aware, but I was aware that there was an agreement on that* [Shell Building] *project for us to win that job*'.[152]

4.31 [Director A] (McGee) and [Director] (Brown and Mason) also said that McGee paid Brown and Mason's compensation payment under a series of invoices, spread over the period 2015 to 2017, for the provision of '*temporary steelwork to another project*'.[153] Indeed, Brown and Mason's payment records show that it received three payments from McGee during the period December 2015 to May 2017, totalling £600,000 (plus VAT).[154] Although the payment records do not specifically mention the Southbank, London contract, the CMA infers from the witness evidence that, because [Director] (Brown and Mason) stated he was promised £600,000, which matches the total value of the sums paid to Brown and Mason by McGee, these payments are likely to be evidence of the compensation element of this Infringement.

4.32 Similarly, Erith (in response to a section 26 notice), [Director A] (McGee), and [Director A] (Erith) said that McGee paid Erith a compensation payment under

---

[148] This is a reference to the prices that [Director] (Brown and Mason) had obtained from third party contractors for the delivery of the additional services required following the extension of the scope of the contract. [Director] (Brown and Mason) has explained that after the initial tender bids had been submitted, the scope of the contract was extended to include '*enabling works, temporary works, piling, excavation*' such that it became '*much more of a civil engineering construction contract*'; Brown and Mason did not have the capabilities in-house to deliver these additional works: URN2899, pages 153 to 154 and 159 to 160.
[149] URN2899, page 154 (see also page 159).
[150] URN2899, page 167.
[151] URN2936, pages 314 to 318.
[152] URN3063, page 171.
[153] URN2899, pages 154 to 155; URN6189, paragraphs 39 and 55 to 60; URN5549; URN5550; URN5542; URN5543; URN5553; URN5554.
[154] URN5550 and URN6311; URN5543 and URN6312; URN5554 and URN6313.

a series of invoices, during the period May 2016 to February 2017, for '*reusable steel*'.[155]

4.33 There is evidence that Brown and Mason's revised tender bid was increased to take account of additional costs following the rescoping of the contract; and that Brown and Mason may, in fact, have submitted this bid with the intention of winning the contract (noting, in particular, that this bid was lower than the other bids submitted at the second stage of the tender process: see paragraph 4.27).[156]

4.34 Nevertheless, for the reasons set out below, the CMA considers that Brown and Mason and McGee infringed the Chapter I prohibition by entering into an agreement or concerted practice to submit a cover bid:

(a) there is no evidence to suggest that Brown and Mason either:

(i) expressed to McGee its purported intention to compete; or

(ii) attempted to distance itself from, or cease its involvement in, cover bidding discussions in relation to this contract with McGee;

(b) the evidence set out in paragraphs 4.29 to 4.32 above, including, in particular, evidence that McGee paid Brown and Mason a compensation payment, indicates that, at the very least, McGee understood there to have been a cover bidding arrangement in place, under which it had agreed to compensate Brown and Mason for submitting a high tender bid;

(c) as noted in chapter 3, parties cannot avoid liability for an arrangement infringing the Chapter I prohibition by arguing that it was never put into

---

[155] Erith described certain invoices as '*payments made by McGee Group Limited to Erith as compensation for Erith agreeing not to compete with McGee Group Limited in certain circumstances*': URN6452: page 4, paragraph 13. URN6189, paragraphs 39 to 54 (see in particular, paragraph 43 '*the idea to use reusable steel as a vehicle for this payment would, I would think, probably have been mine*' and paragraph 44 '*I would probably have discussed with* [Director A] [(Erith)] *what to put on the invoice so it wouldn't stand out* […] *What is on the invoice didn't matter as it is a compensation payment*'). See also: URN4171; URN4236; URN4237; URN4238; URN4239; URN4240; URN4241; URN4242; URN4243; URN4247; URN4248; URN4249; URN4250; URN4251; URN4252; URN4253; URN4254; URN4255; URN4256; URN5532; URN5533; URN5541 (see in particular, [Director B]'s (McGee) email: '*we must have an invoice showing 50 plus tons of scrap on the job')*; URN5544; URN5545; URN5547; URN5568; URN6442; URN6443; URN6444 (see in particular, [Director A]'s (McGee) email, '*can you re-issue the same invoice and rephrase it like the other one (i.e. say sale of reusable steel – and not reuseable scrap). And refer to Battersea on it- something like*'); URN6445; URN6446; URN6447; URN6448; URN6449. URN2936, pages 313 to 334 (the CMA notes that [Director A] (Erith) was unable to recall the amount of the compensation payment, but he confirmed that three invoices were compensation for a cover bidding arrangement).

[156] See also URN2899, pages 154 to 155 and 158 to 159; URN6218, page 4; URN7730.

effect by them; and if an agreement or concerted practice has as its object the prevention, restriction or distortion of competition, it is not necessary to establish that it would also have had an anti-competitive effect.

Legal assessment

4.35 On the basis of the evidence above, the CMA finds that, at McGee's instigation, Brown and Mason and Erith each agreed with McGee that they would submit a cover bid in return for a compensation payment in relation to the Shell Building, Southbank.

4.36 Thus, having regard to the legal principles set out in chapter 3, the CMA considers that:

(a) between at least 3 June 2013 and 8 July 2013 ('*Relevant Period 3(a)'*), McGee and Brown and Mason;

(b) between at least 3 June 2013 and 8 July 2013 ('*Relevant Period 3(b)*'), McGee and Erith,

infringed the Chapter I prohibition by participating in one or more agreements or concerted practices in the form of a cover bidding and compensation payment arrangement or arrangements which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services for the Shell Building, Southbank. This is not affected by whether or not Brown and Mason put the agreement into effect (see paragraph 3.33).

Infringement 4 – Bow Street (1): Scudder, Keltbray and Cantillon

4.37 Infringement 4 concerns conduct by Scudder, Keltbray and Cantillon in relation to the supply of Demolition Services and Asbestos Removal Services for Bow Street (1).[157]

4.38 Invitations to tender were issued to Scudder, Keltbray, Cantillon and [demolition contractor] in April 2014, with an initial tender return date of 17 April 2014. Details of the bids submitted are set out in the table below.[158]

---

[157] The project concerned the conversion of Bow Street Police Station and Magistrates Court into a Hotel. The tender was for a single package of enabling works, asbestos removal, soft strip, demolition and excavations. The end client was Bow Street Hotel Limited; [tender manager] was appointed initially as Project Manager and then as Construction Manager: URN5778, page 2.
[158] URN5778.

Although information in relation to bid submissions provided to the CMA by the Project Manager refers to the formal submission date of 17 April 2014, the CMA infers from contact between Scudder and Cantillon on 24 and 25 April 2014 (see paragraph 4.43 below) that Cantillon, in fact, received an extension for the submission of its bid.[159]

Name	Initial submission due date	Value
Scudder	17 April 2014	£807,843
Keltbray	17 April 2014	£968,730
Cantillon	17 April 2014	£895,216
[demolition contractor]	17 April 2014	£658,770[160]

4.39 The contract was awarded to Scudder.[161]

Contact between Scudder and Keltbray

4.40 On 16 April 2014, [Employee] (Scudder) provided [Director] (Keltbray) with pricing information for the purposes of a cover bid, by forwarding Scudder's '*quote for demolition*' for '*Bow Street*', saying, '*Any queries please give me a call*'.[162] In response, [Director] (Keltbray) asked, '*how many weeks*', to which [Employee] (Scudder) replied, '*We were … talking in the region of 14 weeks*'.[163]

4.41 In his witness evidence, [Employee] (Scudder) said that the '*fact that we've provided Keltbray with our price indicates that they were possibly not interested in winning the job and could not be bothered to price, or that the project may not have been their type of work or they did not fancy working for the client*'.[164] He also explained that [Director]'s (Keltbray) query about the programme length was important '*because the duration as well as the price*

[159] URN5778. [tender manager] was unable to confirm the exact date of Cantillon's bid submission: URN5229.
[160] Deemed a '*Non-compliant bid*': URN5778, page 3.
[161] URN5778, page 3. Works commenced in June 2014 but were abandoned at the end of August 2015 due to lack of funding.
[162] URN0576; URN0577: the Tender Sum Analysis specified a total tender sum of £807,843, that is: Scudder's initial bid, as submitted on 17 April 2014. See also URN7099, paragraphs 68 to 71.
[163] URN3493.
[164] URN7099, paragraph 72; see also paragraph 74: [Employee] (Scudder) was unable to recall precisely who asked him to send the figures to Keltbray.

would affect the competitiveness of the tender. You need to get both aspects right to win a tender process'.[165]

4.42 In interview, [Director] (Keltbray) said that he discussed with Scudder whether Keltbray would be willing to go on the tender list '*knowing that* [Keltbray] *would not be the preferred contractor for the work*';[166] and that in order to ensure that Scudder won the contract, he '*would have been informed either verbally or in an email etc from* [Employee] [(Scudder)] "*This is where we're at*"*, or* "*this is where you need to be at for the price of the works*"*.*[167] He too said that the duration of any works is an important consideration, noting that this information, along with the tender analysis provided by Scudder, would have given Keltbray '*a sanity check of whether we were in the right ballpark, the right money*'.[168]

Contact between Scudder and Cantillon

4.43 [Director A] (Scudder) and [Employee A] (Cantillon) discussed pricing for this contract in a series of text messages on 24 and 25 April 2014, with Scudder providing Cantillon with information for the purposes of a cover bid.[169] In particular, there is:

(a) a text from [Employee A] (Cantillon) asking for Scudder's '*bq*',[170] saying '*I will go north and vary it*'; to which [Director A] (Scudder) replied, '*you need to be north of 850k*';

(b) a text from [Employee A] (Cantillon) asking for the '*split for the 4 Sections*';

(c) a text from [Employee A] (Cantillon) confirming that, '*Our* [Cantillon's] *Bow at figure was 890k in the end*'.[171]

4.44 In interview, [Employee A] (Cantillon) explained that Cantillon was not interested in winning the tender, and that he approached [Director A]

---

[165] URN7099, paragraph 71.
[166] URN3001, page 38.
[167] URN3001, pages 38 to 39.
[168] URN3001, page 45.
[169] URN3819.
[170] Bill of quantities: URN3738, page 128.
[171] The CMA notes that Cantillon submitted a bid of £895,216: URN5778.

(Scudder) for '*a price that I could go well away from and not waste my time on the contract -- on the tender*'.[172]

4.45 Consistently with this, [Director A] (Scudder) said that [Employee A] (Cantillon) '*was just looking for a price. Cantillon were not interested in the job or hadn't looked at it and he was looking for a price that was above our price. So, he's taken a cover from us* … he *would take our bills of quantities … and he would, depending on the way the bill was prepared, put different rates in or different prices in for different elements, but, ultimately, would be more expensive than us*'.[173]

Legal assessment

4.46 On the basis of the evidence above, the CMA finds that Scudder provided both Cantillon and Keltbray with pricing information which they each relied upon for the purposes of submitting a cover bid.

4.47 Thus, having regard to the legal principles set out in chapter 3, the CMA considers that:

(a) between at least 16 April 2014 and 17 April 2014 ('*Relevant Period 4(a)*'), Scudder and Keltbray; and

(b) between at least 24 April 2014 and 25 April 2014 ('*Relevant Period 4(b)*'), Scudder and Cantillon;

infringed the Chapter I prohibition by participating in one or more agreements or concerted practices in the form of a cover bidding arrangement or arrangements which had as its object the prevention, restriction, or distortion of competition in relation to the supply of Demolition Services and Asbestos Removal Services for Bow Street (1).

[172] URN3738, page 123.
[173] URN3181, pages 173 to 175 and also pages 176 to 178 ([Director A]'s (Scudder) explanation of the texts when shown them during interview).

Infringement 5 – Station Hill, Reading: Scudder, Erith, Keltbray, Cantillon and McGee

4.48 Infringement 5 concerns conduct by Scudder, Erith, Keltbray, Cantillon and McGee in relation to the supply of Demolition Services for Station Hill, Reading.[174]

4.49 Invitations to tender were issued to Scudder, Erith, Keltbray, Cantillon and McGee in April 2014, with an extended tender return date of 30 May 2014.[175] Details of the initial bids submitted are set out in the table below:[176]

Name	Initial submission Date	Value
Scudder	30 May 2014	£5,241,722
Erith	30 May 2014	£5,447,942
Keltbray	30 May 2014	£5,488,623
Cantillon	30 May 2014	£5,541,026
McGee	30 May 2014	£4,917,000[177]

4.50 Post-tender interviews were held on 9 June 2014, following which Scudder, Erith, Keltbray and Cantillon were asked to submit bids for a rescoped package.[178] The contract was awarded to Scudder.[179]

Cover bidding in conjunction with a compensation payment

4.51 Text messages sent between May and September 2014 evidence contact between Erith, Scudder and McGee in relation to this contract.[180] Specifically:

[174] This job formed part of a redevelopment of a shopping centre and various buildings in central Reading. The tender process was managed by [tender manager], on behalf of the end client, Sackville Developments (Reading) Ltd, a joint venture with Stanhope Plc], which also acted as the site's development manager: URN5783.
[175] URN5783.
[176] URN5783.
[177] McGee's initial tender offer was deemed non-compliant and was not taken further: URN5783.
[178] URN5783.
[179] URN5783.
[180] URN3150; URN3861.

(a) on 28 May 2014,[181] [Director A] (Scudder) sent a text to [Director A] (Erith), by which Scudder instigated a cover bidding arrangement in return for compensation:

'*Offer for reading £50k each*

'*Placings to be agreed*

'*See if you can get agreement and we can talk later re budgets etc*';

(b) on 29 May 2014,[182] [Director A] (Erith) replied: '*gis a shout when you can I have spoken to all*', later sharing information in relation to McGee's bid: '[name/initials] *4.9m excluding externals*'.[183] The CMA infers that [Director A] (Erith) obtained this information from McGee, noting that McGee submitted a tender bid of £4,917,000, which excluded part of the works.[184] [Director A] (Erith) also asked, '*what program shall I tell him* [[Director A] (McGee)]', to which [Director A] (Scudder) replied: *'35 weeks*'. Thus, the CMA infers that McGee was party to these discussions, and this arrangement;

(c) on 11 June 2014,[185] [Director A] (Erith) sent a text to [Director A] (Scudder) saying that one of Erith's estimators would call '*re Reading and our responses*';[186]

(d) on 30 September 2014, [Director A] (Erith) sent a text to [Director A] (Scudder) saying, '*can I invoice you for reading less taplow 75 less 35 is 40k?*' to which [Director A] (Scudder) replied, on 2 October 2014: '*No news on Reading so hold fire also figure was 65k not 75k*'.

4.52 In interview, [Director A] (Scudder) said that these texts refer to Scudder's offer of a compensation payment to the other contractors in the tender process, in return for Scudder winning the job.[187] He further explained that, in the text message referred to in paragraph 4.51(d), [Director A] (Erith) was asking for a figure for an invoice under which Scudder could make the

---

[181] The CMA infers that this text concerned the initial tender bid, which was submitted on 30 May 2014.
[182] The CMA infers that this text concerned the initial tender bid, which was submitted on 30 May 2014.
[183] URN3150. [Director A] (Erith) has said '[name/initials]' is a reference to [Director A] (McGee): URN2936, page 206.
[184] URN5783. McGee's tender bid was submitted the following day, 30 May 2014.
[185] The CMA infers that this text concerned follow up queries arising from the post tender interviews on 9 June 2014.
[186] URN3150; URN2936, page 208.
[187] URN3181, page 159. He also clarified that '*Placings to be agreed*' meant agreement as to '*where people would end up in the*…[tender] *return process*', that is: '*where their price sits in relation to the winning price*': URN3181, pages 159 to 160 (based on his reading of the evidence during the interview).

compensation payment for this contract, describing it as '*compensation for the quid pro quo values*'.[188] (See also paragraphs 4.13 to 4.15 above.)

4.53 Consistently with this, [Director A] (Erith) said that Scudder considered Station Hill, Reading to be '*its job*' and had therefore offered Erith £50,000 to submit a cover bid; he concluded, '*we'd done as we was told … we provided a tender and we had been given the number by Carey* [Scudder] *… for 50 grand to do the honourable…Carey's* [Scudder] *was going to get the job*'.[189]

4.54 There is also evidence of contact between Keltbray and Scudder which was intended to inform Keltbray's cover bid:

(a) on 29 May 2014, [Director B] (Scudder) sent an email headed '*Station Hill Reading'* to [Director] (Keltbray), attaching various pricing documents relating to that tender;[190]

(b) on 9 June 2014,[191] [Director] (Keltbray) sent an email to [Employee A] (Keltbray) saying, '[Director B] *from Scudders will call you re Reading and replies*'.[192]

4.55 [Director B] (Scudder) explained that he sent pricing information to [Director] (Keltbray), '*to make sure that he would be comfortably above our price for that element of the project*'.[193] The CMA also notes [Director]'s (Keltbray) evidence that: '*On the basis that we weren't interested in the job … it's a fair assumption, that we actually put a price in for the work that assisted Careys* [Scudder] *in potentially winning this job*'.[194]

4.56 There is evidence that Cantillon was party to a cover bidding and compensation payment arrangement in relation to Station Hill, Reading:

(a) [Director A] (Cantillon) said that, following initial tender bids and further to a discussion with Scudder, he agreed to provide a cover price in return for

---

[188] URN3181, pages 147 and 148 (based on his reading of the evidence during the interview).
[189] URN2936, page 201. [Director A] (Erith) said that each contractor on the tender list would have been in line to receive the compensation payment (albeit that he could not recall whether Erith did, in fact, receive the payment, or who those contractors were, other than McGee): URN2936, page 205.
[190] URN0569; URN0570; URN0571; URN0572; URN0573.
[191] The day of Keltbray's post tender interview: URN5783.
[192] URN3513. The CMA notes that this email was also sent to [Director A] (Scudder). The CMA also notes that, on 5 June 2014, [Director] (Keltbray) sent a text to [Director A] (Scudder) to inform him that Keltbray's post-tender interview was scheduled on 9 June 2014, at 09:00: URN3827.
[193] URN7098, paragraph 57. He further noted that, '*It was to give Keltbray an aide memoire, so that they didn't' have to work too hard, that is they would not have to cost the job themselves*'.
[194] URN3001, dated 7 November 2020, page 66.

his '*costs*' being covered, '*Of which* [Director A] [(Scudder)] *agreed to £75,000*';[195]

(b) [Employee] (Scudder) said that '*Scudder won the contract but there was cover pricing and exchanges of commercially sensitive information on this project. I provided a copy of our quotation to* [Employee A] *at Cantillon for him to submit a cover price*'.[196]

4.57 Notebook extracts provide further evidence as regards the compensation payments for this contract, specifically:

(a) an extract from a notebook belonging to [Director A] (Cantillon) (see paragraph 4.7(a)), which says: '*Reading 65k or 75k ow*';[197] and

(b) an extract from a notebook belonging to [Employee] (Scudder) (see paragraph 4.7(b)), which says:[198]

'*Reading* *60 Erith - * (Barchester)*

60 Cantillon

60 McGee'

4.58 [Employee] (Scudder) said that the entry referred to in paragraph 4.57(b) '*refers to the contract at Station Hill in Reading … the figure 60 which would signify £60,000 that was owed to Erith, Cantillon and McGee. The money was owed by Scudder to these companies for standing back on the Station Hill tender and thereby allowing Scudder to win the contract*'.[199]

4.59 [Director A] (Cantillon) said that Scudder paid Cantillon's compensation payments for both Station Hill, Reading and Lots Road Power Station[200]

---

[195] URN3191, page 73.
[196] URN7099, paragraph 109. The CMA notes that he also added, '*based on my recollection, I believe Erith and McGee were also involved in cover pricing on this contract*'.
[197] URN1393.
[198] URN1993.
[199] URN7099, paragraph 122. [Employee] (Scudder) also noted that the '*word 'Barchester' is not my handwriting and it does not mean anything to me…*'. The CMA also notes [Director B]'s (Scudder) witness evidence: '*I am pretty sure there was a deal done with the other competitors tendering for this project as a type of the quid pro quo arrangement*': URN7098, paragraph 59.
[200] See Infringement 6.

under a series of monthly invoices for fictional logistical support services in relation to a Selfridges contract,[201] from [Company].[202]

4.60 Consistently with this, [Employee] (Scudder) said that he facilitated payments to Cantillon, '*in monthly chunks of £20,000 to spread the cost to Scudder and to avoid any concerns or questions being raised internally. As the Selfridges contract was running and legitimate costs were being incurred it was possible to use that contract as a vehicle to make the payments. No such services were provided to Scudder by* [Company]'.[203]

4.61 The CMA notes that although the evidence as regards the level of the compensation payment is to some extent inconsistent, the documentary, witness and interview evidence relating to Scudder, Erith, Cantillon and McGee is consistent as regards there having been a compensation payment in place.

Legal assessment

4.62 On the basis of the evidence above, the CMA finds that Scudder instigated and entered into:

(a) a cover bidding arrangement with Keltbray; and

(b) a cover bidding and compensation payment arrangement with Erith, Cantillon and McGee,

in relation to Station Hill, Reading.

4.63 Thus, having regard to the legal principles set out in chapter 3, the CMA considers that:

---

[201] The Selfridges contract is the Duke Street, London contract which is the subject of Infringement 7.
[202] URN3191, pages 75 and 76; see also pages 418 to 423. The CMA notes that at the time the payments were made, they could not be, and were not, made to Cantillon as it had been sold to Beechbrook Capital. The CMA is in possession of nine invoices raised by [Company], in relation to the Selfridges contract, for an overall total of £210,000 (inc. VAT): URN0240; URN4430; URN4433; URN4421; URN0939; URN4434; URN0940; URN4432; URN0941; URN4431; URN0942; URN4429; URN0943; URN4414; URN0944; URN4435. See also URN3863, in which [Director A] (Cantillon) and [Director A] (Scudder) discussed invoices issued by [Company].
[203] URN7099, paragraphs 139 to 140; see also paragraphs 131 to 141. The CMA notes that [Employee] (Scudder) was not told the circumstances as to why or how the money was owed (paragraph 136). See also URN0239: in this email correspondence, dated 22 February 2016, [Employee] (Scudder) asked [Director A] (Cantillon) to invoice '*our contract at Selfridges*' at '*20k a month for logistical support or such like*'. [Director A] (Cantillon) replied that he had done so, asking [Employee] (Scudder) to confirm that he was '*happy with the wording*'.

(a) between at least 28 May 2014 and 11 June 2014 ('*Relevant Period 5(a)*'), Scudder and Erith;

(b) between at least 29 May 2014 and 9 June 2014 ('*Relevant Period 5(b)*'), Scudder and Keltbray;

(c) between at least 30 May and 9 June 2014 ('*Relevant Period 5(c)*'), Scudder and Cantillon; and

(d) between at least 29 May 2014 and 30 May 2014 ('*Relevant Period 5(d)*'), Scudder and McGee,

infringed the Chapter I prohibition by participating in one or more agreements or concerted practices, in the case of Keltbray, in the form of a cover bidding arrangement, and, in the case of Scudder, Erith, Cantillon and McGee a cover bidding and compensation payment arrangement or arrangements, which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services for Station Hill, Reading.

Infringement 6 – Lots Road Power Station: Scudder, Cantillon and Brown and Mason

4.64 Infringement 6 concerns conduct by Scudder, Cantillon and Brown and Mason in relation to the supply of Demolition Services for Lots Road Power Station.[204]

4.65 Invitations to tender were issued to Scudder, Cantillon, Brown and Mason, [demolition contractor], [demolition contractor] and [demolition contractor] in June 2014, with an initial tender return date of 4 August 2014.[205] In August and September 2014, post tender interviews were carried out with the three lowest tenderers, Scudder, Cantillon and Brown and Mason, with post tender queries sent out in advance.[206] Details of the final bids submitted are set out in the table below:[207]

[204] This contract formed part of the redevelopment of Lots Road Power Station, which was carried out in stages. The tender process was managed by [tender manager] on instruction from [company], on behalf of the end client, Circadian Ltd: URN5805, page 5.
[205] URN5805. Companies were invited to bid on a base tender package and/or four alternative schemes.
[206] URN5805.
[207] URN5805, page 11.

Name	Value
Scudder	£9,600,237.80
Cantillon	£10,705,359.75
Brown and Mason	£10,882,377.00

4.66 The contract was awarded to Scudder.[208]

Overview - cover bidding in conjunction with a compensation payment

4.67 [Employee] (Scudder) has provided evidence of a cover bidding arrangement in relation to Lots Road Power Station, saying:[209]

'*Towards the back end of the tender process I became aware that there was to be some cover pricing on the job….*

'*I was basically told by* [Director A] [(Scudder)] *or* [Director B] [(Scudder)] *to get our price together and when we were happy with it, we were going to pass it on*'.

4.68 There is also documentary evidence of a compensation payment of £100,000 being owed to both Cantillon and Brown and Mason. Specifically:

(a) an extract from a notebook belonging to [Director A] (Cantillon) (see paragraph 4.7(a)), which says: '*Lotts RD 100k owed*';[210] and

(b) an extract from a notebook belonging to [Employee] (Scudder) (see paragraph 4.7(b)), which says: '*Lots Rd 100k BMason Cantillon*'.[211]

4.69 As regards the entry referred to in paragraph 4.68(b) [Employee] (Scudder) said, '*I believe, based on the documentary evidence, that this refers to a compensation payment paid to Brown and Mason of £100,000. As Cantillon*

---

[208] URN5805, pages 2 to 11.
[209] URN7099, paragraphs 98 and 100. The CMA notes that, in interview, [Employee A] (Cantillon) said that this was a contract that Cantillon was '*very interested*' in, and that '*we competed*': see URN3738, page 158, and more generally, pages 158 to 161. However, taking account of the totality of the evidence, including in particular the documentary evidence in relation to a compensation payment, the CMA is of the view that Scudder and Cantillon were party to a cover bidding and compensation payment arrangement.
[210] URN1393. Although he was unable to recollect any detail, in interview, [Director A] (Scudder) said that, '*given the extract from the notebook … there obviously is indication there is a compensation payment for Lots Road…I think there would have been a discussion between Cantillon, Brown and Mason, and myself about Lots Road*': URN3181, pages 103 and 104; see also page 95.
[211] URN1993.

are referred to in the book and were also on the tender list, I also assume £100,000 was paid to them…The figure came from [Director A] [(Scudder)]'.[212]

Scudder and Cantillon

4.70 There is documentary evidence of contact between [Director A] (Scudder) and [Director A] (Cantillon) in June 2014, from which the CMA infers that Scudder and Cantillon discussed, or sought to discuss, Lots Road Power Station.[213]

4.71 In interview, [Director A] (Cantillon) explained that, following the submission of initial tender bids, Cantillon agreed with Scudder that it would submit a cover bid, in return for a compensation payment:[214]

'…[Director A] [(Scudder)] *said to me, "We're going to win this job. I don't know what you're still doing here. Careys* [Scudder] *have got the infrastructure to do it…*

'*Anyway, I said … "Look, we – me and Dad are, are scared of this. It's got bigger and bigger and you're probably right, but I want my estimating costs to date covered and then I will cover you"...*

'*I said to* [Director A] [(Scudder)]*, "I want -- I want paying for what we've spent to date". And that was the £100,000 that you see in front of you*[215]*…That's what me and* [Director A] [(Scudder)] *agreed*'.

4.72 He further explained that Scudder paid Cantillon's compensation payment under a series of monthly invoices for fictional logistical support services in relation to a Selfridges contract,[216] from [Company]. These invoices were used to facilitate compensation payments in relation to both Lots Road Power

---

[212] URN7099, paragraph 123.

[213] For example, [Director A] (Cantillon) sent a text to [Director A] (Scudder) on 26 June 2014: '*Please call re lotts Rd';* '*Did you speak to* [name/initials]*?*': URN3863. In interview, [Director A] (Cantillon) said that he was most likely trying to find out who the competition was for this contract, but that he could not remember who '[name/initials]' was; URN3191, pages 95 to 99. The CMA considers it reasonable to infer that this was a reference to [Director] (Brown and Mason) given the identity of the companies involved in the tender process for the Lots Road contact; and noting also that, on 14 July 2014, [Director A] (Scudder) sent a text to [Director] (Brown and Mason): '*Can we have a discussion on Lots Road later this week'*: URN3875.

[214] URN3191, pages 64 to 65, see also pages 69 to 70 as regards the mechanics of the cover bidding arrangement.

[215] That is: URN1393: '*Lotts RD 100k owed*'.

[216] The Selfridges contract is the Duke Street, London contract which is the subject of Infringement 7.

Station and Station Hill, Reading, and are discussed in more detail in paragraphs 4.59 and 4.60 above.

Scudder and Brown and Mason

4.73 On 14 July 2014, [Director A] (Scudder) sent a text message to [Director] (Brown and Mason), saying '*Can we have a discussion on Lots Road later this week*'.[217] The CMA is of the view that this meeting eventually took place on 28 July 2014, at the Thistle, Tower Bridge.[218] In interview, [Director] (Brown and Mason) recalled that [Director A] (Scudder) '*kept wanting to talk about this job. So, I agreed to meet him and then we discussed it…*'.[219]

4.74 The CMA is of the view that during this discussion Scudder and Brown and Mason entered into a compensation payment arrangement (without cover bidding), under which they agreed to fix an element of the tender price. In the words of [Director] (Brown and Mason):[220]

'*he* [[Director A] (Scudder)] *tells me he wants the job… he wants to buy me off the job … -- he wants to get rid of me … his company has targeted the job and he's wanted to make an offer, if you like, a momentary offer for me to do what he wanted me to do as far as putting my bid back goes, which I refused to do… So I told him I wasn't interested, I want the job, so I'm not interested in that in any manner, shape or form.*

'*…So, he then basically suggested to me that it's an expensive…tendering process … it's unreasonable. The client doesn't want to cover your cost… So, what he's suggesting is that we have an agreement between ourselves whereby we add a certain amount of money on to cover our tendering costs. Whoever wins the job gives the other x amount of pounds…*

'*…we've agreed on something like 80k add-on to cover tendering costs… but he was, I think, trying to manoeuvre, just trying to get an advantage over me*'.

---

[217] URN3875.

[218] URN3841: see text from [Director A] (Scudder) on 25 July 2014: '[Director] [(Brown and Mason)] *Monday* [28 July 2014] *midday at the thistle tower bridge if that suits*', and [Director]'s (Brown and Mason) reply '*Ok mate see you then*'. In interview, [Director] (Brown and Mason) explained that this text related to the discussion on Lots Road: '*you really need to look at* [URNs] *3875 and 3841, I think, as one type of thing ... basically* [Director A] [(Scudder)] *was trying to get hold of me. Ended up with a message. And then if you look at the next one, the same day on the 14th July, I message him back saying, "I'm back in the office from Wednesday. Call me". Then I got one back saying…"Sorry* [Director] [(Brown and Mason)]*" or whatever, "I didn't contact you last week. What date suits you to have a chat?"…*': URN2899, pages 89 to 90.

[219] URN2899, page 91.

[220] URN2899, pages 91 to 94.

4.75 Although [Director] (Brown and Mason) said in interview that '*I went straight ahead and priced the job as I wanted to – would price the job to win it*',[221] he nevertheless admitted to accepting a compensation payment from Scudder. He explained that he did so because [✂]. In his words: '*I went back to* [Director A] [(Scudder)] *and said, "You've basically caused me a load of grief now,* [Director A] [(Scudder)] *…80 grand you owe me. I want it"*'.[222]

4.76 [Director] (Brown and Mason) said that Scudder made this compensation payment to Brown and Mason under a series of invoices for fictional consultancy and survey work.[223] Consistently with this, [Employee] (Scudder) has provided witness evidence that he '*facilitated the payment to Brown and Mason*' by authorising the relevant invoices.[224]

4.77 Notwithstanding [Director]'s (Brown and Mason) assertion that he priced the job to win it, the CMA notes that his interview evidence indicates that his discussions with Scudder were conducted in such a way that Scudder would have understood Brown and Mason to be acting in accordance with a compensation payment arrangement. Evidence that the compensation was, in fact, paid further indicates that Scudder considered that it had an agreement with Brown and Mason:

(a) '*in my mind he* [[Director A] (Scudder)] *was making the play so I put my price up. So,* ***I agreed to do that****, knowing full well that I weren't going to put my price up and I was – and I weren't going to pay him either … And I*

---

[221] URN2899, page 94. There is no evidence as to whether either party increased their bids by the agreed amount. However, as noted in chapter 3, parties cannot avoid liability for an arrangement infringing the Chapter I prohibition by arguing that the arrangement was never put into effect by them; and if an agreement or concerted practice has as its object the prevention, restriction or distortion of competition, it is not necessary to establish that it would also have had an anti-competitive effect.

[222] URN2899, page 94.

[223] URN2899, pages 124 to 129.

[224] See URN7099, paragraph 106, and 161 to 169; URN3633; URN3618; URN3619; URN0936. The CMA is in possession of invoices raised by Brown and Mason to Scudder over the period November 2015 to February 2017, for an overall total of £100,000 (plus VAT), paid in four instalments: URN3619/URN4577; URN3692/URN4576; URN0936; URN3691/URN4575; URN0937; URN6310. Invoices no. 10059 (URN3692/URN4576, URN0936) and 10062 (URN3691/URN4575, URN0937) were originally issued with reference to the Lewisham site, then changed to Ford Dagenham at Scudder's request, URN3689; URN3687; URN3688. In interview, [Director] (Brown and Mason) confirmed that Brown and Mason did not provide Scudder with any of the services referenced in those invoices: URN2899, pages 124 to 129, and pages 138 to 139. The CMA notes that the total of £100,000 which was paid is consistent with the sums in the notebooks referred to at paragraph 4.68. The fact that that is more than the £80,000 figure [Director] (Brown and Mason) mentioned does not impact on the CMA's conclusions.

didn't expect for one -- in any manner, shape or form to get paid off of him';[225]

'*I went back to* [Director A] [(Scudder)] *and said "You've basically caused me a load of grief now … 80 grand you owe me" … I basically said to him* [[Director A] (Scudder)]*, "I want the money. It's as simple as that.* ***You know, what you agreed to do****". Then … I invoiced him, as he told me to and he paid us*'.[226] [Emphasis added]

Legal assessment

4.78 On the basis of the evidence above, the CMA finds that, at Scudder's instigation:

(a) Cantillon agreed with Scudder that Scudder would provide Cantillon with a cover bid in return for a compensation payment;

(b) Scudder and Brown and Mason were party to a compensation payment arrangement (without cover bidding), under which they agreed to fix an element of the tender price,

in relation to Lots Road Power Station.

4.79 Thus, having regard to the legal principles set out in chapter 3, the CMA considers that:

(a) between at least 4 August 2014 and 1 September 2014 ('*Relevant Period 6(a)*'),[227] Scudder and Cantillon;

(b) between at least 28 July 2014 and 28 August 2014 ('*Relevant Period 6(b)*'),[228] Scudder and Brown and Mason,

infringed the Chapter I prohibition by participating in one or more agreements or concerted practices, which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services for Lots Road Power Station. In the case of Scudder and Cantillon, this took the form of a cover bidding and compensation payment arrangement. In the case of Scudder and Brown and Mason, this took the form of a compensation payment arrangement (without cover bidding). The CMA's conclusion is not

[225] URN2899, page 93.
[226] URN2899, page 95.
[227] The date of the post tender meeting between [tender manager] and Cantillon: URN5805, page 9.
[228] The date of the post tender meeting between [tender manager] and Brown and Mason: URN5805, page 9.

affected by whether or not Cantillon wanted to win the contract, or whether Brown and Mason put the agreement into effect (see paragraphs 3.29 and 3.33).

