

Competition Act 1998

Decision of the Office of Fair Trading

CA98/03/2013

Collusive tendering in the supply and installation of certain access control and alarm systems to retirement properties

6 December 2013

(Case CE/9248-10)

Note: Confidential information has been redacted from this published version of the Decision. Redactions are indicated in square brackets, for example: '[C]' or [...]. The names of individuals in the original version of this Decision have been removed and replaced by a general description of roles (for example: '[a CCSL administrator]'

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1. INTRODUCTION

A. Executive summary

1.1 By this decision (the 'Decision'), the Office of Fair Trading (the 'OFT') has concluded that the undertakings listed at paragraph 1.2 below (each a 'Party', together the 'Parties') have infringed the prohibition imposed by section 2(1) (the 'Chapter I prohibition') of the Competition Act 1998 (the 'Act') by participating in one or more agreements¹ and/or concerted practices which each had as its object the prevention, restriction or distortion of competition in the supply and installation of warden call and door entry systems (whether combined or standalone),² and fire detection and protection systems to Peverel Management Services Limited ('PMSL') retirement properties in the UK (each an 'Infringement', together the 'Infringements').

I. The Parties

1.2 This Decision is hereby addressed to each Party to which the OFT has attributed liability in respect of the agreements and/or concerted practices which the OFT has concluded constitute an infringement of the Chapter I prohibition and for the resulting financial penalty in each case where the OFT has decided to impose a financial penalty, namely:

- Cirrus Communication Systems Limited ('CCSL'), Careline UK Monitoring Limited ('CML'), and Peverel Building Technologies Limited ('PBTL') (together referred to as 'Cirrus')³
- Peter O'Rourke Electrical Limited ('O'Rourke')
- Owens Installations Limited ('Owens')
- Glyn Jackson Communications Limited ('Jackson')

¹ For the purposes of this Decision, all references to an agreement should be read as also meaning a concerted practice unless otherwise stated.

² These occasionally included a CCTV element integral to the relevant system.

³ While the legal entity that was directly engaged in the relevant infringements was CCSL, the OFT refers throughout this Decision to the group of legal entities to whom it is attributing liability as 'Cirrus'. For the purposes of Infringement 1, 'Cirrus' is a reference to CCSL and CML. For the purposes of Infringements 2 and 3, Cirrus is a reference to CCSL, CML and PBTL.

1.3 A description of each of the Parties to which liability is attributed for the Infringements and the resulting financial penalties in each case is set out at section 2.A below.

II. Summary of the Infringements

1.4 This case concerns anti-competitive arrangements for the supply and installation of warden call and door entry systems (whether combined or standalone),⁴ and fire detection and protection systems to PMSL retirement properties in the UK.

1.5 By this Decision, the OFT finds that Cirrus and each of O'Rourke, Owens and Jackson have infringed the Chapter I prohibition by participating in one or more agreements and/or concerted practices which each had as its object the prevention, restriction or distortion of competition in the supply and installation of warden call and door entry systems, and fire detection and protection systems to PMSL retirement properties in the UK.

1.6 The OFT has found that the Infringements comprised of three separate bilateral collusive tendering arrangements between Cirrus and each of O'Rourke, Owens and Jackson with a total of 65 tenders⁵ (the 'Tenders'), with an aggregate value of approximately £1.4 million⁶, being the subject of collusion.

1.7 Each of the Infringements spanned different periods between November 2005 and November 2009. These periods are:

⁴ These occasionally included a CCTV element integral to the relevant system.

⁵ In respect of the few occasions where it appears that PMSL issued 'Request to Tender' documentation in respect of multiple systems for a particular property, where the documentation was based on a 'joint' Form of Tender for the multiple systems, the OFT has treated that as a single contract (for example, Hanbury Court); and where the documentation involves separate Forms of Tender for the multiple systems, the OFT has treated that as separate contracts (for example, Chapel Lodge).

⁶ The OFT has calculated this figure by adding up the bid that Cirrus submitted for each of the 65 Tenders that are the subject of this Decision. While there are some instances where the eventual outcome of the tender process is unknown or, in a small number of instances, where the contract was not awarded to Cirrus, the OFT considers that Cirrus' bid is an appropriate proxy for the value of each Tender.

- i. For the Infringement involving **Cirrus** and **O'Rourke** ('Infringement 1'), from on or around 23 November 2005 to on or around 30 March 2007.
 - ii. For the Infringement involving **Cirrus** and **Owens** ('Infringement 2'), from on or around 30 November 2007 to on or around 16 November 2009.
 - iii. For the Infringement involving **Cirrus** and **Jackson** ('Infringement 3'), from on or around 26 February 2009 to on or around 27 October 2009.
- 1.8 Further and/or in the alternative, the OFT finds separate agreements and/or concerted practices in respect of each Tender.
- 1.9 Each Infringement involved tenders conducted by PMSL - a company that managed a number of retirement properties across the UK. PMSL's properties were variously equipped with door entry, warden control, and fire detection and protection systems (the 'Affected Products').⁷ At the material time, Cirrus - who was part of the same corporate group as PMSL - together with O'Rourke, Jackson or Owens (together referred to as the 'Contractors', each a 'Contractor'), supplied and installed the Affected Products to, among other customers, retirement properties.
- 1.10 For each Tender, PMSL ran a selective tender process⁸ under which it invited CCSL and one of the Contractors to bid. The Contractor that was invited to bid was invariably nominated by CCSL. For the majority of the Tenders, the only companies invited to bid were CCSL and the Contractor that CCSL had nominated to PMSL. For each Tender, the OFT finds that CCSL colluded with one of the Contractors by disclosing its bid to the Contractor in advance of the Contractor submitting its bid. Once the Contractor had received CCSL's bid, the Contractor then submitted its own bid, which was higher than the bid that CCSL disclosed to the Contractor. The OFT has found that the aim of this

⁷ See section 4 below for the OFT's analysis and conclusions on the products and services that were affected by the Infringements.

