INTRODUCTION

1. This document sets out the response of the Competition Appeal Tribunal (the “CAT”) to the Sub-Committee’s call for evidence in relation to its inquiry concerning Brexit and competition law and policy.

2. The CAT is a specialist tribunal established by statute with UK-wide jurisdiction. It is the exclusive forum for challenges – whether by appeal or judicial review – to decisions of the competition authority (the Competition and Markets Authority or “CMA”) and sectoral regulators (Ofcom, Ofgem, etc) in the enforcement of competition law. It is also in effect a court of first instance hearing private claims for damages or an injunction concerning infringement of competition law. As regards such ‘private enforcement’, the CAT’s jurisdiction is largely parallel to that of the ordinary civil courts, but the CAT has the exclusive jurisdiction to hear a new form of “collective proceedings” which involves bringing together such claims in a class action, introduced by the Consumer Rights Act 2015. Appeals from decisions of the CAT go to the Court of Appeal, or the Court of Session in a Scottish case, or the Court of Appeal of Northern Ireland in a Northern Irish case. Further details about the CAT and its composition are given in Annex A to this Response.

3. We appreciate that the Sub-Committee is looking at the overall approach to competition policy in the UK, whereas it is not appropriate for the CAT to comment on pure matters of policy. This Response is limited to highlighting aspects of Brexit that may have a direct impact on the CAT and the cases coming before it. However, although some of the points made in this Response are matters of detail, those details can have significant impact on the clarity and effectiveness of the competition regime in the UK, as regards both private and public enforcement.

4. We use the expression “antitrust law” to refer to the prohibitions on anti-competitive agreements, arrangements and concerted practices and on the abuse of a dominant position set out in Articles 101 and 102 of the Treaty on the Functioning of the European Union (“TFEU”) and the Chapter I and Chapter II prohibitions under the Competition Act 1998 (“CA”); and the expression “competition law” as comprising antitrust law but including also merger control. For convenience, we shall refer to Articles 101 and 102 TFEU together as “EU antitrust law”, and similarly to the Chapter I and II prohibitions as “UK antitrust law”. The matters addressed are:

   (a) a likely increase in contested merger decisions coming before the CAT;

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1 However, by reason of the parallel jurisdiction of the CAT with the ordinary courts in private cases, some of the observations inevitably relate also to cases that may be brought in the courts.
(b) a likely increase, over time, in the number and complexity of antitrust law infringement decisions by the CMA leading to appeals against those decisions to the CAT;
(c) the need for clarity in the transitional arrangements concerning the respective jurisdictions of the CMA and the European Commission (the “Commission”) concerning infringements of EU antitrust law;
(d) as regards civil actions, the implications of retaining under the European Union (Withdrawal) Bill (the “Repeal Bill”) the EU antitrust provisions in UK law;
(e) the need for clarity as regards the interpretation of EU antitrust law;
(f) the need for clarity as regards the application and interpretation of UK antitrust law; and
(g) ensuring that the CAT’s jurisdiction with regard to civil claims for damages remains effective;
(h) ensuring that the UK’s jurisdiction with regard to cross-border claims remains effective.

A. MERGERS

5. The most immediate effect of Brexit on the work of the CAT is likely to come in the area of merger control.

6. Currently, by reason of the EU Merger Regulation, all mergers “with a Community dimension” are subject to exclusive review and control by the Commission, from whose decisions there is a right of appeal to the EU General Court in Luxembourg. That effectively embraces all the larger, international and cross-country mergers. Two recent examples are the bid by the London Stock Exchange to acquire Deutsche Börse; and the merger between the US-based companies DuPont and Dow. When the UK is no longer subject to this regime, the current “one-stop shop” approach to the scrutiny of such mergers will cease. Thereafter, the European Commission will not be able to examine the effects of a merger (otherwise meeting the Merger Regulation thresholds) on UK economic markets and impose any remedies to counteract any adverse effects on competition in the UK. The effects of such transactions within the UK will therefore have to be considered by the CMA, in parallel with any investigation that may be carried out in relation to the EU by the Commission.