Infringement 7 – Duke Street, London: Scudder, McGee and Keltbray

4.80 Infringement 7 concerns conduct by Scudder, McGee and Keltbray in relation to the supply of Demolition Services for Duke Street, London (also referred to as the '*Selfridges*' contract).[229]

4.81 Invitations to tender were issued to Scudder, McGee, and Keltbray in June 2014, with an initial tender return date of 9 July 2014.[230] Following the submission of bids, certain works were excluded from the scope of the tender; the PQS adjusted the bids to exclude the costs associated with those works.[231] Details of the bids are set out in the table below.[232]

Name	Initial submission date	Initial Value	Reconciled Value (adjusted by PQS)
Scudder	9 July 2014	£3,211,288.00	
			£1,089,020.00
McGee	9 July 2014	£3,410,516.59	
			£1,354,842.00
Keltbray	9 July 2014	£3,592,980.00	
			£1,471,936.00

4.82 The contract was awarded to Scudder.[233]

Cover bidding arrangement

4.83 In his witness evidence, [Employee] (Scudder) said that he '*provided two cover prices for both Keltbray and McGee's*' for the Duke Street (Selfridges) contract, elaborating that it *'was arranged that we would provide Keltbray and McGee with cover prices to submit to ensure we got the contract*'.[234] The

[229] The tender process was managed by [tender manager] in a joint venture with [tender manager], on behalf of the end client, Stanhope plc and Selfridges: URN5801.
[230] URN5801.
[231] URN5801; URN7104; URN7105, page 4.
[232] URN5801; URN7104; URN7105, page 4.
[233] URN5801.
[234] URN7099, paragraph 43.

CMA also notes [Director B]'s (Scudder) witness evidence in relation to this contract: '*There was a job at Selfridges we won a while ago and I seem to recall McGee was on the list and I don't think they wanted to do the job*'.[235]

4.84 Indeed, the following documentary evidence shows that Scudder discussed this contract with Keltbray and McGee, providing them with pricing information for the purposes of a cover bid:[236]

(a) a text message from [Director A] (Scudder) to [Director A] (McGee) on 3 July 2014, which says, '*will be in a better position to talk abt Selfridges later today'* to which [Director A] (McGee) replied, '*Ok that's fine. Can you try ring me at about 12.30/1pm please as we need to know where we're going with this as no doubt still plenty to do before it goes in*';[237]

(b) a text message from [Director A] (McGee) to [Director A] (Scudder) on 7 July 2014, which says, '*We obviously got the extension till Wednesday , can you give us a ring in the morning to discuss the numbers and what the plan is please*';[238]

(c) an email from [Employee] (Scudder) to [Director A] (McGee), on 8 July 2014, headed '*Re Selfridges*', attaching a pricing schedule containing a final tender sum of £3,196,305, saying:[239]

'*Please find attached our tender proposal for the above*

'*Please adjust terminology in red – this is not in the in the original pricing document*

'[Director A] [(Scudder)] *suggested you go some 8 % to 10 % above this*

'*Also suggests going longer on your program – ours is 44 wks*';

(d) an email from [Employee] (Scudder) to [Director] (Keltbray), on 8 July 2014, headed '*Re Selfridges*', attaching a pricing schedule containing a final tender sum of £3,196,305, saying:[240]

---

[235] URN7098, paragraph 40.
[236] URN3873.
[237] URN3874.
[238] URN3874.
[239] URN0917; URN4222; URN0918; URN4223.
[240] URN0556; URN0557. In interview, [Director] (Keltbray) said that [Employee] (Scudder) sent him this information to '*assist on our level of pricing'*: URN3001, page 57. The CMA notes that Scudder told Keltbray to price 10% to 12% above Scudder, and McGee to price 8% to 10% above Scudder. Consistently with this, at the first stage of the tender process, Keltbray submitted a bid that was higher than McGee's; and both Keltbray and McGee submitted bids higher than Scudder: URN5801; URN7104; URN7105.

'*Please find attached our tender proposal for the above*

'*Please adjust terminology in red – this is not in the in the original pricing document*

'[Director A] [(Scudder)] *suggested you go some 10 % to 12 % above this*

'*Also suggests going longer on your program – ours is 44 wks*';

(e) an email from [Director] (Keltbray) to [Employee] (Scudder), on 9 July 2014, headed '*Re Selfridges*', saying, '*can you send programme please*', to which [Employee] (Scudder) replied, '*Working on this now Will get it over to you as soon as it is finished*'.[241]

Legal assessment

4.85 On the basis of the evidence above, the CMA finds that Scudder provided McGee and Keltbray with pricing information, which they each used to submit a cover bid.

4.86 Thus, having regard to the legal principles set out in chapter 3, the CMA considers that:

(a) between at least 3 July 2014 and 9 July 2014 ('*Relevant Period 7(a)*'), Scudder and McGee;

(b) between at least 8 July 2014 and 9 July 2014 ('*Relevant Period 7(b)*'), Scudder and Keltbray,

infringed the Chapter I prohibition by participating in one or more agreements or concerted practices in the form of a cover bidding arrangement or arrangements which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services in relation to the Duke Street, London (Selfridges) contract. This is not affected by whether or not McGee and Keltbray wanted to win the contract (see paragraph 3.29).

[241] URN0558.

Infringement 8 – Lombard House, Redhill: Scudder, Erith, Keltbray and Clifford Devlin

4.87 Infringement 8 concerns conduct by Scudder, Erith, Keltbray and Clifford Devlin in relation to the supply of Demolition Services for Lombard House, Redhill.[242]

4.88 Invitations to tender were issued to Scudder, Erith, Keltbray, Clifford Devlin and [demolition contractor] on 28 July 2014,[243] with an initial tender return date of 22 August 2014.[244] Details of the bids submitted are set out in the table below:[245]

Name	Submission date	Value
Scudder	26 August 2014	£1,674,072
Erith	27 August 2014	£1,803,625
Keltbray	22 August 2014	£1,916,825
Clifford Devlin	21 August 2014	£1,889,155
[demolition contractor]	27 August 2014	£1,612,200[246]

4.89 The contract was awarded to Scudder.[247]

Contact between Scudder and Erith

4.90 On 15 July 2014, [Director A] (Scudder) sent a text message to [Director A] (Erith), in which Scudder asked if it could put Erith forward as a potential bidder for this contract.[248] (See also paragraph 4.94 below.)

4.91 This was followed by a series of text messages between [Director A] (Scudder) and [Director A] (Erith), between 24 July 2014 and 18 September

---

[242] This project concerned the demolition of Lombard House, to enable the neighbouring Sainsbury's supermarket to be altered and extended: URN5407, page 5. The tender process was managed by [tender manager] on behalf of the end client, Sainsbury's Supermarkets Ltd: URN5424.
[243] URN5423.
[244] Invitations to tender were sent on 12 August 2014: URN5424.
[245] URN5424.
[246] Non-compliant bid: URN5423.
[247] URN5424.
[248] URN3876: '*Putting a list together for a job in Redhill you ok if we put you forward?*'.

2014, which, in conjunction with interview evidence, show contact concerning the provision of a cover price for the '*Redhill*' contract.[249] In particular, there is:

(a) a text message from [Director A] (Scudder) on 24 July 2014 saying, '*job…coming out next week from* [initials][250] *Try and meet up early next week to discuss*';

(b) a text message from [Director A] (Erith) on 12 August 2014, asking, '*Do we need to go thru motions*':

(c) a text message from [Director A] (Erith) on 16 September 2014[251] asking '*Did redhill go to plan*', to which [Director A] (Scudder), replied, on 18 September 2014: '*Will know on Redhill on Monday Don't anticipate any issues*'.[252]

4.92 In interview, [Director A] (Scudder) said that these text messages would have been part of managing the process by which Erith would submit a cover price, so that Scudder would '*end up with the job, and … their* [Erith's] *price would not be accepted*'.[253]

Contact between Scudder and Keltbray

4.93 On 20 August 2014, Scudder provided Keltbray with pricing information for the purposes of submitting a cover bid, specifically:

(a) [Director B] (Scudder) sent an email to [Director] (Keltbray) attaching a pricing schedule in relation to '*Lombard House for* [tender manager] – *Sainsburys*', containing a breakdown of prices and specifying a tender

---

[249] URN3150.

[250] '[initials]' is a reference to the main contractor in the Lombard House project in Redhill, [tender manager].

[251] That is: after the submission of the tender offers.

[252] URN3150: [Director A] (Erith) replied: '*Good news*'.

[253] URN3181, page 145 and see more generally pages 139 to 144. When [Director A] (Erith) was asked about these text messages in interview, he said that, having read through the material, his view was that, '*…the client obviously wants him* [Scudder] *to do the job. He's, he's picking a list of tenderers, and he's asking me would we be okay to do it…to provide a cover price for, for him*': URN2936, page 158. See also pages 158 to 163. However, the CMA notes that [Director A] (Erith) said that he was unable to remember this contract; he also said that he '*presumed*' that the reference to '*go thru the motions*' was a query as to whether Erith would have to put in the work to provide a comprehensive tender, or whether Erith would be required to provide '*just a, a cover price*': URN2936, page 162.

total of £1,916,825.[254] Keltbray submitted this pricing schedule to [tender manager] on 22 August 2014;[255]

(b) [Director] (Keltbray) replied asking for certain clarifications: '*These are our figures? What about programme and method statement*', to which [Director B] (Scudder) replied '*Program should be 20 wks not 18*'. [Director] (Keltbray) then responded, '*we have made 22*'.[256]

4.94 In his witness evidence, [Director B] (Scudder) said that the '*only time I recall I initiated cover pricing was in relation to some Sainsbury's contracts. It was a recognised fact that we used to do most if not all the work for Sainsbury's*'; as regards Lombard House in Redhill, he recalled that he, '*put a list together of companies that would take cover prices.* [tender manager] *then sent the enquiries out direct to them*'.[257]

4.95 In interview, [Director] (Keltbray) explained:[258]

'*the only involvement Keltbray had in this project was providing a price … with my brother* [[Director A] (Scudder)] *asking me, "Can you please provide us with a price for the Sainsbury's job."* … *I wouldn't have even bother to have gone and sort of put someone to go and have a look at the site or - this would purely be a pricing exercise that we'd be doing on the basis of what Careys* [Scudder] *gave us*'.

Contact between Scudder and Clifford Devlin

4.96 On 21 August 2014, [Director B] (Scudder) provided Clifford Devlin with a cover price for this contract, by sending an email to [Director] (Clifford Devlin), attaching a pricing schedule containing a breakdown of prices and specifying a tender total of £1,860,697, saying, '*These are your figures*'.[259] This figure was marginally below Clifford Devlin's final tender figure of £1,889,155, as submitted to [tender manager] on 21 August 2014.[260]

---

[254] URN0549; URN0550.
[255] URN5418; URN5419. Metadata shows the last author of the pricing schedule document (URN5419) was '[Director B] (Scudder)'.
[256] URN0553.
[257] URN7098, paragraph 34.
[258] URN3001, pages 95 to 96.
[259] URN0272; URN0273.
[260] URN5424.

4.97 In his witness evidence, [Director B] (Scudder) recalled that, '*For the Redhill job, I asked* [Director] *of Clifford Devlin to cover price. Some of those communications were by email, some by phone call*'.[261]

4.98 In interview, [Director] (Clifford Devlin) said that although he did not have a '*great deal of recollection*', it looked as though Scudder had '*asked us to, to look at something which we, we've completed and sent back as they requested*'.[262]

Legal assessment

4.99 On the basis of the evidence above, the CMA finds that, at Scudder's lead, Erith, Keltbray and Clifford Devlin each submitted a cover bid in the tender process for Lombard House in Redhill.

4.100 Thus, having regard to the legal principles set out in chapter 3, the CMA considers that:

(a) between at least 15 July 2014 and 27 August 2014 ('*Relevant Period 8(a)*'), Scudder and Erith;

(b) between at least 20 August 2014 and 22 August 2014 ('*Relevant Period 8(b)*'), Scudder and Keltbray;

(c) on at least 21 August 2014 ('*Relevant Period 8(c)*'), Scudder and Clifford Devlin,

infringed the Chapter I prohibition by participating in one or more agreements or concerted practices in the form of a cover bidding arrangement or arrangements which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services for Lombard House in Redhill.

Infringement 9 – 18 Blackfriars Road: Scudder and Squibb

4.101 Infringement 9 concerns conduct by Scudder and Squibb in relation to the supply of Demolition Services for 18 Blackfriars Road.[263]

---

[261] URN7098, paragraph 34.
[262] URN2842, page 98.
[263] The contract was tendered as one package for the demolition of three groups of buildings. The tender process was managed by [tender manager] on behalf of the end client, Black Pearl Limited: URN5802 Tender C page 3.

4.102 Invitations to tender were issued to Scudder, Squibb, [demolition contractor], [demolition contractor] and [demolition contractor], with an initial tender return date of 1 December 2014.[264] Details of the bids submitted are set out in the table below.[265]

Name	Submission date	Value
Scudder	1 December 2014	£5,119,750
Squibb	1 December 2014	£4,760,000
[demolition contractor]	1 December 2014	£5,398,685
[demolition contractor]	1 December 2014	£5,042,500
[demolition contractor]	1 December 2014	£5,198,600

4.103 None of these bidders were awarded the contract, which was ultimately negotiated directly with, and awarded to, [demolition contractor].[266]

Cover bidding arrangement

4.104 [Director B] (Scudder) has provided witness evidence of a cover bidding arrangement in relation to this contract, saying, '*this project was going to be Squibb's job. I can't remember all the details of it, but I know that I provided a cover price for Squibb on this project*'.[267]

4.105 Consistently with this, [Director A] (Squibb) said that [Director A] (Scudder) '*said he was busy, said he does a lot of work for* [tender manager]*, he didn't want to be taken off the tender list and would we give him a cover price … which we did*'.[268]

4.106 The CMA is also in possession of documentary evidence that Squibb provided Scudder with pricing information for the purposes of preparing a cover bid. Specifically:

(a) on 26 November 2014, [Director A] (Squibb) sent a text to [Director A] (Scudder) saying, '*Where can I send over your bill* [of quantities] *for*

[264] URN5802 Tender C page 3.
[265] URN5802 Tender C pages 3 and 4.
[266] URN5802 Tender C page 4.
[267] URN7098, paragraph 60.
[268] URN4074, page 96.

Blackfriars be ready in the morning', to which [Director A] (Scudder) replied providing [Director B]'s (Scudder) work email address;[269]

(b) on 28 November 2014, [Director B] (Squibb) sent an email to [Director B] (Scudder), attaching a pricing schedule specifying a tender total of £5,119,750, saying: '*BoQ as requested, 60 weeks for the project*'.[270] [Director B] (Scudder) explained:[271]

'…*£5,119,750 would have been above Squibb's figure*…. [Director B] [(Squibb)] *mentions '60 weeks for the project'. That's him telling me how long I should put my preliminaries in at. Sometimes the time to carry out a project can affect whether you are likely to get it or not. If my price is too high and my contract duration too long, I expect Scudders would lose the tender*'.

Legal assessment

4.107 On the basis of the evidence above, the CMA finds that Squibb provided Scudder with pricing information, which it relied upon for the purposes of submitting a cover bid for the 18 Blackfriars Road contract.

4.108 Thus, having regard to the legal principles set out in chapter 3, and the specific circumstances of this infringement, the CMA considers that between at least 26 November 2014 and 1 December 2014 ('*Relevant Period 9*'), Squibb and Scudder infringed the Chapter I prohibition by participating in an agreement or concerted practice in the form of a cover bidding arrangement which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services for 18 Blackfriars Road.[272] This

---

[269] URN3878. In interview, [Director A] (Scudder) said that [Director B] (Scudder) would have been the one '*dealing with the tender*', and that, on the basis of this text: '*I assume we're taking a cover off* [Director A] [(Squibb)]. *We're not interested in the job and just getting a price to go in that's above his price*': URN3181, page 193.

[270] URN0930; URN0931. The CMA notes that Scudder did, in fact, submit a tender total of £5,119,750: URN5802 Tender C page 4.

[271] URN7098, paragraph 62.

[272] Squibb has made representations that the CMA has '*made no effort to assess the relevant context*' of the Infringements in which it was involved. Squibb argues that Infringement 9 concerns simple cover bidding, which, when viewed in the relevant context, is '*neither sufficiently serious, nor sufficiently clear, for it to be treated as an infringement by object*' and that an effects analysis of this Infringement would show that it '*did not have an appreciable negative impact on competition*': URN8351, paragraphs 131 and 156; see also paragraphs 25, 87 to 144 and 151 to 184. The CMA does not agree. The CMA has considered the specific circumstances of Infringement 9, including its legal and economic context, and considers that the anticompetitive nature of the conduct is sufficiently obvious for it to be classified as an object infringement, noting, in particular, that the customer was not aware that Squibb was providing a cover bid; the submission of even one cover bid reduces

is not affected by whether or not Scudder wanted to win the contract or simply wanted to stay on the tender list (see paragraphs 3.28 and 3.29).[273]

Infringement 10 – Bow Street (2): Scudder and Keltbray

4.109 Infringement 10 concerns conduct by Scudder and Keltbray in relation to the supply of Demolition Services for Bow Street (2).[274]

4.110 Invitations to tender were issued to [demolition contractor], [demolition contractor], [demolition contractor], [demolition contractor], Scudder, Keltbray and [demolition contractor], in October 2014, with an initial tender return date of 24 November 2014.[275] The contract was awarded to Scudder.[276] Details of the bids submitted are set out in the following table:[277]

Name	Submission date	Value
Scudder	26 November 2014	£10,884,249.57
Keltbray	28 November 2014	£1,071,175[278]
[demolition contractor]	26 November 2014	£12,269,948.35

uncertainty and deprives the customer of the opportunity to make an informed decision as to whether to obtain a (competitive) bid elsewhere; and the potential effects of the conduct may extend beyond the confines of the specific contract being tendered and create an atmosphere of collusion: see chapter 2 (*Industry overview*) and chapter 3 (*Agreements between undertakings*; and *Object of restricting or distorting competition)*.

[273] Squibb has made representations that a party may have *'objective reasons*' to seek or provide a cover bid, specifically to circumvent the costs of preparing a tender proposal in circumstances where it does not wish to win the contract (and therefore has no prospect of recouping those costs): URN8351, including paragraphs 122 to 124. However, as stated in footnote 502 below the object of an agreement or concerted practice is not assessed by reference to the parties' subjective intentions when they enter into it and it is irrelevant that a party may have submitted a cover bid so as not to risk being excluded from future tender lists: see chapter 3 (*Subjective intentions*).

[274] The project concerned the conversion of Bow Street Police Station and Magistrates Court into a Hotel. The end client was Bow Street Hotel Limited; [tender manager] was appointed initially as Project Manager and then as Construction Manager. An earlier package tendered in April 2014 (see Infringement 4) was abandoned due to lack of funding: URN5778, pages 1, 2 and 3.

[275] URN5778, page 5. The scope of the tender comprised demolition, piling, substructure and superstructure works.

[276] However, the works were abandoned at the end of August 2015 due to '*lack of funding*': URN5778, page 5.

[277] URN5778, page 5. Only Scudder, Keltbray and [demolition contractor] returned bids; the other companies did not do so '*due to workload*'.

[278] Tender offers from Scudder and [demolition contractor] covered the whole scope of the tender; Keltbray's bid was limited to demolition of existing structures.

Contact between Scudder and Keltbray

4.111 The CMA is in possession of evidence that Scudder and Keltbray shared pricing information in relation to this contract, for the purposes of enabling Keltbray to prepare and submit a cover bid.

4.112 On 26 November 2014, [Employee] (Scudder) sent an email to [Director] (Keltbray), attaching an extract from Scudder's '*bid analysis*' for '*Bow Street Hotel*'.[279] In the email he highlighted the price of Scudder's bid for the demolition of existing structures ('*£941,506 our bid – including our prelims*') and the time on site ('*16 weeks*'), and included a recommendation to '*spread your figure over further items / boxes*'.

4.113 On 27 November 2014, [Employee A] (Keltbray) sent an email to [Employee] (Scudder) attaching Keltbray's pricing schedule for '*Bow St. Hotel*', asking, '*Do you think I'll get away with this*'.[280] [Employee] (Scudder) replied '*That looks good to me*'.[281]

4.114 [Employee] (Scudder) has explained that:[282]

> '[Employee A] [(Keltbray)] *…is asking me, as I read his email, if his price was far enough above our price for it not to be a problem for him. His price was £1,050,350 and therefore considerably above our figure.*[283] [Employee A] [(Keltbray)] *was trying to avoid being called to a post tender interview so that Keltbray would have no further involvement in the project…*
>
> '*…if a company is looking to be excused from a project and they do not want to go through the process of pulling the numbers together, the unwritten rule, is that if you reach out for help, that you then don't undermine that by actually trying to win the contract from you*'.

4.115 Consistently with this, [Employee A] (Keltbray) said that this '*was a horrible job that* [Keltbray] *didn't want*', but that he needed to submit a bid because '*sometimes, if you turn down a tender, you may not get on the list for the next job*'.[284]

---

[279] URN3540; URN3541.

[280] URN3542; URN3543. The pricing schedule specified a tender total of £1,050,350. The CMA notes that Keltbray ultimately submitted a bid of £1,071,175 for demolition works: URN5778, page 5.

[281] URN3544.

[282] URN7099, paragraphs 82 and 83.

[283] That is, considerably above Scudder's figure (of £941,506) for the demolition aspect of the works.

[284] URN2817, pages 74 to 82. [Director] (Keltbray) agreed that this job was '[Scudder's] *to win and* [Keltbray's] *to lose*' when this was put to him in interview: URN3001, page 53.

Legal assessment

4.116 On the basis of the evidence above, the CMA finds that Scudder provided Keltbray with pricing information which Keltbray relied upon for the purposes of submitting a cover bid.

4.117 Thus, having regard to the legal principles set out in chapter 3, the CMA considers that between at least 26 November 2014 and 28 November 2014 ('*Relevant Period 10*') Scudder and Keltbray infringed the Chapter I prohibition by participating in an agreement or concerted practice in the form of a cover bidding arrangement which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services for the Bow Street (2) project. This is not affected by whether or not Keltbray wanted to win the contract, or simply wanted to stay on the tender list (see paragraphs 3.28 and 3.29).

Infringement 11 – Underground car park, High Wycombe: Clifford Devlin, Scudder and Erith

4.118 Infringement 11 concerns conduct by Clifford Devlin, Scudder and Erith in relation to the supply of Demolition Services for an underground car park in High Wycombe.[285]

4.119 Invitations to tender were issued to Clifford Devlin, Scudder, Erith and [demolition contractor] in October 2015, with an initial tender return date of 9 November 2015.[286] Details of the initial bids submitted are set out in the table below.[287] The submission of these bids was followed by a post tender query process, with post tender interviews taking place in November 2015.

Name	Initial submission date	Value
Clifford Devlin	6 November 2015	£2,519,186
Scudder	9 November 2015	£3,264,058
Erith	9 November 2015	£3,539,007
[demolition contractor]	6 November 2015	£3,728,904

[285] This project concerned the renovation of an underground car park. Part of the works package concerned the demolition and removal of defective concrete. The tender process was managed by [tender manager] and [tender manager] on behalf of the end client, Johnson & Johnson: URN6191; URN5083.
[286] URN6191.
[287] URN6191.

4.120 The contract was awarded to Clifford Devlin.[288]

Contact between Clifford Devlin and Scudder

4.121 In interview, [Director A] (Scudder) said that [Director] (Clifford Devlin) had '*asked us to put a cover price in on the job … at J&J in High Wycombe*'; and that Clifford Devlin provided Scudder with that cover price so that Scudder would not '*need to do any sort of work on the tender*'.[289] Consistently with this, [Employee] (Scudder) said that, '*Based on the documents and my recollection, Scudder submitted a cover price for Clifford Devlin on this Johnson and Johnson project*'.[290]

4.122 There is documentary evidence of contact between [Director] (Clifford Devlin) and [Director A] (Scudder) throughout October 2015, by which they discussed the tender process for this contract;[291] and there is documentary evidence of contact between Clifford Devlin and Scudder in November 2015, by which Clifford Devlin provided Scudder with pricing information for the purposes of a cover price. The CMA notes in particular:

(a) a series of contacts between [Director] (Clifford Devlin) and [Director A] (Scudder) on 3 November 2015, in which:

(i) [Director] (Clifford Devlin) asked for contact details for [Employee] (Scudder), so that he could '*send him a couple of email addresses to seek pricing on two items*', noting that '*I will call you later in week to discuss the whole return*';[292]

(ii) [Director A] (Scudder) confirmed that [Employee] (Scudder) '*knows that we are playing ball*'; that is, [Employee] (Scudder) was '*aware*

---

[288] URN6191. The tender for this work was carried out in a two-stage process; Clifford Devlin submitted a second tender bid in August 2016 for £3,239,253.
[289] URN3181, pages 118 and 124 (based on his reading of the evidence during the interview).
[290] URN7099, paragraph 90.
[291] URN3147 (see, in particular, messages from [Director] (Clifford Devlin), (a) on 2 October 2015: '*details have now been issued to Johnson & Johnson. The work is a refurbishment to their main car park. Their procurement lady may contact you at some stage next week. If she does can you confirm that … you are interested in bidding for the work. I'll call you Monday if that's ok*'; and (b) on 14 October 2015: '*you will be getting a call or e mail from* … [tender manager] *regarding the job at J & J in High Wycombe I spoke to you about…There will be a PQQ to complete and a site walk round on Friday 23rd October. Can you accept the invitation to tender and get someone to do the site visit ... I'll speak to you about it, but just wanted to out you on notice*'. On 15 October 2015 [Director A] (Scudder) informed [Director] (Clifford Devlin) that ' [Employee] [(Scudder)] *will be dealing with the tender*' (URN3147), forwarding tender details to [Employee] (Scudder) on 19 October 2015: URN4061; URN4062.
[292] URN3147.

there's…a tender to be submitted, and it'll be based on someone else's figures';[293]

(b) following on from that contact, an email from [Director] (Clifford Devlin) to [Employee] (Scudder) on 3 November 2015, saying: '[Director A] [(Scudder)] *has passed me your details for the J & J bid. Could I ask you to send two price enquiry e mails. Confirm that you are pricing … direct for the client and have been provided with their details for this aspect of the work*';[294]

(c) contacts between Clifford Devlin and Scudder on 5 November 2015, including:

(i) an email from [Director] (Clifford Devlin) to [Employee] (Scudder) attaching a pricing schedule for the job, containing [Director]'s (Clifford Devlin) handwritten annotations and a tender total of £3,264,058.45.[295] The CMA notes that this is the tender total that was ultimately submitted by Scudder;[296]

(ii) a text from [Director] (Clifford Devlin) to [Director A] (Scudder) saying, '*I have issued a priced schedule to* [Employee] [(Scudder)]. *You are 2nd. Price is about 3.2m but will be VE'd* [297] *down to around 2. Like for like with us you are about 300k behind...*'.[298] The CMA notes that Scudder's bid was, indeed, the second lowest in the tender process;[299]

(d) a series of contacts between Clifford Devlin and Scudder in relation to the post tender process,[300] including an email sent by [Director] (Clifford Devlin) to [Employee] (Scudder) on 17 November 2015, by which he provided Scudder with detailed information in relation to a number of elements of its cover price, for the purposes of a post tender interview on 19 November 2015.[301]

---

[293] URN3147; URN3181, pages 125 to 126.
[294] URN3615.
[295] URN3616; URN3617; URN2842, page 114.
[296] URN6191.
[297] Value engineered: URN3181, page 126.
[298] URN3147. See also URN3181, pages 126 to 128.
[299] URN6191.
[300] URN3147 (see texts dated 12 November 2015).
[301] URN3629.

Contact between Clifford Devlin and Erith

4.123 [Director B] (Erith) has provided evidence that '*Erith did not wish to win this tender*', and therefore '*based its bid on that of Clifford Devlin*', adding that he '*felt that Erith had to submit a bid of some description to preserve Erith's relationship with the client for future tenders*'.[302]

4.124 In support of this, there is documentary evidence of contact between [Director] (Clifford Devlin) and [Director B] (Erith) throughout October 2015, by which they discussed the tender process for this contract;[303] and there is documentary evidence of contact between Clifford Devlin and Erith in November 2015, by which Clifford Devlin provided Erith with a cover price. The CMA notes in particular:

(a) contacts between Clifford Devlin and Erith on 5 November 2015, including:

(i) an email from [Director] (Clifford Devlin) to [Director B] (Erith), attaching a pricing schedule for the job, containing handwritten annotations and a tender total of £3,539,007.84.[304] This is the tender total that was ultimately submitted by Erith;[305]

(ii) a text from [Director] (Clifford Devlin) to [Director B] (Erith), saying, '*I've e mailed the schedule. I'll bring it with me in the morning to discuss*';[306]

(b) a text from [Director] (Clifford Devlin) to [Director B] (Erith) on 6 November, saying: '*can I ask that all calculations are double checked for accuracy where %ages have been added please*';[307]

(c) a series of contacts between Clifford Devlin and Erith in relation to the post tender interview process, including texts from [Director] (Clifford

---

[302] URN6206, page 5; paragraph 25.
[303] URN1499. See, in particular, messages from [Director] (Clifford Devlin), (a) on 2 October 2015: '*details have now been issued to Johnson & Johnson. The work is a refurbishment to their main car park. Their procurement lady may contact you at some stage next week. If she does can you confirm that … you are interested in bidding for the work. I'll call you Monday if that's ok*'; and (b) on 14 October 2015: '*you will be getting a call or e mail from* … [tender manager] *regarding the job at J & J in High Wycombe I spoke to you about…There will be a PQQ to complete and a site walk round on Friday 23rd October. Can you accept the invitation to tender and get someone to do the site visit ... I'll speak to you about it, but just wanted to out you on notice*'. The CMA notes that these text messages mirror those sent by [Director] (Clifford Devlin) to [Director A] (Scudder) in relation to this project.
[304] URN6207; URN6208.
[305] URN6191.
[306] URN1499.
[307] URN1499.

Devlin) to [Director B] (Erith) on 19 November 2015,[308] by which he indicated that Clifford Devlin would provide Erith with information in relation to its cover price for the purposes of a post tender interview:

(i) '*It is a very informal interview with a 30 minute slot which includes a q & a. There is nothing technical and I will prepare a full brief for you if it goes ahead*';

(ii) '*I'll prepare some details for you based on ours. I'll come over to the office and meet up and do a run through well in advance*'.

Legal assessment

4.125 On the basis of the evidence above, the CMA finds that Clifford Devlin provided Scudder and Erith with pricing information, which they each relied upon to submit a cover bid.

4.126 Thus, having regard to the legal principles set out in chapter 3, the CMA considers that:

(a) between at least 2 October 2015 and 19 November 2015 ('*Relevant Period 11(a)*'), Clifford Devlin and Scudder;

(b) between at least 2 October 2015 and 19 November 2015 ('*Relevant Period 11(b)*'), Clifford Devlin and Erith;

infringed the Chapter I prohibition by participating in one or more agreements or concerted practices in the form of a cover bidding arrangement or arrangements which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services for an underground car park in High Wycombe.

Infringement 12 – 33 Grosvenor Place: Erith, Keltbray, Cantillon and McGee

4.127 Infringement 12 concerns conduct by Erith, Keltbray, Cantillon and McGee in relation to the supply of Demolition Services and Asbestos Removal Services for a development at 33 Grosvenor Place.[309]

---

[308] URN1499.

[309] The project involved demolition work at 33 Grosvenor Place to make way for a private hospital, Cleveland Clinic. The tender process was managed by [tender manager] on behalf of the end client, 33 Grosvenor Place and Cleveland Clinic London Ltd: URN5766.

4.128 Invitations to tender were issued to Erith, Keltbray, Cantillon and McGee in October 2016, with an initial tender return date of 14 November 2016.[310] Details of the bids submitted are set out in the table below.[311] The submission of these bids was followed by a post tender query process.

Name	Submission date	Value
Erith	14 November 2016	£14,956,963
Keltbray	14 November 2016	£16,729,120
Cantillon	14 November 2016	£16,452,603
McGee	14 November 2016	£16,249,754

4.129 The contract was awarded to Erith.[312]

Contact between Erith and Keltbray

4.130 There is evidence of a series of contacts between Erith and Keltbray, in which they shared and discussed pricing information to enable Keltbray to prepare and submit a cover bid. In particular:

(a) on 11 November 2016, [Employee A] (Erith) sent an email to [Employee A] (Keltbray) from his personal email address attaching a '*Form of Tender Sum Analysis*', annotated with handwritten figures, comments and amendments.[313] In interview, [Employee A] (Erith) said that this document contained a breakdown of Keltbray's cover price, noting in particular that a handwritten annotation on the cover page, '*KB circa 16.666 mill*',[314] '*means his figure's got to be circa 16.666*';[315]

---

[310] URN5766.
[311] URN5766.
[312] URN5766.
[313] URN2977; URN2978. In interview [Employee A] (Erith) confirmed that the annotations were in his handwriting: URN2871, pages 154 to 156. Both [Employee A] (Erith) and [Employee A] (Keltbray) used their personal email addresses for correspondence relating to cover bidding: see, for example, URN2871, pages 69 ('*you don't want anybody within Erith other than me, seeing it*'), 126, 162 and 163; URN2817, pages 21 and 22 (in the words of [Employee A] (Keltbray): '*it dawned on me that some of the exchanges were not correct and … I discussed it with one of my colleagues at the same level and we decided that we should …use our private…dawned on me …we shouldn't have been exchanging information…cover prices, commercial information*').
[314] '*KB*' is a reference to Keltbray: URN2871, pages 155 and 157.
[315] URN2871, pages 153 to 159. The CMA notes that Keltbray submitted a bid consistent with that approach, at £16,729,120: URN5766.

(b) on 14 November 2016 [Employee A] (Keltbray) sent an email to [Employee A] (Erith) from his personal email address attaching Keltbray's completed '*Form of Tender Sum Analysis*',[316] and informing him that Keltbray was '*going to suspend 8nr parking bays on Chester Mews*'.[317] [Employee A] (Keltbray) explained that he informed [Employee A] (Erith) that Keltbray had allowed for this potentially '*huge cost*', in case Erith was asked about it during the post tender interview process, the risk being that '[[Employee A] (Erith)] *might go to an interview and … be asked the same question and say "No, I haven't included them. I need to put more on my bid" and he might end up losing it*';[318]

(c) on 16 November 2016, [Employee A] (Keltbray) sent a number of emails to [Employee A] (Erith) against the background that Keltbray felt it would have to carry out a '*serious review*', of its bid, given alterations to the scope of the work during the tender period.[319] In two of those emails, he asked [Employee A] (Erith) for assistance in relation to the breakdown of Keltbray's '*General Conditions Number*';[320]

(d) on 17 November 2016, [Employee A] (Erith) sent an email to [Employee A] (Keltbray) saying: '*Did you get what I sent you this morning?*'; [Employee A] (Keltbray) responded: '*Received. Thanks*'.[321] Given the timing of these emails, the CMA infers that they refer to information that [Employee A] (Erith) had sent to [Employee A] (Keltbray) in relation to the breakdown of Keltbray's General Conditions number.