⁸ See section 4 below for an explanation of selective tender processes.

collusion between CCSL and the Contractors was that CCSL would be awarded the contract.⁹

1.11 In summary, the OFT has found that the Parties have engaged in the Infringements as follows:

Infringement	Period ¹⁰	Number of Tenders	Parties
1	On or around 23 November 2005 to on or around 30 March 2007	19	Cirrus and O'Rourke
2	On or around 30 November 2007 to on or around 16 November 2009	9	Cirrus and Owens
3	On or around 26 February 2009 to on or around 27 October 2009	37	Cirrus and Jackson

B. The OFT's action

1.12 The OFT considers that it is not necessary to give directions under section 32 of the Act to any of the Parties to bring the Infringements to an end given that the OFT has no evidence on its file to suggest that any of the Infringements are continuing and that the OFT considers that the Infringements have already come to an end.

1.13 Section 36(1) of the Act provides that the OFT may impose a financial penalty on an undertaking which has intentionally or negligently committed an infringement of the Chapter I prohibition. The OFT considers that agreements or concerted practices between undertakings that collusive tendering is an object restriction and a serious infringement of the Act. Accordingly, with the exception of Cirrus, the OFT is imposing a financial penalty on each of the Parties under section 36 of the Act in relation to the Infringements to which it was a party. The

⁹ As CCSL and the nominated Contractor were not always the only bidders for a Tender, there were occasions where CCSL faced a competing bid from a third party.

¹⁰ As set out at paragraph 5.10 below, this period is the approximate duration which the OFT has ascribed to the Infringements, the 'Relevant Period'.

financial penalties will become owed to the OFT in their entirety on 7 February 2014 and must be paid to the OFT by the close of banking business on that date.¹¹

- 1.14 Pursuant to the OFT's leniency programme, Cirrus has been granted immunity from financial penalty.
- 1.15 Owens has been granted a reduction in financial penalty by virtue of a settlement agreement that it concluded with the OFT on 12 February 2013 (the 'Owens Settlement Agreement'), pursuant to which, among other matters, Owens admitted its involvement in the Infringement to which it was a party in breach of the Chapter I prohibition and agreed to pay a financial penalty.

¹¹ Details of how to pay are notified in the letter accompanying this Decision.

2. BACKGROUND

A. The Parties and attribution of liability

2.1. The Parties to whom this Decision is addressed are as set out at paragraph 1.2 above. They are the legal entities that the OFT finds to have been directly involved in the Infringements, as well as, where applicable, the legal entities that had decisive influence on the policy of the legal entities that were directly involved in the Infringements. Where more than one legal entity is named in respect of a particular Party, the OFT finds that all named legal entities are jointly and severally liable for any financial penalty in respect of that conduct.

I. The relevant law on attributing liability

2.2. Companies belonging to the same corporate group will often constitute a single undertaking within the meaning of the Chapter I prohibition. The fact that a subsidiary company directly involved in an infringement of competition law has a separate legal personality as such does not prevent legal responsibility for its conduct being attributed to its parent company.¹²

2.3. A parent company can be held jointly and severally liable for an infringement committed by a subsidiary company where, at the time of the infringement, that parent company:

- i. had the ability to exercise decisive influence over the conduct of the subsidiary in question, and
- ii. actually exercised such decisive influence over that subsidiary.¹³

2.4. In *Durkan*, the Competition Appeal Tribunal (the 'CAT') noted that the EU Courts have established, among other things, that:

- i. such exercise of decisive influence may be indirect and can be established even where the parent does not interfere in the day to day business of the subsidiary or where it does not issue express instructions or guidelines to the subsidiary;

¹² Case 48/69 *ICI v Commission* [1972] ECR 619.

¹³ Case C-97/08 P *Akzo Nobel v Commission* [2009] ECR II-5049, at paragraph 60.

- ii. it is not necessary to show that any influence was actually exercised as regards the infringement in question; instead, one must look generally at the relationship between the two entities; and
 - iii. the factors to which regard may be had when considering the issue of decisive influence *'are not limited to commercial conduct but cover a wide range'*.¹⁴
- 2.5. Where a parent company owns the totality of the shares of a subsidiary company, it can generally be presumed that the parent company exerts a decisive influence over the subsidiary company's conduct and that the parent and subsidiary company constitute a single undertaking.¹⁵
- 2.6. This presumption is rebuttable. It is for the party in question to rebut the presumption by adducing evidence demonstrating that the subsidiary company determined its conduct independently.¹⁶
- 2.7. Additional indicia of decisive influence, other than the parent's shareholding in the subsidiary, may also be relied on.¹⁷ Such indicia have been found to include a parent being active on the same or adjacent markets to its subsidiary,¹⁸ direct instructions being given by a parent to a subsidiary¹⁹ or the two entities having shared directors.²⁰

II. The OFT's approach to assessing liability in this case

- 2.8. In determining which legal entity or entities are liable for an infringement committed by an undertaking and, therefore, if applicable, subject to any financial penalty which the OFT may impose, it is necessary to identify

¹⁴ *Durkan Holdings Limited and Others v Office of Fair Trading* [2011] CAT 6, at [22].

¹⁵ Case C-97/08 P *Akzo Nobel v Commission* [2009] ECR II-5049, at paragraph 60.

¹⁶ *Ibid*, at paragraph 61.

¹⁷ *Ibid*, at paragraphs 60 to 62; Case C-286/98 P *Stora Kopparbergs Bergslags AB v Commission* [2000] ECR I-9925, at paragraphs 23 and 27 to 29; and Case 107/82 *AEG-Telefunken v Commission* [1983] ECR 3151. More recently, see *Durkan Holdings Limited and Others v Office of Fair Trading* [2011] CAT 6, at [22].

¹⁸ Opinion of Advocate-General Mischo in Case C-286/98 P *Stora Kopparbergs Bergslags AB v Commission* [2000] ECR I-9925, at paragraph 49.

¹⁹ Case T-48/69 *ICI Limited v Commission* [1972] ECR I-619, at paragraphs 132 to 133.