7. This obviously raises the immediate prospect of a significantly increased workload for the CMA and an issue as to the additional resources that may be necessary to absorb it. But it also means that, alongside any Commission decision subject to challenge in the EU Courts, there will be a domestic, UK decision subject to challenge in the CAT.

2 Regulation (EC) No. 139/2004 on the control of concentrations between undertakings.
3 Defined in terms of both aggregate world-wide turnover and aggregate EU-wide turnover exceeding specified thresholds, unless both parties achieve more than two thirds of their turnover in the same EU Member State.
8. Although challenges to Commission decisions in merger cases have been relatively infrequent, we do not think that is a guide to the likely rate of challenge to future CMA decision on such mergers. Since mergers are usually time-sensitive transactions, a significant factor militating against such appeals in the EU courts is the time which proceedings there take. By contrast, the CAT is considerably quicker in determining a challenge in a merger case. Moreover, mergers falling into this category are likely to be very large, where a great deal is at stake for the participants and the industry concerned, and the costs of legal proceedings are not a major consideration. In addition, a challenge to the UK dimension of a European-wide merger may, if successful, act as a “veto” on the whole transaction, or at the very least cause enough of a delay to cause it to founder.

9. Accordingly, it is likely that the CAT’s workload with regard to the judicial review of merger decisions will significantly increase.

B. INFRINGEMENT DECISIONS

10. There will inevitably come a point when there are European-wide cartels subject to investigation by the Commission which concern a period after the UK has left the EU, and similarly there will be cases concerning an abuse of dominance where the impugned conduct relates to several European countries and concerns a period post-Brexit. Any Commission decision in such a case will not address effects on the UK market. That will affect not just the level of penalty (since UK turnover will no longer be included in “relevant turnover” for the purpose of fixing the fine) but the scope of the finding of infringement, since both Articles 101 and 102 apply only where there is an effect on trade between Member States (of which the UK will no longer be one).⁴

11. It will therefore fall to the CMA to investigate the UK dimension of the cartel or the abusive conduct. For the CMA to carry out an independent investigation of a major, international cartel could be a very significant task, even if the CMA were able to rely to some extent on evidence gathered in the Commission investigation. Similarly, we understand that the CMA has indicated that if a major abuse case, such as Google, were to arise in this post-Brexit scenario, the CMA considers that it would be appropriate to take its own decision concerning the effect on the UK. Such cases, involving very large, multi-national companies and complex questions of assessment, are also very demanding for a competition authority.

12. Commission decisions, in the great majority of cases of this nature, lead to appeals. If the CMA is likely in such cases to take separate infringement decisions and impose its own fines, this would no doubt similarly lead to appeals to the CAT. Cartel cases almost by definition involve a number of parties; they often cover a long period of time; and they are very fact intensive. Abuse of dominance cases can raise difficult questions of law and economic evaluation. As the experience of the EU General Court has shown, such appeals are likely to make heavy demands on the CAT.

⁴ The text of Articles 101 and 102 TFEU is in Annex B to this Response.
C. TRANSITIONAL ARRANGEMENTS

13. As noted above, many of the larger cartels and some abuses of a dominant position cover trade in or with the UK. However, antitrust cases often take considerable time to investigate and reach the point at which the investigating authority can make a decision and, where appropriate, impose penalties. That is particularly the case for cartels, which by their nature are usually secret and may take many years to come to light. But it is also true, to a lesser extent, for conduct found to constitute abuse of a dominant position. Therefore, for several years following the UK’s exit from the EU, the Commission is likely to take decisions (covering the European Economic Area) regarding antitrust infringements that it was already investigating prior to Brexit. Furthermore, post-Brexit, the Commission is likely to discover, and then investigate and penalise cartels that cover a period pre-Brexit, or a period that spans Brexit.