4.131 In interview, [Employee A] (Erith) explained that Erith wanted to win this contract (noting that it had a lot of '*kudos*'); he said he was informed by [Director A] (Erith) that '"*we want this job, and we're going to give* [Keltbray, Cantillon and McGee] *a cover price*"'.[322]

4.132 Consistently with this, [Employee A] (Keltbray) explained that '*about…two weeks before the tender submission was to go in, I was told*[323] *…that we*

---

[316] Specifying Keltbray's final tender bid of £16,729,120.
[317] URN2752; URN2753.
[318] URN2817, pages 49 to 51.
[319] URN2762; URN2763; URN2764; URN2773. See also URN2817, pages 54 to 63.
[320] URN2764 (this email attached Keltbray's final '*Form of Tender sum analysis*', which had specified a figure of £1,384,180 for '*General Conditions*': URN2765. According to [Employee A] (Keltbray), this '*was the number advised to me by* [Employee A] [(Erith)] *to be in my bid*', which had been set '*to make sure that* [Keltbray] *would lose*': URN2817, pages 62 to 63); URN2773.
[321] URN2751.
[322] URN2871, pages 133 to 134.
[323] By [individual] (Keltbray).

weren't going to win this job – and that Erith would win it and, "Can you liaise with [[Employee A] (Erith)] *to manage your bid?"*.[324]

Contact between Erith and Cantillon

4.133 There is evidence of contact between Erith and Cantillon, in which they shared and discussed pricing information to enable Cantillon to prepare and submit a cover bid. In particular:

(a) on 11 November 2016, [Employee A] (Erith) sent an email to [Employee A] (Cantillon) which included Erith's programme for works annotated with handwritten comments.[325] In interview, [Employee A] (Erith) explained that he shared these documents so that Cantillon could compare its programme with Erith's and '*go in at a … longer time*', thereby enabling Erith to '*win* [the tender]';[326]

(b) on 12 November 2016, [Employee A] (Erith) sent [Employee A] (Cantillon) a '*Form of Tender Sum Analysis*' annotated with handwritten figures, comments and amendments.[327] This annotated '*Form of Tender Sum Analysis*' had also been sent to [Employee A] (Keltbray) and contained a breakdown of Keltbray's cover price (see paragraph 4.130(a)). Cantillon submitted a bid of £16,452,603 i.e., a figure consistent with the approach and information set out in the annotated document.

4.134 In interview, [Employee A] (Cantillon) acknowledged that '*at some point I was advised that Erith were going to win it, so at some point there was knowledge of the agreement*'.[328] Similarly [Director B] (Cantillon) said that '*I would have been told that there was an agreement in place. And it would have followed the same pattern as the other projects where, you know, we would have had to run the mechanics of a tender process*'.[329]

---

[324] URN2817, page 48.
[325] URN2971; URN2972; URN2973 (sent from his personal email address). The same email chain and attachments were forwarded by [Employee A] (Erith) to [Employee A] (Cantillon) again (from his personal email address) on 12 November 2016: URN2976.
[326] URN2871, pages 149 to 151.
[327] URN2977; URN2978 (sent from his personal email address). On 12 November 2016, [Employee A] (Erith) also sent [Employee A] (Cantillon) an email attaching a blank '*Form of Tender Sum Analysis*': URN2974; URN2975.
[328] URN3738, page 282.
[329] URN3045, page 180.

Contact between Erith and McGee

4.135 There is evidence of contact between Erith and McGee, in which they shared and discussed pricing information to enable McGee to prepare and submit a cover bid. In the words of [Director A] (McGee), 33 Grosvenor Place '*was a project* [McGee] *took a cover from Erith on*'.[330]

4.136 On 9 November 2016, [Director A] (McGee) sent an email to [Employee A] (Erith), with the subject line '[Director A]'s [(Erith)] *Xmas Pressie from* [Director A] [(McGee)]',[331] setting out certain pricing details for McGee's proposed bid for this contract.[332]

4.137 [Employee A] (Erith) replied to that email on 10 November 2016, highlighting the areas where McGee's proposed bid needed to be increased, noting, for example, that '*if we add 4.5mill to your bid its coming up to our figure*'.[333] In interview, [Employee A] (Erith) explained that '[Director A] [(McGee)] *asked for a cover price late in the proceedings … So he sent me his price … and then I've looked at it and said, "Look,* [Director A] [(McGee)]*, that's wrong, have another look at it"*', noting that McGee then '*rectified*' its numbers.[334]

4.138 Indeed, the CMA notes that [Director A] (McGee) forwarded [Employee A]'s (Erith) email (along with Erith's tender documents) to colleagues in McGee, saying: '*I'll email you something shortly (waiting for them to send me something)! It's gonna be 16.25 and 76 working weeks. I'll need to run thru a few bits with you here or on the phone when I get the breakdown*'.[335] When [Employee B] (McGee) questioned the approach, [Director A] (McGee) replied, '*The attached should give you an easy route to get to the final number of 16.25 but the programme approach clearly needs discussion*'.[336]

---

[330] URN6189, paragraph 67. This is consistent with interview evidence from [Employee B] (McGee), who explained that, at some point, he was told by [Director A] (McGee) to '*make sure that we didn't try and win the job from Erith*' (albeit that [Employee B] (McGee) considered that McGee ought to try to win the job): URN6560, pages 53 to 55; see also pages 56 and 57. Similarly, in interview, [Employee A] (McGee) said, '*I had reason to believe that* [Director A] [(McGee)] *had promised the job to* [Director A] [(Erith)]': URN3063, page 38. See also URN5488.

[331] As regards the meaning of this subject line, [Employee A] (Erith) has said, '*I think its because* [McGee] *were going to go for the job, I think, and now he's given* [Director A] [(Erith)] *a present because he's going to take a cover*': URN2871, page 171.

[332] URN5492.

[333] URN5492.

[334] URN2871, pages 171 to 173.

[335] URN5489; URN5490; URN5491.

[336] URN5489; URN5490; URN5491. See also URN5492.

4.139 On 17 November 2016, [Employee A] (Erith) sent an email to [Director A] (McGee), complaining that McGee's bid was '*far too close to us when I compare numbers*' and that '*you guys have not followed my schedule, which puts us in a difficult situation*'; he provided a detailed breakdown of the aspects of McGee's bid which were too low; and concluded:[337]

'*You just have to tell your team to be negative.*

'*In short your number needs to increase substantially and ours has to decrease*'.

4.140 In his witness evidence, [Director A] (McGee) said the email appeared to be a '*post-tender exchange of information between* [Employee A] [(Erith)] *and me in which he was giving me pointers on how to appear uncompetitive*'.[338]

4.141 Also on 17 November 2016, [Director A] (McGee) emailed [Employee A] (McGee) the following image of a series of text messages between [Director A] (McGee) and [Director A] (Erith), in which [Director A] (Erith) emphasised the need for McGee to increase the level of its bid:[339]

[337] URN5851 (extract of URN6596).
[338] URN6189, paragraph 72.
[339] URN5496, also embedded in URN5495. In this email, [Director A] (McGee) said, '[name/initials]*'s* [[Director A] (Erith)] *got the right hump so you and* [Employee B] [(McGee)] *need to tread very careful today*': URN5495.

4.142 [Director A] (McGee) described this text exchange as follows:[340]

> '[Director A] [(Erith)] *was clearly not happy about McGee being too close in terms of price to Erith…He clearly seems to be concerned that we're being too positive about the tender…Whilst I would never instruct my team to be negative in their dealings with clients about a job, I didn't want them to be overly positive about this job either. I would've spoken to* [Employee] [(McGee)] *about this and given him instructions about how to approach the meeting*'.

4.143 On 23 November 2016, [Employee B] (McGee) sent an email to [Director A] (McGee) and [Employee A] (McGee), providing an update in relation to a recent meeting on a number of end client requests, and indicating that he would be discussing the pricing of McGee's bid with [Employee A] (Erith):[341]

> '*… I am pricing the list of items below by close of play today …*
>
> '*I will go through them with* [name/initials][342] *tomorrow once I have submitted*
>
> '*I will price all items at the punchy level without looking like we don't want the job*'.

4.144 In a series of further contacts between 28 November 2016 and 9 December 2016, Erith and McGee discussed and exchanged information in relation to certain post tender queries and the level of the '*asbestos provisional sum*'.[343] In interview, [Employee B] (McGee) explained that [Director A] (McGee) told him to liaise with [Employee A] (Erith) and [Director C] (Erith) '*on everything that went in on this job*',[344] and noted that contact during the post tender query process ensured that Erith and McGee '*were both aligned, and Erith would be still on top when it all finished out*'.[345]

---

[340] URN6189, paragraph 73.
[341] URN5502. [Employee B] (McGee) explained that '*at the punchy level*', meant '*inflated*', URN6560, page 76 .
[342] [name/initials] - [Employee A] (Erith): URN6560, page 74.
[343] URN5507.
[344] URN6560, page 85.
[345] URN6560, page 93.

Legal assessment

4.145 On the basis of the evidence above, the CMA finds that Erith provided Keltbray, Cantillon and McGee with pricing information, which they each relied upon to submit a cover bid.

4.146 Thus, having regard to the legal principles set out in chapter 3, the CMA considers that:

(a) between at least 11 November 2016 and 16 November 2016 ('*Relevant Period 12(a)*'), Erith and Keltbray;

(b) between at least 11 November 2016 and 14 November 2016 ('*Relevant Period 12(b)*'), Erith and Cantillon;

(c) between at least 9 November and 9 December 2016 ('*Relevant Period 12(c)*'), Erith and McGee,

infringed the Chapter I prohibition by participating in one or more agreements or concerted practices in the form of a cover bidding arrangement or arrangements which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services and Asbestos Removal Services for 33 Grosvenor Place.

Infringement 13 – Wellington House: Keltbray, Cantillon and McGee

4.147 Infringement 13 concerns conduct by Keltbray, Cantillon and McGee in relation to the supply of Demolition Services and Asbestos Removal Services for Wellington House.[346]

4.148 Invitations to tender were issued to Keltbray, Cantillon, McGee and [demolition contractor] on 26 September 2016, with an initial tender return date of 10 November 2016.[347] The initial bids submitted were significantly over the end client's budget, so an invitation to tender was then sent to a further demolition company, [demolition contractor]. Details of the bids

[346] This project was tendered as one package for strip out and asbestos removal including part demolition, façade retention and basement construction at Wellington House, and soft strip of adjoining, retained buildings. The tender process was managed by [tender manager] on behalf of the end client, Capital & Counties CGP: URN6320.
[347] URN6320.

submitted are set out in the table below.[348] The submission of these bids was followed by a post tender query process.

Name	Submission date	Value
Keltbray	10 November 2016	£21,368,178
Cantillon	10 November 2016	£21,997,665
McGee	10 November 2016	£22,399,049
[demolition contractor]	10 November 2016	£24,044,029
[demolition contractor]	21 December 2016	£13,446,493[349]

4.149 The contract was awarded to [demolition contractor].[350]

Cover bidding arrangement

4.150 In interview, [Director A] (Cantillon) said that Cantillon '*took a cover from Keltbray*' for this contract, noting that, given the size and complexity of the job, '*it was always going to have Keltbray's name on it*'.[351]

4.151 Similarly, in his witness evidence, [Director A] (McGee) recalled that McGee '*were taking a cover price off Keltbray*', elaborating that '*Keltbray said that they knew the client and they were going to get the job anyway*'.[352] Consistently with this, in interview, [Employee B] (McGee) stated that this was a project '*that Keltbray was supposed to win*' and that he was asked to '*do as I was told basically for that to happen*'.[353]

4.152 There is documentary evidence of contact between Keltbray and Cantillon and / or McGee, by which they sought to discuss this contract, and shared pricing information, for the purposes of enabling Cantillon and McGee to prepare and submit cover bids. The CMA notes, in particular:

(a) emails dated 28 October 2016 and 1 November 2016, from [Director A] (Cantillon) to [Employee B] (Cantillon), asking whether he had been in

[348] URN6320.
[349] Final tender value following post-tender adjustments: URN6320.
[350] URN6320. Work began in relation to the soft strip and asbestos removal, but the project was ultimately cancelled.
[351] URN3191, page 189.
[352] URN6189, paragraph 78.
[353] URN6560, page 101.

contact with Keltbray with regard to the '*Wellington*' programme.[354] In interview, [Director A] (Cantillon) said that he would have asked [Employee B] (Cantillon) '*to get a, a price for us to go in at*';[355]

(b) emails from [Employee B] (Keltbray), headed '*Wellingtom House*' to,

(i) [Director B] (Cantillon) on 7 November 2016, and

(ii) [Director A] (Cantillon) on 8 November,

by which he forwarded information concerning Keltbray's works programme;[356]

(c) an email from [Employee B] (Keltbray) to [Director A] (Cantillon) and [Director A] (McGee), headed '*Wellington House*' dated 9 November 2016, attaching Keltbray's '*breakdown of the tender figures*';[357]

(d) an email in relation to '*Wellington Hotel'* from [Employee B] (Keltbray) to [Director A] (McGee), dated 9 November 2016, attaching a pricing schedule specifying a draft tender total of £24,044,029, saying, '*Further to our meeting earlier I have attached your figures regarding the above, the figure varies slightly from the figure we discussed but ok to use*'; he also provided [Employee C]'s (Keltbray) phone number in case of '*any queries*';[358]

(e) an email from [Director A] (Cantillon) to [Director A] (McGee), dated 14 November 2016, attaching a [tender manager] pricing schedule containing Cantillon's tender figures,[359] to which [Director A] (McGee) replied: '*It's*

---

[354] See, for example, URN3227; URN3228.
[355] URN3191, page 194.
[356] URN2970. For example, '*Basement enabling works and secant/bearing piling – 25 weeks RC frame to Ground 35 weeks…*'. In interview, [Employee B] (Keltbray) said that he thought that this was '*information to enable* [Employee B] [(Cantillon)] *or* [Director B] [(Cantillon)] *to produce a programme*': URN3790, page 113.
[357] URN5485; URN5486. The CMA considers that this information was useful to, and relied upon, by Keltbray, Cantillon and McGee, noting that the breakdown of Keltbray's tender figure was circulated within both Cantillon and McGee: URN3229; URN3230 (Cantillon); URN5485 (McGee): the CMA notes, in particular, the instruction from [Director A] (McGee), '*Delete once printed*'. In his witness evidence, [Director A] (McGee) said that 'The *price schedule may have helped* [Employee B] [(McGee)] *price the job…My statement to "Delete once printed" is because this was clearly sensitive information that we probably shouldn't have had and I didn't want it being printed and hanging around the office*': URN6189, paragraph 82. See also URN6560, page 117.
[358] URN5483; URN5484. In interview, [Employee B] (McGee) said Keltbray had not sent sufficient detail '*that would allow us just to use it as it is…it meant a lot of work, rather than what it was supposed to be…a cover…price*': URN6560, page 110.
[359] URN4244; URN4245. The CMA notes that this email and attachment were circulated within McGee pricing team: URN5435.

the quants[360] *that I need, the attached is of very limited use to me tbh ☹ Give me a ring to discuss*'.[361] Both [Director A] (Cantillon) and [Director A] (McGee) said that they were in contact in relation to the price breakdown required by [tender manager] during the post tender process;[362]

(f) an email in relation to '*Wellington Hotel*' from [Employee B] (Keltbray) to [Director A] (McGee), dated 15 November 2016, attaching a partially completed tender sum analysis with certain items highlighted, asking [Director A] to '*change the description and quants in column 'C"*.[363] [Director A] (McGee) circulated this email and attachment within McGee, saying, '*We need to somehow get the quants into the schedule that we priced. And do NOT use his bills in anything electronic. In fact your best to print it off and use whatever we can from it and put into our own spreadsheet'*;[364]

(g) an email exchange between [Director A] (Cantillon), and [Employee B] (Cantillon), on 7 December 2016, in which they refer to a phone call with [Employee C] (Keltbray) in relation to the post tender interview meeting.[365] In particular, the CMA notes [Employee B]'s (Cantillon) comment, '*I have already had the call and* [[Employee C] (Keltbray)] *has agreed my proposed strategy*'.

Legal assessment

4.153 On the basis of the evidence above, the CMA finds that Keltbray, Cantillon and McGee shared competitively sensitive information, which Cantillon and McGee each relied upon to submit a cover bid.

4.154 Thus, having regard to the legal principles set out in chapter 3, the CMA considers that:

(a) between at least 28 October 2016 and 7 December 2016 ('*Relevant Period 13(a)*'), Keltbray and Cantillon; and

---

[360] Bill of quantities.
[361] URN4246.
[362] URN6189, paragraph 85; URN3191, pages 205 to 208.
[363] URN5493; URN5494.
[364] URN5493. See also: URN5497; URN5498; URN5499; URN5500; URN5501; URN5504 (which discusses the '*fabricated quants*'); URN5505; URN5506; URN5445: URN5503, as regards the difficulties encountered by McGee in preparing the cover bid, given the quality of the pricing information provided to it by Keltbray.
[365] URN3239.

(b) between at least 9 November 2016 and 8 December 2016[366] ('*Relevant Period 13(b)*'), Keltbray and McGee,

infringed the Chapter I prohibition by participating in one or more agreements or concerted practices in the form of a cover bidding arrangement or arrangements which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services and Asbestos Removal Services for Wellington House.

Infringement 14 – Ilona Rose House: Cantillon, Keltbray, John F Hunt and Erith

4.155 Infringement 14 concerns conduct by Cantillon, Keltbray, John F Hunt and Erith in relation to the supply of Demolition Services for Ilona Rose House.[367]

4.156 Invitations to tender were issued to Cantillon, Keltbray, John F Hunt, and Erith in October 2016, with an initial tender return date of 18 November 2016.[368] Details of the bids submitted are set out in the table below.[369] The submission of these bids was followed by a post tender query process.

Name	Submission date	Value
Cantillon	18 November 2016	£21,547,758.49
Keltbray	18 November 2016	£24,022,418.20
John F Hunt	18 November 2016	£22,400,000.00
Erith	18 November 2016	£23,201,013.00

4.157 The contract was awarded to Cantillon.[370]

[366] Noting that McGee's post tender meeting was on 8 December 2016: URN5506.
[367] This project concerned the demolition and enabling works required for the redevelopment of Ilona Rose House. It was tendered as one package, with a number of addenda issued during the tender process. The tender process was managed by [tender manager] on behalf of the end client, Soho Estates Limited: URN5766.
[368] URN5766, page 10.
[369] URN5766, page 10.
[370] URN5766, page 10.

Overview

4.158 There is evidence of contacts between Cantillon and each of Keltbray, John F Hunt and Erith, in which they discussed and shared pricing information for the purposes of enabling Keltbray, John F Hunt and Erith to submit cover bids.

4.159 In interview, [Director A] (Cantillon) described the arrangement as follows:[371]

> '*I worked really, really hard to get this job over the line….I personally rang each one of the competition…I contacted the principal of every business that was on it, and I basically said to them, "Look, we're desperate for this job, we really, really need it … I'm really asking for your help on this … we're going to give the client a proper price, because he's got the proper cost plan, but I would like you to cover me" …*
>
> '*It was quite a difficult conversation, because some of them really wanted to go for it, and other people said, "Yeah, that's fine, because we've got – we're flat out on other work … Anyway, I finally got round to convincing them to … let Cantillon have a go at the job, which, which what I mean by that is I mean that we, we would hopefully win the job, and they would cover us*'.

Contact between Cantillon and Keltbray

4.160 On 16 November 2016 [Employee A] (Cantillon) sent an email to [Employee A] (Keltbray), providing information for the purposes of preparing Keltbray's cover bid: '*Yours is 92 working weeks. Having trouble finishing BQ*[372]*…will forward am. Unless you have managed something yourself*'.[373]

4.161 On 18 November 2016,[374] [Employee A] (Keltbray) sent an email to [Employee A] (Cantillon), attaching Keltbray's '*Tender Sum Analysis*' for Ilona Rose House, saying '*See what you think*'.[375] In interview, [Employee A] (Cantillon) explained that, '*In line with his agreement …he's sending me his tender to let me know where his figure is coming to…I would need to check where my figure ended up. He's agreed to stand back, he's not below it*'.[376]

---

[371] URN3191, pages 225 and 226.
[372] Bill of quantities.
[373] On 17 November 2016, [Employee A] (Keltbray) replied [Employee A] (Cantillon): '*When can I expect it. I only have three hours in the morning so getting under pressure*': URN2748.
[374] The tender return date: URN5766, page 10.
[375] URN2754; URN2755. The tender analysis specified a tender total of £24,022,418.20. The CMA notes that this was tender total submitted by Keltbray on 18 November 2016: URN5766, page 10.
[376] URN3738, page 312 (based on his reading of the evidence during the interview).

4.162 Consistently with this, [Employee A] (Keltbray) said he was '*instructed quite early … that* [Keltbray] *were not going to win this'* and that Cantillon would win the contract.[377] He explained that he sent his proposed pricing schedule to [Employee A] (Cantillon) to check that he was content with the number, noting that '*because it's such a large number…there's a lot of detail in there. There's a lot of numbers to add up to the final one…he must have given me some advice where to put my numbers, how to allocate it*'.[378]

Contact between Cantillon and John F Hunt

4.163 In interview, [Director A] (Cantillon) explained:[379]

> '*I had quite a difficult time with John F Hunt…* [Director A] [(John F Hunt)] *…was very, very difficult about agreeing to stand aside for Cantillon…it took me quite a long time to convince him… he finally agreed to, and he shook my hand*…
>
> '*…We then priced the job, and I then organised cover prices for all the other contractors, so we fed them all the numbers and the programmes that they would need to complete the bid…*
>
> '*…*[Director A] [(John F Hunt)] *had obviously told* [[Employee] (John F Hunt)] *that he had agreed to cover Cantillon, and…I was giving* [Employee] [(John F Hunt)] *his numbers – or…one of the team were giving them – and* [Employee] [(John F Hunt)] *was doing what he, he thought he was supposed to do…*'

4.164 Consistently with this, the CMA notes that John F Hunt's tender bid, submitted on 18 November 2016, was £852,241.51 above Cantillon's bid.[380]

4.165 The CMA acknowledges that there is evidence that John F Hunt later sought to '*cheat*' on the arrangement (including interview evidence from [Director A] (John F Hunt): '*we tried… I was gutted that we didn't get it… we tendered it and… tried to win the job*'; and [Director A]'s (Cantillon) interview evidence that after the bid had gone in, [Director A] (John F Hunt) '*tried to win the job behind* [Cantillon's] *back*', which ultimately resulted in the price of the job being '*driven down*').[381] Nevertheless, for the reasons set out below, the CMA

---

[377] URN2817, page 106.
[378] URN2817, page 108; see more generally pages 105 to 112.
[379] URN3191, pages 226 to 228.
[380] URN5766 page 10.
[381] URN2847, pages 94 to 96; URN3191 pages 226 to 229, pages 239 to 244, and page 268.

considers that Cantillon and John F Hunt infringed the Chapter I prohibition by participating in a cover bidding arrangement.[382]

4.166 First, there is evidence that, on 6 December 2016, [Employee] (John F Hunt) sent an email to [Director A] (Cantillon) attaching John F Hunt's proposed responses to certain post tender queries in relation to Ilona Rose House, saying: '*Please call me tomorrow if you get a chance to discuss*'.[383] The proposed responses identified potential cost savings and expressed a willingness to accept risk, which the CMA interprets as suggesting that John F Hunt was moving towards undercutting Cantillon.

4.167 When asked about this email in interview, [Director A] (Cantillon) explained that '[Employee] [(John F Hunt)] *sent me this from – obviously that must be his home email address – because he wouldn't have sent it from, from John F Hunt, because he's working for him – and he's basically saying, "*[Director A] [(Cantillon)]*, look, this is what we're doing behind your back". Thank you for telling me that; I didn't recognise it*'.[384]

4.168 The CMA infers that this information was provided either to enable Cantillon to adjust its own further submissions, or to contact John F Hunt to seek to ensure that it was acting in accordance with the cover bidding arrangement. Indeed, the CMA notes that:

(a) this information was discussed and circulated within Cantillon, suggesting it was considered by, and useful to, the individuals who were responsible for preparing submissions in relation to Ilona Rose House;[385]

---

[382] See chapter 3 (*Participation and Implementation*).

[383] URN2985. This email was sent from a private email address belonging to [Employee] (John F Hunt): URN6153 (see responses at 8a and 8b). On 7 December 2016, [Director A] (Cantillon) forwarded this email and an attachment (John F Hunt's proposed responses to certain tender queries) to [Employee A] (Cantillon): URN2985; URN2986. The available metadata shows that the last author of the attachment (URN2986) was '[Employee]' of John F Hunt.

[384] URN3191, page 244. See also page 228, [Director A]'s (Cantillon) comment that, [Employee] (John F Hunt) had rung him to say '"*I'm just really not comfortable with … the way* [Director A]*'s* [(John F Hunt)] *behaving he's trying to steal the job from, from you" … "I'm going to send you over the documentation"*'.

[385] For example, on 7 December 2016, [Employee A] (Cantillon) sent a text to [Director B] (Cantillon), saying, '*WHen you get a chance can you call me re J response on IRH.* [Director A] [(Cantillon)] *chasing*': URN3165. See URN2985; URN2986; URN2998; URN2999 (available metadata shows that the last author of URN2986 and URN2999 was '[Employee]*'* (John F Hunt)). See also URN3030; URN3031 (available metadata shows that the last author of URN3031 was '[Director B]' (John F Hunt)). The CMA acknowledges that, on occasion, Cantillon obtained copies of John F Hunt's tender documents and the end client's analysis of tender offers from the Ilona Rose House [project manager]. (See for example: URN2966; URN2979; URN2982; URN2987; URN3012; URN3014; URN3026; URN3027; URN3028; URN3029; URN3033; URN3034; as well as [Director A]'s (Cantillon) interview evidence: URN3191, pages 235 to 261; [Director A]'s (John F Hunt) interview evidence that he thought

(b) in interview, [Director A] (Cantillon) said that he contacted [Director A] (John F Hunt) during the tender query process in order to challenge him on his approach: '*I rang* [Director A] [(John F Hunt)]*…and I met him…and I said "*[Director A] [(John F Hunt)] *the team want me, I've seen the information that you're sending in; you're not, you're not honouring this agreement whatsoever"*'.[386]

4.169 The CMA also notes that internal emails emanating from Cantillon make reference to John F Hunt seeking to '*cheat*' on the cover bidding arrangement. Specifically:

(a) an email from [Director B] (Cantillon), dated 14 December 2016, sets out a short review of John F Hunt's response to post tender queries[387] saying, '*they are doing everything they can to disregard the agreement*';[388] and

(b) an email from [Director A] (Cantillon), dated 21 December, responds to news that Cantillon has won the contract, saying '*Take that* [Director A] [(John F Hunt)] [✂]'.[389]

4.170 Finally, the CMA is of the view that, even though it sought to '*cheat*' on the arrangement, John F Hunt did not seek to distance itself publicly from it. For example:

(a) on 11 February 2017, [Director A] (Cantillon) sent an email to [individual] [demolition contractor] and [Director A] (Erith) highlighting that John F Hunt ultimately sought to compete for the Ilona Rose House Contract, saying, '*You now have the facts, and can make up your own minds on any bullshit you hear from him and his team*'.[390] In interview, [Director A] (Cantillon) explained that he sent this email as, ' [Director A] [(John F Hunt)] *had gone round telling everybody that he had honoured our deal*';[391]

(b) in interview, [Director A] (Cantillon) said that, when he spoke to [Director A] (John F Hunt) during the post tender query process, [Director A] (John

---

Cantillon was getting information on John F Hunt's tender submissions from someone working on behalf of the end client: URN2847, pages 97 to 112.) Nevertheless, the evidence shows that Cantillon and John F Hunt were in contact in relation to the tender process, and that Cantillon also received information which was relevant to the preparation of tender submissions directly from John F Hunt.

[386] URN3191, pages 227 to 228.

[387] Provided to Cantillon by the [project manager].

[388] URN3010.

[389] URN3035.

[390] See URN3330.

[391] URN3191, page 268.

F Hunt) '*unbelievably, completely flatly denied*' that he was '*not honouring this agreement*'.[392]

Contact between Cantillon and Erith

4.171 [Employee A] (Erith) explained in interview that Ilona Rose House was a contract that Erith did not wish to win given the nature of the work; accordingly [Director A] (Erith) told him that Erith would '*get a number from Cantillon. And that's what we did. Because these bids, you see can take a couple of months to put together*'.[393]

4.172 This is supported by documentary evidence which shows contact between Cantillon and Erith in relation to certain elements of Erith's cover bid: on 1 December 2016, [Employee A] (Erith) sent an email to [Employee A] (Cantillon), attaching an Excel spreadsheet containing post tender queries, saying, '*can you answer the two items in red please*'.[394] In interview, [Employee A] (Erith) explained he was asking [Employee A] (Cantillon) '*to clarify price, and inclusions…because he would have given me a number and I wouldn't have known what it included*'.[395] The CMA notes that [Employee A] (Erith) used his personal email account for this correspondence because, in his words, '*if we* [Erith] *are taking a cover, let's say, we don't want anybody to know, as such, so I'd do it from the personal account*'.[396]

Legal assessment

4.173 On the basis of the evidence above, the CMA finds that Cantillon instigated and entered into a cover bidding arrangement with each of Keltbray, John F Hunt and Erith, in the tender process for Ilona Rose House.

4.174 Thus, having regard to the legal principles set out in chapter 3, the CMA considers that:

(a) between at least 16 November 2016 and 18 November 2016 ('*Relevant Period 14(a)*'), Cantillon and Keltbray;

(b) between at least 18 November 2016 and 6 December 2016 ('*Relevant Period 14(b)*'), Cantillon and John F Hunt;

---

[392] URN3191, pages 227 to 228.
[393] URN2871, pages 62 to 64.
[394] Specifically, items relating to '*sundries*' totalling £202,410; and piling works: URN2980; URN2981.
[395] URN2871, pages 70 to 72.
[396] URN2871, page 69.

(c) between at least 18 November 2016 and 1 December 2016 ('*Relevant Period 14(c)*'), Cantillon and Erith,

infringed the Chapter I prohibition by participating in one or more agreements or concerted practices in the form of a cover bidding arrangement or arrangements which had as its object the prevention, restriction, or distortion of competition in relation to the supply of Demolition Services for Ilona Rose House. This is not affected by whether John F Hunt sought to cheat on the arrangement or whether or not Erith wanted to win the contract (see paragraphs 3.29 and 3.33).

Infringement 15 – 44 Lincoln's Inn Fields: McGee, Cantillon and John F Hunt

4.175 Infringement 15 concerns conduct by McGee, Cantillon and John F Hunt in relation to the supply of Demolition Services and Asbestos Removal Services for 44 Lincoln's Inn Fields.[397]

4.176 The tender process for 44 Lincoln's Inn Fields comprised two pricing stages.[398]

4.177 Invitations to tender were issued to McGee, Cantillon, John F Hunt, [demolition contractor] and [demolition contractor] on 25 November 2016, with an initial tender return date of 20 January 2017.[399] On return of the initial tender offers, the scope of the work was reduced, to omit certain works until greater design certainty could be delivered.[400] Details of the bids submitted at this stage are set out in the table below.[401]

[397] The contract included the demolition of the existing building, and asbestos, radiological and biochemical decontamination, for the redevelopment of 44 Lincoln's Inn Fields. The tender process was managed by [tender manager] on behalf of the end client,-the London School of Economics and Political Science: URN5766, page 5.
[398] URN5766, page 6.
[399] URN5766, page 7.
[400] URN5766, page 7. This required the submission of tender queries with a recalculated value shortly after the initial submission to reflect certain works being omitted from the previous submission.
[401] URN5766, page 7. The contractors were invited to submit bids for four alternatives (A to D); this table sets out the bids for alternative A, which was eventually followed.

Name	Submission date	Initial Value	Revised Value
McGee	20 January 2017	£11,450,488.29	
	February 2017		£5,231,954.00
Cantillon	20 January 2017	£12,954,958.00	
	February 2017		£5,486,034.00
John F Hunt	20 January 2017	£12,349,878.00	
	6 February 2017		£6,849,451.00
[demolition contractor]	20 January 2017	£13,093,488.00	
	February 2017		£6,603,378.00
[demolition contractor]	20 January 2017	£12,609,610.00	
	February 2017		£7,268,610.00

4.178 On 10 April 2017, McGee and Cantillon were shortlisted for the second pricing stage, with a tender return date of 28 April 2017. Details of the bids submitted at this stage are set out in the table below:[402]

Name	Submission date	Value
McGee	28 April 2017	£5,544,924.00
Cantillon	28 April 2017	£5,141,954.00

4.179 The contract was awarded to McGee.[403]

Overview

4.180 There is witness and interview evidence that McGee provided both Cantillon and John F Hunt with a cover bid for the 44 Lincoln's Inn Fields contract:

(a) in his witness evidence, [Director A] (McGee) said:[404]

'*This was a project…that I felt we were due to win and were owed by other companies because of contracts we had let them win previously. Cantillon and JF Hunt were involved and they agreed to submit cover*

[402] URN5766, page 8. The table sets out bids for alternative A.
[403] URN5766, page 8.
[404] URN6189, paragraphs 87 and 88.

prices for us….We ended up winning the 44 Lincoln's Inn Fields contract, so I believe both Cantillon and JF Hunt kept to the agreement';

(b) in interview, [Employee B] (McGee) said:[405]

'*…part way through the process … I was made aware that we were to win this one by* [Director A] [(McGee)] *and to liaise with the other demolition contractors to make sure that happened…Cantillon, John F Hunt…*';

(c) in interview, [Director A] (Cantillon) explained:[406]

'*we knew McGee were on the job … I've said to* [Director A] [(McGee)], "*Can I take a cover from you?*" *I think* [Director A] [(McGee)] *gave me his,* [Director A] [(McGee)] *gave me the numbers, which, which I covered* [Director A] [(McGee)] *on*';

(d) in interview, [Director B] (Cantillon) said: '*I recall that there was an agreement in place here between McGee's and Cantillon…we would stand back for McGee's on 44 Lincolns Inn Fields*'.[407]

Contacts

4.181 In email correspondence dated 19 January 2017 discussing Cantillon's proposed bid for 44 Lincoln's Inn Fields, [Director A] (Cantillon) asked [Employee B] (Cantillon), '*Can you please speak to* [Employee B] [McGee)]'.[408] Taking account of the context and wider evidence in relation to this contract, the CMA infers that the purpose of any such call would have been for Cantillon to discuss its cover bid with McGee.

4.182 On 3 February 2017, [Employee B] (Cantillon) sent an email to [Director A] (Cantillon) attaching Cantillon's revised pricing schedule, '*which was requested by* [name/initials]'*,*[409] asking: '*can you please forward by best available means*'.[410] The CMA infers that McGee wanted this information to check Cantillon's proposed cover bid, noting [Employee B]'s (Cantillon) evidence that:[411]

---

[405] URN6560, page 146.
[406] URN3191, page 279.
[407] URN3045, page 164.
[408] URN3243; URN3004, page 44.
[409] [name/initials] - [Employee B] (McGee).
[410] URN3245.
[411] URN3004, page 63.

'*…either* [Employee B] [(McGee)] *has contacted me or someone else and that request has come back to me for us to provide our draft response to the post-tender queries…I presume so they can comment on it*'.

4.183 On 23 January 2017, [Director A] (McGee) sent an email to [Employee B] (McGee) and [Director D] (McGee), in which he refers to a meeting with '[name/initials]'[412] and comments that John F Hunt's tender programme[413] had been '*changed to reflect the "agreement"*'.[414] The CMA infers that this is a reference to that programme having been changed to reflect John F Hunt's cover bidding agreement with McGee.

4.184 The CMA further notes that this email also reflects [Director A]'s (McGee) apparent confidence that McGee would win the contract,

'*He said something along the line of he thought that they could prop off the internal column bases for the underpinning. Anyways, it doesn't really matter until we get the job then maybe look at the sequence then*'.