²⁰ *Sepia Logistics Limited v Office of Fair Trading* [2007] CAT 13, at [77] to [80].

the legal and/or natural persons who form part of the undertaking in question.

- 2.9. For each Party which the OFT has found infringed the Act, the OFT has first identified the legal entity directly involved in each of the Infringements during the Relevant Period. It has then determined whether liability for each of the relevant Infringements should be shared with another legal entity, in which case each legal entity's liability will be joint and several.
- 2.10. Where a company had the ability to exercise decisive influence, whether directly or indirectly, over the commercial policy of a legal entity which was directly involved in an Infringement, and actually exercised such influence, the OFT has exercised its discretion as to whether to find that company jointly and severally liable with the latter.
- 2.11. Finally, where a Party which was directly involved in an Infringement was owned by natural persons during the Relevant Period, liability for the Infringement(s) will not extend to those individuals.
- 2.12. The Parties to whom the Decision is addressed are set out in paragraph 1.2 above. They comprise:
 - the legal entities directly involved in the Infringement(s) during the Relevant Period, and
 - the legal entities which the OFT finds had the ability to and actually exercised decisive influence over the legal entities directly involved in the Infringement(s) during the Relevant Period.
- 2.13. Where more than one legal entity is named in respect of a particular Party, the OFT considers that they form part of the same undertaking and should be held jointly and severally liable for the relevant Infringement(s) and, if applicable, any financial penalty imposed by the OFT.
- 2.14. Due to the possibility that there may have been a change in the company name and/or registered address, each legal entity's company number, as recorded at Companies House, is detailed below. This Decision is to be construed as applying to the company registered with the stated company number, however named and/or irrespective of its registered

address prior to, at, or subsequent to the time of the relevant Infringement(s).

III. The Parties

Cirrus

Summary

2.15. The OFT is addressing this Decision to the following entities:

- i. Cirrus Communication Systems Limited ('CCSL');
- ii. Careline UK Monitoring Limited ('CML'); and
- iii. Peverel Building Technologies Limited ('PBTl').

2.16. The OFT has found these legal entities jointly and severally liable for the Infringements that the OFT has attributed to them in this Decision.²¹

Reasoning

2.17. CCSL is a private limited company registered in England, under company number 01444995; its registered address is Oregon House, 19 Queensway, New Milton, Hampshire, BH25 5NR.²² For the duration of the three Infringements, CCSL was a provider of maintenance and installation services for telecare, fire safety and security systems. These systems include grouped social alarms and warden call systems, dispersed alarms, CCTV, door entry and access control systems.

2.18. As outlined in Section 5 below, the OFT considers that CCSL was directly involved in Infringements 1, 2 and 3. Accordingly, the OFT attributes liability to CCSL for Infringements 1, 2 and 3.

2.19. CML²³ is a private limited company registered in England, under company number 03229746. Its registered address is Queensway House, 11 Queensway, New Milton, Hampshire, BH25 5NR.²⁴ For the duration of

²¹ As set out below, the OFT finds CCSL and CML jointly and severally liable for Infringement 1; and CCSL, CML and PBTl jointly and severally liable for Infringements 2 and 3.

²² CCSL Financial Analysis Made Easy ('FAME') Report 2013.

²³ Previously called Cirrus Careline Limited until 17 November 2009.

²⁴ CML Financial Analysis Made Easy ('FAME') Report 2013.

the three Infringements²⁵, CML was active in the provision of monitoring services²⁶.

- 2.20. For the duration of the Infringements, CCSL was a wholly-owned subsidiary of CML²⁷ and CCSL and CML also had a number of shared directors.²⁸ Accordingly, CML can be presumed to have exercised decisive influence over CCSL's commercial policy for the duration of the Infringements. Therefore, the OFT finds that CCSL and CML formed part of the same undertaking for the duration of the Infringements and attributes liability to CML on a joint and several basis with CCSL for Infringements 1, 2 and 3²⁹.
- 2.21. PBTL³⁰ was incorporated in the period between the end of Infringement 1 and the commencement of Infringement 2, on 26 July 2007. PBTL is a private limited company registered in England, under company number 06324769. Its registered address is Queensway House, 11 Queensway, New Milton, Hampshire, BH25 5NR.³¹ For the duration of Infringements

²⁵ The OFT finds that the total duration for those three Infringements is on or around 23 November 2005 to on or around 30 March 2007 and on or around 30 November 2007 to on or around 16 November 2009

²⁶ See CML's Annual Accounts for the years ending 31 December 2004, 31 December 2005, 31 December 2006, 31 December 2007, 31 December 2008 and 31 December 2009.

²⁷ See CCSL's Annual Returns of 11 November 2004, 12 December 2005, 11 November 2006, 6 December 2007, 6 December 2008 and 6 December 2009; and submissions in a letter from Freshfields on behalf of Peverel of 9 May 2013 asserting that CCSL was a wholly-owned subsidiary of CML for the duration of the three Infringements, annexing historical group structure charts reflecting that position said to relate to 2006 and 2007.

²⁸ Based on the information about current and previous directors of CCSL and CML contained Financial Analysis Made Easy ('FAME') Reports (dated 28 February 2012), for the duration of the three Infringements at least 2 (and up to 3) individuals were directors of both CCSL and CML.

²⁹ The OFT received representations on behalf of Cirrus on the OFT's reasoning as to its findings on attribution of liability but did not consider those sufficiently persuasive.

³⁰ Previously called Cirrus Building Technologies Limited until 11 September 2009. See PBTL Financial Analysis Made Easy ('FAME') Report 2013.

³¹ See PBTL Financial Analysis Made Easy ('FAME') Report 2013.