14. It is therefore important that the transitional issues regarding jurisdiction as between the Commission and CMA applicable to such cases are determined in the agreement reached between the UK and the EU. Lack of clarity regarding jurisdiction will give rise to complex issues, which may then fall to be determined by the CAT on any appeal from a CMA decision and which could affect civil damages claims, although these issues are essentially questions of policy. If jurisdiction is divided, that is likely to give rise to disputes as to which actions or effects are properly attributable to the period before and the period after the change in jurisdiction. We would urge that the transitional arrangements should be as clearly expressed as possible and have regard to the ease of practical application, to avoid storing up trouble for the future.

D. RETENTION OF THE EU ANTITRUST PROVISIONS IN UK LAW

15. Under clause 4 of the Repeal Bill, as presented to Parliament, the rights available in domestic law by virtue of section 2(1) of the European Communities Act 1972 will continue to be available in domestic law after Brexit. The illustrative list in the Explanatory Notes to the Bill (at para 89) sets out the Government’s view that this therefore includes the antitrust provisions in Articles 101 and 102 TFEU, which are directly enforceable.

16. As noted above, the UK has its own, domestic antitrust law which, through the Chapter I and Chapter II prohibitions, largely mirrors Articles 101 and 102, save that it requires an effect on trade in any part of the UK. This will, of course, be retained. Full policy consideration therefore needs to be given as to whether contravention of Articles 101 or 102 should continue to be an infringement of UK law. In such cases, post-Brexit, since both those articles apply only where the arrangement or practice has an effect on trade between Member States of the EU, which post-Brexit will exclude the UK, there would be a right of action in UK law for an anti-competitive arrangement or abusive conduct producing effects wholly outside the UK. If this approach were to be

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5 But see paras 30-31 below.
maintained in the resulting Act, the apparent consequence would be that parties could bring private actions in the Tribunal and UK courts for damages for breach of Articles 101 or 102 even where there is no parallel breach of the Chapter I or Chapter II prohibition. Moreover, in applying those provisions, pursuant to clause 6 of the Bill the UK courts would no longer be bound by post-Brexit decisions of European Courts. Necessarily, this situation therefore gives rise to a potential for forum shopping and tactical litigation which cannot be in the public interest.

17. We should make clear that this point does not relate to the continuing application of Articles 101 and 102 to facts arising pre-Brexit (i.e. where the cause of action arose pre-Brexit, even if the case is started afterwards). On the contrary, it is clearly important that EU antitrust law should continue to apply in cases concerning events while the UK was a member of the EU: i.e. that there is no retrospective removal of the direct effect of those provisions. We discuss those cases further in the next section.

E. CLARITY AS REGARDS EU ANTITRUST LAW

18. The issues raised under this heading relate to private cases, in particular claims for damages by those who suffer loss from infringement of antitrust law.

19. As the Sub-Committee will be aware, over the past decade there has been a very significant increase in the bringing of such claims, as victims become more aware of the potential for compensation and new forms of procedure are introduced to facilitate such claims: e.g. in the UK, the collective proceedings regime to help smaller businesses and consumers bring claims brought in by the Consumer Rights Act 2015. Some of these private cases are “follow-on” claims, where the competition authority has found an infringement and claimants asserting that they were victims of that infringement seek damages for their resulting loss. In such cases, the claimants do not have the challenging task of proving an infringement of competition law: their claims are confined to establishing causation and an estimation of loss (although those matters nonetheless can give rise to difficult issues). However, there have also been a number of significant “stand-alone” claims in the UK, where the claimant seeks an injunction and/or damages concerning an alleged violation of competition law. (It is well recognised that the CMA does not have either the obligation or the resources to investigate and pursue every competition law complaint.)