4.185 On 1 February 2017, [Director A] (McGee) sent an email to [Employee B] (McGee), and [Director D] (McGee), attaching a blank list of tender queries issued to John F Hunt, saying: '*I assume we've had our queries in today as well? I've chased the other fella (*[name/initials]*)*[415] *and see what he says*'.[416]

4.186 The CMA infers from this email that there was communication between McGee and each of Cantillon and John F Hunt in relation to the post tender queries for this contract, including the receipt by McGee of information from John F Hunt, for the purposes of a cover bidding arrangement. Evidence from individuals directly involved with this conduct is consistent with this view. Specifically:

---

[412] [name/initials] - [Director B] (John F Hunt): URN6189, paragraph 90. This meeting took place at 11.00am on 20 January 2017, after John F Hunt had submitted its initial tender bid. John F Hunt uploaded its tender submission to the portal during the morning of 20 January 2017, and a hard copy of its tender submission was delivered to the client at 10.25am: URN7729.

[413] John F Hunt has said that [Director A]'s (McGee) comment relates to a draft version of the tender programme, and not the programme that was submitted by John F Hunt to the client on 20 January 2017: URN7729.

[414] URN5589. In his witness evidence, [Director A] (McGee) explained, '*I recall I met him* [[Director B] (John F Hunt)] …*We discussed this job. He thought it could be done one way and we thought differently … I passed on his thoughts on how to do the job to* [Employee B] [(McGee)] *and* [Director D] [(McGee)]': URN6189, paragraph 90.

[415] [Director A] (Cantillon): URN6189, paragraphs 91 and 92.

[416] URN5591; URN5592.

(a) [Director A]'s (McGee) interpretation of the evidence when it was put to him in interview was that:[417]

'*I must have been sent the attachment to this email by someone from JF Hunt … My reference to "*[name/initials]*" is obviously that I've spoken to Cantillon to see what queries they might have got in. There must have been an agreement between JF Hunt, Cantillon and us because, otherwise, I wouldn't have been either dealing with either J F Hunt or Cantillon's queries unless there was such an agreement on this contract*';

(b) [Director D] (McGee) said that they would have been discussing J F Hunt's tender queries because:[418]

'*…effectively this is a job that there's been an agreement on … and this is basically that process being managed. I took or my assumption when seeing this email was that Cantillon's were also involved*';

(c) [Employee B] (McGee) said that he was sent John F Hunt's tender queries, '*so that I can then fill it out and then give it back to Hunt's*'.[419]

4.187 Email correspondence between McGee and Cantillon in early February 2017 provides evidence that McGee did, in fact, provide Cantillon with answers to post tender queries, for the purposes of its cover bid:

(a) on 2 February 2017, [Director A] (Cantillon) sent an email attaching Cantillon's proposed response to post tender queries to [Director A] (McGee),[420] who, in turn, forwarded it, to [Employee B] (McGee) on 3 February 2017;[421]

(b) on 6 February, [Employee B] (McGee) sent an email to [Director A] (Cantillon), attaching Cantillon's '*tender query response…for your team to forward on*';[422]

---

[417] URN6189, paragraph 91.
[418] URN3063, pages 80 to 81; see more generally pages 79 to 84.
[419] URN6560, page 158.
[420] The email was initially sent to a Hotmail address belonging to [✂], which [Director A] (McGee) sometimes used as: '*a conduit for the information so that the information from Cantillon was not coming directly to a McGee email address*', URN6189, paragraph 94. The email was then forwarded to [Director A]'s (McGee) work email address: URN3043.
[421] URN3043. The CMA further notes that, on 3 February 2017, [Employee B] (McGee) sent a text to [Director B] (Cantillon): '*Just had a conversation with* [[Director A] (Cantillon)] *and he wants me to liaise with you regarding 44 LIF. Can you please give me a ring when you are free*': URN2795.
[422] URN3043; URN3044.

(c) [Director A] (Cantillon) forwarded this email and attachment to [Director B] (Cantillon) asking: '*Are these ok ?*'.[423]

4.188 As regards this correspondence, [Director A] (Cantillon) explained that Cantillon had asked McGee for its help in answering post tender queries so as to ensure that Cantillon's cover bid was credible, noting that McGee '*would know the job backwards*'.[424]

4.189 On 25 April 2017, [Employee B] (McGee) sent an email to [Director D] (McGee), and [Director A] (McGee) attaching McGee's updated works programme, saying: '*Just need to sort a meeting with* [name/initials][425] *to bottom out there numbers and programme*'.[426] [Director A] (McGee) later replied: '*I spoke to* [name/initials] [[Director A] (Cantillon)] *on this so give* [Employee B] [(Cantillon)][427] *a ring and arrange to meet him to run through all the numbers and programme*'.[428]

Legal assessment

4.190 On the basis of the evidence above, the CMA finds that McGee entered into a cover bidding arrangement with both Cantillon and John F Hunt for the purposes of 44 Lincoln's Inn Fields.

4.191 Thus, having regard to the legal principles set out in chapter 3, the CMA considers that:

(a) between at least 19 January 2017 and 28 April 2017 ('*Relevant Period 15(a)*'), McGee and Cantillon;

(b) between at least 20 January 2017 and 1 February 2017 ('*Relevant Period 15(b)*'), McGee and John F Hunt,

infringed the Chapter I prohibition by participating in one or more agreements or concerted practices in the form of a cover bidding arrangement or arrangements which had as its object the prevention, restriction or distortion

---

[423] URN3907; URN3908.
[424] URN3191, pages 285 to 290. This email chain continues at URN5974, where [Director B] (Cantillon) and [Director A] (Cantillon) discuss the response.
[425] The CMA infers this is a reference to [Director A] (Cantillon).
[426] URN5594; URN5595.
[427] URN6560, page 172.
[428] URN5593.

of competition in relation to the supply of Demolition Services and Asbestos Removal Services for 44 Lincoln's Inn Fields.

Infringement 16 – 57 Whitehall, Old War Office: McGee and John F Hunt

4.192 Infringement 16 concerns conduct by McGee and John F Hunt in relation to the supply of Demolition Services for 57 Whitehall, Old War Office.[429]

4.193 Invitations to tender were issued to McGee, John F Hunt, [demolition contractor], [demolition contractor], [demolition contractor], [demolition contractor] and [demolition contractor] in February 2017, with an initial tender return date of 10 April 2017.[430] Revised tender offers were submitted on 4 May 2017, following post tender clarifications and adjustments.[431] On 23 May 2017, McGee provided a further price based on a different method of working.[432] John F Hunt and [demolition contractor] were then invited to price an alternative scheme. Details of the bids submitted are set out in the table below.[433]

[429] The project was tendered as a single demolition contract. The tender process was managed by [tender manager] on behalf of the end client, 57 Whitehall SARL and its representative Westminster Development Services: URN5792.
[430] URN5792.
[431] URN5792.
[432] URN6970.
[433] URN5792; URN6970.

Name	Submission date	Initial Value	Revised Value	Alternative scheme
McGee	10 April 2017	£52,285,063.96		
	4 May 2017 23 May 2017		£52,685,314 £53,922,716	
John F Hunt	10 April 2017	£45,854,335		
	4 May 2017		£39,951,066	
	15 June 2017			£51,253,687
[demolition contractor]	10 April 2017	£49,858,831		
	4 May 2017			
[demolition contractor]	10 April 2017	£57,262,371		
	4 May 2017			
[demolition contractor]	10 April 2017	£30,424,909.78		
	4 May 2017		£37,293,991	
	15 June 2017			£50,248,545

4.194 The contract was awarded to [demolition contractor].[434]

Cover bidding arrangement

4.195 In his witness evidence, [Director A] (McGee) said that McGee had '*agreed to take a cover price from JF Hunt*' in relation to this contract, elaborating that, '*It was a job that JF Hunt were keen on and, from memory, we were not so keen, and they asked if we would take a cover and we agreed*'.[435] Both [Director D] (McGee) and [Employee B] (McGee) have also provided evidence that such an arrangement was in place, and that they shared pricing information with John F Hunt in accordance with it.[436]

4.196 There is documentary evidence of contact between McGee and John F Hunt, by which they shared pricing information for the purposes of enabling McGee to submit a cover bid. In particular, there is:

(a) a text message from [Director C] (McGee) to [Director A] (McGee), dated 4 May 2017, saying, '[Director D] [(McGee)] *has ask can they do the dirty*

[434] URN5792.

[435] URN6189, paragraph 101.

[436] URN3063, pages 95 to 120; URN6560, pages 178 to 201. [Employee B] (McGee) noted in interview that '*it was agreed that Hunt's would be the, the lead demolition contractor on this one. But it fell apart…the client retendered the job and someone else did it*': URN6560, pages 179 to 180.

on [name/initials] [437] *at 57 Whitehall. I have said no…*';[438] [Director A] (McGee) explained: '[Director D] [(McGee)] *had asked* [Director C] [(McGee)] *if we can go renege on the agreement we had with Hunt to which* [Director C] [(McGee)] *said we should not.* [Director C] [(McGee)] *is liaising with me here because it's an agreement I had with JF Hunt*';[439]

(b) an email in relation to '*Whitehall*', from [Director A] (McGee) to [Employee B] (McGee), dated 12 May 2017, in which he says, '*I had a missed call from* [name/initials] [440] *yesterday – what's the latest?*', to which [Employee B] (McGee) replied, '*There are looking for programme savings based on top down construction for the triangular basement. I need to respond to some queries which are asking us to confirm our clarifications but that is it*';[441]

(c) an email from [Director D] (McGee) to [Director B] (John F Hunt), dated 17 May 2017, attaching McGee's works programme saying, '*Give me a call in the morning to discuss*';[442] [Director B] (John F Hunt) later replied asking for '*the front end of the programme*';[443]

(d) an email from [Director B] (John F Hunt) to [Employee A] (McGee), dated 18 May 2017, attaching a work's programme with [Director B]'s (John F Hunt) handwritten annotations, saying:[444]

'*Programme adjustments*

'*This should still represent a circa 3 to 4 month saving on your compliant.*

'*Can you send me amended programme*';

(e) an email from [Director D] (McGee) to [Director A] (McGee), dated 19 May 2017, attaching the works programme annotated by [Director B] (John F

---

[437] [Director B] (John F Hunt).
[438] URN5552.
[439] URN6189, paragraph 106.
[440] [Director B] (John F Hunt).
[441] URN5597.
[442] URN2735; URN2736. [Director B] (John F Hunt) replied '*Will do*': URN2737. [Director B] (John F Hunt) has said '*I think this is a programme produced by* [Director D] [(McGee)]': URN6180, question 9c.
[443] URN2738.
[444] URN4264; URN4265. [Director B] (John F Hunt) said that this was the '*programme that* [Director D] [(McGee)] *sent across with my comments*' and that he '*sanity checked*' it before submission: URN6180, questions 11b, 11c and 12a. He also said that at the time of this email exchange, '*McGee believed they were out of the tender process and were just making sure that their programme was there or there abouts with the minimum of effort*': URN6180, question 11a.

Hunt), and including an explanation of the approach that John F Hunt asked McGee to take as regards its bid;[445]

(f) an email in relation to '*57 Whitehall*' from [Director A] (McGee) to [Director B] (John F Hunt), dated 20 May 2017, attaching McGee's work's programme, saying, '*Speak Monday about this. We haven't submitted this yet but need to do so Monday morning*';[446]

(g) an email from [Director A] (McGee) to [Director B] (John F Hunt), dated 22 May 2017, attaching the work's programme submitted by McGee to Gardiner & Theobald saying:[447]

'*Any issues let me know.*

'*Let's hope that this excludes us now and that it's down to yous and the other fella and that he doesn't nick it through the back door!*';

(h) an email from [Director A] (McGee) to [Director B] (John F Hunt), dated 23 May 2017, forwarding a query from [tender manager] as to when the '*financial part*' of the bid would be submitted, saying, '*In summary we will need to trim the prelims to suit and increase the excavation rates to account for the top down extra costs so we'll do that and send to you before we submit…*';[448]

(i) an email from [Employee B] (McGee) to [Director A] (McGee) and [Director B] (John F Hunt), dated 23 May 2017, attaching McGee's pricing schedule, specifying a tender total of £53,922,712.96, saying, '*Please see attached which we have issued to the PQS. Increase of approx £1.6m*'.[449]

---

[445] URN5599; URN5600. In interview, [Director D] (McGee) said that, in his email, he checked whether he could submit a more competitive bid: URN3063, page 113. In his witness evidence, [Director A] (McGee) said, ' [Director D] [(McGee)] *told me that we could do the programme of works much quicker than Hunt and he asked me if we should continue to keep to the agreement… I think I said to* [Director D] [(McGee)] *that we keep with the agreement with Hunt*': URN6189, paragraph 102.

[446] URN2739; URN2740; URN2741, in which [Director B] (John F Hunt) confirmed that he would review this email. See also McGee internal emails: URN5563; URN5564.

[447] URN2742; URN2743 (the CMA notes that this is the same document as URN2740 and URN5564).

[448] URN2744. See also McGee internal email correspondence: URN5605.

[449] URN2745; URN2746; URN2747, page 7.

Legal assessment

4.197 On the basis of the evidence above, the CMA finds that McGee and John F Hunt shared pricing information, which McGee relied upon to submit a cover bid in relation to 57 Whitehall, Old War Office.

4.198 Thus, having regard to the legal principles set out in chapter 3, the CMA considers that between at least 4 May 2017 and 15 June 2017 ('*Relevant Period 16*'), McGee and John F Hunt infringed the Chapter I prohibition by participating in an agreement or concerted practice in the form of a cover bidding arrangement which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services for 57 Whitehall, Old War Office.

Infringement 17 – 135 Bishopsgate: Cantillon, Erith and Scudder

4.199 Infringement 17 concerns conduct by Cantillon, Erith and Scudder in relation to the supply of Demolition Services at 135 Bishopsgate.[450]

4.200 Invitations to tender were issued to Cantillon, Erith and Scudder in May 2017, with an initial tender return date of 16 June 2017.[451]

4.201 The CMA notes that internal email correspondence within Cantillon in early June 2017 indicates that Cantillon contacted Erith and Scudder in order to obtain their assistance in convincing [tender manager] to extend the initial tender return date from 9 June 2017 to 16 June 2017.[452]

4.202 Details of the bids submitted are set out in the table below:[453]

---

[450] The main demolition works package was tendered through a four-stage process managed by [tender manager] on behalf of the end client, Bluebutton Properties UK Limited: URN5801.
[451] URN5801.
[452] For example, when, on 1 June 2017, [tender manager] rejected a request from Cantillon to extend the initial tender return date, *inter alia*, because the '*other tenderers have confirmed that they would be on target to return their tender by* [the original tender date, 9 June 2017]', [Director B] (Cantillon) emailed [Employee A] (Cantillon) to say '*don't respond* [Employee A] [(Cantillon)]*, this will be dealt with tomorrow*': URN3066. On 2 June 2017, [Director A] (Cantillon) emailed [Employee A] (Cantillon) in relation to '*135*' asking him to '*call* [individual] [Scudder] *and ask him to request extension of time on the bid'* and to '*call* [Employee A] [(Erith)] *also*': URN3067.
[453] URN5801.

Name	First Stage Initial tender inquiry		Second Stage Addendum		Third stage Post tender interviews		Fourth Stage Final tender queries	
	Date	**Value**	**Date**	**Value**	**Date**	**Value**	**Date**	**Value**
Cantillon	16 June 2017	£4,441,675	6 July 2017	£4,606,414	18 July 2017	£4,807,285	19 July 2017	£4,736,737
Erith	16 June 2017	£4,658,376	6 July 2017	£4,955,905	18 July 2017	£5,107,620	19 July 2017	£5,148,050
Scudder	16 June 2017	£4,507,553	6 July 2017	£5,239,827	N/A	N/A	N/A	N/A

4.203 The contract was awarded to Cantillon.[454]

Overview

4.204 There is evidence of a series of contacts between Cantillon and each of Erith and Scudder, in which they discussed and shared pricing information for the purposes of enabling Erith and Scudder to submit cover bids.

4.205 The arrangement is described in general terms in an internal email chain emanating from Cantillon, dated 15 June 2017, in which [Employee A] (Cantillon) set out his proposed final figure for Cantillon's bid, as well as suggested cover bids for Erith and Scudder:[455]

'*This is our final FOT* [456] *£4,441,675*

'*E+200k*

'*And C+400k*'

[Director A] (Cantillon) replied, '*Ok pls relay*'.

4.206 In interview, [Employee A] (Cantillon) explained that his email provided '*an update of where my current tender value sits …I've suggested, Erith 200 and Careys* [Scudder] *400 above our figure*';[457] and that, in response, [Director A]

[454] URN5801, indicates the 'winning bidder' was Cantillon at a price of £4,769,237 after firming up provisional sums.
[455] URN3069.
[456] Form of Tender: URN3738, page 372.
[457] URN3738, page 373.

(Cantillon) was '*probably saying: please relay to Erith and Careys* [Scudder] *my projected figures*'.[458]

4.207 Broadly consistently with this email evidence, Erith's initial bid was £216,701 more than Cantillon's; and Scudder's bid at the second stage of the tender process had been revised so that it was £633,413 above Cantillon's second stage bid.[459]

4.208 Further, although recollections were not always strong, in interview, [Employee A] (Cantillon), [Director B] (Cantillon), [Director A] (Cantillon) and [Employee A] (Erith) all said that, on the basis of the documentary evidence, it is clear that there was an arrangement under which Cantillon would win the 135 Bishopsgate contract, with Erith and Scudder submitting cover bids.[460]

Contact between Cantillon and Erith

4.209 On 7 June 2017, [Employee A] (Cantillon) sent an email to [Employee A] (Erith), seeking to discuss the 135 Bishopsgate contract: '*Tender due back 16th now. Plse call*'; to which [Employee A] (Erith) responded '*Call u in the morning*', and then again on 12 June 2017, '[Employee A] [(Cantillon)] *can you please call me*'.[461] When asked about these emails in interview, [Employee A] (Erith) explained that he spoke to [Employee A] (Cantillon) about this tender '*because we* [Erith] *were getting a price from them*'.[462]

4.210 [Employee A] (Cantillon) and [Employee A] (Erith), discussed pricing and post tender queries for 135 Bishopsgate in a series of text messages sent between 26 June 2017 and 12 July 2017, for the purposes of Erith's cover bid.[463] In particular, there is:

(a) a message from [Employee A] (Cantillon) on 26 June 2017 asking, '*have you offered a fixed price at 135 Bishopsgate? The M&E should be*

---

[458] URN3738, page 379.
[459] URN5801.
[460] URN3738, pages 364 to 365; URN3045, pages 228 to 232; URN3191, pages 304 to 305; URN2871, pages 81 to 82.
[461] URN3068.
[462] URN2871, page 86. [Employee A] (Erith) also explained that he used his personal email account for this type of contact so that '*it wasn't in the public domain within Erith…So, if my guy had worked his whatsits off, putting a tender together, and at the end of the day I said "we're not going to get that job", I – it'd have effect on him*': URN2871, page 87.
[463] URN2806.

prov[isional[464]]*?*', to which [Employee A] (Erith) replied, '*don't know will check. I think we have*';

(b) a message from [Employee A] (Cantillon) on 10 July 2017, asking '*Have you been invited to interview at 135 Bishopsgate today*'. [Employee A] (Erith) replied, '*yep .anything we should know say*', to which [Employee A] (Cantillon) replied:

'*Hoardings are by* [company]

'*You have allowed 2 traffic guys as required not full time .(they might want a saving)*

'*Credits included -tbc*

'*You need more time on steel price .*

'*You want to confirm a schedule of stone removal as drawings not clear .*

'*30 working weeks ok.*

'*Need 8 weeks min for steel conn design*';

(c) a message from [Employee A] (Cantillon) on 12 July 2017, saying '*We are working up our responses. Please don't go back Friday. I will send a further list of questions for you to answer. Just spent the am down there with them*'.

4.211 When asked about these messages [Employee A] (Erith) explained: '*obviously they're going to ask us a lot of questions at the interview and we don't want to be…tripped up and want to remain where we are, which is not in contention as such*'.[465]

4.212 On 28 and 30 June 2017, [Employee A] (Erith) sent a number of emails to [Employee A] (Cantillon) providing pricing information in relation to 135 Bishopsgate, confirming the level of Erith's (first stage) cover bid and highlighting a number of post tender queries from [tender manager], specifically:

[464] URN2871, page 106.
[465] URN2871, page 114.

(a) on 28 June 2017: an email chain including correspondence with [tender manager], confirming that Erith's bid covered '*welfare removal*' and '*should have been priced by the contractors*';[466]

(b) on 28 June 2017: an email attaching Erith's '*Pricing Document*', with a tender total of £4,658,376;[467]

(c) on 30 June 2017: an email attaching a copy of Erith's '*Pricing Document*', with a tender total of £4,658,376, saying, '*This is what we sent in* [to [tender manager]]';[468]

(d) on 30 June 2017: an email saying '*this what they* [tender manager] *sent* us',[469] attaching:

(i) details of the '*Scope of* Works' in Erith's '*Technical Submission Document*' with handwritten annotations;[470]

(ii) a list of post tender queries on Erith's bid;[471] and

(iii) Erith's '*pricing document*' with various items highlighted in red with question marks or requests to clarify.[472]

Contact between Cantillon and Scudder

4.213 [Employee A] (Cantillon) and [Employee] (Scudder) were in contact in relation to pricing for 135 Bishopsgate in a series of text messages sent between 7 June 2017 and 14 July 2017, for the purposes of Scudder's cover bid.[473] These messages were similar in timing and substance to correspondence between [Employee A] (Cantillon) and [Employee A] (Erith) set out in paragraphs 4.209 and 4.210 above. In particular, there is:

(a) a message from [Employee A] (Cantillon) on 7 June 2017, saying, '*135 Bishopsgate has been extended please call*';

---

[466] URN3075.
[467] URN3076; URN3077; URN3078 (Duplicate of URN3083), page 2.
[468] URN3082; URN3083 (Duplicate of URN3078), page 2.
[469] URN3084.
[470] URN3085.
[471] URN3086.
[472] URN3087.
[473] URN2805.

(b) a message from [Employee A] (Cantillon) on 26 June 2017, saying: '*Did you offer a fixed price, any prov sums M&E*[474]*?*';

(c) messages from [Employee A] (Cantillon) on 28 June 2017, saying:

'*Can you forward the M&E quote and your final bq*[475] *please*.

'*Please exclude the block work in phase 2 strip (ground floor and Mezz plant rooms)* …

'*…Steel price please add 297500.*

'*Then add wherever you can to bring you up to iro 4.985,000?';*

(d) messages from [Employee A] (Cantillon) on 29 June 2017 asking [Employee] (Scudder) to call him, and provide '*the M&E quote*';

(e) a message from [Employee A] (Cantillon) on 30 June 2017 asking [Employee] (Scudder) to '*Please forward the summary sheet*';[476]

(f) a message from [Employee A] (Cantillon) on 10 July 2017, saying: '*Did not get the summary? Are you being called to interview on this?*';

(g) a message from [Employee A] (Cantillon) on 14 July 2017, saying: '*Can you call please re 135 Bgate'*.

4.214 There is evidence that Scudder engaged with Cantillon in relation to at least some of the matters raised by [Employee A] (Cantillon) in these text messages. For example, on 29 June 2017, [Employee] (Scudder) sent an email to [Employee A] (Cantillon) attaching details of a quotation received by Scudder from Clover Technical Services for M&E works at 135 Bishopsgate.[477]

4.215 In interview, [Employee A] (Cantillon) observed that:[478]

'*He's finally acceded to sort of share his specialist quote with me…he's taken all his sums out of the document, so he's not sharing his document with me, but he's sharing the M&E element of the document with me, and giving me*

---

[474] Mechanical and Electrical: URN7099, paragraphs 49 and 50.
[475] Bill of Quantities: URN3738, pages 387 and 388.
[476] In interview, [Employee A] (Cantillon) explained that he was '*perhaps chasing a summary from* [[Employee] (Scudder)] *that's confirming that he's round about 4.985*', but that he could not recall this document ever being provided, '*given* [[Employee]'s (Scudder)] *lack of assistance or lack of agreement to-date*': URN3738, page 400.
[477] URN3753; URN3754; URN3755; URN3756.
[478] URN3738, pages 391 to 392.

the actual quote, so he's helping me to a certain extent but he's not sharing his bill'.

4.216 [Employee] (Scudder) has said that Scudder's M&E quotation '*would be helpful for Cantillon as they would be able to mirror those qualifications if they had not done already*'.[479] He further noted that:[480]

'*It is clear from the documents I have been shown regarding this project that Scudder is supporting some anti-competitive behaviour in providing documents to* [Employee A] *and Cantillon with an understanding of what our bid was going to be and that it was to be higher than theirs*'.

4.217 Thus, the CMA concludes that Scudder submitted a cover bid in this tender process, having regard to the following in particular:

(a) consistent with the internal Cantillon email exchange at paragraph 4.205, Cantillon was in repeated contact with Scudder during the tender process;

(b) although the evidence of communications from Scudder to Cantillon is much more limited, it includes the provision of information regarding the '*M&E*' element of Scudder's bid (see paragraph 4.214);

(c) the information provided by Cantillon to Scudder was sufficient to enable Scudder to submit a cover bid and included specific instructions on aspects of how to do this (see paragraph 4.213);

(d) there is no evidence of Scudder having distanced itself from the information provided by Cantillon; and

(e) the bid submitted by Scudder was higher than Cantillon's and significantly and unusually higher at the second state of the tender process (see paragraphs 4.202 and 4.207).[481]

Legal assessment

4.218 On the basis of the evidence above, the CMA finds that Cantillon and Erith, and Cantillon and Scudder, entered into a cover bidding arrangement in relation to 135 Bishopsgate.

---

[479] URN7099, paragraph 55.
[480] URN7099, paragraph 59.
[481] Scudder's bid at the second stage of the tender process was £633,413 above Cantillon's second stage bid, having been only £65,878 higher than Cantillon's bid at the first stage of the tender process.

4.219 Thus, having regard to the legal principles set out in chapter 3, the CMA considers that:

(a) between at least 7 June 2017 and 19 July 2017 ('*Relevant Period 17(a)*'), Cantillon and Erith;

(b) between at least 7 June 2017 and 19 July 2017 ('*Relevant Period 17(b)*'), Cantillon and Scudder;

infringed the Chapter I prohibition by participating in one or more agreements or concerted practices in the form of a cover bidding arrangement or arrangements which had as its object the prevention, restriction, or distortion of competition in relation to the supply of Demolition Services for 135 Bishopsgate.

Infringement 18 – Civic Centre Scheme, Coventry: DSM, Squibb and Scudder

4.220 Infringement 18 concerns conduct by DSM, Squibb and Scudder in relation to the supply of Demolition Services for the Civic Centre Scheme, Coventry.[482]

4.221 Invitations to tender were issued to DSM, Scudder, Squibb, [demolition contractor] and [demolition contractor] in November 2017, with an initial tender return date of 22 January 2018.[483] Details of the bids submitted are set out in the table below.[484] The submission of these bids was followed by a post tender query process.

Name	Submission date	Value[485]
DSM	22 January 2018	£3,727,838.00
Scudder	22 January 2018	£4,832,295.00
Squibb	22 January 2018	£4,021,000.00
[demolition contractor]	22 January 2018	£4,190,000.00
[demolition contractor]	22 January 2018	£3,881,460.20

[482] This project formed part of Coventry University's Civic Centre scheme and was tendered under a single contract. The tender process was managed by [tender manager] on behalf of the end client, Coventry University: URN5777.
[483] URN5777.
[484] These are the final tender bids, submitted following post tender clarifications: URN5777.
[485] Including adjustments made following initial submissions.

4.222 The contract was awarded to DSM.[486]

Contact between DSM and Scudder

4.223 There is evidence that [Employee] (DSM)[487] and [Director A] (Scudder) sought to speak to each other about the Civic Centre Scheme, Coventry in a series of text messages sent in January 2018; and that this contact resulted in the provision of a cover bid by DSM to Scudder. In particular, there is:

(a) a message sent by [Director A] (Scudder) on 8 January 2018 saying '*…Also Coventry Hospital?*';

(b) a message sent by [Employee] (DSM) on 9 January 2018 saying, '*Give you a call on Cov Uni!*', to which [Director A] (Scudder) replied, '*Ok* [Employee] [(DSM)] *…speak later*';[488]

(c) a message sent by [Employee] (DSM) on 18 January 2018 saying, '*Cov in Monday now, speak later or in the morning?*', to which [Director A] (Scudder) replied, at 16:34, '*I'll call you in 20*'.[489] Forty three minutes later (during which time the CMA infers that the two men had a telephone call about the contract), [Director A] (Scudder) sent a message to [Employee] (DSM), saying '*Speak tomorrow to arrange a day and time to meet Just need a figure if possible*', to which [Employee] (DSM) replied: '*4.37m all in . 3ok for you*'.[490]

4.224 In interview, [Director A] (Scudder) said that, on the basis of the documentary evidence, '*I would say we were looking to get a cover on Coventry University, because we didn't have any interest in it…we were asking for a figure to go in that we wouldn't be competitive, so we were asking for the cover and* [Employee] [(DSM)] *has obviously provided it*'.[491]

---

[486] URN5777, page 2, Section A, c Main Contractor.
[487] [✂].
[488] URN3852.
[489] URN3853.
[490] URN3853. [Director A] (Scudder) replied, '*OK Let's try and get a date in the diary as well. Come back with some dates that suit*'. In its Statement of Objections, the CMA put it to the Parties that these texts amounted to a cover bidding arrangement in conjunction with a compensation payment arrangement. However, after considering all the evidence gathered to date and the Parties' submissions, the CMA considers that the evidence is insufficiently clear to find, on the balance of probabilities, that there was an agreement to distort competition in the form of a compensation payment arrangement.
[491] URN3181, pages 68 to 69; see also pages 70 to 77.

4.225 Consistently with this, [Employee] (DSM) said in interview that, '*4.37m all in*' was the cover price that he had provided to Scudder; '*that's their tender figure … Goes on the tender submission*'.[492]

4.226 The CMA notes that Scudder's initial tender submission was in fact £4,498,985,[493] that is, slightly higher than the '*4.37m*' figure suggested by [Employee] (DSM), and consistent with an arrangement for Scudder to submit a cover bid.

Contact between DSM and Squibb

4.227 There is evidence that [Employee] (DSM) provided [Director A] (Squibb) with a cover bid during a series of text messages sent on 19 January 2018. In particular, there is:

(a) a message sent by [Employee] (DSM) saying, '*You go in at 3.994m . 30 k On the slate. Appreciate your assistance as always!*';

(b) a message sent by [Director A] (Squibb) in response, in which he asked, '*Is there any break down*', to which [Employee] (DSM) replied, '*Sorry no, your 3 Rd , but nearly 350k away from us*'.[494]

4.228 In interview, [Employee] (DSM) explained that '*Like with Carey's* [Scudder] *… he's asked me for a figure, so…I've given him the figure of 3.994 to go in at*'.[495]

4.229 Consistently with this, [Director A] (Squibb) explained:[496]

'*…it was a tender that we don't believe we was capable of doing at that specific time. I called him and texted him, and said, "Can we have a cover price?" …He's then told us to go in at 3.994…*

---

[492] URN3006, page 58.
[493] URN5777, page 4, initial tender offer submitted 22 January 2018.
[494] URN3365. In its Statement of Objections, the CMA put it to the Parties that these texts amounted to a cover bidding arrangement in conjunction with a compensation payment arrangement. However, after considering all the evidence gathered to date and the Parties' submissions, the CMA considers that the evidence is insufficiently clear to find, on the balance of probabilities, that there was an agreement to distort competition in the form of a compensation payment arrangement.
[495] URN3006, page 61.
[496] URN4074, pages 112 to 120.

'*…he's giving us a price of 3.994 , and is there a breakdown to the price that we put elements of it against asbestos, demolition? We couldn't just return the tender saying 3.994…*

'*…he's placed us third…or he thinks we're going to be third, but we're £350,000 more than him*'.

4.230 There is also evidence that DSM provided Squibb with its '*suggested responses*' to a number of post tender queries from [tender manager], thereby enabling Squibb to maintain the credibility of its cover bid. In particular, there is:

(a) a text from [Director A] (Squibb) to [Employee] (DSM), sent on 29 January 2018, highlighting that Squibb had received '*30 queries in on Coventry*', and asking '*could you let me know the best person for* [Director B] [(Squibb)] *to speak to'*. [Employee] (DSM) replied, '*could you email them to me please*';[497]

(b) an email from [Director B] (Squibb) to [Employee] (DSM), sent on 30 January 2018, attaching Squibb's '*Post Tender Clarification Log*';[498]

(c) an email from [Director] (DSM) to [Director B] (Squibb), sent on 30 January 2018, attaching DSM's '*suggested responses*' to the post tender queries, and saying '*We did it in PDF just in case there were any references on the excel doc – hopefully you can transfer the info over your end*'.[499]

4.231 In interview, [Director A] (Squibb) said that he had asked DSM for help with the post tender queries: '*I subsequently contacted him* [[Employee] (DSM)] *again, saying – because we hadn't even sent anybody to the site –"I've had 30 queries in, can you tell me what I could tell* [Director B] [(Squibb)]'.[500]

---

[497] [Director A] (Squibb) replied: '[…] *will do it first thing*' to which [Employee] (DSM) responded: '*Thanks mate*'. URN3365. The evidence shows that [Director A] (Squibb) forwarded the contact email address provided by [Employee] (DSM) to [Director B] (Squibb) on 30 January 2018: URN6495.

[498] [Employee] (DSM) forwarded this email and attachment to [Director] (DSM) asking for a response the same day: URN6497.

[499] URN6497; URN6498.

[500] URN4074, page 112. [Director B] (Squibb) was responsible for putting together Squibb's tender package for this contract: URN4074, page 114.

Legal assessment

4.232 On the basis of the evidence above, the CMA finds that DSM provided Scudder and Squibb with pricing information which they each relied upon to submit a cover bid.

4.233 Thus, having regard to the legal principles set out in chapter 3, the CMA considers that:

(a) between at least 8 January 2018 and 22 January 2018 ('*Relevant Period 18(a)*'), DSM and Scudder;

(b) between at least 19 January 2018 and 30 January 2018 ('*Relevant Period 18(b)*'), DSM and Squibb;

infringed the Chapter I prohibition by participating in one or more agreements or concerted practices in the form of a cover bidding arrangement which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services for the Civic Centre Scheme, Coventry.[501] This is not affected by whether or not Scudder and Squibb wanted to win the contract (see paragraph 3.29).[502]

---

[501] Squibb has made representations that the CMA has '*made no effort to assess the relevant context*' of the Infringements in which it was involved. Squibb argues that Infringement 18 concerns simple cover bidding, which, when viewed in the relevant context, is '*neither sufficiently serious, nor sufficiently clear, for it to be treated as an infringement by object*' and that an effects analysis of this Infringement would show that it '*did not have an appreciable negative impact on competition*': URN8351, paragraphs 131 and 192; see also paragraphs 25, 188 to 210 and 253 to 258. The CMA does not agree. The CMA has considered the specific circumstances of Infringement 18, including its legal and economic context, and considers that the anticompetitive nature of the conduct is sufficiently obvious for it to be classified as an object infringement, noting, in particular, that the customer was not aware that Squibb was providing a cover bid; the submission of even one cover bid reduces uncertainty amongst the bidders and deprives the customer of an opportunity to make an informed decision as to whether to obtain a (competitive) bid elsewhere; and the potential effects of the conduct may extend beyond the confines of the specific contract being tendered and create an atmosphere of collusion: see chapter 2 (*Industry overview*) and chapter 3 (*Agreements between undertakings*; and *Object of restricting or distorting competition*).