2 and 3,³² PBTL's principal activity was the management of its subsidiary companies.³³

- 2.22. For the duration of Infringements 2 and 3, CML was a wholly-owned subsidiary of PBTL³⁴ and CML and PBTL also had a number of shared directors.³⁵ Accordingly, PBTL can be presumed to have exercised decisive influence over CML's commercial policy for the duration of Infringements 2 and 3. Therefore, the OFT finds that CML and PBTL formed part of the same undertaking for the duration of the Infringements 2 and 3 and attributes liability to PBTL on a joint and several basis with CML (and CCSL) for Infringements 2 and 3.
- 2.23. There may be other companies within the same corporate group as Cirrus which could have also been held jointly and severally liable for one or more of the Infringements. However, for the purposes of the Investigation, and without prejudice to the approach to be adopted in any future investigation, the OFT has exercised its discretion not to attribute liability to such other companies.
- 2.24. This Decision is therefore addressed to CCSL, CML and PBTL.
- 2.25. Peverel Group Limited ('PGL') applied for, and was granted, immunity on behalf of Cirrus Communication Systems Limited, Careline UK Monitoring

³² The OFT finds that the total duration for Infringements 2 and 3 is on or around 30 November 2007 to on or around 16 November 2009 and on or around 26 February 2009 to on or around 27 October 2009.

³³ See PBTL's Annual Accounts for year ending 31 December 2007 and 31 December 2008.

³⁴ See CML's Annual Returns for 18 October 2008, 18 October 2009 and 18 October 2010; CML's Annual Accounts for year ending 31 December 2007 and 31 December 2008; PBTL's Annual Accounts for year ending 31 December 2007, 31 December 2008 and year ending 31 December 2009; and submissions in a letter from Freshfields on behalf of Peverel of 9 May 2013 asserting that CML was a wholly-owned subsidiary of PBTL from 30 November 2007 to the date of those submissions, annexing historical group structure charts reflecting that position as of 30 November 2007, then in 2008, 2009 and 2012. The OFT notes that there is some uncertainty as to precisely when CML became the wholly owned subsidiary of PBTL, but the OFT considers that it is reasonable to conclude based on the historical group structure disclosed by Peverel as Annex 4 to its letter of 9 May 2013 that CML had become a wholly-owned subsidiary of PBTL by 30 November 2007 if not earlier.

³⁵ Based on the information about current and previous directors of PBTL and CML contained Financial Analysis Made Easy ('FAME') Reports (dated 28 February 2012), for the duration of the Infringements 2 and 3 at least two (and up to three) individuals were directors of both CML and PBTL.

Limited and Peverel Building Technologies Limited³⁶ in accordance with OFT's leniency policy³⁷. Accordingly, the penalty which the OFT would otherwise impose on Cirrus for the Infringements has been reduced by 100 per cent.

Peter O'Rourke Electrical Limited

- 2.26. The OFT considers that O'Rourke was the legal entity directly involved in Infringement 1. Accordingly, the OFT attributes liability to O'Rourke for Infringement 1 and for the resulting financial penalty that the OFT has decided to impose.
- 2.27. As outlined in Section 5 below, the OFT considers that O'Rourke was involved in Infringement 1 from on or around 23 November 2005 to on or around 30 March 2007. This is the Relevant Period for O'Rourke.
- 2.28. O'Rourke is a private limited company registered in England, under company number 04756042; its registered address is 11 Clifton Moor Business Village, James Nicolson Link, York, North Yorkshire, YO30 4XG.³⁸
- 2.29. Until 25 May 2012, when O'Rourke went into administration, its principal activity comprised electrical installation and other building installation. Begbies Traynor (Central) LLP has been appointed as administrator for O'Rourke.³⁹
- 2.30. During the Relevant Period, O'Rourke was based in Conisbrough, Doncaster, South Yorkshire, carrying out supply and installation of door entry, fire detection and warden call (including PBX) systems.⁴⁰ During the Relevant Period, O'Rourke undertook sub-contracting work for CCSL on a number of occasions.⁴¹
- 2.31. The director of O'Rourke throughout the Relevant Period was [...].⁴²

³⁶ As set out above, the OFT refers throughout this Decision to these companies as 'Cirrus'.

³⁷ See OFT803 *Leniency and no-action* (December 2008).

³⁸ See O'Rourke Financial Analysis Made Easy ('FAME') Report 2013.

³⁹ See O'Rourke Financial Analysis Made Easy ('FAME') Report 2013.

⁴⁰ Response to section 26 notice from O'Rourke dated 31 October 2011.

⁴¹ Response to section 26 notice from O'Rourke dated 31 October 2011.

⁴² See O'Rourke Financial Analysis Made Easy ('FAME') Report 2013.

Liability

- 2.32. O'Rourke is not owned by any other company and does not have any subsidiaries.
- 2.33. The OFT has found that O'Rourke is liable for Infringement 1 and is liable for payment of the financial penalty that the OFT has decided to impose on account of its participation in that Infringement.
- 2.34. This Decision is therefore addressed to O'Rourke. The OFT understands that at the date of this Decision O'Rourke is in liquidation but remains in existence. By addressing this Decision to O'Rourke, the OFT is ensuring that this legal entity does not escape any liability for its part in Infringement 1.

Owens Installations Limited

- 2.35. The OFT considers that Owens was the legal entity directly involved in Infringement 2. Accordingly, the OFT attributes liability to Owens for Infringement 2 and for the resulting financial penalty that the OFT has decided to impose.
- 2.36. As outlined in Section 5 below, the OFT considers that Owens was involved in Infringement 2 from on or around 30 November 2007 to on or around 16 November 2009. This is the Relevant Period for Owens.
- 2.37. Owens is a private limited company registered in England, under company number 06050445; its registered address is ['Strathmore' 53 Bowleaze Coveaway, Preston, Weymouth, Dorset, United Kingdom, DT3 6PL].⁴³
- 2.38. During the Relevant Period, Owens was based in Dorchester in Dorset, carrying out telecommunications installations, including CCTV, fire detection, door access and warden call (including PBX) systems.⁴⁴ During the Relevant Period, Owens undertook sub-contracting work for CCSL on a number of occasions.⁴⁵

⁴³ See Owens Financial Analysis Made Easy ('FAME') Report 2013. [This address has been amended to correct a factual inaccuracy in the Decision].