20. It is necessary to distinguish between (a) cases where the facts giving rise to the infringement (or alleged infringement) occurred pre-Brexit, albeit that the case may start or be heard in court post-Brexit; and (b) cases where the facts giving rise to the infringement (or alleged infringement) occurred post-Brexit. We refer to (a) as “transitional claims”, and (b) as “post-Brexit claims”.

(a) Transitional claims
21. As noted above, we expect that it is not intended to introduce a retrospective amendment of the substantive law. As part of this, two issues need to be clarified: (i) the significance of a Commission decision; and (ii) the interpretation of EU antitrust law.

22. As to Commission decisions, under section 58A CA the UK courts and the Tribunal are bound by a Commission decision once it becomes final (i.e. appeal rights are exhausted). That is the foundation of a follow-on claim. If this provision is not retained for transitional cases, then the defendant to a claim for compensation would be able to argue that the Commission decision was wrong, which would hugely increase the burden on those seeking compensation and doubtless deter many from doing so. As to EU antitrust law, the UK Courts and the Tribunal are, of course, presently bound by principles laid down or decisions made by the European Courts. It will be important to address the question whether this should continue to apply to transitional cases, having regard to the position applicable to Commission decisions.

(b) Post-Brexit claims

23. Even if Articles 101 and 102 are no longer part of UK law on an ongoing basis (see section D above), we consider that claimants might nonetheless seek to bring claims based on those provisions in the UK. But in that event, EU antitrust law would be foreign law. It is understood that some lawyers are therefore contemplating a cause of action before the UK courts based on breach of foreign law. Moreover, since all the EU Member States now have domestic antitrust law modelled on EU antitrust law, a claim in the UK may allege breach of such a foreign national law (e.g. French or Swedish antitrust law).

24. We make no comment on whether such a claim would be well-founded in the UK as a matter of law. That may well be a matter of argument in any individual case. But if it is, then the UK courts would interpret the relevant EU antitrust law in the same manner as it would be interpreted in the courts of EU Member States. Just as a UK court in a case concerning French or Swedish antitrust law would determine an issue of interpretation of that law by applying a relevant decision of the French or Swedish Supreme Court, so in a case concerning EU antitrust law the court would determine an issue of interpretation of that law by applying a relevant decision of the EU Court. Whether that decision of the EU Court was given before or after Brexit should be irrelevant in these circumstances. Of course UK courts would not have the power to refer to the CJEU any points requiring interpretation of the TFEU.

F. CLARITY AS REGARDS UK ANTITRUST LAW

25. Once EU antitrust law ceases to apply directly, the Chapter I and Chapter II prohibitions will be the central means of protection against, and remedies

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26. We highlight two issues which merit attention: (a) the scope of the Chapter I prohibition; and (b) the interpretation of the Chapter I and Chapter II prohibitions.

(a) **Scope of the Chapter I prohibition**

27. The Chapter I prohibition, set out under section 2 CA, mirrors Article 101 in most respects, save that where Article 101 refers to an effect on trade between Member States, the Chapter I prohibition refers to an effect on trade within the UK; and where Article 101 refers to “the prevention, restriction or distortion of competition within the internal market”, the Chapter I prohibition refers to “the prevention, restriction or distortion of competition within the United Kingdom.”

28. However, section 2(3) provides that the Chapter I prohibition “applies only if the agreement, decision or practice is, or is intended to be, implemented in the United Kingdom” [emphasis added].

29. There is no corresponding provision in the TFEU as regards Article 101. Moreover, in its recent *Intel* judgment, the Court of Justice rejected the argument that EU antitrust law would only apply if the multilateral or unilateral conduct was implemented in the EU. The Court, in a judgment delivered by the Grand Chamber, upheld, as justified under public international law, the application of a “qualified effects test” as a basis of jurisdiction to apply EU antitrust law: i.e. when it is foreseeable that the multilateral or unilateral conduct in question will have an immediate and substantial effect in the EU. As the Court explained, this has the objective of preventing conduct which, while not adopted in the EU, has anticompetitive effects liable to have an impact on the EU market.