[502] Squibb has made representations that a party may have '*objective reasons*' to seek or provide a cover bid, specifically to remain on tender lists, and to circumvent the costs of preparing a tender proposal in circumstances where it does not wish to win the contract (and therefore has no prospect of recouping those costs): URN8351, including paragraphs 122 to 124. In relation to this specific contract, Squibb has made representations that it submitted a cover bid because it did not expect that it would have a high likelihood of winning the contract, it had some concerns about its capacity to carry out the tender, and it '*did not want* [tender manager]*, a nationwide cost consultant, to disregard it for future tendering opportunities':* URN8351, paragraph 198. However, the object of an agreement or concerted practice is not assessed by reference to the parties' subjective intentions when they enter into it, and it is irrelevant that a party may have submitted a cover bid so as not to risk being excluded from future tender lists: see chapter 3 (*Subjective intentions*).

Infringement 19 – Tinbergen Building, Oxford: Erith and McGee

4.234 Infringement 19 concerns conduct by Erith and McGee in relation to the supply of Demolition Services and Asbestos Removal Services for the Tinbergen Building, Oxford.[503]

4.235 Invitations to tender were sent out to Erith, McGee, [demolition contractor], [demolition contractor], [demolition contractor], [demolition contractor] and [demolition contractor] in April 2018, with an initial tender return date of 8 June 2018.[504] The submission of these bids was followed by a post tender query process.

4.236 Details of the bids submitted are set out in the table below.[505]

Name	Submission date	Value
Erith	8 June 2018	£11,002,518
McGee	8 June 2018	£13,609,853
[demolition contractor]	8 June 2018	£14,595,444
[demolition contractor]	8 June 2018	£10,209,476
[demolition contractor]	8 June 2018	£12,779,560
[demolition contractor]	8 June 2018	£13,952,453
[demolition contractor]	8 June 2018	£12,921,150

4.237 The contract was awarded to Erith.[506]

Cover bidding arrangement

4.238 There is witness and interview evidence that Erith and McGee entered into a cover bidding arrangement in relation to the Tinbergen Building contract.

---

[503] This project involved the demolition of Oxford University's Tinbergen Building. The work was tendered under a single contract. The tender process was managed by [tender manager] on behalf of the end client, the University of Oxford: URN6204.
[504] URN6204.
[505] URN6204.
[506] URN6204. Four bidders were invited to interview on 26 June 2018; Erith was the preferred bidder due to the '*combined quality and price rankings*' of its offer. It was then agreed that Erith should develop a Gross Maximum Price (GMP) on the proviso that, should its revised GMP exceed that of the second ranked bidder, the second ranked bidder would be offered the same opportunity. Erith's revised price was less than the bid of the second ranked bidder and the contract was awarded to Erith.

According to [Director A] (McGee) this contract '*was one where Erith asked us to take a cover price on and we agreed*'.[507]

4.239 The CMA is also in possession of documentary evidence that McGee prepared its cover bid in collaboration with Erith.

4.240 On 6 June 2018, [Director A] (McGee) sent an email to [Director D] (McGee), attaching a pricing schedule for this contract, saying *inter alia*: '*On the CSA* [508] *where it asks for a discount if awarded all 3 phases, please offer a discount of zero*'.[509] In his witness evidence, [Director A] (McGee) explained: '*This was likely to have been feedback we received as part of the cover price from Erith … I instructed* [Director D] [(McGee)] *and* [Employee C] [(McGee)] *to use that information from Erith in order to price the job, as long as we are being reasonable and could justify the price to the client*'.[510]

4.241 The CMA notes that [Director D] (McGee) forwarded this email internally, saying '*NOT FOR SHARING/DISCUSSING (other than with me or* [Employee C] [(McGee)]*) and please delete when done with it!!*'.[511] In interview, [Director D] (McGee) explained: '*at this stage, we knew there was an agreement in place. It's just limiting the knowledge of that*'.[512]

4.242 On 18 June 2018, [Employee C] (McGee) sent an email to [Director D] (McGee) attaching tender queries received from the end client, asking: '*What do we do, do we add some monies or are we supposed to get more information from others ?*'.[513] In interview, [Director D] (McGee) explained that [Employee C] (McGee) was: '*asking whether we* [McGee] *should consult Erith prior to returning these queries*'.[514]

---

[507] URN6189, paragraph 111. Internal emails emanating from within McGee are consistent with this evidence, insofar as they indicate that McGee's pricing team understood that they should not '*waste*' too much time on putting together its bid: URN5510; URN6597; URN5509; URN5512; URN5513; URN5516. See also [Employee C]'s (McGee) interview evidence (i) confirming the existence of a cover bidding agreement in relation to this contract: URN5123, pages 125 and 126; and (ii) explaining that he told colleagues not to spend too much time on this contract '*because we* [McGee] *had no hope of winning the Tinbergen job*': URN5123, pages 135 to 136. See also [Director D]'s (McGee) interview evidence: URN3063, pages 151 to 152.

[508] Contract Sum Analysis: URN6189, paragraph 115.

[509] URN5448; URN5449. The CMA notes that the tender total in the pricing schedule was £13,799,998.85, nearly £3 million higher than Erith's tender offer, and very similar to the final tender figure submitted by McGee (£13,609,853).

[510] URN6189, paragraph 115.

[511] URN5512.

[512] URN3063, page 158.

[513] URN5517; URN5518.

[514] URN3063, page 162.

4.243 The evidence shows that McGee did, in fact, consult with Erith in relation to these queries, for the purposes of submitting a cover bid. Specifically:

(a) on 19 June 2018, [Director D] (McGee) emailed this list of tender queries to [Employee B] (Erith).[515] In interview, [Director D] (McGee) explained that he was '*looking for instruction as how to respond* … [b]*ecause potentially how you answer the questions may alter … programme and price position*';[516]

(b) on 19 June 2018, [Employee B] (Erith) replied, attaching a completed version of McGee's tender queries, as well as Erith's '*prelims*'.[517] [Employee B] (Erith) confirmed that he inserted the information into the completed version of McGee's tender queries; and explained that he sent Erith's preliminaries to [Director D] (McGee) '*to assist him in answering question 6*' of the tender queries: that is, '*please provide a breakdown of your preliminaries by section*';[518]

(c) on 20 June 2018, [Director D] (McGee) sent an email to [Employee C] (McGee) attaching a copy of McGee's response to the tender queries,[519] and Erith's preliminaries,[520] saying, '*There are 3 answers left that need your input and I've attached a prelim sheet to assist. These are their actual, so you'll need to adjust to fit our number*'.[521] In interview, [Employee C] (McGee) said that [Director D] (McGee) sent these documents to him so that he could: '*adjust our* [McGee's] *figure to be more expensive than theirs* [Erith's]'.[522]

Legal assessment

4.244 On the basis of the evidence above, the CMA finds that Erith and McGee entered into a cover bidding arrangement in relation to the Tinbergen Building, Oxford.

---

[515] URN4267; URN4268.
[516] URN3063, page 164.
[517] URN4269; URN4270; URN4271.
[518] URN6161, questions 37 to 39; URN4270.
[519] URN5522. This is almost identical to URN4270, the document sent to [Director D] (McGee) by [Employee B] (Erith).
[520] URN5521. This appears to be the same document as URN4271, the document sent to [Director D] (McGee) by [Employee B] (Erith).
[521] URN5520.
[522] URN5123, page 171 (based on his reading of the emails during the interview).

4.245 Thus, having regard to the legal principles set out in chapter 3, the CMA considers that between at least 6 June 2018 and 20 June 2018 ('*Relevant Period 19*'), Erith and McGee infringed the Chapter I prohibition by participating in an agreement or concerted practice in the form of a cover bidding arrangement which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services and Asbestos Removal Services for the Tinbergen Building, Oxford.

5. ATTRIBUTION OF LIABILITY

Identification of the appropriate legal entity

5.1 For each Party which the CMA finds has infringed the Competition Act, the CMA has first identified the legal entity directly involved in the Infringements. It has then determined whether liability for the Infringement should be shared with another legal entity forming part of the same undertaking, or whether liability should rest with an '*economic successor*', in which case each legal entity's liability will be joint and several.

5.2 The CMA has exercised its discretion not to hold certain legal entities forming part of the same undertaking liable, where in each case this would not affect the level of any financial penalty, or the application of the statutory cap at step 5 of the penalty calculation, for that undertaking.

Direct personal liability

5.3 Liability for an infringement of the Chapter I prohibition rests with the legal person(s) responsible for operating the undertaking at the time of the infringement (the '*personal responsibility*' principle).[523]

Indirect personal liability

5.4 A parent company may be held jointly and severally liable for an infringement committed by its subsidiary – without the parent's knowledge or involvement[524] – where, as a matter of economic reality,[525] it exercised decisive influence over its subsidiary during its ownership period.[526] In such circumstances, the parent company and its subsidiary form a single economic unit and therefore form a single undertaking.[527] This assessment turns not only on intervention in, or supervision of, the subsidiary's commercial conduct

[523] T-6/89 *Enichem Anic SpA v European Commission*, ECLI:EU:T:1991:74, paragraphs 236 to 237.
[524] C-90/09 P *General Química SA v Commission*, ECLI:EU:C:2011:21, paragraph 102. See also C-97/08 *Akzo Nobel v Commission*, ECLI:EU:C:2009:536, paragraphs 59 and 77.
[525] C-293/13 P *Del Monte v Commission*, ECLI:EU:C:2015:416.
[526] C-97/08 P *Akzo Nobel v Commission*, ECLI:EU:C:2009:536, paragraph 60; C-179/12 P *Dow v Commission*, ECLI:EU:C:2013:605.
[527] C-97/08 P *Akzo Nobel NV v Commission*, ECLI:EU:C:2009:536, paragraph 59; *Sainsbury's Supermarkets Ltd v MasterCard* [2016] CAT 11, paragraph 363.

in the strict sense,[528] but on the economic, organisational and legal links between parent and subsidiary, which may be informal.[529]

5.5 If the subsidiary is wholly owned by the parent company, whether directly or indirectly,[530] then the parent company is able to exercise decisive influence over the subsidiary and there is a rebuttable presumption in law that the parent did in fact exercise decisive influence over the commercial policy of the subsidiary.[531] This presumption also applies if ownership of the subsidiary is just below 100%.[532]

Economic successor liability

5.6 In some instances, responsibility for the operation of an undertaking may have changed following the infringement and the new person responsible for the operation of the undertaking may be held liable for the infringement (the '*economic successor*' principle).[533]

5.7 If undertakings could escape penalties by simply changing their identity through restructurings, sales or other legal or organisational changes, the objective of suppressing conduct that infringes the competition rules and preventing its reoccurrence by means of deterrent penalties would be jeopardized.[534] To ensure the effective enforcement of competition law, the economic successor principle has been applied where a business is transferred from one legal entity (the transferor) to another (the transferee) and:

---

[528] C-97/08 P *Akzo Nobel v Commission*, ECLI:EU:C:2009:536.
[529] C-440/11 *Commission v Stichting Administratiekantoor Portielje and Gosselin Group NV* ECLI:EU:C:2013:514.; Case C-97/08 P *Akzo Nobel v Commission*, ECLI:EU:C:2009:356.
[530] C-508/11 P *Eni Spa v Commission* EU:C:2013:289, paragraph 48; C-595/18P *GoldmanSachs v Commission*, EU:C:2021:73, paragraphs 32 to 33.
[531] C-97/08 P *Akzo Nobel NV v Commission*, ECLI:EU:C:2009:536, paragraphs 60 and 61; T-24/05 *Alliance One & Others v European Commission*, ECLI:EU:T:2010:453, paragraphs 126 to 130.
[532] C-508/11 P *ENI v Commission* paragraph 47; T-299/08 *Elf Aquitaine v Commission*, EU:T:2011:217, paragraphs 51 to 57 and 64 (where the presumption was held to apply in relation to a shareholding of approximately 98%); T-217/06 *Arkema France and Others v Commission*, EU:T:2011:251, paragraphs 53 and 65; T-24/05 *Alliance One International and Others v Commission*, EU:T:2010:453, paragraphs 126 to 130.
[533] This operates as an exception to the personal responsibility principle: T-6/89 *Enichem Anic SpA v European Commission*, ECLI:EU:T:1991:74, paragraph 237; C-204/00 P *Aalborg Portland A/S v Commission*, ECLI:EU:C:2004:6, paragraphs 344 and 358 to 359; T-161/05 *Hoechst v Commisson* paragraph 51; C-280/*06 ETI v Commission*, paragraph 41. Where economic succession is established, the CMA has the power, but not an obligation, to impute to the new operator an infringement committed by the former operator: T-161/05 *Hoechst v Commisson*, paragraphs 51 and 64; C-444/11 P *Team Relocations v Commission*, ECLI:EU:C:2013:464, paragraphs 159 to 161.
[534] C-601/18 P *Prysmian v Commission* ECLI:EU:C:2020:751, paragraph 86.

(a) the person in control of the undertaking at the time the infringement was committed no longer exists[535] or is no longer economically active;[536] and / or

(b) the transferee continued the transferor's economic activities on the market affected by the suspected infringement so that the legal person in control of the undertaking at the time the infringement is no longer active in the relevant market; and at the time of the transfer there were economic and organisational structural links between the original person responsible for the undertaking that committed the infringement and the legal person which is economic successor on the basis of which it may be considered that the two entities form a single undertaking.[537]

5.8 Continuation of economic activities is indicative of an economic successor.[538] A change in the legal form and name of an undertaking does not necessarily have the effect of creating a new undertaking free from liability for the anti-competitive behaviour of its predecessor when, from an economic point of view, the two are identical.[539] In order to establish whether a person may be regarded as an economic successor, it is necessary to identify the '*combination of physical and human elements* [i.e. the assets and personnel] *which contributed to the commission of the infringement and then to identify the person who has become responsible for their operation*'.[540]

5.9 It is not necessary for the economic successor to have taken over all of the assets and personnel of the relevant undertaking that committed the infringement. It is sufficient that the successor has taken over '*the main part of those physical and human elements that were employed in* [the relevant

---

[535] C-40/73 *Suiker Unie v. Commission*, ECLI:EU:C:1975:174; C-29/83 *Compagnie Royale Asturienne des Mines and Rheinzink GmBH v Commission*, ECLI:EU:C:1984:130; T-6/89 *Enichem Anic SpA v European Commission*, ECLI:EU:T:1991:74.

[536] T-134/94 *NMH Stahlwerke GmbH v Commission*, ECLI:EU:T:1999:44; C-280/06 *Autorita Garante Della Concorrenza e del Mercato v Ente Tabacchi Italiani – ETI SpA*, ECLI:EU:C:2007:775, paragraphs 77 and following.

[537] C-204/00 P *Aalborg Portland A/S v Commission*, ECLI:EU:C:2004:6, paragraphs 358 to 359; T-161/05 *Hoechst v Commisson* paragraph 52; C-280/06 *ETI v Commission*, paragraphs 45 and 49; C-511/11 P *Versalis SpA v Commission*, ECLI:EU:C:2013:386, paragraphs 6 and 52; C-434/13 P *Commission v Parker Hannifin Manufacturing Srl* EU:C:2014:2165, paragraphs 39 to 41 and 50 to 51; C-601/18 P *Prysmian v Commission* ECLI:EU:C:2020:751, paragraphs 85 to 90.

[538] C-29/83 *CRAM v Commission* EU:C:1984:130, paragraph 9.

[539] C-204/00 P *Aalborg Portland A/S v Commission*, ECLI:EU:C:2004:6, paragraph 59; C-434/13 P *Commission v Parker Hannifin* EU:C:2014:2456, paragraphs 40 to 41.

[540] T-6/89 *Enichem Anic SpA v European Commission*, ECLI:EU:T:1991:74, paragraph 237.

business] *and therefore contributed to the commission of the infringement in question*'.[541]

5.10 The principle of economic continuity may apply where the transfer of the infringing business took place after the infringement had come to an end, provided that the structural links existed at the time of that transfer.[542]

Application to the Parties

Brown and Mason

5.11 The CMA finds that Brown and Mason was directly involved in Infringements 3 and 6.

5.12 However, Brown and Mason is in administration and is no longer active in the relevant market.

5.13 In January 2020, BMG[543] acquired materially all the employees and tangible assets of Brown and Mason.[544] Moreover, the directors and indirect shareholders of BMG are, to a significant extent, the same as the directors and indirect shareholders of Brown and Mason.[545] The CMA therefore finds that there are economic and organisational structural links between BMG and Brown and Mason.

5.14 Thus, on the basis that BMG is the economic successor to Brown and Mason, the CMA finds BMG liable for Infringements 3 and 6. This Decision is therefore addressed to BMG.

---

[541] T-134/94 *NMH Stahlwerke GmbH v. Commission*, ECLI:EU:T:1999:44, paragraph 130.
[542] C-204/00 P *Aalborg Portland and Others v Commission* EU:C:2004:6, paragraphs 59, 351, 356 and 357; and C-434/13 P *Commission v Parker Hannifin* EU:C:2014:2456, paragraph 49.
[543] Until 2019 BMG was known as Brown and Mason Plant Hire Limited. Until September 2020 BMG was 100% owned by Brown and Mason Holdings Limited (the 100% parent of Brown and Mason). During Relevant Periods 3(a) and 6(b), it was a sister company of Brown and Mason.
[544] Appendix 1, paragraphs 2.7, 5.5, 5.6 and 5.11 of Notice of Administrator's Proposals for Brown and Mason dated 13 November 2020, as filed at Companies House; Administrator's report 1, paragraphs 5.6 and 5.9.
[545] Brown and Mason's directors included [individual], [individual] and [individual] ([✂]). BMG's directors are [individual] and [individual]. [individual] is also the director of NRLB Limited, which acquired 100% of the shares in BMG in September 2020. See also URN2899, pages 14 and 15. [individual] indirectly owned 25% of the shares in Brown and Mason, with the remainder being owned by other members of the Brown and Hadden families. [individual] indirectly owns 100% of the shares in BMG.

Cantillon

5.15 The CMA finds that Cantillon was directly involved in Infringements 2, 4, 5, 6, 12, 13, 14, 15 and 17, and therefore finds it liable for those infringements.

5.16 During Relevant Periods 2, 4(b), 5(c), 6(a), 12(b), 13(a), 14(a), (b) and (c), 15(a) and 17(a) and (b), Cantillon was wholly owned by CH. On the basis that a parent is presumed to exercise a decisive influence over the commercial policy of its wholly owned subsidiaries, the CMA provisionally finds CH jointly and severally liable with Cantillon for Infringements 2, 4, 5, 6, 12, 13, 14, 15 and 17.

5.17 This Decision is therefore addressed to Cantillon and CH.

Clifford Devlin

5.18 The CMA finds that Clifford Devlin was directly involved in Infringements 8 and 11, and therefore finds it liable for those infringements. This Decision is therefore addressed to Clifford Devlin.

DSM

5.19 The CMA finds that DSM was directly involved in Infringement 18, and therefore finds it liable for that infringement.

5.20 During Relevant Periods 18(a) and (b):

(a) DSM was wholly owned by DSGH;

(b) DSGH was wholly owned by Nobel Midco; and

(c) Nobel Midco was wholly owned by Nobel Topco.

5.21 On the basis that a parent is presumed to exercise a decisive influence over the commercial policies of its wholly owned subsidiaries, the CMA finds DSGH, Nobel Midco and Nobel Topco jointly and severally liable with DSM for Infringement 18.

5.22 This Decision is therefore addressed to DSM, DSGH, Nobel Midco and Nobel Topco.

Erith

5.23 The CMA finds that Erith was directly involved in Infringements 1, 3, 5, 8, 11, 12, 14, 17 and 19, and therefore finds it liable for those infringements.

5.24 During Relevant Period 1, 3(b), 5(a), 8(a), 11(b), 12(a), (b) and (c), 14(c), 17(a), and 19, Erith was 99.99% owned by EH.[546] EH is therefore presumed to have exercised a decisive influence over Erith during that time; therefore, the CMA finds EH jointly and severally liable with Erith for Infringements 1, 3, 5, 8, 11, 12, 14, 17 and 19.

5.25 This Decision is therefore addressed to Erith and EH.

John F Hunt

5.26 The CMA finds that John F Hunt was directly involved in Infringements 14, 15 and 16, and therefore finds it liable for those infringements.

5.27 During Relevant Periods 14(b), 15(b) and 16, John F Hunt was wholly owned by JFH Group. On the basis that a parent is presumed to exercise a decisive influence over the commercial policy of its wholly owned subsidiaries, the CMA finds JFH Group jointly and severally liable with John F Hunt for Infringements 14, 15 and 16.

5.28 This Decision is therefore addressed to John F Hunt and JFH Group.

Keltbray

5.29 The CMA finds that Keltbray was directly involved in Infringements 4, 5, 7, 8, 10, 12, 13 and 14, and therefore finds it liable for those infringements.

5.30 During Relevant Periods 4(a), 5(b), 7(b), 8(b), 10, 12(a), 13(a) and (b) and 14(a), Keltbray was wholly owned by KGH; KGH is therefore presumed to have exercised a decisive influence over Keltbray during that time.

5.31 On 1 November 2020, KH acquired 100% of the shares in Keltbray from KGH; and, as part of a corporate restructuring process, Keltbray's operational assets were transferred to other entities within the Keltbray group.[547] Given the structural links between KGH and KH,[548] and in order to ensure the effective enforcement of competition law, the CMA is of the view that it is

[546] EH held 52,499 shares and [individual] held 1 share.
[547] As a consequence, Keltbray may have significantly reduced turnover and assets, such that it is unable to pay any financial penalty imposed by the CMA.
[548] KGH and KH are both owned by the same companies; and the same individuals, [individual] and [individual], have been directors of Keltbray, KGH and KH.

appropriate to find KH jointly and severally liable with Keltbray, following the principles of economic successor liability set out in paragraphs 5.6 to 5.10.[549]

5.32 This Decision is therefore addressed to Keltbray and KH.

McGee

5.33 The CMA finds that McGee was directly involved in Infringements 3, 5, 7, 12, 13, 15, 16 and 19, and therefore finds it liable for those infringements.

5.34 During Relevant Periods 3(a) and (b), 5(d), and 7(a), McGee was wholly owned by DealPride Limited. However, the CMA is of the view that DealPride Limited is no longer active on the relevant market. On 5 November 2015, MFCOIL acquired 100% of the shares in DealPride Limited, along with all of DealPride Limited's demolition assets:[550] DealPride currently has no employees and is a '*micro-entity*' with around £40,000 of assets. However, the CMA notes that the directors of MFCOIL are to a significant extent, the same as the directors of DealPride Limited,[551] and therefore finds that there are economic and organisational structural links between DealPride Limited and MFCOIL.

5.35 Thus, on the basis that MFCOIL is the economic successor to DealPride Limited, and that in respect of Relevant Periods 12(c), 13(b), 15(a) and (b), 16 and 19 is presumed to have exercised a decisive influence over the commercial policies of McGee, the CMA finds MFCOIL jointly and severally liable with McGee for Infringements 3, 5, 7, 12, 13, 15, 16 and 19.

5.36 This Decision is therefore addressed to McGee and MFCOIL.

Scudder

5.37 The CMA finds that Scudder was directly involved in Infringements 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 17 and 18, and therefore finds it liable for those infringements.

5.38 During Relevant Period 1, 2, 4(a) and (b), 5(a), (b), (c) and (d), 6(a) and (b), 7(a) and (b), 8(a), (b) and (c), 9, 10, 11(a), 17(b), and 18(a):

---

[549] The CMA notes the structural links between KGH and KH.
[550] That is: during Relevant Periods 12(c), 13(b), 15(a) and (b), 16 and 19 McGee was wholly owned by MFCOIL.
[551] That is: [individual], [individual], [individual] (noting that [individual] and [individual] are no longer directors of MFCOIL, from September 2020).

(a) Scudder was wholly owned by Carey Plant Hire; and

(b) Carey Plant Hire was wholly owned by Carey Group Plc. On 7 October 2020, Carey Group Plc was converted into a limited company, Carey.[552]

5.39 On the basis that a parent is presumed to exercise a decisive influence over the commercial policies of its wholly owned subsidiaries, the CMA finds Carey Plant Hire and Carey jointly and severally liable with Scudder for Infringements 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 17 and 18.

5.40 This Decision is therefore addressed to Scudder, Carey Plant Hire and Carey.

Squibb

5.41 The CMA finds that Squibb was directly involved in Infringements 9 and 18, and therefore finds it liable for those infringements. This Decision is therefore addressed to Squibb.

[552] Araglin Holdings Limited acquired 100% of the shares in Carey on 22 October 2020. Since 18 January 2019, Scudder has been wholly owned by Carey.

6. THE CMA'S ACTION

The CMA's decision

6.1 On the basis of the evidence set out in this Decision, the CMA has made a decision addressed to the Parties, finding them liable for infringing the Chapter I prohibition of the Competition Act.

Directions

6.2 Section 32(1) of the Competition Act provides that if the CMA has made a decision that an agreement infringes the Chapter I prohibition, it may give to such person or persons as it considers appropriate such directions as it considers appropriate to bring the infringement to an end.

6.3 As the Infringements have come to an end, the CMA has decided not to impose directions in this case.

Financial penalties

6.4 On making a decision that an agreement has infringed the Chapter I prohibition, the CMA may require an undertaking which is party to the agreement to pay the CMA a penalty in respect of the infringement.[553]

6.5 The CMA considers that it is appropriate in the circumstances of this case to exercise its discretion to impose a penalty on the Parties for each of the Infringements in which they were involved, given the seriousness of the conduct and in order to deter similar conduct in the future.[554]

The CMA's margin of appreciation in determining the appropriate penalty

6.6 The CMA has a margin of appreciation when determining the appropriate amount of a penalty under the Act, provided that:

(a) the penalties it imposes in a particular case are within the range of penalties permitted by section 36(8) of the Act and the Competition Act

---

[553] Section 36(1) of the Competition Act.

[554] The CMA considers that section 39 of the Act (which provides for limited immunity from penalties in relation to the Chapter I prohibition) does not apply in the present case on the basis that the combined applicable turnover of the Parties to each Infringement exceeded the relevant threshold: Regulation 3 of *The Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000*, SI/2000/262.

1998 (Determination of Turnover for Penalties) Order 2000 (the '*2000 Order*'),[555] and

(b) it has had regard to the *CMA's guidance as to the appropriate amount of a penalty* (the '*Penalty Guidance*')[556] in accordance with section 38(8) of the Act.[557]

6.7 In this case, the CMA has had regard to:

(a) the Penalty Guidance published on 18 April 2018 (the '*2018 Penalty Guidance*') for the purposes of calculating the penalties of the Settling Parties;[558]

(b) the Penalty Guidance published on 16 December 2021 (the '*2021 Penalty Guidance*'), for the purposes of calculating the penalties of EEH and Squibb.

6.8 The CMA is not bound by its decisions in relation to the calculation of financial penalties in previous cases.[559] Rather, the CMA makes its assessment on a case-by-case basis[560] having regard to all relevant circumstances and the objectives of its policy on financial penalties.

Intention / negligence

6.9 The CMA may impose a penalty on an undertaking which has infringed the Chapter I prohibition only if it is satisfied that the infringement has been committed intentionally or negligently.[561]

6.10 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

---

[555] SI 2000/309, as amended by the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004, SI 2004/1259.
[556] CMA73.
[557] *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, paragraph 168 and *Umbro Holdings and Manchester United and JJB Sports and Allsports v OFT* [2005] CAT 22, paragraph 102.
[558] Settlement discussions were ongoing at the time that the 2021 Penalty Guidance was published. Thus, the 2018 Penalty Guidance was applied to the calculation of the maximum penalties agreed with the Settling Parties. See 2021 Penalty Guidance, footnote 11.
[559] See, for example, *Eden Brown and Others v OFT* [2011] CAT 8, paragraph 78.
[560] See, for example, *Kier Group and Others v OFT* [2011] CAT 3, paragraph 116 where the CAT noted that *'other than in matters of legal principle there is limited precedent value in other decisions relating to penalties, where the maxim that each case stands on its own facts is particularly pertinent*'. See also *Eden Brown and Others v OFT* [2011] CAT 8, paragraph 97 where the CAT observed that '[d]*ecisions by this Tribunal on penalty appeals are very closely related to the particular facts of the case*'.
[561] Section 36(3) of the Competition Act.

exercise its discretion to impose a penalty.[562] 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*'.[563]

6.11 The circumstances in which the CMA may find that an infringement has been committed intentionally include the situation in which the agreement, concerted practice or conduct in question has as its object the restriction of competition.

6.12 The CMA has concluded that the Infringements had as their object the restriction of competition.[564] The conduct of the Parties, as set out in chapter 4, was deliberate and obviously anti-competitive, such that they must have been aware, could not have been unaware, or at the least ought to have known, that it would result in a restriction or distortion of competition.

6.13 None of the Parties have made representations that their conduct was not committed intentionally or negligently.

6.14 In these circumstances, the CMA finds, for the purposes of determining whether to exercise its discretion to impose penalties in this case, that the Infringements were committed intentionally, or at least negligently.

6.15 Ignorance or a mistake of law does not prevent a finding of intentional infringement.[565]

---

[562] *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1 paragraphs 453 to 457. See also judgment in *SPO and Others v Commission,* C-137/95P, EU:C:1996:130, paragraphs 53 to 57.

[563] *Argos Limited and Littlewoods Limited v OFT* [2005] CAT 13, paragraph 221. See also *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1, paragraph 456. See also Royal Mail [2019] CAT 27, paragraph 782.

[564] See chapter 4.

[565] C-681/11 *Bundeswettbewerbsbehörde and Bundeskartellanwalt v Schenker & Co. AG and Others* EU:C:2013:404, paragraph 38. *Ping Europe Limited v CMA* [2020] EWCA Civ 13, paragraph 117.

Calculation of the penalties

6.16 Both the 2018 Penalty Guidance and 2021 Penalty Guidance set out a six-step approach for calculating a financial penalty.

6.17 Under both sets of Penalty Guidance:

(a) for the purposes of steps 1 to 3, the CMA has calculated a separate penalty for each of the Infringements in which each Party was involved;

(b) at steps 4 to 6, the CMA has calculated a total (combined) penalty figure for all of the Infringements in which each Party was involved.

Step 1 – starting point

6.18 The starting point for determining the level of financial penalty is calculated having regard to the relevant turnover of the undertaking, the seriousness of the infringement and the need for general deterrence.[566]

Determination of relevant turnover

6.19 The relevant turnover is the turnover of the undertaking in the relevant market affected by the infringement in the undertaking's '*last business year*', that is the financial year preceding the date when the infringement ended.[567]

6.20 The CMA's findings as regards the relevant market, last business year and relevant turnover for each of the Infringements are set out in the table below.

---

[566] 2018 Penalty Guidance, paragraphs 2.3 to 2.15; 2021 Penalty Guidance, paragraphs 2.2 to 2.13.

[567] 2018 Penalty Guidance, paragraph 2.11; 2021 Penalty Guidance, paragraph 2.10. EEH has made representations that the CMA's relevant turnover calculation is '*over inclusive*' on the basis that: (i) the starting point percentage has been applied to EEH's turnover on all contracts across the relevant years, even though each of its Infringements related to only a single contract, resulting, according to EEH, in a '*gross mismatch*' between the turnover that was subject to collusion and the turnover to which the penalty is applied; and (ii) the CMA has failed to show how the conduct could lead to '*future tender processes being similarly impaired*': URN8354, paragraphs 3.13 to 3.24 and 4.12 to 4.13. However, the CMA does not consider that there is any reason to depart from the definition of '*relevant turnover*' set out in the 2021 Penalty Guidance in this case. As noted by the Court of Appeal in *Argos/Littlewoods* [2006] EWCA Civ 1318, paragraphs 171 and 173, when determining penalties, the CMA is not limited to the turnover of the very services which were the direct subject of the anticompetitive practice. Moreover, the CMA considers that the potential effects of cover bidding extend beyond the specific contract affected by the infringement. See: *North Midland Construction plc v OFT* [2011] CAT 14, paragraph 56; *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraph 251; chapter 3 (*Object of preventing, restricting or distorting competition*, '*Cover bidding*') above; chapter 6 (*Assessment of seriousness – application of percentage starting point to relevant turnover*) below.

6.21 The CMA acknowledges that there is a degree of double counting that arises by calculating multiple fines using the same relevant turnover in the same financial year, resulting in an inflated relevant turnover figure. By contrast, in the case of a year-long single continuous infringement, relevant turnover would be factored into the penalty calculation only once. The CMA has taken this into account in the making its assessment for proportionality, at step 4 under the 2018 Penalty Guidance in the case of the Settling Parties, and step 5 under the 2021 Penalty Guidance in the case of EEH and Squibb.

Infringement	Relevant Market	Date on which Infringement ended	Last business year	Relevant Turnover
BMG				
Southbank, London	Demolition Services in the UK	8 July 2013	Financial year ending 30 April 2013	**£7,657,685**
Lots Road Power Station	Demolition Services in the UK	28 August 2014	Financial year ending 30 April 2014	**£5,712,231**
CCH				
MPS Training & Operations Centre Hendon	Demolition Services and Asbestos Removal Services in the UK	20 June 2013	Financial year ending 31 December 2012	**£10,028,446**
Bow Street (1)	Demolition Services and Asbestos Removal Services in the UK	25 April 2014	Financial year ending 31 December 2013	**£13,571,888**
Station Hill, Reading	Demolition Services in the UK	9 June 2014	Financial year ending 31 December 2013	**£12,729,313**
Lots Road Power Station	Demolition Services in the UK	1 September 2014	Financial year ending 31 December 2013	**£12,729,313**
33 Grosvenor Place	Demolition Services and Asbestos Removal Services in the UK	14 November 2016	Financial year ending 30 June 2016[568]	**£22,865,903**
Wellington House	Demolition Services and Asbestos Removal Services in the UK	7 December 2016	Financial year ending 30 June 2016	**£22,865,903**

[568] As a result of a change to its reporting period, Cantillon Limited's financial statements for the financial year ending 30 June 2016 covered an 18-month period. CCH has therefore provided the CMA with Cantillon Limited's turnover figures for the 12-month period 1 July 2015 to 30 June 2016; URN6849.

Ilona Rose House	Demolition Services in the UK	6 December 2016	Financial year ending 30 June 2016	**£21,570,608**
44 Lincoln's Inn Fields	Demolition Services and Asbestos Removal Services in the UK	28 April 2017	Financial year ending 30 June 2016	**£22,865,903**
135 Bishopsgate	Demolition Services in the UK	19 July 2017	Financial year ending 30 June 2017	**£26,278,777**
Clifford Devlin				
Lombard House, Redhill	Demolition Services in the UK	21 August 2014	Financial year ending 31 March 2014	**£4,119,026**
Underground car park, High Wycombe	Demolition Services in the UK	19 November 2015	Financial year ending 31 March 2015	**£3,838,678**
DSM Nobel				
Civic Centre Scheme, Coventry	Demolition Services in the UK	30 January 2018[569]	Financial year ending 30 March 2017[570]	**£35,457,137**
EEH				
Bishop Centre	Demolition Services and Asbestos Removal Services in the UK	At least 17 January 2013	Financial year ending 30 September 2012	**£15,337,828**
Southbank, London	Demolition Services in the UK	8 July 2013	Financial year ending 30 September 2012	**£14,648,042**
Station Hill, Reading	Demolition Services in the UK	11 June 2014	Financial year ending 30 September 2013	**£19,394,275**
Lombard House, Redhill	Demolition Services in the UK	27 August 2014	Financial year ending 30 September 2013	**£19,394,275**
Underground car park, High Wycombe	Demolition Services in the UK	19 November 2015	Financial year ending 30 September 2015	**£43,748,227**

[569] The CMA has found that the relevant periods were between at least 8 January 2018 and 22 January 2018 for the conduct with Scudder, and between at least 19 January 2018 and 30 January 2018 for the conduct with Squibb.