⁴⁴ Response to section 26 notice from Owens dated 9 September 2011.

⁴⁵ Response to section 26 notice from Owens dated 9 September 2011.

2.39. The director of Owens throughout the Relevant Period was [...].⁴⁶

Liability

2.40. Owens is not owned by any other company and does not have any subsidiaries.

2.41. The OFT has found that Owens is liable for Infringement 2 and that it is liable for payment of the financial penalty that the OFT has decided to impose on account of its participation in that Infringement. As explained at paragraph 1.15 above, the amount of financial penalty to be imposed on Owens was determined by the Owens Settlement Agreement.

2.42. This Decision is therefore addressed to Owens.

Glyn Jackson Communications Limited

2.43. The OFT considers that Jackson was the legal entity directly involved in Infringement 3. Accordingly, the OFT attributes liability to Jackson for Infringement 3 and for the resulting financial penalty that the OFT has decided to impose.

2.44. As outlined in Section 5 below, the OFT considers that Jackson was involved in Infringement 3 from on or around 26 February 2009 to on or around 27 October 2009. This is the Relevant Period for Jackson.

2.45. Jackson is a private limited company registered in England, under company number 04376051; its registered address is 26 York Place, Leeds, West Yorkshire, LS1 2EY.⁴⁷

2.46. Until 29 August 2012, when Jackson went into administration, its principal activity comprised electrical installation. Clark Business Recovery Limited has been appointed as administrator for Jackson.⁴⁸

2.47. During the Relevant Period, Jackson was based in Conisbrough, Doncaster, South Yorkshire, carrying out supply and installation of CCTV, fire detection, door access and warden call (including PBX) systems as both a contractor and a sub-contractor.⁴⁹ During the Relevant

⁴⁶ See Owens Financial Analysis Made Easy ('FAME') Report 2013.

⁴⁷ See Jackson Financial Analysis Made Easy ('FAME') Report 2013.

⁴⁸ See Jackson Financial Analysis Made Easy ('FAME') Report 2013.

⁴⁹ Response to section 26 notice from Jackson dated 2 November 2011.

Period, Jackson undertook sub-contracting work for Cirrus on a number of occasions.⁵⁰

2.48. The director of Jackson throughout the Relevant Period was [...].⁵¹

Liability

2.49. Jackson is not owned by any other company and does not have any subsidiaries.

2.50. The OFT has found that Jackson is liable for Infringement 3 and that it is liable for payment of the financial penalty that the OFT has decided to impose on account of its participation in that Infringement.

2.51. This Decision is therefore addressed to Jackson. The OFT understands that at the date of this Decision Jackson is in liquidation but remains in existence. By addressing this Decision to Jackson, the OFT is ensuring that this legal entity does not escape any liability for its part in the Infringement 3.

B. The OFT's Investigation

I. Background

2.52. PGL was granted a Type A immunity marker and submitted its application for immunity (the 'Leniency Application') under the OFT's leniency policy in December 2009. The Leniency Application reported collusive tendering arrangements involving PGL's subsidiaries PMSL and Cirrus and each of the three Contractors, in relation to the supply and installation of warden call systems, door entry and access control systems and fire detection and protection systems (collectively the 'Systems') between 2005⁵² and 2009 amongst other matters. PGL's immunity marker was perfected in July 2011. The Immunity Agreement was signed by a representative of CCSL, CML and PBTL and by the OFT in June 2013.

⁵⁰ Response to section 26 notice from Jackson dated 2 November 2011.

⁵¹ See Jackson Financial Analysis Made Easy ('FAME') Report 2013.

⁵² The Leniency Application states that it is uncertain when the infringing conduct began, but the Application was intended to cover all instances between 2005 and 2009. See Leniency Application, footnotes 2 (first paragraph) and 3.

- 2.53. In January 2010, the OFT also received two complaints from, or on behalf of, residents in retirement properties managed by PMSL raising concerns about the tender process for the upgrade of some of the Systems. The first complaint was submitted by a relative of a leaseholder of a PMSL-managed retirement property; and the second complaint, which was transferred to the OFT by the Serious Fraud Office, was submitted by a group of leaseholders of retirement flats, and their relatives, on behalf of the Campaign Against Retirement Leasehold Exploitation ('Carlex').
- 2.54. By May 2011, the OFT began a formal investigation under the Act after it had been determined that there were reasonable grounds for suspecting that Peverel, through its subsidiaries PMSL and Cirrus, had been involved in agreement(s) and/or concerted practice(s) which have had as their object or effect the prevention, restriction or distortion of competition in the market for the supply and installation of warden call, door entry/access control and fire detection/protection systems to retirement properties in the UK (the 'Investigation').⁵³
- 2.55. In May 2011, the OFT requested information from Jackson, O'Rourke and Owens under section 26 of the Act, with a second round of requests being sent to the same Parties in September 2011. A number of requests for documents were also sent to Peverel.
- 2.56. In addition to gathering documentary evidence, the OFT interviewed 13 witnesses who worked for either CCSL or PMSL during the period relating to the Investigation in July 2011, October 2011 and June 2012. Each of these interviews were recorded and transcribed.⁵⁴ The witnesses interviewed by the OFT were as follows:

Peverel witness	Position (during the Relevant Period)	Date of interview
[...]	A CCSL Contracts manager	6 July 2011

⁵³ The OFT had preliminary evidence of a number of other instances of anti-competitive behaviour involving at least some of the Parties as well as other contractors. However, the OFT has prioritised the three Infringements set out in this Decision (see OFT953 *OFT Prioritisation Principles* (October 2008)).

⁵⁴ This is with the exception of the OFT's interview with [...] [a CCSL Director] which was not recorded as a result of a fault with the recording equipment.