30. Analogous considerations obviously apply as regards the UK market. Accordingly, if UK antitrust law is to provide protection which is of equivalent effectiveness, consideration should be given to the deletion or amendment of section 2(3) CA.

31. This issue does not arise as regards the Chapter II prohibition since there is no equivalent provision in section 18 CA.

(b) **Interpretation of the Chapter I and Chapter II prohibitions**

32. At present, interpretation is governed by section 60 CA, which sets out the so-called consistency principle, whereby the UK court or Tribunal must determine any questions in relation to competition regarding the Chapter I and II prohibitions so as to ensure that there is no inconsistency with the

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7 Case C-413/14P *Intel Corp. v Commission* EU:C:2017:632, at paras 40-46. The Court upheld the judgment of the General Court to that effect.
treatment of corresponding questions of EU law, and in particular any principles applied and decision reached by the EU Courts. Section 60(3) provides that the UK court or Tribunal must in addition “have regard” to any relevant decision or statement of the Commission. The text of section 60 is in Annex B to this Response.

33. The continuation, or otherwise, of the “consistency principle” will need to be resolved. It will be of critical importance to the interpretation of UK antitrust law that there is as much clarity as possible.

G. PRESERVING THE CAT’S JURISDICTION FOR PRIVATE CLAIMS

34. The CAT is a statutory tribunal. Its jurisdiction is therefore entirely determined by the governing statutes: unlike the High Court, it has no inherent jurisdiction.

35. For private claims, the governing provision is section 47A CA. This provides that a person may bring before the Tribunal a claim for damages or other sum of money, which it could bring in civil proceedings in the courts in any part of the UK, in respect of an infringement or an alleged infringement of the Chapter I prohibition, the Chapter II prohibition, the prohibition in Article 101 and the prohibition in Article 102. The text of section 47A is in Annex B to this Response.

It may be that the express reference to EU antitrust law in this section is repealed. However, as we have explained above, claimants may wish to continue to bring claims in the UK post-Brexit relying on EU antitrust law or the domestic competition law of an EU Member State as foreign law. In order to ensure that the specialist expertise of the CAT can continue to be deployed effectively in the judicial determination of civil claims involving cross-border infringements of competition law, and assuming such claims are good in law, it will be necessary to ensure the CAT has the requisite jurisdiction pursuant to an amended section 47A.

H. PRESERVING THE UK’S JURISDICTION FOR CROSS-BORDER CLAIMS

36. Finally, as mentioned above, there has been a large increase in private antitrust damages claims in recent years. In particular, the major cartel decisions by the Commission tend to provoke claims for compensation, and sometimes there are multiple claims arising from the same infringement. Usually the claimants have a choice as to where to bring their claim, when the participants in the cartel come from several EU Member States and the domicile of any one defendant may be sufficient to found jurisdiction against all of them. To date, the UK, along with Germany and the Netherlands, has proved to be one of the favoured jurisdictions for such claims. In addition to foreign claimants choosing to bring their claims in the UK, a UK business which suffered loss from an antitrust infringement by a foreign defendant

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8 And an injunction, save in Scottish proceedings.
may prefer to seek compensation in the UK court or Tribunal rather than having to sue abroad.

37. The attractiveness of the UK as a venue for such cross-border antitrust claims is dependent on its jurisdiction over the foreign defendant being recognised and any resulting damages judgment being enforced in the defendant’s home state. At present, as between EU Member States, that is achieved through the regime established by the Brussels Regulation.\(^9\)

38. Accordingly, retaining the position of the UK courts and the Tribunal with regard to such claims requires the UK to become part of a similar framework for recognition and enforcement of civil and commercial judgments after Brexit. This is of course an issue of general importance to the position of the UK (and specifically, London) as a centre for international litigation, with implications well beyond antitrust damages claims.