[570] As a result of a change to its reporting period, DSM Demolition Limited's financial statements for the financial year ending 30 March 2017 covered a 15-month period. DSM Nobel therefore provided the CMA with pro-rated turnover for a 12-month period: URN6785.

33 Grosvenor Place	Demolition Services and Asbestos Removal Services in the UK	9 December 2016[571]	Financial year ending 30 September 2016	**£55,851,982**
Ilona Rose House	Demolition Services in the UK	1 December 2016	Financial year ending 30 September 2016	**£55,493,351**
135 Bishopsgate	Demolition Services in the UK	19 July 2017	Financial year ending 30 September 2016	**£55,493,351**
Tinbergen Building, Oxford	Demolition Services and Asbestos Removal Services in the UK	20 June 2018	Financial year ending 30 September 2017	**£46,915,563**
JFHG				
Ilona Rose House	Demolition Services in the UK	6 December 2016	Financial year ending 31 March 2016	**£32,437,912**
44 Lincoln's Inn Fields	Demolition Services and Asbestos Removal Services in the UK	1 February 2017	Financial year ending 31 March 2016	**£25,538,216**
57 Whitehall Old War Office	Demolition Services in the UK	15 June 2017	Financial year ending 31 March 2017	**£23,026,848**
KKH				
Bow Street (1)	Demolition Services and Asbestos Removal Services in the UK	17 April 2014	Financial year ending 31 October 2013	**£64,725,000**
Station Hill, Reading	Demolition Services in the UK	9 June 2014	Financial year ending 31 October 2013	**£58,783,000**
Duke Street, London	Demolition Services in the UK	9 July 2014	Financial year ending 31 October 2013	**£58,783,000**
Lombard House, Redhill	Demolition Services in the UK	22 August 2014	Financial year ending 31 October 2013	**£58,783,000**
Bow Street (2)	Demolition Services in the UK	28 November 2014	Financial year ending 31 October 2014	**£72,745,000**

[571] The CMA has found that the relevant periods were between at least 11 November 2016 and 16 November 2016 for the conduct with Keltbray, between at least 11 November 2016 and 14 November 2016 for the conduct with Cantillon, and between at least 9 November 2016 and 9 December 2016 for the conduct with McGee.

33 Grosvenor Place	Demolition Services and Asbestos Removal Services in the UK	16 November 2016	Financial year ending 31 October 2016	**£175,607,000**
Wellington House	Demolition Services and Asbestos Removal Services in the UK	8 December 2016	Financial year ending 31 October 2016	**£175,607,000**
Ilona Rose House	Demolition Services in the UK	18 November 2016	Financial year ending 31 October 2016	**£155,510,000**
MCGEE / MFCOIL				
Southbank, London	Demolition Services in the UK	8 July 2013	Financial year ending 30 November 2012	**£20,960,000**
Station Hill, Reading	Demolition Services in the UK	30 May 2014	Financial year ending 30 November 2013	**£16,584,000**
Duke Street, London	Demolition Services in the UK	9 July 2014	Financial year ending 30 November 2013	**£16,584,000**
33 Grosvenor Place	Demolition Services and Asbestos Removal Services in the UK	9 December 2016	Financial year ending 30 November 2016	**£38,206,000**
Wellington House	Demolition Services and Asbestos Removal Services in the UK	8 December 2016	Financial year ending 30 November 2016	**£38,206,000**
44 Lincoln's Inn Fields	Demolition Services and Asbestos Removal Services in the UK	28 April 2017[572]	Financial year ending 30 November 2016	**£38,206,000**
57 Whitehall Old War Office	Demolition Services in the UK	15 June 2017	Financial year ending 30 November 2016	**£37,614,000**
Tinbergen Building, Oxford	Demolition Services and Asbestos Removal Services in the UK	20 June 2018	Financial year ending 30 November 2017	**£14,855,000**
SPC				
Bishop Centre	Demolition Services and Asbestos Removal Services in the UK	17 January 2013	Financial year ending 31 March 2012	**£10,840,754**

[572] The CMA has found that the relevant periods were between at least 19 January 2017 and 28 April 2017 for the conduct with Cantillon, and between at least 20 January 2017 and 1 February 2017 for the conduct with John F Hunt.

MPS Training & Operations Centre Hendon	Demolition Services and Asbestos Removal Services in the UK	20 June 2013	Financial year ending 31 March 2012	**£10,802,352**
Bow Street (1)	Demolition Services and Asbestos Removal Services in the UK	25 April 2014[573]	Financial year ending 31 March 2014	**£17,662,465**
Station Hill, Reading	Demolition Services in the UK	11 June 2014	Financial year ending 31 March 2014	**£16,468,703**
Lots Road Power Station	Demolition Services in the UK	1 September 2014[574]	Financial year ending 31 March 2014	**£16,468,703**
Duke Street, London	Demolition Services in the UK	9 July 2014[575]	Financial year ending 31 March 2014	**£16,468,703**
Lombard House, Reading	Demolition Services in the UK	27 August 2014	Financial year ending 31 March 2014	**£16,468,703**
18 Blackfriars Road	Demolition Services in the UK	1 December 2014	Financial year ending 31 March 2014	**£16,468,703**
Bow Street (2)	Demolition Services in the UK	28 November 2014	Financial year ending 31 March 2014	**£16,468,703**
Underground car park, High Wycombe	Demolition Services in the UK	19 November 2015	Financial year ending 31 March 2015	**£23,083,334**
135 Bishopsgate	Demolition Services in the UK	19 July 2017	Financial year ending 31 March 2017	**£43,007,658**
Civic Centre Scheme, Coventry	Demolition Services in the UK	22 January 2018	Financial year ending 31 March 2017	**£43,007,658**

[573] The CMA has found that the relevant periods were between at least 16 April 2014 and 17 April 2014 for the conduct with Keltbray, and between at least 24 April 2014 and 25 April 2014 for the conduct with Cantillon.
[574] The CMA has found that the relevant periods were between at least 4 August 2014 and 1 September 2014 for the conduct with Cantillon, and between at least 28 July 2014 and 28 August 2014 for the conduct with Brown and Mason.
[575] The CMA has found that the relevant periods were between at least 3 July 2014 and 9 July 2014 for the conduct with McGee, and between at least 8 July 2014 and 9 July 2014 for the conduct with Keltbray.

Squibb				
18 Blackfriars Road	Demolition Services in the UK	1 December 2014	Financial year ending 31 January 2014	**£11,704,631**
Civic Centre Scheme, Coventry	Demolition Services in the UK	30 January 2018	Financial year ending 31 January 2017	**£7,151,879**

Assessment of seriousness – application of percentage starting point to relevant turnover

6.22 The CMA will apply a starting point of up to 30% of the undertaking's relevant turnover in order to reflect adequately the seriousness of an infringement (and ultimately the extent and likelihood of actual or potential harm to competition and consumers), and the need to deter the infringing undertaking and other undertakings from engaging in that type of infringement in the future.[576]

6.23 In making this case specific assessment, the CMA will take into account overall:

(a) how likely it is for the type of infringement at issue to, by its nature, harm competition;

(b) the extent and likelihood of harm to competition in the specific relevant circumstances of the case;

(c) whether the starting point for a particular infringement is sufficient for the purpose of general deterrence.

Likelihood that the type of infringement at issue will, by its nature, cause harm to competition

6.24 The CMA will generally use a starting point of between 21% and 30% of relevant turnover for the most serious types of infringement.

[576] Section 36(7A) of the Competition Act; 2018 Penalty Guidance, paragraph 2.4, as elaborated in paragraphs 2.5 to 2.10; 2021 Penalty Guidance, paragraph 2.3, as elaborated in paragraphs 2.4 to 2.9.

6.25 In this case, the Infringements concern cover bidding and/or compensation payment arrangements,[577] within a selective tendering process. For the reasons set out below, the CMA considers that cover bidding is a serious restriction and distortion of competition, which is very likely, by its nature, to cause harm to competition.[578]

6.26 Cover bidding is an object infringement, including where it involves a minority of bidders (see chapter 3).

6.27 The content and primary objective of a cover bidding arrangement is to frustrate the tendering process chosen by the customer. It is from the perspective of the customer that cover bidding should be assessed. The mutual trust and understanding between the provider of the cover bid and the recipient is the antithesis of a competitive relationship between undertakings participating in a closed bidding process, in which each undertaking is subject to the risks associated with not being able accurately to anticipate competitors' behaviour and is expected to adapt its own conduct accordingly. Cover bidding thus, by its nature, restricts and distorts competition.

6.28 Moreover, cover bidding has numerous potential harmful effects.[579] For example:

(a) cover bidding compromises the tendering exercise by misleading the tenderee as to the number of competitive bids that it has received, thereby depriving it of the opportunity to make an informed decision as to whether to seek a replacement (competitive) bid. This is the case irrespective of whether the party submitting the cover bid may have unilaterally decided not to compete, or submitted a cover bid so as not to risk being excluded from future tender lists. Cover bidding is thus

---

[577] Infringements 1, 2, 3, 5 and 6. For Infringement 6, the Infringement between Scudder and Brown and Mason concerned a compensation payment arrangement (without cover bidding) under which they agreed to fix an element of the tender price.

[578] EEH and Squibb have made representations that cover bidding should be viewed as less serious than other forms of price fixing, noting that the Infringements concerned '*simple cover pricing'* (citing the approach in *Kier Group and Others v OFT* [2011] CAT 3, paragraphs 93 to 102); URN8354, paragraphs 3.1 to 3.12; URN8351, paragraphs 275 to 288. The CMA recognises and has had regard to the fact that, depending on the circumstances, other object infringements may be more serious, but it does not follow from this that cover bidding is not a serious infringement. Moreover, in light of the CMA's experience subsequent to *Kier Group and Others v OFT* [2011] CAT 3, the CMA considers that some of the statements in that judgment are no longer applicable, in particular the dicta at paragraphs 101 to 102 of the judgment concerning the likely effects of cover pricing and the foreseeability of its effect on competition.

[579] The CAT has held that, in considering the '*type of infringement*' for the purposes of the Penalty Guidance at step 1, the CMA is entitled to regard the conduct in question as potentially having a range of harmful effects, irrespective of whether they have all been shown to be present in the specific case: *Roland v CMA* [2021] CAT 8, paragraph 82.

inherently harmful to competition because it distorts the tender process irrespective of the subjective intentions of those committing the infringement;[580]

(b) to the extent that the bidder making a cover bid, rather than simply declining to bid, is motivated by a desire to protect its bidding credibility with a customer, the other bidders have no legitimate interest in protecting a rival's bidding credibility. Indeed, maintaining and protecting credibility may be regarded as a factor that influences a bidder's competitive behaviour, including decisions as to whether to bid, and what prices to bid;

(c) future tendering processes are liable to be more susceptible to cover bidding where competitors are aware of each other's willingness to engage in that conduct;

(d) tenderees' perceptions as regards a competitive price may be distorted by having seen inflated cover bids, which may affect their assessment of both the bids in the instant case and future bids.

6.29 Over the past decade the experience of the CMA, and its predecessor the OFT, has been that cover bidding continues to occur despite numerous infringement decisions relating to cover bidding or other cartel behaviour within the construction industry, and the imposition of penalties.[581] The frequent recurrence of cover bidding within the construction industry makes it reasonable to conclude that parties benefit from distorting the competitive process and depriving tenderees of the opportunity to make informed decisions about whether to seek replacement (competitive) bids. Moreover, the instance of a number of significant compensation payments in this case

---

[580] See *North Midland Construction plc v OFT* [2011] CAT 14, paragraphs 55 to 58 and 111; *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraphs 248 to 251; *Groupement des cartes bancaires v Commission* C-67/13 P, EU:C:2014:2204, paragraph 50; chapter 3 (*Object of preventing, restricting or distorting competition*).
[581] The CMA found and imposed fines for cover bidding in *Design, construction and fit-out services* (2019). The OFT found and imposed fines for cover bidding in the following cases: *Construction industry in England: bid-rigging* (2009); *Felt and single ply roofing contracts in Western-Central Scotland: anti-competitive practices (*2007); *Flat roof and car park surfacing contracts in England and Scotland: anti-competitive practices* (2006); *Felt and single ply flat-roofing contracts in the North East of England: anti-competitive practices* (2005); *Mastic asphalt flat-roofing contracts in Scotland: investigation into collusion* (2005); *Flat-roofing contracts in the West Midlands: collusive tendering* (2004). The CMA also found and imposed fines for cartel conduct in the construction industry in the following cases: *Supply of groundworks products to the construction industry* (2021); *Roofing materials* (2021); *Supply of galvanised steel tanks for water storage* (2019); and *Supply of precast concrete drainage products* (2021). EEH and Squibb both highlighted in their representations the approach to the starting point taken in certain other CMA cases: URN8354, paragraphs 2.5 to 2.10; URN8351, paragraphs 259 to 288. The assessment of the level of a financial penalty is case specific, however, and the CMA has taken the nature of the conduct into account in its assessment below.

reinforces the conclusion that the cover bidding arrangements are of value to those making the compensation payments.

6.30 In assessing the degree of seriousness inherent in the infringements, the CMA recognises, and has taken into account, that single instances of cover bidding between two or more parties may be viewed as less serious than a long running, multi-partite, market wide cartel; and that the provision of a cover bid may not always have affected the outcome of the tender or the final price paid.[582]

6.31 Nevertheless, as set out above, the CMA considers cover bidding to be a serious restriction of the competition rules, noting that the CAT has stated that '*undertakings must recognise that any future instances of this kind of infringement will be dealt with very firmly by the Tribunal*'.[583]

6.32 The CMA considers infringements involving compensation payments to be a particularly serious breach of competition law: compensation payment arrangements have previously been found to be more serious than arrangements where no such inducement is offered (see chapter 3).

6.33 Taking account of the factors above, the CMA considers that the starting points in this case should be within the 21-30% range in order to reflect the serious nature of the Infringements, with the starting point for Infringements involving a compensation payment being higher than those involving cover bidding alone.

The extent and likelihood of harm to competition in the specific relevant circumstances of the case

6.34 In making its assessment of the extent and likelihood of harm to competition in the specific circumstances of the case,[584] the CMA has had regard to a number of factors which it considers should be balanced against each other. In particular, the CMA considers that the following factors point to a high likelihood and extent of harm:

---

[582] *Kier Group and Others v OFT* [2011] CAT 3, paragraph 100.

[583] *GF Tomlinson Group Limited v OFT* [2011] CAT 7, paragraph 282.

[584] As these Infringements are object infringements, the CMA is not required to make a formal assessment of the actual harm caused for the purposes of establishing an infringement: *Consten and Grundig v Commission* joined cases C-56/64, C-58/64, EU:C:1966:41, page 342. *Cityhook Limited v OFT*, paragraph 269. Squibb has made representations that the likely harm arising from simple cover bidding is low: URN8351, paragraphs 289 to 309. The CMA has had regard to all the relevant circumstances, as set out in paragraphs 6.34 to 6.35.

(a) the Infringements concerned 19 tender processes[585] and included conduct by some of the leading demolition companies in the UK;[586]

(b) the number of companies that submitted bids for the affected contracts was small, given the specialist nature of the work and the cost involved in preparing tender documents. The CMA therefore considers it reasonable to conclude that at least some of the Parties involved in the Infringements are likely to have been aware, or could guess, that they faced only limited competition. A number of Parties in this case were involved in more than one Infringement with the same counterparty;[587]

(c) in 16 out of the 19 affected tender processes, the contract was awarded to one of the Parties involved in the relevant cover bidding arrangement;[588]

(d) the Infringements concerned tender processes which were carried out on behalf of a range of end-customers, including public sector bodies,[589] and involved significant contracts ranging in value from approximately

---

[585] For BMG, two tender processes within two years (2013 to 2014); for CCH, nine tender processes within five years (2013 to 2017); for Clifford Devlin, two tender processes within two years (2014 to 2105); for DSM Nobel, one tender process (2018); for EEH, nine tender processes within six years (2013 to 2018); for JFHG, three tender processes within two years (2016 to 2017); for KKH, eight tender processes within three years (2014 to 2016); for McGee / MFCOIL, eight tender processes within five years (2014 to 2018); for SPC, twelve tender processes within six years (2013 to 2018); for Squibb, two tender processes within five years (2014 to 2018). Squibb has made representations that the CMA has only identified 19 Infringements over a ten year period of investigation, a tiny percentage of the total number of tenders in which Squibb participated, and that taking into account all the tenders across the market, this number is immaterial. This means, Squibb represents, that only a small proportion of the Parties' relevant turnover will have benefitted from the Infringements: URN8351, paragraphs 299 to 303. However, the scope of the Infringements in the market context have been taken into account both here and at step 5.

[586] For example, the four largest contractors account for nearly half of the market, with a combined market share of 43.6%: specifically, Keltbray has a market share of 18.8%; Erith has a market share of 16.3%; Brown and Mason has a market share of 4.9%; and John F Hunt has a market share of 3.6%: URN7578 F43.110 Demolition in the UK Industry Report (Dec 2020).

[587] Five Infringements concerned arrangements between Cantillon and Scudder (Infringements 2, 4, 5, 6 and 17); five Infringements concerned arrangements between Keltbray and Scudder (Infringements 4, 5, 7, 8 and 10); three Infringements concerned arrangements between Cantillon and Erith (Infringements 12, 14 and 17); three Infringements concerned arrangements between Erith and McGee (Infringements 3, 12 and 19); three Infringements concerned arrangements between Erith and Scudder (Infringements 1, 5 and 8); two Infringements concerned arrangements between Cantillon and Keltbray (Infringements 13 and 14); two Infringements concerned arrangements between Clifford Devlin and Scudder (Infringements 8 and 11), two Infringements concerned arrangements between McGee and Scudder (Infringements 5 and 7); two Infringements concerned arrangements between McGee and John F Hunt (Infringements 15 and 16).

[588] Infringements 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14, 15, 17, 18, 19.

[589] Including, in the case of CCH and SPC, the Metropolitan Police Service Training and Operations Centre; in the case of McGee / MFCOIL, CCH and JFHG, the London School of Economics and Political Science; in the case of DSM Nobel, Squibb and SPC, Coventry University; and, in the case of EEH and McGee / MFCOIL, Oxford University.

£800,000 to £50.2 million.[590] The value of the compensation payment arrangements for the affected contracts were *circa* £20,000 to £600,000.[591]

6.35 Against this, the CMA has also taken into account that the following factors would tend to temper the likelihood and extent of harm to competition:

(a) not all of the parties involved in the relevant tender processes were party to the anti-competitive arrangements; and

(b) the structure of the relevant market in this case is relatively fragmented, with smaller demolition companies competing on a regional basis.[592]

General deterrence

6.36 Finally, given the seriousness of the conduct, the CMA is of the view that there must be a clear message to other businesses that they should not engage in similar conduct. General deterrence is a particularly important consideration in this case given that the CMA, and its predecessor the OFT, have already conducted a number of investigations and found infringements in the construction and related sectors, including specifically a number of cases that have involved cover pricing or compensation payments. The

[590] Specifically, for BMG £9.6 million to £19.1 million; for CCH £800,000 to £21.6 million; for Clifford Devlin £1.7 million to £2.5 million; for DSM Nobel £3.7 million; for EEH £1.1 million to £21.6 million; for JFHG £5.5 million to £50.2 million; for KKH £800,000 to £21.6 million; for McGee / MFCOIL £1.1 million to £50.2 million; for SPC £800,000 to £10.9 million; for Squibb £3.7 million to £4.8 million. Squibb has made representations that the supply of demolition services is not homogenous and the price of the service is not the only parameter; and that any impact on end consumers is small given that the cost of demolition and related services will typically represent a relatively small percentage of the total costs of redevelopment: URN8351, paragraphs 289 to 292 and 308. The CMA considers price to be an important consideration in terms of seriousness, and, although the services in question might form a small proportion of the overall costs of any construction project, the relevant contracts were of a significant value.

[591] The compensation values for the affected contracts were: for BMG - *circa* £600,000 for the South Bank, London and £100,000 for Lots Road Power Station; for CCH - *circa* £20,000 for the MPS Training and Operations Centre, Hendon, *circa* £60,000 for Station Hill, Reading and £100,000 for Lots Road Power Station; for EEH - *circa* £35,000 for the Bishop Centre, £600,000 for the Southbank, London and *circa* £60,000 for Station Hill Reading; for McGee / MFCOIL - *circa* £600,000 for the South Bank, London and *circa* £60,000 for Station Hill Reading; for SPC - *circa* £35,000 for the Bishop Centre, *circa* 20,000 for the MPS Training and Operations Centre, Hendon, *circa* £60,000 for Station Hill, Reading and £100,000 for Lots Road Power Station.

[592] The CMA notes that Squibb has made representations that there are about 350 to 400 professional demolition companies operating in the UK: URN8351, paragraphs 293 to 298.

unlawful nature of the Parties' conduct has been established for a number of years and should have been well known to them.[593]

Conclusion on percentage starting point

6.37 Having considered all the factors, set out above, in the round, the CMA concludes that the following starting points should be applied in this case, in order to reflect adequately the seriousness of the Infringements and the need for general deterrence:

(a) **24% for Infringements involving cover bidding alone;**

(b) **26% for Infringements involving cover bidding in conjunction with a compensation payment arrangement; and**

(c) **26% for the Infringement involving a compensation payment arrangement alone.**

Step 2 – adjustment for duration

6.38 The amount resulting from step 1 may be increased, or in particular circumstances, decreased to take into account the duration of an infringement. Where the duration of an infringement is less than one year, the CMA will treat the duration as a full year for the purpose of calculating the number of years of the infringement. In exceptional circumstances, the starting point may be decreased where the duration of the infringement is less than one year.[594]

6.39 As set out in chapter 4, the CMA has found that the duration of each of the Infringements was less than one year. The CMA is of the view that there are no exceptional circumstances that would render it appropriate to decrease the

---

[593] See footnote 581 for the CMA and OFT infringement decisions relating to cover bidding or other cartel behaviour within the construction industry. EEH has recognised the need for further deterrence in its representations, accepting that '*it and others in the industry should have known better at the time of these Infringements*': URN8354, paragraph 3.12. Squibb has made representations that a starting point in the range of 15% to 20% would be sufficient for the purposes of general deterrence, noting that (i) its Infringements concern simple cover bidding; and (ii) that the construction sector is separate from the demolition sector, and it should not be assumed that Squibb would have been aware of those decisions: URN8351, paragraphs 310 to 314. The CMA does not agree with Squibb. For the reasons set out in this section, and in chapter 3, the CMA considers all cover bidding to be a serious infringement of competition law; and that Squibb should have been aware of its legal obligations.

[594] 2018 Penalty Guidance, paragraph 2.16; 2021 Penalty Guidance, paragraph 2.14.

starting point in this case,[595] noting that once an affected contract had been awarded, the anti-competitive effect may have been achieved across the whole duration of that contract.

6.40 The CMA concludes, therefore, that the figure reached at the end of step 1 should be **multiplied by 1** for each Infringement.[596]

Step 3 – adjustment for aggravating and mitigating factors

6.41 The amount resulting from step 2, may be increased where there are aggravating factors, or reduced where there are mitigating factors.[597]

Aggravating factor – involvement of directors/senior management

6.42 The involvement of directors or senior management in an infringement can be an aggravating factor.[598]

6.43 As set out in chapter 4, the CMA has found that for each of the 19 Infringements at least one director or senior manager was either:

(a) directly involved in the Infringements, for example by requesting, agreeing, organising or internally discussing cover bids, typically by text or email; or

(b) aware of the conduct that was the subject of an Infringement.[599]

6.44 Having regard to the fact that the conduct in question was deliberate and obviously anti-competitive, and that directors and senior managers must lead by example and be cognisant of the risks of breaking competition law, the CMA considers that it is appropriate to apply:

---

[595] See also *Apex Asphalt and Paving Co Ltd v OFT* [2005] CAT 4, paragraph 278, in which the CAT found that it was appropriate and reasonable not to make any downward adjustment for duration given that the effect of collusive tendering has a potential continuing impact on future tendering processes by the same tenderees; and that once a contract has been awarded following an anti-competitive tender, the anti-competitive effect is irreversible in relation to that tender.

[596] The CMA acknowledges that this leads to a degree of double counting in circumstances where there is more than one infringement in one financial year. However, this has been taken into account in the assessment for proportionality at step 4 under the 2018 Penalty Guidance and step 5 under the 2021 Penalty Guidance.

[597] 2018 Penalty Guidance, paragraphs 2.17 to 2.19; 2021 Penalty Guidance, paragraphs 2.15 to 2.18.

[598] 2018 Penalty Guidance, paragraph 2.18; 2021 Penalty Guidance, paragraph 2.16.

[599] Moreover, the CMA has secured legally binding Director disqualification undertakings from David Darsey (EEH), Michael Cantillon (CCH) and Paul Cluskey (CCH), as a result of their conduct in the relevant Infringements as set out in this Decision (https://www.gov.uk/cma-cases/supply-of-construction-services-director-disqualification).

(a) an **uplift of 15%** where a director or member of senior management was directly involved in the conduct;[600] and

(b) an **uplift of 10%** where a director or member of senior management was aware of the conduct.

6.45 Details of director and senior management involvement are set out in the description of the conduct in relation to each Infringement in chapter 4 and are summarised in the table below.

Infringement	Nature of Director / Senior Management Involvement
1. Bishop Centre	EEH – direct involvement of [Director A] (evidence of contact with Scudder, including by email and text, in relation to a cover bidding and compensation payment arrangement) SPC – direct involvement of [Director A] (evidence of contact with Erith, including by email and text, in relation to a cover bidding and compensation payment arrangement)
2. MPS Training & Operations Centre, Hendon	CCH – direct involvement of [Director A] (evidence of contact with Scudder, including by text, in relation to a cover bidding and compensation payment arrangement) SPC – direct involvement of [Director A] (evidence of contact with Cantillon, including by text, in relation to a cover bidding and compensation payment arrangement)
3. Southbank, London	BMG – direct involvement of [Director] (witness evidence of contact with Erith and McGee in relation to a cover bidding and compensation payment arrangement) EEH – direct involvement of [Director A] (witness evidence of contact with Brown and Mason and McGee in relation to a cover bidding and compensation payment arrangement) McGee/MFCOIL – direct involvement of [Director A] (witness evidence of contact with Erith and Brown and Mason, including that he initiated such contact in relation to a cover bidding and compensation payment arrangement)

[600] Squibb has made representations that an increase of 15% for the direct involvement of a director is not justified, taking account of the scale and nature of Squibb's directors' involvement (including that [Director A] was not involved in strategic management at the time of the Infringements) and the CMA's approach in other cases: URN8351, paragraphs 327 to 336. The CMA is not persuaded by these representations. The CMA has a margin of discretion when determining the appropriate amount of any penalty; the level of a financial penalty is a case specific assessment, based on all the relevant circumstances. The CMA considers that the approach taken in relation to the uplift for director involvement is appropriate, and properly reflects the level of involvement of the relevant director(s). See also *Ping Europe Limited v Competition and Markets Authority* [2018] CAT 13, paragraphs 242 to 248.

4. Bow Street (1)	KKH – direct involvement of [Director] (evidence of contact with Scudder, including by email, in relation to a cover bidding arrangement) SPC – direct involvement of [Director A] (evidence of contact with Cantillon, including by text, in relation to a cover bidding arrangement)
5. Station Hill, Reading	CCH – direct involvement of [Director A] (witness and notebook evidence of contact with Scudder in relation to a cover bidding and compensation payment arrangement) EEH – direct involvement of [Director A] (evidence of contact with Scudder and McGee, including by text, in relation to a cover bidding arrangement) KKH – direct involvement of [Director] (evidence of contact with Scudder, including by email, in relation to a cover bidding arrangement) McGee/MFCOIL – direct involvement of [Director A] (text and witness evidence of contact with Erith in relation to a cover bidding and compensation payment arrangement) SPC – direct involvement of [Director A] (evidence of contact with Erith and McGee, including by text, in relation to a cover bidding and compensation payment arrangement) SPC – direct involvement of [Director B] (evidence of contact with Keltbray, including by email, in relation to a cover bidding and compensation payment arrangement)
6. Lots Road Power Station	BMG – direct involvement of [Director] (evidence of contact with Scudder, including by text, in relation to a compensation payment arrangement) CCH – direct involvement of [Director A] (witness, text and notebook evidence of contact with Scudder in relation to a cover bidding and compensation payment arrangement) SPC – direct involvement of [Director A] (witness evidence of contact with Cantillon in relation to a cover bidding and compensation payment arrangement; evidence of contact with Brown and Mason, including by text, in relation to a compensation payment arrangement)

7. Duke Street, London	KKH – direct involvement of [Director] (evidence of contact with Scudder, including by email, in relation to a cover bidding arrangement) McGee/MFCOIL – direct involvement of [Director A] (evidence of contact with Scudder, including by text and email, in relation to a cover bidding arrangement) SPC – direct involvement of [Director A] (evidence of contact with McGee, including by text and email, in relation to a cover bidding arrangement)
8. Lombard House, Redhill	Clifford Devlin – direct involvement of [Director] (evidence of contact with Scudder, including by email, in relation to a cover bidding arrangement) EEH – direct involvement of [Director A] (evidence of contact with Scudder, including by text, in relation to a cover bidding arrangement) KKH – direct involvement of [Director] (evidence of contact with Scudder, including by email, in relation to a cover bidding arrangement) SPC – direct involvement of [Director A] (evidence of contact with Erith, including by text, in relation to a cover bidding arrangement) SPC – direct involvement of [Director B] (evidence of contact with Keltbray and Clifford Devlin, including by email, in relation to a cover bidding arrangement)
9. 18 Blackfriars Road	SPC – direct involvement of [Director A] (evidence of contact with Squibb, including by text, in relation to a cover bidding arrangement) SPC – direct involvement of [Director B] (evidence of contact with Squibb, including by email, in relation to a cover bidding arrangement) Squibb – direct involvement of [Director A] (evidence of contact with Scudder, including by text, in relation to a cover bidding arrangement) Squibb – direct involvement of [Director B] (evidence of contact with Scudder, including by email, in relation to a cover bidding arrangement)
10. Bow Street (2)	KKH – direct involvement of [Director] (evidence of contact with Scudder, including by email, in relation to a cover bidding arrangement)

11. Underground car park, High Wycombe	Clifford Devlin – direct involvement of [Director] (evidence of contact with Scudder and Erith, including by text and email, in relation to a cover bidding arrangement) EEH – direct involvement of [Director B] (evidence of contact with Clifford Devlin, including by text and email, in relation to a cover bidding arrangement) SPC – direct involvement of [Director A] (evidence of contact with Clifford Devlin, including by text, in relation to a cover bidding arrangement)
12. 33 Grosvenor Place	CCH – awareness of the conduct by [Director B] (witness evidence regarding knowledge of cover bidding arrangement with Erith) McGee/MFCOIL – direct involvement of [Director A] (evidence of contact with Erith, including by email and text, in relation to a cover bidding arrangement)
13. Wellington House	CCH – direct involvement of [Director A] (evidence of contact with Keltbray and McGee, including by email, in relation to a cover bidding arrangement) CCH – direct involvement of [Director B] (evidence of contact with Keltbray, including by email, in relation to a cover bidding arrangement) McGee/MFCOIL – direct involvement of [Director A] (evidence of contact with Keltbray and Cantillon, including by email, in relation to a cover bidding arrangement)
14. Ilona Rose House	CCH – direct involvement of [Director A] (witness evidence of contact with Keltbray, John F Hunt and Erith in relation to a cover bidding arrangement) EEH – direct involvement of [Director A] (witness evidence of contact with Cantillon in relation to a cover bidding arrangement) JFHG – direct involvement of [Director A] (witness evidence of contact with Cantillon in relation to a cover bidding arrangement)

15. 44 Lincoln's Inn Fields	CCH – direct involvement of [Director A] (evidence of contact with McGee, including by email, in relation to a cover bidding arrangement) JFHG – direct involvement of [Director B] (evidence of contact with McGee in relation to a cover bidding arrangement) McGee/MFCOIL – direct involvement of [Director A] (evidence of contact with Cantillon and John F Hunt, in relation to a cover bidding arrangement) McGee/MFCOIL – direct involvement of [Director D] (evidence of emails regarding contact with Cantillon and John F Hunt in relation to a cover bidding arrangement)
16. 57 Whitehall Old War Office	JFHG – direct involvement of [Director B] (evidence of contact with McGee, including by email, in relation to a cover bidding arrangement) McGee/MFCOIL – direct involvement of [Director A] (evidence of contact with John F Hunt, including by email, in relation to a cover bidding arrangement) McGee/MFCOIL – direct involvement of [Director D] (evidence of contact with John F Hunt, including by email, in relation to a cover bidding arrangement)
17. 135 Bishopsgate	CCH – direct involvement of [Director A] (evidence of emails regarding contact with Erith and Scudder, in relation to a cover bidding arrangement)
18. Civic Centre Scheme, Coventry	DSM Nobel – direct involvement of [Director] (evidence of contact with Squibb, including by email, in relation to a cover bidding arrangement) SPC – direct involvement of [Director A] (evidence of contact with DSM, including by text, in relation to a cover bidding arrangement) Squibb – direct involvement of [Director A] (evidence of contact with DSM, including by text, in relation to a cover bidding arrangement) Squibb – direct involvement of [Director B] (evidence of contact with DSM, including by email, in relation to a cover bidding arrangement)
19. Tinbergen Building, Oxford	McGee/MFCOIL – direct involvement of [Director A] (evidence of email regarding contact with Erith in relation to a cover bidding arrangement) McGee/MFCOIL – direct involvement of [Director D] (evidence of contact with Erith, including by email, in relation to a cover bidding arrangement)

Aggravating factor – role of the undertaking as a leader in, or an instigator of, the infringement

6.46 The role of an undertaking as a leader in, or an instigator of, an infringement can be an aggravating factor.[601]

6.47 In this case, the CMA considers that the leader or instigator of an infringement was the party which orchestrated the anti-competitive arrangement, including by requesting cover bids from, or providing cover bids to, other parties, in order to improve its chances of winning the contract.

6.48 As set out in chapter 4, there is evidence that:

(a) McGee / MFCOIL acted as a leader or instigator in relation to the Infringement concerning the Southbank, London;

(b) SPC acted as a leader or instigator in relation to the Infringements concerning Station Hill, Reading, Lots Road Power Station and Lombard House, Redhill;

(c) CCH acted as a leader or instigator in relation to the Infringement concerning Ilona Rose House.

6.49 The CMA therefore considers that it is appropriate to apply an **uplift of 10%** to the penalties of McGee / MFCOIL, SPC and CCH for their role as a leader in, or instigator of, these Infringements.

Mitigating factor – cooperation[602]

6.50 The CMA may decrease the penalty at step 3 for co-operation which enables the enforcement process to be concluded more effectively and/or speedily. For these purposes, what is expected is cooperation over and above respecting time limits specified or otherwise agreed (which will be necessary but not sufficient criterion to merit a reduction).[603]

---

[601] 2018 Penalty Guidance, paragraph 2.18.