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[...]	A senior PMSL employee	6 July 2011
[...]	A PMSL Director	6 July 2011
[...]	A CCSL Contracts manager	6 July 2011
[...]	A senior CCSL employee	21 July 2011
[...]	A senior PMSL employee	21 July 2011
[...]	A CCSL Director	4 October 2011
[...]	A CCSL Estimator	4 October 2011
[...]	A senior CCSL employee	6 October 2011 and 10 November 2011
[...]	A CCSL Director	19 October 2011
[...]	A CCSL Contracts Administrator	13 June 2012
[...]	A CCSL Admin Support Supervisor	13 June 2012
[...]	A PMSL Senior Administrator	14 June 2012

2.57. Jackson and O'Rourke voluntarily made their respective directors available for interview. These individuals were interviewed by the OFT as follows:

Party	Witness	Position	Date of interview
Jackson	[...]	Director	July 2011
O'Rourke	[...]	Director	August 2011

2.58. Owens declined to make its director available for interview.

2.59. The OFT met with both sets of complainants jointly on 11 October 2011, 27 September 2012 and 24 July 2013.

II. Settlement

2.60. On 12 February 2013, Owens entered into the Owens Settlement Agreement in respect of Infringement 2 by admitting it had infringed competition law and agreeing to co-operate in the expedition of the process for concluding the Investigation. The Owens Settlement

Agreement sets out all the conditions of the agreement with Owens to reach a settlement.⁵⁵

III. Companies in liquidation

2.61. As explained in section 2.A.III above, during the course of the Investigation, O'Rourke and Jackson were placed into administration; both are currently in liquidation.

IV. Statement of Objections

2.62. On 5 July 2013, the OFT issued a Statement of Objections (the 'SO'), setting out its proposed findings, to Cirrus, Jackson, O'Rourke and Owens. In the SO, the OFT set out the facts and evidence on which it relied, the objections it raised in terms of the alleged infringements of the Chapter I prohibition, the action it proposed to take and its reasons for the proposed action. In the SO, the OFT provisionally found that the Parties infringed the Chapter I prohibition by participating in one or more agreements and/or concerted practices which each had as its object the prevention, restriction or distortion of competition in the supply and installation of warden call and door entry systems (whether combined or standalone) and fire detection and protection systems to PMSL retirement properties in the UK (each an 'Alleged Infringement', together the 'Alleged Infringements'). The Alleged Infringements are the same as the Infringements that the OFT finds in this Decision.

V. Appointment of Case Decision Group

2.63. On 30 August 2013, Claudia Berg (Enforcement Director), Simon Nichols (Enforcement Director) and Nisha Arora, (Joint Senior Director of Services, Infrastructure and Public Markets Group) were appointed as members of the Case Decision Group ('CDG') for this case in accordance with the OFT's decision-making process in cases under the Act.⁵⁶ The Parties were informed of this on 13 September 2013.

VI. Representations relating to the SO

⁵⁵ Letter of agreement between the OFT and Owens dated 12 February 2013.

⁵⁶ See paragraphs 11.27 to 11.31 of *A guide to the OFT's investigation procedures in competition cases* (OFT1263rev, October 2012).

- 2.64. Cirrus provided the OFT with a memorandum alleging a number of factual inaccuracies in the SO.⁵⁷ The OFT has carefully considered each and every inaccuracy and has made various minor adjustments to the text of the SO where appropriate.
- 2.65. Jackson and O'Rourke did not submit any written representations on the SO, nor did either request an oral hearing.
- 2.66. Owens did not identify any factual inaccuracies in the SO.
- 2.67. No Party requested access to any of the documents on the OFT's file, nor did they request an oral hearing.

VII. Draft Penalty Statement

- 2.68. On 19 November 2013, the OFT issued a Draft Penalty Statement ('DPS') to each of Jackson and O'Rourke. No DPS was sent to Cirrus given that it had been granted conditional immunity from financial penalties. Similarly, no DPS was sent to Owens given that a maximum financial penalty had already been agreed under the Owens Settlement Agreement.
- 2.69. Neither Jackson nor O'Rourke submitted any representations on the DPS issued to them, nor did they request an oral hearing.

⁵⁷ Letter from Freshfields to the OFT, dated 2 August 2013.

3. LEGAL BACKGROUND

A. Introduction

- 3.1. This section sets out the legal framework within which the OFT has considered the evidence in this Decision.

B. The Chapter I prohibition

- 3.2. Section 2(1) of the Act prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade within the UK⁵⁸ and which have as their object or effect the prevention, restriction or distortion of competition within the UK, unless they are excluded or exempt in accordance with the provisions of Part I of the Act. The prohibition imposed by section 2(1) of the Act is defined as the Chapter I prohibition.

C. Application of section 60 of the Act - Consistency with European Community law

- 3.3. Section 60(1) of the Act requires that, so far as is possible (having regard to any relevant differences between the provisions concerned), questions relating to UK competition law should be dealt with in a manner which is consistent with the treatment of corresponding questions under EU competition law.
- 3.4. In particular, under section 60(2) of the Act, the OFT must act (so far as it is compatible with the provisions of Part I of the Act) with a view to securing consistency with the principles laid down by the Treaty on the Functioning of the European Union (the 'TFEU') and any relevant decision of the European Court⁵⁹ in determining any corresponding questions arising in EU law.

⁵⁸ Under section 2(3) of the Act, section 2(1) applies only if the agreement, decision or practice is, or is intended to be, implemented in the United Kingdom. Under section 2(7) of the Act, United Kingdom means, in relation to an agreement which operates or is intended to operate only in a part of the United Kingdom, that part.

⁵⁹ The European Court is defined in section 59 of the Act as meaning the Court of Justice of the European Communities (now the Court of Justice of the European Union (the 'CJ')) and including the Court of First Instance (now the General Court (the 'GC')).

- 3.5. In addition, under section 60(3) of the Act, the OFT must have regard to any relevant decision or statement of the European Commission (the 'Commission').
- 3.6. The provision in EU competition law equivalent to the Chapter I prohibition is Article 101 TFEU,⁶⁰ on which the Chapter I prohibition is modelled.