2 November 2017

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\(^9\) Regulation (EU) No. 1215/2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
ANNEX A

THE COMPETITION APPEAL TRIBUNAL: BACKGROUND INFORMATION

Introduction
The Enterprise Act 2002 provided for the establishment of the Competition Appeal Tribunal (CAT). The jurisdiction of the CAT extends to the whole of the United Kingdom.

Principal functions of the CAT
The CAT hears appeals against: decisions taken under the Competition Act 1998 (1998 Act) and Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) by the Competition and Markets Authority (CMA) and by designated sector regulators with concurrent powers;¹ certain decisions of the Office of Communications (OFCOM) regarding the communications and broadcasting sectors under the Communications Act 2003 (2003 Act); and other legislation related to those sectors and decisions of the CMA or the Secretary of State for Business, Energy & Industrial Strategy (BEIS) on merger cases and market investigations under the Enterprise Act 2002 (2002 Act).

Further powers have been given to the CAT to hear appeals under the Payment Services Regulations 2009. Under the Financial Services (Banking Reform) Act 2013 and the Payment Card Interchange Fee Regulations 2015, the CAT has jurisdiction to hear appeals from some types of enforcement and penalty decisions of the Payment Systems Regulator. Under the Energy Act 2010, the CAT is able to hear appeals in relation to decisions taken by the Gas and Electricity Markets Authority (GEMA) in respect of the application of a market power licence condition to particular types of exploitative behaviour in electricity markets. The CAT may also hear appeals in respect of decisions taken by OFCOM pursuant to the Mobile Roaming (European Communities) Regulations 2007 and the Authorisation of Frequency Use for the Provision of Mobile Satellite Services (European Union) Regulations 2010. The Postal Services Act 2011 provides for an appeal to the CAT in respect of certain decisions taken by OFCOM in relation to the regulation of postal services.

The Civil Aviation Act 2012 affords a right of appeal to the CAT in respect of various decisions and determinations of the Civil Aviation Authority (CAA) including market power determinations, the imposition, modification and revocation of certain enforcement orders, the revocation of licences and the imposition of penalties.

Under the Consumer Rights Act 2015, the CAT can hear any claim for damages in respect of an infringement whether or not there is a prior decision of a competition authority establishing such an infringement (previously the CAT’s jurisdiction was limited to “follow-on” claims, i.e. claims that follow-on from a decision by a national competition authority finding an infringement of UK competition law or by the European Commission in respect of an infringement of Articles 101 or 102 of the TFEU). Furthermore, the CAT can hear collective actions for damages on both an “opt-in” and “opt-out” basis and also (except in Scottish cases) has power to grant injunctive relief in order to prevent or curtail infringements of competition law.
Deciding cases

Each case is heard and decided by a cross disciplinary tribunal consisting of the President (currently the Honourable Mr Justice Roth, a judge of the Chancery Division of the High Court) or a Chairman (either a High Court judge or a senior lawyer), and two other members (who are experts in competition law and/or related areas such as economics, accountancy, and business).

The decisions of the CAT may be appealed on a point of law or as to the amount of any penalty to the Court of Appeal in England and Wales, the Court of Session in Scotland or the Court of Appeal in Northern Ireland.

Membership of the CAT

President
The Hon. Mr Justice Roth

Panel of Chairmen
The Hon. Mr Justice Mann
The Hon. Mr Justice Morgan
The Hon. Mr Justice Barling
The Hon. Mr Justice McCloskey
The Hon. Lord Doherty
The Hon. Mr Justice Hildyard
The Hon. Mr Justice Birss
The Hon. Mrs Justice Rose
The Hon. Mr Justice Nugee
The Hon. Mr Justice Green
The Hon. Mr Justice Snowden
The Hon. Mr Justice Henry Carr
The Hon. Mr Justice Morris
The Hon. Mr Justice Marcus Smith
Heriot Currie QC
Peter Freeman CBE, QC (Hon)
Andrew Lenon QC
Hodge Malek QC