[602] The penalties of McGee / MFCOIL and SPC have not been considered under this head. As leniency applicants, McGee / MFCOIL and SPC will not receive a reduction for cooperation at step 3 given that continuous and complete cooperation is a condition of leniency. Their cooperation has been reflected in the leniency discount applied at step 6.

[603] 2018 Penalty Guidance, paragraph 2.19 and footnote 35; 2021 Penalty Guidance, paragraph 2.17 and footnote 31.

6.51 During the CMA's investigation, BMG, CCH, Clifford Devlin, DSM Nobel, EEH,[604] JFHG, KKH and Squibb provided cooperation by:

(a) making a number of employees available for voluntary interviews, as well as providing them with separate legal representation; and

(b) agreeing to a streamlined access to file process,[605]

thereby enabling the investigation to be concluded more effectively and speedily.

6.52 The CMA therefore considers that it is appropriate to apply a **5% reduction** to the penalties of these Parties.

Mitigating factor – compliance[606]

6.53 Under the 2018 Penalty Guidance, which applies to the Settling Parties, the CMA may decrease the penalty at step 3 where an undertaking demonstrates that adequate steps have been taken with a view to ensuring compliance with competition law.[607]

6.54 Clifford Devlin, DSM Nobel, KKH, McGee / MFCOIL and SPC have provided the CMA with details of their compliance activities and the steps taken to

---

[604] EEH has made representations that the CMA should apply a reduction of 10% for cooperation, including to reflect that it has responded promptly to wide-ranging section 26 notices, and made a voluntary admission regarding the anti-competitive circumstances relating to certain transactions. EEH has further noted that higher reductions for cooperation have been granted in other CMA cases: URN8354, paragraphs 5.1 to 5.4. The CMA is not persuaded by these representations. The CMA assesses reductions for cooperation on a case-by-case basis; and it does not consider that EEH has provided evidence of cooperation sufficient to warrant a reduction of 10% (noting, in particular, that respecting time limits is a necessary but not sufficient criterion to merit a reduction at this step).

[605] Although cooperation by agreeing to a streamlined access to file process was not included in the description of cooperation set out in the Draft Penalty Statement issued to EEH and Squibb on 23 June 2022, in the circumstances of this case, the CMA considers that this was a factor which enabled the investigation to be concluded more effectively. However, the CMA does not consider that this factor alone warrants an increase in the reduction of 5% at this step. As noted above, the CMA considers that a reduction of 5% is appropriate in the circumstances of this case.

[606] The penalties of EEH and Squibb have not been considered under this head as compliance is not included in the list of mitigating factors in the 2021 Penalty Guidance. Squibb has made representations that CMA should exercise its discretion to apply a compliance discount to its penalty, notwithstanding the provisions of the 2021 Penalty Guidance: URN8351, paragraphs 338 to 342. However, the CMA does not consider that there is any reason to depart from the 2021 Penalty Guidance, being the relevant guidance for the purpose of setting the penalties for EEH and Squibb in this case.

[607] 2018 Penalty Guidance, paragraph 2.19 and footnote 3.

ensure a compliance culture within each respective undertaking.[608] In particular, these submissions show that these Parties have taken appropriate steps in relation to risk identification, risk assessment and risk mitigation.

6.55 The CMA considers that these Parties have provided sufficient evidence of compliance activities, demonstrating a clear and unambiguous commitment to competition law compliance throughout the organisation from the top down, to warrant a reduction in penalty. The CMA considers that a **10% reduction** for compliance for these Parties is appropriate in the circumstances of this case.

6.56 BMG has also provided the CMA with details of its compliance activities and the steps taken to ensure a compliance culture.[609] The CMA considers that BMG's compliance activities demonstrate a clear and unambiguous commitment to competition law compliance throughout the organisation from the top down, to warrant a reduction in penalty. The CMA considers that a **5% reduction** for compliance for BMG is appropriate in the circumstances of this case, noting that BMG's compliance steps in relation to senior management commitment, risk mitigation and review are not as comprehensive as those for Clifford Devlin, DSM Nobel, KKH, McGee / MFCOIL and SPC.

Calculation of the penalty after step 3

6.57 As noted at paragraph 6.17, for the purposes of steps 1 to 3, the CMA has calculated a separate penalty for each of the Infringements in which each Party was involved.

6.58 At steps 4 to 6, the CMA has carried out its assessment on a party-by-party basis in relation to the total penalty figure for all of the Infringements in which each Party was involved, that is:

(a) a total figure of **£3,649,987** for BMG;

(b) a total figure of **£44,229,030** for CCH;

(c) a total figure of **£1,909,849** for Clifford Devlin;

---

[608] Clifford Devlin: URN7684; URN7685; URN7686; URN7687; URN7688; URN7689; URN7690; URN7691; URN7781; URN7782; URN7783; URN7784; URN7785; URN7786. DSM Nobel: URN7655; URN7656; URN7657; URN7658; URN7659; URN7660; URN7661; URN7662; URN7663; URN7788. KKH: URN7360; URN7364; URN7365; URN7808; URN7809.McGee/MFCOIL: URN7355. SPC: URN7369; URN7795; URN7797; URN7798; URN7799; URN7800; URN7801; URN7802; URN7803; URN7804; URN7805; URN7806.
[609] URN7670; URN7777.

(d) a total figure of **£8,509,713** for DSM Nobel;

(e) a total figure of **£81,526,071** for EEH;

(f) a total figure of **£21,384,786** for JFHG;

(g) a total figure of **£178,688,256** for KKH;

(h) a total figure of **£56,432,788** for McGee / MFCOIL;

(i) a total figure of **£62,555,206** for SPC; and

(j) a total figure of **£4,978,119** for Squibb.

6.59 As set out in paragraph 6.7 and described below, the CMA has had regard to the 2018 Penalty Guidance for the purpose of calculating the penalties of the Settling Parties; and the 2021 Penalty Guidance for the purpose of calculating the penalties of EEH and Squibb.[610]

Application of the 2018 Penalty Guidance to the Settling Parties at steps 4 and 5

Step 4 – adjustment for specific deterrence and proportionality

6.60 The penalty figure reached after steps 1 to 3 may be adjusted for specific deterrence (ensuring that the penalty imposed on the undertaking in question will deter it from breaching competition law in the future) or to ensure that it is proportionate.[611]

6.61 In considering whether any adjustments should be made at this step, the CMA will consider appropriate indicators of the undertaking's size and financial position at the time the penalty is being imposed. The CMA may have regard to indicators – including total turnover, profitability (including profits after tax), net assets and dividends, liquidity and industry margins – as well as any other relevant circumstances of the case.[612]

6.62 An increase for specific deterrence to the penalty figure at step 4 will generally be limited to situations in which an undertaking has a significant proportion of

---

[610] Settlement discussions were ongoing at the time that the 2021 Penalty Guidance was published. Thus, the 2018 Penalty Guidance was applied to the calculation of the maximum penalties agreed with the Settling Parties. See 2021 Penalty Guidance, footnote 11.
[611] 2018 Penalty Guidance, paragraph 2.20, as elaborated in paragraphs 2.21 to 2.24.
[612] 2018 Penalty Guidance, paragraph 2.20.

its turnover outside the relevant market, or where the CMA has evidence that the infringing undertaking has made or is likely to make an economic or financial benefit from the infringement that is above the level of the penalty reached at the end of step 3.[613]

6.63 Conversely, where necessary, the penalty may be decreased at step 4 to ensure that the level of penalty is not disproportionate or excessive. In carrying out the assessment of whether a penalty is proportionate, the CMA will assess whether, in its view, the overall penalty is appropriate 'in the round'; and have regard to the undertaking's size and financial position, the nature of the infringement, the role of the undertaking in the infringement and the impact of the undertaking's infringing activity on competition.[614]

BMG

6.64 The CMA considers that a penalty of **£3,649,987** after step 3 is disproportionate having regard to all the relevant circumstances, The CMA has, therefore, considered it appropriate to apply a lower penalty at step 4.

6.65 The CMA considers that a penalty of **£3,000,000** is appropriate to reflect the serious nature of the Infringements in which BMG was involved, its role, BMG's size and financial position and the need sufficiently to deter both BMG and other undertakings from engaging in anti-competitive activity.

6.66 In making this assessment, the CMA has had particular regard to the following factors that indicated the need for a reduction at this step:

(a) the fact that each of BMG's Infringements was of a short duration and concerned a single contract, rather than the entirety of BMG's business in the relevant markets; and

(b) BMG was neither a leader nor an instigator of the conduct.

6.67 Balanced against this are the following factors which are also relevant to the CMA's assessment of proportionality and, in particular to what extent it is appropriate to reduce the penalty:

---

[613] 2018 Penalty Guidance, paragraph 2.21.
[614] 2018 Penalty Guidance, paragraph 2.24.

(a) **the nature of the Infringements**: cover bidding arrangements and compensation payment arrangements are, by their nature, serious restrictions of competition;[615]

(b) **the role of the undertaking**: BMG was involved in two infringements over the course of two years, both of which involved a compensation payment arrangement;[616]

(c) **the impact of the undertaking's infringing activity**: any impact of the conduct will have lasted at least for the whole duration of the affected contracts as well having the potential for continuing impacts.

6.68 In conjunction with all of these factors, the CMA has also taken into account BMG's size and financial position. BMG has:[617]

(i) worldwide turnover of £41.3 million in 2021 and £51.3 million in 2022. A penalty of £3 million represents around 6% of its average worldwide turnover over this period and around 3% of such turnover when considered on a per infringement basis;

(ii) profit after tax which has increased from £1 million in 2021 to £2 million in 2022. A penalty of £3 million represents around 200% of its average profit after tax for the last two years and around 100% of such profit after tax when considered on a per infringement basis;

(iii) net assets that have remained around £12 million over these two financial years. This penalty represents 24% of its net assets for this period and 12% of such assets when considered on a per infringement basis; and

(iv) made a dividend payment of £1.85 million in 2022.

---

[615] See chapter 3 and chapter 6 (*Step 1 – starting point*, '*Assessment of seriousness – application of percentage starting point to relevant turnover*').
[616] Infringements 3 and 6 that occurred between 2013 and 2014.
[617] Brown and Mason Group Limited's report and financial statements for the financial year ending 30 April 2021; Brown and Mason Group Limited's report and financial statements for the financial year ending 30 April 2022, as filed at Companies House.

CCH

6.69 The CMA considers that a penalty of **£44,229,030** after step 3 is disproportionate having regard to all the relevant circumstances. The CMA has therefore considered it appropriate to apply a lower penalty at step 4.

6.70 The CMA considers that a penalty of **£10,000,000** is appropriate to reflect the serious nature of the Infringements in which CCH was involved, its role, CCH's size and financial position and the need sufficiently to deter both CCH and other undertakings from engaging in anti-competitive activity.

6.71 In making this assessment, the CMA has had particular regard to the following factors that indicated the need for a reduction at this step:

(a) the fact that CCH's relevant turnover has been factored into the penalty calculation more than once for those financial years in which there was more than one infringement,[618] resulting in a disproportionately large penalty figure after step 3. By contrast, in the case of a year-long single continuous infringement, relevant turnover would be factored into the penalty calculation only once. Without a reduction at this step, the total penalty for multiple infringements within the same financial year, which together lasted for substantially less than one year, could be significantly higher than the penalty for a year-long single continuous infringement; and

(b) the fact that each of CCH's Infringements was of a short duration and concerned a single contract, rather than the entirety of CCH's business in the relevant markets.

6.72 Balanced against this are the following factors which are also relevant to the CMA's assessment of proportionality and, in particular to what extent it is appropriate to reduce the penalty:

(a) **the nature of the Infringements**: cover bidding arrangements and compensation payment arrangements are, by their nature, serious restrictions of competition;[619]

---

[618] Specifically, three of the Infringements took place in the financial year ending 31 December 2014 and four of the Infringements took place in the financial year ending 30 June 2017.

[619] See chapter 3 and chapter 6 (*Step 1 – starting point,* '*Assessment of seriousness – application of percentage starting point to relevant turnover*').

(b) **the role of the undertaking**: CCH was involved in nine Infringements over the course of five years,[620] three of which involved a compensation payment arrangement[621] and CCH acted as a leader or instigator in relation to the Infringement concerning Ilona Rose House;

(c) **the impact of the undertaking's infringing activity**: CCH was awarded three of the contracts which were the subject of the Infringements;[622] and any impact of the conduct will have lasted at least for the whole duration of the affected contracts as well having the potential for continuing impacts.

6.73 In conjunction with all of these factors, the CMA has also taken into account CCH's size and financial position. CCH has:[623]

(i) worldwide turnover of £24.4 million in 2021 and an average worldwide turnover for 2019 to 2021 of around £28.5 million. A penalty of £10 million represents 35% of its average worldwide turnover over this three-year period and 4% of such turnover when considered on a per infringement basis;

(ii) profit after tax which has decreased from £4.8 million in 2019 to £1.3 million in 2022. A penalty of £10 million represents around 590% of CCH's average profit after tax for this period and around 66% of such profit after tax when considered on a per infringement basis;

(iii) net assets that have remained around £4 million over the period 2019 to 2021. This penalty would represent around 260% of CCH's net assets over this period and around 29% when considered on a per infringement basis; and

(iv) made dividend payments of £8.7 million in 2019 and [error].[624]

---

[620] Infringements 2, 4, 5, 6, 12, 13, 14, 15 and 17 that occurred between 2013 and 2017.
[621] Infringements 2, 5 and 6.
[622] Infringements 2 (value of £1.5 million), 14 (value of £21.6 million) and 17 (value of £4.7 million).
[623] Cantillon Limited's report and financial statements for the financial year ending 30 June 2019; Cantillon Limited's report and financial statements for the financial year ending 30 June 2020; Cantillon Limited's report and financial statements for the financial year ending 31 October 2021 (given the change in reporting period, figures for this year have been pro-rated), as filed at Companies House.
[624] Correction: no dividend payment was made in 2020. This correction does not affect the level of CCH's penalty.

Clifford Devlin

6.74 The CMA considers that a penalty of **£1,909,849** after step 3 is disproportionate having regard to all the relevant circumstances. The CMA has, therefore, considered it appropriate to apply a lower penalty at step 4.

6.75 The CMA considers that a penalty of **£1,500,000** is appropriate to reflect the serious nature of the Infringements in which Clifford Devlin was involved, its role, Clifford Devlin's size and financial position and the need sufficiently to deter both Clifford Devlin and other undertakings from engaging in anti-competitive activity.

6.76 In making this assessment, the CMA has had particular regard to the following factors that indicated the need for a reduction at this step:

(a) the fact that each of Clifford Devlin's Infringements was of a short duration and concerned a single contract, rather than the entirety of its business in the relevant markets; and

(b) Clifford Devlin was neither a leader nor an instigator of the conduct in question.

6.77 Balanced against this are the following factors which are also relevant to the CMA's assessment of proportionality and, in particular to what extent it is appropriate to reduce the penalty:

(a) **the nature of the Infringements**: cover bidding arrangements are, by their nature, serious restrictions of competition;[625]

(b) **the role of the undertaking**: Clifford Devlin was involved in two Infringements over the course of two years concerning cover bidding;[626]

(c) **the impact of the undertaking's infringing activity**: Clifford Devlin was awarded one of the contracts which was subject of the Infringements[627] and any impact of the conduct will have lasted at least for the whole duration of the affected contracts as well having the potential for continuing impacts.

---

[625] See chapter 3 and chapter 6 (*Step 1 – starting point,* '*Assessment of seriousness – application of percentage starting point to relevant turnover*').
[626] Infringements 8 and 11 that occurred between 2014 and 2015.
[627] Infringement 11 (value of £2.5 million).

6.78 In conjunction with all of these factors, the CMA has also taken into account Clifford Devlin's size and financial position. Clifford Devlin has:[628]

(i) worldwide turnover of £5.3 million in 2022 and average worldwide turnover for 2020 to 2022 of around £10.8 million. A penalty of £1.5 million would represent 14% of its average worldwide turnover for this period and 7% of such turnover when considered on a per infringement basis;

(ii) profit after tax which has [✂] around £895,000 in 2020 to [✂] in 2022;

(iii) net assets that have [✂] £3.3 million to [✂] over the period 2020 to 2022. This penalty would represent around [✂] of its net assets for 2022 and around [✂] of such assets when considered on a per infringement basis; and

(iv) made a dividend payment of £4.5 million in 2020, [✂].

DSM Nobel

6.79 The CMA considers that a penalty of **£8,509,713** after step 3 is disproportionate having regard to all the relevant circumstances. The CMA has, therefore, considered it appropriate to apply a lower penalty at step 4.

6.80 The CMA considers that a penalty of **£1,750,000** is appropriate to reflect the serious nature of the Infringement in which DSM Nobel was involved, its role, DSM Nobel's size and financial position and the need sufficiently to deter both DSM Nobel and other undertakings from engaging in anti-competitive activity.

6.81 In making this assessment, the CMA has had particular regard to the following factors that indicated the need for a reduction at this step:

(a) the fact that DSM Nobel's Infringement was of a short duration and concerned a single contract, rather than the entirety of its business in the relevant markets; and

(b) DSM Nobel was neither a leader nor an instigator of the conduct.

---

[628] Clifford Devlin Limited's report and financial statements for the financial year ending 31 March 2021; Clifford Devlin Limited's report and financial statements for the financial year ending 31 March 2020, as filed at Companies House; Clifford Devlin Limited's report and financial statements for financial year ending 31 March 2022 provided to the CMA.

6.82 Balanced against this are the following factors which are also relevant to the CMA's assessment of proportionality and, in particular to what extent it is appropriate to reduce the penalty:

(a) **the nature of the Infringement**: a cover bidding arrangement is, by its nature, a serious restriction of competition;[629]

(b) **the role of the undertaking**: DSM Nobel was involved in one Infringement concerning cover bidding;

(c) **the impact of the undertaking's infringing activity**: DSM Nobel was awarded the contract which was subject of the Infringement[630] and any impact of the conduct will have lasted at least for the whole duration of the affected contract as well having the potential for continuing impacts.

6.83 In conjunction with all of these factors, the CMA has also taken the undertaking's size and financial position into account when reaching a view on a proportionate penalty. DSM Nobel has:[631]

(i) worldwide turnover of £70 million in 2022 and average worldwide turnover for 2020 to 2022 of around £54.5 million A penalty of £1.75 million represents 3% of its average worldwide turnover for this period;

(ii) losses after tax of around £13 million in 2020, £16.7 million in 2021 and £5.4 million in 2022;[632]

(iii) net liabilities that have been around £46.2 million over the period 2020 to 2022; and

(iv) not made any dividends payments in its last three financial years.

---

[629] See chapter 3 and chapter 6 (*Step 1 – starting point,* '*Assessment of seriousness – application of percentage starting point to relevant turnover*').

[630] Infringement 18 (value of £3.7 million).

[631] Nobel Midco Limited's report and financial statements for the financial year ending 31 March 2020; Nobel Midco Limited's report and financial statements for the financial year ending 31 March 2021; Nobel Midco Limited's report and financial statements for the financial year ending 31 March 2022, as filed at Companies House.

[632] The CMA notes that Nobel Midco Limited's report and financial statements for the financial year ending 31 March 2022 include a provision of £1.6 million '*in full settlement of a regulatory infringement*'.

JFHG

6.84 The CMA considers that a penalty of **£21,384,786** after step 3 is disproportionate having regard to all the relevant circumstances. The CMA has, therefore, considered it appropriate to apply a lower penalty at step 4.

6.85 The CMA considers that a penalty of **£7,000,000** is appropriate to reflect the serious nature of the Infringements in which JFHG was involved, its role, JFHG's size and financial position and the need sufficiently to deter both JFHG and other undertakings from engaging in anti-competitive activity.

6.86 In making this assessment, the CMA has had particular regard to the following factors that indicated the need for a reduction at this step:

(a) the fact that JFHG's relevant turnover has been factored into the penalty calculation more than once for the financial year in which there was more than one infringement,[633] resulting in a disproportionately large penalty figure after step 3. By contrast, in the case of a year-long single continuous infringement, relevant turnover would be factored into the penalty calculation only once. Without a reduction at this step, the total penalty for multiple infringements within the same financial year, which together lasted for substantially less than one year, could be significantly higher than the penalty for a year-long single continuous infringement;

(b) the fact that each of JFHG's Infringements was of a short duration and concerned a single contract, rather than the entirety of its business in the relevant markets; and

(c) JFHG was neither a leader nor an instigator of the conduct.

6.87 Balanced against this are the following factors which are also relevant to the CMA's assessment of proportionality and, in particular to what extent it is appropriate to reduce the penalty:

(a) **the nature of the Infringements**: cover bidding arrangements are, by their nature, serious restrictions of competition;[634]

[633] Specifically, two of the Infringements took place in the financial year ending 31 March 2017.
[634] See chapter 3 and chapter 6 (*Step 1 – starting point,* '*Assessment of seriousness – application of percentage starting point to relevant turnover*').

(b) **the role of the undertaking**: JFHG was involved in three Infringements over the course of two years concerning cover bidding;[635]

(c) **the impact of the undertaking's infringing activity**: any impact of the conduct will have lasted at least for the whole duration of the affected contracts as well having the potential for continuing impacts.

6.88 In conjunction with all of these factors, the CMA has also taken into account JFHG's size and financial position. JFHG has:[636]

(i) worldwide turnover of £81 million in 2021 and average worldwide turnover for 2019 to 2021 of around £77.4 million. A penalty of £7 million represents 9% of its average worldwide turnover for this period and 3% of such turnover when considered on a per infringement basis;

(ii) profit after tax of £4.7 million in 2019 and £4.2 million in 2020 and a loss after tax of £3.1 million in 2021. A penalty of £7 million represents around 360% of its average profit after tax for this period and around 120% of such profit after tax on a per infringement basis;

(iii) net assets that have remained around £28 million over the period 2019 to 2021. This penalty represents around 25% of JFHG's net assets over this period and around 8% of such assets when considered on a per infringement basis; and

(iv) made dividend payments of over the three years 2019 to 2021 totalling around £2 million.

KKH

6.89 The CMA considers that a penalty of **£178,688,256** after step 3 is disproportionately large having regard to all the relevant circumstances. The CMA has, therefore, considered it appropriate to apply a lower penalty at step 4.

6.90 The CMA considers that a penalty of **£20,000,000** is appropriate to reflect the serious nature of the Infringements in which KKH was involved, its role, KKH's

---

[635] Infringements 14, 15 and 16.

[636] John F Hunt Group Limited's report and financial statements for the financial year ending 31 March 2019; John F Hunt Group Limited's report and financial statements for the financial year ending 31 March 2020; John F Hunt Group Limited's report and financial statements for the financial year ending 31 March 2021, as filed at Companies House.

size and financial position and the need sufficiently to deter both KKH and other undertakings from engaging in anti-competitive activity.

6.91 In making this assessment, the CMA has had particular regard to the following factors that indicated the need for a reduction at this step:

(a) the fact that KKH's relevant turnover has been factored into the penalty calculation more than once for those financial years in which there was more than one infringement,[637] resulting in a disproportionately large penalty figure after step 3. By contrast, in the case of a year-long single continuous infringement, relevant turnover would be factored into the penalty calculation only once. Without a reduction at this step, the total penalty for multiple infringements within the same financial year, which together lasted for substantially less than one year, could be significantly higher than the penalty for a year-long single continuous infringement;

(b) the fact that each of KKH's Infringements was of a short duration and concerned a single contract, rather than the entirety of its business in the relevant markets; and

(c) KKH was neither a leader nor an instigator of the conduct.

6.92 Balanced against this are the following factors which are also relevant to the CMA's assessment of proportionality and, in particular to what extent it is appropriate to reduce the penalty:

(a) **the nature of the Infringements**: cover bidding arrangements are, by their nature, serious restrictions of competition;[638]

(b) **the role of the undertaking**: KKH was involved in eight Infringements over the course of three years concerning cover bidding;[639]

(c) **the impact of the undertaking's infringing activity**: any impact of the conduct will have lasted at least for the whole duration of the affected contracts as well having the potential for continuing impacts.

---

[637] Specifically, four of the Infringements took place in the financial year ending 31 October 2014 and three of the Infringements took place in the financial year ending 31 October 2017.

[638] See chapter 3 and chapter 6 (*Step 1 – starting point,* '*Assessment of seriousness – application of percentage starting point to relevant turnover*').

[639] Infringements 4, 5, 7, 8, 10, 12, 13 and 14 that occurred between 2014 and 2016.

6.93 In conjunction with all of these factors, the CMA has also taken into account KKH's size and financial position. KKH has:[640]

(i) worldwide turnover of £389.5 million in 2021 and average worldwide turnover for 2019 to 2021 of around £460.5 million. A penalty of £20 million represents around 4% of its average worldwide turnover and around 0.5% of such turnover when considered on a per infringement basis;

(ii) profit after tax of £6.8 million in 2019 and losses after tax of £9.3 million in 2020 and £4.3 million in 2021;[641]

(iii) net assets that have reduced from £41.8 million to £27.7 million over the period 2019 to 2021. A penalty of £20 million represents 72% of KKH's net assets in 2021 and 9% of such assets when considered on a per infringement basis; and

(iv) made dividends payments in 2019 and 2020 totalling £6.5 million, but no dividend payment in 2021.

McGee / MFCOIL

6.94 The CMA considers that a penalty of **£56,432,788** after step 3 is disproportionately large having regard to all the relevant circumstances. The CMA has, therefore, considered it appropriate to apply a lower penalty at step 4.

6.95 The CMA considers that a penalty of **£20,000,000** is appropriate to reflect the serious nature of the Infringements in which McGee / MFCOIL was involved, its role, McGee / MFCOIL's size and financial position and the need sufficiently to deter both McGee / MFCOIL and other undertakings from engaging in anti-competitive activity.

6.96 In making this assessment, the CMA has had particular regard to the following factors that indicated the need for a reduction at this step:

(a) the fact that McGee / MFCOIL's relevant turnover has been factored into the penalty calculation more than once for those financial years in which

---

[640] Keltbray Holdings Limited financial statements for the financial year ending 31 October 2019; Keltbray Group (Holdings) Limited financial statements for the financial year ending 31 October 2020; Keltbray Group (Holdings) Limited financial statements for the financial year ending 31 October 2021, as filed at Companies House.
[641] The CMA note that Keltbray Group (Holdings) Limited financial statements for the financial year ending 31 October 2021 include a provision for a '*regulatory penalty*' of £6 million.

there was more than one infringement,[642] resulting in a disproportionately large penalty figure after step 3. By contrast, in the case of a year-long single continuous infringement, relevant turnover would be factored into the penalty calculation only once. Without a reduction at this step, the total penalty for multiple infringements within the same financial year, which together lasted for substantially less than one year, could be significantly higher than the penalty for a year-long single continuous infringement; and

(b) the fact that each of McGee / MFCOIL's Infringements was of a short duration and concerned a single contract, rather than the entirety of its business in the relevant markets.

6.97 Balanced against this are the following factors which are also relevant to the CMA's assessment of proportionality and, in particular to what extent it is appropriate to reduce the penalty:

(a) **the nature of the Infringements**: cover bidding arrangements and compensation payment arrangements are, by their nature, serious restrictions of competition;[643]

(b) **the role of the undertaking**: McGee / MFCOIL was involved in eight Infringements over the course of six years,[644] two of which involved a compensation payment arrangement[645] and McGee / MFCOIL acted as a leader or instigator in relation to the Infringement concerning the Southbank, London;

(c) **the impact of the undertaking's infringing activity**: McGee / MFCOIL was awarded two of the contracts which were the subject of the Infringements;[646] and any impact of the conduct will have lasted at least for the whole duration of the affected contracts as well having the potential for continuing impacts.

---

[642] Specifically, two of the Infringements took place in the financial year ending 30 November 2014 and four of the Infringements took place in the financial year ending 30 November 2017.
[643] See chapter 3 and chapter 6 (*Step 1 – starting point,* '*Assessment of seriousness – application of percentage starting point to relevant turnover*').
[644] Infringements 3, 5, 7, 12, 13, 15, 16 and 19 that occurred between 2013 and 2018.
[645] Infringements 3 and 5.
[646] Infringements 3 (value of £19 million) and 15 (value of £5.5 million).

6.98 In conjunction with all of these factors, the CMA has also taken the undertaking's size and financial position into account when reaching a view on a proportionate penalty. McGee/ MFCOIL has:[647]

(i) worldwide turnover of £98.8 million in 2021 and average worldwide turnover for 2019 to 2021 of around £95.7 million. A penalty of £20 million represents 21% of its average worldwide turnover for this period and 3% of such turnover when considered on a per infringement basis;

(ii) profit after tax of £7.1 million in 2019, a loss after tax of £2.7 million in 2020 and profit after tax of £7.2 million in 2021. A penalty of £20 million represents 515% of its average profit after tax for this three-year period and 64% of such profit after tax when considered on a per infringement basis;

(iii) net assets that have reduced from £14.9 million to £12.5 million over the period 2019 to 2021. This penalty represents 160% of its 2021 net assets and 20% of such assets when considered on a per infringement basis; and

(iv) made a dividend payment of £6 million in 2019 but not in the years 2020 or 2021.

SPC

6.99 The CMA considers that a penalty of **£62,555,206** after step 3 is disproportionately large having regard to all the relevant circumstances. The CMA has, therefore, considered it appropriate to apply a lower penalty at step 4.

6.100 the CMA considers that a penalty of **£40,000,000** is appropriate to reflect the serious nature of the Infringements in which SPC was involved, its role, SPC's size and financial position and the need sufficiently to deter both SPC and other undertakings from engaging in anti-competitive activity.

6.101 In making this assessment, the CMA has had particular regard to the following factors that indicated the need for a reduction at this step:

(a) the fact that SPC's relevant turnover has been factored into the penalty calculation more than once for those financial years in which there was

---

[647] MFCOIL Limited's report and financial statements for the financial year ending 30 November 2019; MFCOIL Limited's report and financial statements for the financial year ending 30 November 2020; MFCOIL Limited's report and financial statements for the financial year ending 30 November 2021, as filed at Companies House.

more than one infringement,[648] resulting in a disproportionately large penalty figure after step 3. By contrast, in the case of a year-long single continuous infringement, relevant turnover would be factored into the penalty calculation only once. Without a reduction at this step, the total penalty for multiple infringements within the same financial year, which together lasted for substantially less than one year, could be significantly higher than the penalty for a year-long single continuous infringement; and

(b) the fact that each of SPC's Infringements was of a short duration and concerned a single contract, rather than the entirety of its business in the relevant markets.

6.102 Balanced against this are the following factors which are also relevant to the CMA's assessment of proportionality and, in particular to what extent it is appropriate to reduce the penalty:

(a) **the nature of the Infringements**: cover bidding arrangements and compensation payment arrangements are, by their nature, serious restrictions of competition;[649]

(b) **the role of the undertaking**: SPC was involved in 12 Infringements over the course of six years,[650] four of which involved a compensation payment arrangement[651] and SPC acted as a leader or instigator in relation to the Infringements concerning Station Hill, Reading, Lots Road Power Station and Lombard House, Redhill;

(c) **the impact of the undertaking's infringing activity**: SPC was awarded six of the contracts which were the subject of the Infringements;[652] and any impact of the conduct will have lasted at least for the whole duration of the affected contracts as well having the potential for continuing impacts.

---

[648] Specifically, two of the Infringements took place in the financial year ending 31 March 2013, seven of the Infringements took place in the financial year ending 31 March 2015 and two of the Infringements took place in the financial year ending 31 March 2018.

[649] See chapter 3 and chapter 6 (*Step 1 – starting point,* '*Assessment of seriousness – application of percentage starting point to relevant turnover*').

[650] Infringements 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 17 and 18 that occurred between 2013 and 2018.

[651] Infringements 1, 2, 5 and 6.

[652] Infringements 4 (value of £800,000), 5 (value of £5.2 million), 6 (value of £9.6 million), 7 (value of £1.1 million), 8 (value of 1.7 million) and 10 (value of £10.9 million).

6.103 In conjunction with all of these factors, the CMA has also taken into account SPC's size and financial position. SPC has:[653]

(i) worldwide turnover of £344 million in 2021 and average worldwide turnover for 2019 to 2021 of around £472.9 million. A penalty of £40 million represents around 8% of its average worldwide turnover for this period and around 1% of such turnover when considered on a per infringement basis;

(ii) profits after tax of £10.6 million in 2019, £6.9 million in 2020 and £1.2 million in 2021. A penalty of £40 million represents 640% of its average profit after tax for this period and 53% of such profit after tax when considered on a per infringement basis;

(iii) net assets that have increased from £97.8 million to £111.7 million over the period 2019 to 2021. This penalty represents 36% of its net assets in 2021 and 3% of such assets when considered on a per infringement basis; and

(iv) made a dividend payment of £3 million in 2019 but no payments in the years 2020 or 2021.

Step 5 – adjustment to prevent the maximum penalty from being exceeded and to avoid double jeopardy

6.104 The CMA may not impose a penalty for an infringement that exceeds 10% of the undertaking's '*applicable turnover*', that is, the worldwide turnover of the undertaking in the business year preceding the date of the CMA's decision or, if figures are not available for that business year, the one immediately preceding it.[654]

6.105 The CMA has assessed the Settling Parties' penalties after step 4 against the threshold set out in the preceding paragraph. This assessment has resulted in reductions to the penalties of CCH, Clifford Devlin, McGee / MFCOIL and SPC, as follows:

---

[653] Carey Group Limited's report and financial statements for the financial year ending 31 March 2019; Carey Group Limited's report and financial statements for the financial year ending 30 September 2020 (given the change in reporting period, figures for this year have been pro-rated); Carey Group Limited's report and financial statements for the financial year ending 30 September 2021, as filed at Companies House.
[654] Section 36(8) of the Act and the 2000 Order, as amended. See also 2018 Penalty Guidance, paragraph 2.25.

- CCH - **£2,400,000**[655]
- Clifford Devlin - **£529,519**[656]
- McGee / MFCOIL - **£7,846,413**[657]
- SPC - **£34,401,000**[658]

Application of the 2021 Penalty Guidance to EEH and Squibb at steps 4 and 5

Step 4 – adjustment for specific deterrence

6.106 The penalty figure reached after steps 1 to 3 may be increased to ensure that the penalty to be imposed on the undertaking is sufficient to deter it from breaching competition law in the future. The CMA may increase the penalty reached after step 3 where this is appropriate in order to ensure that the penalty achieves deterrence given the undertaking's specific size and financial position, and any other relevant circumstances of the case.[659]

6.107 When assessing an undertaking's financial position for the purposes of deterrence, the CMA will generally take into account the undertaking's total worldwide turnover as a primary indicator of the size of the undertaking and its economic power, unless the circumstances of the case indicate other metrics are more appropriate.[660]

---

[655] This figure was calculated using the turnover recorded in Cantillon Limited's report and financial statements for the financial year ending 30 June 2020. These were the latest figures available at the time that settlement was agreed. The turnover recorded in Cantillon Limited's report and financial statements for the financial year ending 30 June 2021 results in a higher statutory cap; however, the CMA has not adjusted CCH's penalty figure upwards in light of this, as a maximum penalty figure was agreed under the settlement process.
[656] This figure was calculated using the turnover recorded in Clifford Devlin Limited's report and financial statements for the financial year ending 31 March 2022.
[657] This figure was calculated using the turnover recorded in MFCOIL Limited's report and financial statements for the financial year ending 30 November 2020. These were the latest figures available at the time settlement was agreed. The turnover recorded in MFCOIL Limited's report and financial statements for the financial year ending 30 November 2021 results in a higher statutory cap; however, the CMA has not adjusted McGee / MFCOIL's penalty figure upwards in light of this, as a maximum penalty figure was agreed under the settlement process.
[658] This figure was calculated using the turnover recorded in Carey Group Limited's report and financial statements for the financial year ending 30 September 2021.
[659] 2021 Penalty Guidance, paragraph 2.19.
[660] The CMA will consider indicators of size and financial position at the time the penalty is being imposed and may consider three-year averages for turnover: 2021 Penalty Guidance, paragraph 2.20.