D. Undertakings

- 3.7. The Chapter I prohibition applies, amongst other matters, to agreements or concerted practices between undertakings. In order to demonstrate that the Chapter I prohibition has been infringed, it is therefore necessary to establish that the parties to an agreement or concerted practice are undertakings.
- 3.8. The term 'undertaking' is not defined in the Act or the TFEU. However, it has been given a broad interpretation by the CJ in which it has been held to cover *'every entity engaged in an economic activity, regardless of the legal status of the entity or the way in which it is financed'*.⁶¹
- 3.9. Accordingly, the key consideration in establishing whether an entity is an undertaking is whether it is engaged in *'economic activity'*. The CJ has defined economic activity broadly as any activity *'of an industrial or commercial nature'* consisting in *'offering goods and services on the market'*.⁶²
- 3.10. The term 'undertaking' includes any natural or legal person that is capable of carrying on commercial or economic activities, including, among others, individuals operating as sole traders.⁶³

E. Agreements and concerted practices

- 3.11. The Chapter I prohibition applies, amongst other matters, to agreements and concerted practices.⁶⁴

⁶⁰ Formerly Article 81 of the EC Treaty.

⁶¹ Case C-41/90 *Höfner and Elser v Macrotron* [1991] ECR I-1979, at paragraph 21.

⁶² Case 118/85 *Commission v Italy* [1987] ECR 2599, at paragraph 7.

⁶³ See, for example, Case 35/83 *BAT Cigaretten-Fabriken v Commission* [1985] ECR 363.

3.12. For the purposes of finding that the Chapter I prohibition has been infringed, it is not necessary for the OFT to characterise an arrangement exclusively as either an agreement or a concerted practice;⁶⁵ the concepts of agreement and concerted practice are not mutually exclusive and there is no rigid dividing line between the two.⁶⁶ They are both intended:⁶⁷

'to catch forms of collusion having the same nature and are only distinguishable from each other by their intensity and the forms in which they manifest themselves'.

3.13. The OFT is therefore not required to come to a conclusion as to whether the arrangement in issue should be specifically characterised as an agreement or as a concerted practice in order to demonstrate that the Chapter I prohibition has been infringed.

I. Agreements

3.14. An agreement within the meaning of the Chapter I prohibition involves a concurrence of wills between at least two undertakings, the form in which it is manifested being unimportant so long as it constitutes the faithful expression of the parties' intention.⁶⁸

3.15. For an agreement to exist:

*'... it is sufficient that the undertakings in question have expressed their joint intention to conduct themselves on the market in a specific way'.*⁶⁹

⁶⁴ Section 2(1) of the Act. It also applies to decisions by associations of undertakings. However, given that this Decision concerns agreements or concerted practices, it is not necessary for the OFT in this section to also refer to decisions by associations of undertakings.

⁶⁵ *JJB Sports plc and Allsports Limited v Office of Fair Trading* [2004] CAT 17, at [644]; and *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24, at [665]: *'It is trite law that it is not necessary for the OFT to characterise an infringement as either an agreement or a concerted practice: it is sufficient that the conduct in question amounts to one or the other'.*

⁶⁶ Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at paragraphs 130 to 132.

⁶⁷ *Ibid*, at paragraph 131.

⁶⁸ Case T-41/96 *Bayer v Commission* [2000] ECR II-3387, at paragraph 69.

⁶⁹ Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, at paragraph 256.

- 3.16. It is not, however, necessary to establish a joint intention to pursue an anti-competitive aim.⁷⁰
- 3.17. There is no requirement for the agreement to be formal or legally binding, nor for it to contain any enforcement mechanisms.⁷¹ For the purposes of the Chapter I prohibition, an agreement does not have to be in writing, may include oral agreements and 'gentlemen's agreements', and may be inferred from the conduct of the parties, including conduct that appears to be unilateral.⁷²

Implementation

- 3.18. The fact that a party does not act on or subsequently implement, the agreement at all times does not preclude the finding that an agreement existed,⁷³ nor does the fact that a party does not respect the agreement at all times or comes to recognise that it can 'cheat' on the agreement at certain times.⁷⁴
- 3.19. The fact that a party may have played only a limited part in the setting up of the agreement, or may not be fully committed to its implementation, or may have participated only under pressure from other parties does not mean that it is not party to the agreement.⁷⁵
- 3.20. Further, where an agreement has the object of restricting competition (as described below), parties cannot avoid liability for the resulting infringement by arguing that the agreement was never put into effect.⁷⁶
- 3.21. Finally, an agreement between undertakings may be made on an undertaking's behalf by its employees acting in the ordinary course of their employment, despite the ignorance of more senior management.⁷⁷

⁷⁰ Case T-168/01 *GlaxoSmithKline Services v Commission* [2006] ECR II-2969, at paragraph 77 (upheld in Cases C-501/06 P etc *GlaxoSmithKline Services and Others v Commission and Others* [2009] ECR I-9291).

⁷¹ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24, at [658].

⁷² Case 41/69 *ACF Chemiefarma v Commission* [1970] ECR 661, at paragraphs 106 to 114.

⁷³ Case 86/82 *Hasselblad v Commission* [1984] ECR 883 at paragraph 46.

⁷⁴ Case T-141/89 *Tréfileurope v Commission*, [1995] ECR II-791, at paragraph 85; and Case 246/86 *Belasco v Commission* [1989] ECR 2117, at paragraphs 10 to 16.

⁷⁵ See, for example, Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at paragraph 80.

⁷⁶ See, for example, Case 19/77 *Miller v Commission* [1978] ECR 131, at paragraphs 7 to 10.

II. Concerted practices

3.22. The Chapter I prohibition also applies to concerted practices. A concerted practice is:

'... a form of co-ordination between undertakings which, without having reached the stage where an agreement properly so called has been concluded, knowingly substitutes practical co-operation between them for the risks of competition'.⁷⁸

Concertation

3.23. The concept of a concerted practice must be understood in light of the principle that each economic operator must determine independently the policy it intends to adopt on the market.⁷⁹ Whilst undertakings may adapt themselves intelligently to existing or anticipated conduct of their competitors, the requirement of independence strictly precludes:⁸⁰

'Any direct or indirect contact between such operators, the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.'