Ordinary Members
William Allan
Caroline Anderson
Peter Anderson
Kirstin Baker CBE
Professor John Beath OBE
Dr Catherine Bell CB
Dr William Bishop
Professor John Cubbin
Margot Daly
Eamonn Doran
Dr Clive Elphick
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Dermot Glynn
Simon Holmes
Brian Landers
Paul Lomas
Professor Colin Mayer CBE
Sir Iain McMillan CBE
Professor Anthony Neuberger
Clare Potter
Professor Gavin Reid
Dr Joanne Stuart OBE
Professor David Ulph CBE
Anna Walker CB
Professor Michael Waterson
Professor Pauline Weetman
Professor Stephen Wilks

Registrar
Charles Dhanowa OBE, QC (Hon)
ANNEX B


TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

Article 101

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:
   (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
   (b) limit or control production, markets, technical development, or investment;
   (c) share markets or sources of supply;
   (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
   (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
   - any agreement or category of agreements between undertakings,
   - any decision or category of decisions by associations of undertakings,
   - any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
     (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
     (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 102

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:
ANNEX B


(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
(b) limiting production, markets or technical development to the prejudice of consumers;
(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
ANNEX B


COMPETITION ACT 1998

47A Proceedings before the Tribunal: claims for damages etc

(1) A person may make a claim to which this section applies in proceedings before the Tribunal, subject to the provisions of this Act and Tribunal rules.

(2) This section applies to a claim of a kind specified in subsection (3) which a person who has suffered loss or damage may make in civil proceedings brought in any part of the United Kingdom in respect of an infringement decision or an alleged infringement of—
   (a) the Chapter I prohibition,
   (b) the Chapter II prohibition,
   (c) the prohibition in Article 101(1), or
   (d) the prohibition in Article 102.

(3) The claims are—
   (a) a claim for damages;
   (b) any other claim for a sum of money;
   (c) in proceedings in England and Wales or Northern Ireland, a claim for an injunction.

(4) For the purpose of identifying claims which may be made in civil proceedings, any limitation rules or rules relating to prescription that would apply in such proceedings are to be disregarded.

(5) The right to make a claim in proceedings under this section does not affect the right to bring any other proceedings in respect of the claim.

(6) In this Part (except in section 49C) “infringement decision” means—
   (a) a decision of the CMA that the Chapter I prohibition, the Chapter II prohibition, the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed,
   (b) a decision of the Tribunal on an appeal from a decision of the CMA that the Chapter I prohibition, the Chapter II prohibition, the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed, or
   (c) a decision of the Commission that the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed.

60 Principles to be applied in determining questions

(1) The purpose of this section is to ensure that so far as is possible (having regard to any relevant differences between the provisions concerned), questions arising under this Part in relation to competition within the United Kingdom are dealt with in a manner which is consistent with the treatment of corresponding questions arising in [EU] law in relation to competition within the [European Union].
(2) At any time when the court determines a question arising under this Part, it must act (so far as is compatible with the provisions of this Part and whether or not it would otherwise be required to do so) with a view to securing that there is no inconsistency between—
   (a) the principles applied, and decision reached, by the court in determining that question; and
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(b) the principles laid down by the Treaty and the European Court, and any relevant decision of that Court, as applicable at that time in determining any corresponding question arising in [EU] law.

(3) The court must, in addition, have regard to any relevant decision or statement of the Commission.

(4) Subsections (2) and (3) also apply to—
   (a) the [CMA]; and
   (b) any person acting on behalf of the [CMA], in connection with any matter arising under this Part.

(5) In subsections (2) and (3), “court” means any court or tribunal.

(6) In subsections (2)(b) and (3), “decision” includes a decision as to—
   (a) the interpretation of any provision of [EU] law;
   (b) the civil liability of an undertaking for harm caused by its infringement of [EU] law.