EEH

6.108 For the financial year ending 30 September 2021, EEH's worldwide turnover was £175.7 million[661] and having regard to the 2021 Penalty Guidance, the CMA considers that the penalty figure of **£81,526,071** does not require an increase for specific deterrence. Indeed, the CMA considers that a downward adjustment should be made to this figure for proportionality at step 5.

Squibb

6.109 For the financial year ending 31 January 2022, Squibb's worldwide turnover was £32.9 million[662] and having regard to the 2021 Penalty Guidance, the CMA considers that the penalty figure of **£4,978,119** does not require an increase for specific deterrence. Indeed, the CMA considers that a downward adjustment should be made to this figure for proportionality at step 5.

Step 5 – adjustment to check that the penalty is proportionate and prevent the maximum penalty being exceeded

6.110 At step 5, the CMA will:

(a) assess whether, in its view, the overall penalty proposed is appropriate in the round; and

(b) adjust the penalty, if necessary, to ensure that it does not exceed the maximum penalty allowed by statute.[663]

Assessment of whether the penalty is proportionate

6.111 When carrying out the overall assessment of proportionality, the CMA will have regard to all relevant circumstances including the nature of the infringement, the role of the undertaking in the infringement, the impact of the undertaking's infringing activity on competition, and the undertaking's size and financial position.[664] The overall assessment should appropriately reflect the seriousness of the infringement and the need sufficiently to deter both the

---

[661] Erith Holdings Limited's report and financial statements for the financial year ending 30 September 2021, as filed at Companies House.
[662] Squibb Group Limited's report and financial statements for the financial year ending 31 January 2022, as filed at Companies House.
[663] 2021 Penalty Guidance, paragraph 2.24.
[664] In this case, the CMA has considered indicators of size and financial position at the time the penalty is being imposed, as well as three-year averages.

infringing undertaking and other undertakings from engaging in anti-competitive activity.[665]

6.112 Where necessary, the penalty may be decreased to ensure that the level of the penalty is not disproportionate. A penalty may be proportionate even if it exceeds the statutory cap.[666]

6.113 The CMA is not restricted to imposing the lowest penalty that could reasonably be justified and it will select the figure which it considers is appropriate in the circumstances of the case.[667]

6.114 The CMA does not simply apply a percentage reduction at this step; nor does it seek to quantify the reduction associated with each relevant circumstance to which it has had regard. The assessment of proportionality is not a mechanistic adjustment, but one of evaluation and judgement.[668] Rather, the CMA is concerned to ensure that the *final* penalty figure is proportionate 'in the round', having regard to all the relevant circumstances of the case.

6.115 In deciding whether an adjustment to the penalty is warranted at this step, the CMA has, as a starting point, considered the extent to which the relevant party committed multiple infringements in the course of a single year. Where that is the case, there is a risk that, absent a material adjustment at this step, a party would face a higher penalty than if it had participated in a whole-market infringement lasting the entirety of the year in question.

6.116 The CMA has then considered whether there are other factors that might lead to the conclusion that an adjustment at this step is warranted and, if so, what penalty would be appropriate to reflect the seriousness of the conduct, the need for deterrence, as well as the party's size and financial position. In doing so, the CMA observes that, for each Party, some factors point to a higher penalty being appropriate while other factors point in the other direction. The CMA has taken this into account in arriving at a proportionate penalty without, as noting above, applying mechanistic adjustments for each factor.

6.117 In conducting this exercise, the CMA has had regard, in particular, to the following party specific factors.

---

[665] 2021 Penalty Guidance, paragraph 2.26.
[666] 2021 Penalty Guidance, paragraph 2.27.
[667] 2021 Penalty Guidance, paragraph 2.25 and *FP McCann Limited* v CMA [2020] CAT 28, paragraph 347.
[668] 2021 Penalty Guidance, paragraph 2.25.

(a) The number of infringements in which the relevant party participated. The CMA has not, in this case, decided to exercise its discretion to impose separate penalties on the Parties in respect of each Infringement. Nonetheless, the CMA considers that, where a party has engaged in repeated infringements in the relevant period, this is an important factor in assessing the seriousness of the relevant conduct such that there should, if all other factors were equal, be a relationship between the number of infringements and the penalty to be applied.

(b) Whether compensation payments were agreed. As discussed above at paragraph 6.32, the CMA considers that cover bidding combined with compensation payments are particularly serious, such that infringements involving cover bidding combined with compensation payments should, if all other factors were equal, attract a higher penalty for those parties involved in them.

(c) Each Party's relevant market turnover, noting that infringements committed by a party that has a significant share of the relevant market are, by their nature, more likely to be injurious to competition, such that, if all other factors were equal, the imposition of a higher penalty would be warranted.

(d) The period over which those infringements took place, noting in particular that the potential for cover bidding to distort competition beyond the relevant tender (as described at paragraph 6.28 above) would warrant, if all other factors were equal, the imposition of a higher penalty where a party's infringements are spread over a longer period of time.

(e) Whether the party was awarded the contract that was the subject of the relevant tender. In particular, the CMA considers that where a party involved in an infringement was awarded the contract, it is more likely that the relevant party directly benefited from the conduct at issue in which case, all other factors being equal, a higher penalty would be warranted.

(f) Whether the party instigated the relevant conduct, in which case, all other factors being equal, a higher penalty would be warranted.

(g) Each Party's size and financial position both in absolute terms and relative to the size and financial position of other Parties (on a per infringement as well as total basis). In assessing each Party's size and financial position, the CMA has primarily had regard to each Party's worldwide turnover, as this is an important indicator of an undertaking's size and provides a basis for consistency checks across parties that is more reliable for this purpose

than other financial indicators, which the CMA has also taken into account, as set out below.

6.118 The CMA does not consider that a direct comparison[669] between the percentage reductions applied at step 5 to each of the Parties is appropriate, given the differing situations of each Party which must be taken into account in the consideration of all the relevant circumstances.[670]

6.119 The CMA has however sought to ensure that the way in which the relevant circumstances are taken into account for each of the Parties is consistent, in line with the principle of equal treatment. In doing so, the CMA has not sought to apply a mechanistic formula to this exercise (such as imposing a minimum penalty per infringement) but rather has exercised its judgement to ensure that the penalty at the end of this step properly reflects the range of relevant factors (as set out in paragraphs 6.115 to 6.117 above).

6.120 The CMA does not consider it appropriate to make direct comparisons with proportionality adjustments in its previous cases as its fining policy may change over time in order to reflect its evolving experience.[671] Nevertheless, the CMA has had regard to the fact that the CMA and its predecessor, the OFT, have already found infringements in various parts of the construction industry, including specifically a number of cases that involved cover pricing or compensation payments, and the need to ensure that the fines in this case are sufficiently high to deter future infringements in this sector.[672]

EEH

6.121 The CMA considers that a penalty of **£81,526,071** after step 4 is disproportionately large having regard to all the relevant circumstances, including that the penalty after step 4 would represent a significant proportion of Erith's worldwide turnover. The CMA has, therefore, considered it appropriate to apply a lower penalty at step 5.

---

[669] EEH has made representations that the CMA's adjustment at step 5 is insufficient in comparison with the approach taken: (i) in other CMA cases; and (ii) in relation to certain other Parties (providing a comparison of the approach in relation to Keltbray in particular): URN8354, paragraphs 4.16 to 4.19, and 6.1 to 6.18.

[670] *GF Tomlinson Group Limited v OFT* [2011] CAT 7, paragraphs 150 to 157*; Roland v CMA* [2021] CAT 8, paragraph 36.

[671] See *Dansk Rørindustri v Commission* C-189/02P, paragraphs 169 to 173 and 227 to 230; and *Ori Martin v Commission* C-409/15P paragraphs 92 to 93.

[672] See footnote 581 for the CMA and OFT infringement decisions relating to cover bidding or other cartel behaviour within the construction industry.

6.122 For the reasons set out below, the CMA considers that a penalty of **£30,000,000** is appropriate in the round to reflect the serious nature of the Infringements in which EEH was involved, its role, EEH's size and financial position and the need sufficiently to deter both EEH and other undertakings from engaging in anti-competitive activity.

6.123 In making this assessment, the CMA has had particular regard to the following factors that indicated the need for a significant reduction at this step:

(a) EEH's relevant turnover has been factored into the penalty calculation more than once for those financial years in which there was more than one Infringement,[673] contributing to the disproportionately large penalty figure after step 4. By contrast, in the case of a year-long single continuous infringement, relevant turnover would be factored into the penalty calculation only once. Without a reduction at this step, the total penalty for multiple infringements within the same financial year, which together lasted for substantially less than one year, could be significantly higher than the penalty for a year-long single continuous infringement;[674]

(b) each of EEH's Infringements was of a short duration and concerned a single contract, rather than the entirety of EEH's businesses in the relevant markets;[675] and

(c) EEH was neither a leader nor an instigator of the conduct in question.

6.124 Balanced against this are the following factors which are also relevant to the CMA's overall assessment of proportionality and, in particular, to what extent it is appropriate to reduce the penalty:

---

[673] Specifically, two of the Infringements took place in the financial year ending 30 September 2013, two of the Infringements took place in the financial year ending 30 September 2014 and three of the Infringements took place in the financial year ending 30 September 2017.

[674] EEH has said that it infers that the CMA's '*correction for double/triple counting of turnover accounts for an approximately 42% reduction*' and that the remainder of the reduction is attributable to other factors i.e., the nature of the infringements, the short duration of the infringement and EEH's size and financial position. EEH has made representations that, without any analysis of whether these financial measures point towards lower or higher penalties, the CMA's reasoning is insufficient: URN8354, paragraphs 4.3 to 4.8. However, EEH's inference does not correctly reflect the CMA's approach. At this step, the CMA makes an assessment of a number of relevant factors '*in the round*'. As noted above, the assessment of proportionality is not a mechanistic adjustment, but one of evaluation and judgement.

[675] EEH has made representations that the adjustment for proportionality is insufficient and fails to reflect the fact that the overwhelming majority of the relevant turnover has little or no connection with the Infringements: URN8354, paragraph 4.11. The CMA has taken into account the nature and duration of the Infringements (including the scope of the relevant contracts) at this step.

(a) **the nature of the Infringements**: cover bidding arrangements and compensation payment arrangements are, by their nature, serious restrictions of competition;[676]

(b) **the role of the undertaking**: EEH was involved in nine Infringements over the course of six years,[677] of which three involved compensation payment arrangements;[678]

(c) **the impact of the undertaking's infringing activity**: Erith has substantial turnover within the relevant market; any impact of the conduct will have lasted at least for the whole duration of the affected contracts, as well as having the potential for continuing impacts; and EEH was awarded three of the contracts which were the subject of the Infringements.[679]

6.125 In conjunction with all of these factors, the CMA has also taken into account EEH's size and financial position. In doing so, the CMA has primarily had regard to EEH's worldwide turnover which is an important indicator of an undertaking's size and provides a reliable basis for consistency checks across parties; as well as other financial indicators which the CMA has also taken into account, as set out below.[680] As part of this exercise the CMA has also had regard to the penalty when broken down on a per infringement basis (that is for EEH, an average of £3.3 million for each of the 9 Infringements) and has also assessed the financial indicators on a per infringement basis, again as set out below.

6.126 EEH is a large company.[681] EEH had worldwide turnover in 2021 of £175.7 million; and average worldwide turnover for the last three years of around £193.5 million. A penalty of £30 million represents around 16% of its three-year average worldwide turnover over this period and around 2% of such

---

[676] See chapter 3 and chapter 6 (*Step 1 – starting point,* '*Assessment of seriousness – application of percentage starting point to relevant turnover*').

[677] Infringements 1, 3, 5, 8, 11, 12, 14, 17 and 19 that occurred between 2013 and 2018.

[678] Infringements 1, 3 and 5.

[679] See Infringements 1 (value of £1.1 million), 12 (value of £15 million) and 19 (value of £11 million).

[680] Turnover is a useful indicator of size; and has the advantage of allowing for a relatively consistent comparison across different undertakings relative to other financial indicators.

[681] Erith Holdings Limited's report and financial statements for the financial year ending 30 September 2019, Erith Holdings Limited's report and financial statements for the financial year ending 30 September 2020 and Erith Holdings Limited's report and financial statements for the financial year ending 30 September 2021, as filed at Companies House. EEH has made representations that, for a complete assessment of proportionality, it is necessary to consider a full range of financial metrics: URN8354, paragraph 4.17. The CMA has considered all relevant factors 'in the round' when making this assessment, including a range of indicators of EEH's size and financial position at the time the penalty is being imposed. As highlighted in this paragraph, the CMA has considered, in particular, worldwide turnover, profits, net assets and dividends for each of 2019, 2020 and 2021 as against the overall penalty and the penalty on a per infringement basis.

turnover when considered on a per infringement basis. In light of EEH's worldwide turnover figure and all the relevant circumstances the CMA considers that a penalty of £30 million is proportionate.

6.127 EEH's profit after tax increased from £6.6 million in 2019 to £9.4 million in 2021, and its average profit after tax for the last three years was £7.5 million. A penalty of £30 million represents four times its three-year average profit after tax and 44% of such profit after tax when considered on a per infringement basis. The CMA recognises that £30 million is a substantial penalty when set against EEH's profit after tax. However, the CMA considers that a penalty of this magnitude, is proportionate in all the relevant circumstances of this case. Moreover, the CMA notes that EEH has been able to make payments out of profit after tax [✂] £5.5 million in 2019, £7.5 million in 2020 and £9 million in 2021 (a total of £22 million in the last three most recently reported financial years).[682]

6.128 EEH's net assets have remained at around £17 million over the three-year period 2019 to 2021. A penalty of £30 million represents around 176% of EEH's net assets over this period and around 19% of such assets when considered on a per infringement basis. The CMA considers that £30 million is a substantial penalty when set in the context of EEH's net assets. However, the CMA considers that a penalty of £30 million is proportionate in all the relevant circumstances of this case.

6.129 As set out at paragraph 6.113 above, the CMA is not restricted to imposing the lowest penalty that could reasonably be justified in any particular case. This means that there may be a range of figures which could be justified. In this case, the CMA considers it necessary to reflect the serious nature of the Infringements in which EEH was involved and EEH's individual role in those Infringements (as set out above). In reaching its conclusion that £30 million is an appropriate and proportionate penalty, the CMA has also considered the continuing need sufficiently to deter both EEH and other undertakings, including those in construction related industries, from engaging in anti-competitive activity (as referred to above at paragraph 6.120).

6.130 For all the reasons set out above, the CMA considers that a penalty of £30 million is proportionate. Moreover, a penalty of £30 million is consistent with the conclusions it has reached at the end of this step for each of the other

---

[682] These payments are described as 'Contributions to Employee Ownership Trust' in Erith Holdings Limited's report and financial statements. [✂].

parties taking into account EEH's relative size and financial position and its relative role in the infringing conduct.

Squibb

6.131 The CMA is of the view that a penalty of **£4,978,119** after step 4 is disproportionately large having regard to all the relevant circumstances. The CMA has, therefore, considered it appropriate to apply a lower penalty at step 5.[683]

6.132 For the reasons set out below, the CMA considers that a penalty of **£2,000,000** is appropriate[684] to reflect the serious nature of the Infringements in which Squibb was involved, its role, Squibb's size and financial position and the need sufficiently to deter both Squibb and other undertakings from engaging in anti-competitive activity.

6.133 In making this assessment, the CMA has had particular regard to the following factors that indicated the need for a reduction at this step:

(a) Squibb was involved in a comparatively small number of infringements and each of Squibb's Infringements concerned was of short duration and concerned a single contract, rather than the entirety of Squibb's businesses in the relevant markets; and

(b) Squibb was neither a leader nor an instigator of the conduct in question in either infringement.

---

[683] Squibb has made representations that the CMA's originally proposed penalty of £3 million is '*disproportionate to the seriousness of the offence*', noting that (i) it was involved in '*simple cover bidding*'; (ii) it was not party to any systemic wrongdoing; (iii) it was neither the leader nor the instigator of any of the Infringements to which it was party; (iv) the Infringements did not result in any actual harm to competitors, customers or consumers; and (v) Squibb did not benefit financially from the Infringements (noting, in particular, that it was not awarded the contracts and question): URN8351, paragraphs 352 to 369. The CMA has taken account of all of these factors (see paragraphs 6.133 to 6.135 below; and see chapter 3 and chapter 6 (*Step 1 – starting point,* '*Assessment of seriousness – application of percentage starting point to relevant turnover*').

[684] The Draft Penalty Statement provided to Squibb on 23 June 2022 proposed a reduction at step 5 which resulted in a proposed penalty of £3 million. Squibb made representations that the CMA's proposed downward adjustment at step 5 was insufficient when compared with the approach taken in relation to the other Parties and that a substantially lower fine would still be sufficient for deterrence: URN8351, paragraphs 345 to 406. Having decided that the evidence is insufficiently clear to find, on the balance of probabilities, that Squibb was involved in a compensation payment arrangement (see chapter 4, Infringement 18), the CMA has decided that it is appropriate to reduce the penalty to a figure of £2 million at this step, taking into account the relevant factors set out below. As noted above, the CMA has a margin of discretion when determining the appropriate amount of any penalty; and it carries out a case specific assessment, based on all the relevant circumstances. The CMA is not restricted to imposing the lowest penalty that could reasonably be justified: *FP McCann Limited* v CMA [2020] CAT 28, paragraph 347.

6.134 Balanced against this are the following factors which are also relevant to the CMA's overall assessment of proportionality and, in particular to what extent it is appropriate to reduce the penalty:

(a) **the nature of the Infringements**: cover bidding arrangements are, by their very nature, serious restrictions of competition;[685]

(b) **the role of the undertaking**: Squibb was involved in two Infringements over the course of five years[686] concerning cover bidding;[687]

(c) **the impact of the undertaking's infringing activity**: Squibb has significant turnover within the relevant market; any impact of the conduct will have lasted at least for the whole duration of the affected contracts, as well as having the potential for continuing impacts; and the counterparty to one of the two contracts which were the subject of the Infringements, won the contract.

6.135 In conjunction with all of these factors, the CMA has also taken into account Squibb's size and financial position.[688] As part of this exercise the CMA has had regard to the penalty when broken down on a per infringement basis (that is for Squibb, £1 million for each of the two Infringements) and has also assessed the financial indicators on a per infringement basis, as set out below:

(i) Squibb had worldwide turnover of £32.9 million in 2022 and average worldwide turnover for the last three years of around £32.2 million. A penalty of £2 million represents 6% of its average annual worldwide turnover over the three most recent financial years, and 3% of such turnover when considered on a per infringement basis. In light of Squibb's worldwide turnover and all the relevant circumstances of the case, the CMA considers that a penalty of £2 million is proportionate.

---

[685] See chapter 3 and chapter 6 (*Step 1 – starting point,* '*Assessment of seriousness – application of percentage starting point to relevant turnover*').

[686] Infringements 9 and 18 that occurred between 2014 and 2018.

[687] Squibb has made representations as regards the market coverage of the Infringements, noting that its Infringements (i) were four years apart and represent a very small proportion of the number of the tenders in which it participated in during that period; (ii) the value of the two projects also represent a small segment of the industry: URN8351, paragraphs 370 to 373. The CMA has taken this into account at this step.

[688] Squibb Group Limited's report and financial statements for the financial year ending 31 January 2020; Squibb Group Limited's report and financial statements for the financial year ending 31 January 2021; Squibb Group Limited's report and financial statements for the financial year ending 31 January 2022, as filed at Companies House.

(ii) Squibb's profit after tax decreased from £1.7 million in 2020, to £1.6 million in 2021 and then to approximately £600,000 in 2022. A penalty of £2 million represents around 150% of its three-year average profit after tax and around 75% of such profit after tax when considered on a per infringement basis The CMA acknowledges that a penalty of £2 million is a substantial penalty when set against Squibb's profit after tax. However, the CMA considers that a penalty of this magnitude, is proportionate in all the relevant circumstances of this case. Moreover, the CMA notes that Squibb has made dividend payments of £240,000 for each of the last three financial years.[689]

(iii) Squibb's net assets have remained at around £10 million over the three-year period. A penalty of £2 million represents around one fifth of its net assets and 10% of such assets when considered on a per infringement basis.

6.136 Set out at paragraph 6.113 above, the CMA is not restricted to imposing the lowest penalty that could reasonably be justified in any particular case. In reaching its conclusion on the appropriate level of penalty for Squibb, the CMA also considered it necessary to reflect the serious nature of the Infringements in which Squibb was involved, Squibb's own individual role in those Infringements (as set out above) and the continuing need sufficiently to deter both Squibb and other undertakings, including those in construction related industries, from engaging in anti-competitive activity (as referred to above at paragraph 6.120).

6.137 For all the reasons set out above, the CMA considers that a penalty of £2 million is proportionate. Moreover, a penalty of £2 million is consistent with the conclusions it has reached at the end of this step for each of the other parties taking into account Squibb's relative size and financial position and its relative role in the infringing conduct.

---

[689] Squibb has made representations that the CMA's originally proposed penalty of £3 million after step 5 is disproportionate by reference to its size and financial position, on the basis that (i) it is a small family run company; (ii) the payment of dividends is more akin to director remuneration than the payment of excess profits to third party investors; (iii) Squibb's average net profits have fallen in the past two years, as a result of a challenging landscape; (iv) demolition is a low margin industry; and (v) the use of financial indicators from the period covering the Covid pandemic may distort the relative impact of the penalty: URN8351, paragraphs 374 to 389. The CMA is not persuaded that these representations justify a reduction to the penalty. In accordance with the 2021 Penalty Guidance, the CMA has taken account of Squibb's size and financial position at the time the penalty is imposed, by reference to a range of financial indicators. The CMA considers that payment of dividends, which are out of post-tax profits generated by a company, is a relevant factor when reaching a view on financial position, regardless of the individual to whom and the purpose for which the dividend was paid.

Adjustment to prevent the maximum penalty being exceeded[690]

EEH

6.138 EEH's worldwide turnover for the year ended 30 September 2021 was £175,688,000.[691] A further adjustment has been made so that the penalty does not exceed 10% of the worldwide turnover of EEH.

6.139 EEH's penalty has been reduced at this step to **£17,568,800**.

Squibb

6.140 Squibb's worldwide turnover for the year ended 31 January 2022 was £32,906,489.[692] No further adjustment has been made at this step to Squibb's penalty of **£2,000,000**.

Step 6 – application of reductions under the CMA's leniency programme and settlement policy

6.141 The CMA will reduce the undertaking's penalty at step 6 where the undertaking has a leniency agreement with the CMA[693] and/or settles with the CMA.[694]

Application to the Settling Parties

Leniency

6.142 As set out in paragraphs 1.3 to 1.4 above, SPC and McGee / MFCOIL have admitted the facts and allegations of their Infringements and signed a leniency agreement with the CMA.

6.143 Provided that SPC continues to cooperate and comply with the conditions of the CMA's leniency policy, as set out in the leniency agreement, it will benefit from a leniency discount of **70%**.

---

[690] 2021 Penalty Guidance, paragraph 2.28.
[691] Erith Holdings Limited's report and financial statements for the financial year ending 30 September 2021, as filed at Companies House.
[692] Squibb Group Limited's report and financial statements for the financial year ending 31 January 2022, as filed at Companies House.
[693] 2018 Penalty Guidance, paragraph 2.29; 2021 Penalty Guidance, paragraph 2.30.
[694] 2018 Penalty Guidance paragraph 2.30; 2021 Penalty Guidance, paragraph 2.31.

6.144 Provided that McGee / MFCOIL continues to cooperate and comply with the conditions of the CMA's leniency policy, as set out in the leniency agreement, it will benefit from a leniency discount of **40%** (35% and 5% leniency plus[695] discount).

Settlement

6.145 Under the CMA's settlement policy, the Settling Parties have admitted the facts and allegations of their Infringements as set out in the Statement of Objections, which are now reflected in the Decision. In light of these admissions and the Settling Parties' agreement to cooperate in the process for concluding the investigation, the CMA has reduced the Settling Parties' penalties by **20%**.

Application to EEH and Squibb

6.146 Reductions for leniency and settlement are not applicable to EEH or Squibb.

Financial hardship

6.147 In exceptional circumstances, the CMA may reduce a penalty where an undertaking is unable to pay the penalty proposed due to its financial position. A financial hardship claim needs to be made by the undertaking concerned, and that undertaking has the burden of proving that it merits such a reduction.[696]

6.148 The CMA will only grant such a reduction on the basis of objective evidence that the imposition of the proposed penalty would jeopardise irretrievably an undertaking's viability. The CMA will have regard to the undertaking's financial position (including cash flow and ability to borrow), evidence of dividends and other forms of value extracted from the firm, and submissions about the specific social and economic context. The CMA will not base any reduction on the mere finding of an adverse or loss-making financial situation.[697]

6.149 Where appropriate, the CMA may enter into an agreement with an undertaking providing for additional time to pay its penalty ('time to pay agreement'). The CMA will only reduce a penalty for financial hardship in

---

[695] The CMA's guidance *Applications for leniency and no-action in cartel cases* (OFT1495), paragraphs 9.1 to 9.4.
[696] 2021 Penalty Guidance, paragraph 2.35.
[697] 2021 Penalty Guidance, paragraph 2.36.

circumstances where it considers that the undertaking merits such a reduction in addition to any time to pay agreement.[698]

6.150 [✂]

6.151 [✂]

6.152 [✂]

6.153 [✂]

6.154 [✂]

6.155 [✂]

6.156 [✂]

6.157 [✂]

6.158 [✂]

6.159 [✂]

6.160 [✂]

Penalties imposed by the CMA

6.161 The CMA requires:

(a) BMG to pay a penalty of £2,400,000

(b) CCH to pay a penalty of £1,920,000

(c) Clifford Devlin to pay a penalty of £423,615

(d) DSM Nobel to pay a penalty of £1,400,000

(e) EEH to pay a penalty of £17,568,800

(f) JFHG to pay a penalty of £5,600,000

(g) KKH to pay a penalty of £16,000,000

[698] 2021 Penalty Guidance, paragraph 2,37.

(h) McGee / MFCOIL to pay a penalty of £3,766,278

(i) SPC to pay a penalty of £8,256,264

(j) Squibb to pay a penalty of £2,000,000

6.162 The penalties will become due to the CMA on 24 May 2023[699] and must be paid to the CMA by close of banking business on that date.[700]

Anne Fletcher (Chair), Stephen Rose and Geert Goeteyn

the Case Decision Group

for and on behalf of the Competition and Markets Authority

23 March 2023

[699] The next working day two calendar months from the expected date of receipt of the Decision.

[700] Details on how to pay are set out in the letter accompanying this Decision.

Appendix A: Key abbreviations and defined terms

Term	Definition
2018 Penalty Guidance	*Guidance as to the appropriate amount of a Penalty* (CMA73, 18 April 2018)
2021 Penalty Guidance	*Guidance as to the appropriate amount of a Penalty* (CMA73, 16 December 2021)
Asbestos Removal Services	The services described in paragraph 2.2(b)
BMG	Brown and Mason Group Limited
Brown and Mason	Brown and Mason Limited
Carey	Carey Group Limited
Carey Plant Hire	P.J. Carey Plant Hire (Oval) Limited
Cantillon	Cantillon Limited
CH	Cantillon Holdings Limited
CCH	Together, Cantillon and its parent company Cantillon Holdings Limited
Clifford Devlin	Clifford Devlin Limited
Chapter I prohibition	The prohibition imposed by section 2(1) of the Competition Act 1998
CMA	Competition and Markets Authority
Competition Act	Competition Act 1998
Decision	This infringement decision
Demolition Services	The services described in paragraph 2.2(a)
DSM Nobel	Together, DSM Demolition Limited, and its parent companies, DSM SFG Group Holdings Limited, Nobel Midco Limited and Nobel Topco Limited.
DSGH	DSM SFG Group Holdings Limited
DSM	DSM Demolition Limited

EEH	Together, Erith Contractors Limited and its parent company, Erith Holdings Limited
Erith	Erith Contractors Limited
EH	Erith Holdings Limited
Infringements	Infringements 1 to 19, described in chapter 4
John F Hunt	John F Hunt Limited
JFH Group	John F Hunt Group Limited
JFHG	Together, John F Hunt Limited and its parent company John F Hunt Group Limited
Keltbray	Keltbray Limited
KH	Keltbray Holdings Limited
KKH	Together, Keltbray Limited, and its economic successor, Keltbray Holdings Limited
McGee	McGee Group (Holdings) Limited
MFCOIL	MFCOIL Limited
McGee / MFCOIL	Together, McGee Group (Holdings) Limited and its parent, MFCOIL
OFT	The CMA's predecessor organisation, the Office of Fair Trading
Party / Parties	The persons listed in paragraph 1.1 (each a '*Party*', together the '*Parties*')
PQS	Professional Quantity Surveyor
Relevant Periods	The relevant periods for each of the Infringements, as defined in chapter 4
Settling Parties	Together, BMG, CCH, Clifford Devlin, DSM Nobel, JFHG, KKH, McGee/MFCOIL and SPC
Squibb	Squibb Group Limited
Scudder	T. E. Scudder Limited
SPC	Together, T. E. Scudder Limited, P.J. Carey Plant Hire (Oval) Limited and Carey Group Limited

Appendix B: Summary table of the Infringements

Infringement	Parties,[701] Relevant Periods and form of infringement	Services
1: Bishop Centre	Erith and Scudder - Relevant Period 1: at least 17 January 2013 - cover bidding and compensation payment arrangement	Demolition Services Asbestos Removal Services
2: MPS Training & Operations Centre, Hendon	Cantillon and Scudder - Relevant Period 2: between at least 14 June 2013 and 20 June 2013 - cover bidding and compensation payment arrangement	Demolition Services Asbestos Removal Services
3: Southbank, London	McGee and Brown and Mason - Relevant Period 3(a): between at least 3 June 2013 and 8 July 2013 - cover bidding and compensation payment arrangement McGee and Erith - Relevant Period 3(b): between at least 3 June 2013 and 8 July 2013 - cover bidding and compensation payment arrangement	Demolition Services
4: Bow Street (1)	Scudder and Keltbray - Relevant Period 4(a): between at least 16 April 2014 and 17 April 2014 - cover bidding arrangement Scudder and Cantillon - Relevant Period 4(b): between at least 24 April 2014 and 25 April 2014 - cover bidding arrangement	Demolition Services Asbestos Removal Services
5: Station Hill, Reading	Scudder and Erith - Relevant Period 5(a): between at least 28 May 2014 and 11 June 2014 - cover bidding and compensation payment arrangement Scudder and Keltbray - Relevant Period 5(b): between at least 29 May 2014 and 9 June 2014 - cover bidding arrangement Scudder and Cantillon - Relevant Period 5(c): between at least 30 May 2014 and 9 June 2014 - cover bidding and compensation payment arrangement Scudder and McGee - Relevant Period 5(d): between at least 29 May 2014 and 30 May 2014 - cover bidding and compensation payment arrangement	Demolition Services
6: Lots Road Power Station	Scudder and Cantillon - Relevant Period 6(a): between at least 4 August 2014 and 1 September 2014 - cover bidding and compensation payment arrangement Scudder and Brown and Mason - Relevant Period 6(b): between at least 28 July 2014 and 28 August 2014 - compensation payment arrangement (without cover bidding)	Demolition Services

[701] That is, which were directly involved in the Infringement.

7: Duke Street, London	Scudder and McGee - Relevant Period 7(a): between at least 3 July 2014 and 9 July 2014 - cover bidding arrangement Scudder and Keltbray - Relevant Period 7(b): between at least 8 July 2014 and 9 July 2014 - cover bidding arrangement	Demolition Services
8: Lombard House, Redhill	Scudder and Erith - Relevant Period 8(a): between at least 15 July 2014 and 27 August 2014 - cover bidding arrangement Scudder and Keltbray - Relevant Period 8(b): between at least 20 August 2014 and 22 August 2014 - cover bidding arrangement Scudder and Clifford Devlin - Relevant Period 8(c): on at least 21 August 2014 - cover bidding arrangement	Demolition Services
9: 18 Blackfriars Road	Squibb and Scudder - Relevant Period 9: between at least 26 November 2014 and 1 December 2014 - cover bidding arrangement	Demolition Services
10: Bow Street (2)	Scudder and Keltbray - Relevant Period 10: between at least 26 November 2014 and 28 November 2014 - cover bidding arrangement	Demolition Services
11: Underground car park, High Wycombe	Clifford Devlin and Scudder - Relevant Period 11(a): between at least 2 October 2015 and 19 November 2015 - cover bidding arrangement Clifford Devlin and Erith - Relevant Period 11(b): 2 October 2015 to 19 November 2015 - cover bidding arrangement	Demolition Services
12: 33 Grosvenor Place	Erith and Keltbray - Relevant Period 12(a): between at least 11 November 2016 and 16 November 2016 - cover bidding arrangement Erith and Cantillon - Relevant Period 12(b): between at least 11 November 2016 and 14 November 2016 - cover bidding arrangement Erith and McGee - Relevant Period 12(c): between at least 9 November and 9 December 2016 - cover bidding arrangement	Demolition Services Asbestos Removal Services
13: Wellington House	Keltbray and Cantillon - Relevant Period 13(a): between at least 28 October 2016 and 7 December 2016 - cover bidding arrangement Keltbray and McGee - Relevant Period 13(b): between at least 9 November 2016 and 8 December 2016 - cover bidding arrangement	Demolition Services Asbestos Removal Services

14: Ilona Rose House	Cantillon and Keltbray - Relevant Period 14(a): between at least 16 November 2016 and 18 November 2016 - cover bidding arrangement Cantillon and John F Hunt - Relevant Period 14(b): between at least 18 November 2016 and 6 December 2016 - cover bidding arrangement Cantillon and Erith - Relevant Period 14(c): between at least 18 November 2016 and 1 December 2016 - cover bidding arrangement	Demolition Services
15: 44 Lincoln's Inn Field	McGee and Cantillon - Relevant Period 15(a): between at least 19 January 2017 and 28 April 2017 - cover bidding arrangement McGee and John F Hunt - Relevant Period 15(b): between at least 20 January 2017 and 1 February 2017 - cover bidding arrangement	Demolition Services Asbestos Removal Services
16: 57 Whitehall Old War Office	McGee and John F Hunt - Relevant Period 16: between at least 4 May 2017 and 15 June 2017 - cover bidding arrangement	Demolition Services
17: 135 Bishopsgate	Cantillon and Erith - Relevant Period 17(a): between at least 7 June 2017 and 19 July 2017 - cover bidding arrangement Cantillon and Scudder - Relevant Period 17(b): between at least 7 June 2017 and 19 July 2017 - cover bidding arrangement	Demolition Services
18: Civic Centre Scheme, Coventry	DSM and Scudder - Relevant Period 18(a): between at least 8 January 2018 and 22 January 2018 - cover bidding arrangement DSM and Squibb - Relevant Period 18(b): between at least 19 January 2018 and 30 January 2018 - cover bidding arrangement	Demolition Services
19: Tinbergen Building, Oxford	Erith and McGee - Relevant Period 19: between at least 6 June 2018 and 20 June 2018 - cover bidding arrangement	Demolition Services Asbestos Removal Services