3.24. A concerted practice may, in particular, occur where there are reciprocal contacts between undertakings which pursue the aim of removing any uncertainty as to their future conduct on the market,⁸¹ including by way of the disclosure to a competitor of the course of conduct which an undertaking has itself decided to adopt or contemplates adopting on the market.⁸²

⁷⁷ See, for example, Cases 100/80 etc *Musique Diffusion Francaise v Commission* [1983] ECR 1825, at paragraph 97 and *Tesco Stores Limited v Office of Fair Trading*, [2012] CAT 31, at [62].

⁷⁸ Case 48/69 *ICI Limited v Commission* [1972] ECR 619, at paragraph 64.

⁷⁹ Joined Cases 40/73 etc *Suiker Unie and Others v Commission* [1975] ECR 1663, at paragraph 173.

⁸⁰ *Ibid*, at paragraph 174.

⁸¹ *Ibid*, at paragraph 175.

⁸² *Ibid*, at paragraph 174.

3.25. Reciprocal contacts are established:⁸³

'Where one competitor discloses its future intentions or conduct on the market to another when the latter requests it, or at the very least, accepts it'.

3.26. It is also sufficient that:⁸⁴

'... by its statement of intention, the competitor should have eliminated or, at the very least, substantially reduced uncertainty as to the conduct on the market to be expected on his part'.

3.27. Accordingly, in order to demonstrate concertation, it is not necessary to show that the competitor in question has formally undertaken, in respect of one or several others, to adopt a particular course of conduct or that the competitors have expressly requested the information. It is sufficient that, by its statement of intention, the competitor should have eliminated or, at the very least, substantially reduced uncertainty as to his future conduct on the market.

3.28. In establishing reciprocal contacts, it is not also necessary to establish reciprocal disclosures; the unilateral disclosure of information by one competitor to another can be sufficient.⁸⁵

Subsequent conduct on the market

3.29. In addition to the requirement of concertation, the concept of a concerted practice implies conduct on the market pursuant to such collusion, and a relationship of cause and effect between the two:⁸⁶

'As is clear from the very terms of Article [101(1)] of the [TFEU], a concerted practice implies, besides undertakings concerting together, conduct on the market pursuant to those collusive practices, and a relationship of cause and effect between the two.'

⁸³ Cases T-25/95 etc *Cimenteries CBR v Commission* [2000] ECR II-49, at paragraph 1849.

⁸⁴ *Ibid*, at paragraph 1852.

⁸⁵ Cases T-202/98 etc *Tate & Lyle plc and Others v Commission* [2001] ECR II-2035, at paragraph 54.

⁸⁶ Case C-49/92 P *Commission v Anic Participazioni* [1999] ECR I-4125, at paragraph 118.

- 3.30. However, this can be presumed where an undertaking participating in concerting arrangements remains active on the market:⁸⁷

'... subject to proof to the contrary, which it is for the economic operators concerned to adduce, there must be a presumption that the undertakings participating in concerting arrangements and remaining active on the market take account of the information exchanged with their competitors when determining their conduct on that market, particularly when they concert together on a regular basis over a long period'.

- 3.31. This presumption applies even if the concerted action is the result of a meeting held by the participating undertakings on a single occasion.⁸⁸

III. Single overall infringement

- 3.32. Where a group of undertakings pursues a common objective or objectives involving at one and the same time agreements and/or concerted practices, it is not always necessary to divide the conduct by treating it as consisting of a number of separate infringements, but instead it can under certain circumstances be treated as a single overall infringement.⁸⁹

- 3.33. When establishing that an undertaking was involved in a single overall infringement it is necessary to show that:⁹⁰

'... the undertaking intended to contribute by its own conduct to the common objectives pursued by all the participants and that it was aware of the actual conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and that it was prepared to take the risk.'

- 3.34. Accordingly, such conduct can be considered to form part of a single overall infringement where:

⁸⁷ *Ibid*, at paragraph 121.

⁸⁸ Case C-8/08 *T-Mobile Netherlands and Others v NMa* [2009] ECR I-4529, at paragraphs 54 to 62.

⁸⁹ Case T-1/89 *Rhône Poulenc v Commission* [1991] ECR II-867, at paragraph 126.

⁹⁰ Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at paragraph 87.

- i. the agreements and/or concerted practices pursued a common objective or objectives;
- ii. through its own conduct, each undertaking intended to contribute to the common objective(s) pursued by all the participants; and
- iii. each undertaking was aware of other participant's conduct or could reasonably have foreseen it and was prepared to take the risk.

F. Prevention, restriction or distortion of competition

3.35. The Chapter I prohibition prohibits agreements between undertakings and concerted practices which *'have as their object or effect the prevention, restriction or distortion of competition'*.⁹¹

3.36. Where an agreement or concerted practice has as its object the prevention, restriction or distortion of competition, it is not necessary to also prove that the agreement has had or would have the effect of preventing, restricting or distorting competition.⁹²

I. Anti-competitive object

3.37. Object infringements are those forms of collusion between undertakings which are regarded to be, by their very nature, detrimental to competition.⁹³

3.38. In order for a concerted practice to be regarded as having an anti-competitive object, it is sufficient that it has the potential to have a negative impact on competition. As the CJ explained in T-Mobile:⁹⁴

'... in order for a concerted practice to be regarded as having an anti-competitive object, it is sufficient that it has the potential to have a negative impact on competition. In other words, the

⁹¹ Section 2(1)(b) of the Act.

⁹² Joined Cases 56/64 and 58/64 *Consten and Grundig v Commission* [1966] ECR 299, at page 342. See, more recently, Case C-8/08 *T-Mobile Netherlands and Others v NMa* [2009] ECR I-4529, at paragraph 29. This is equally the case for concerted practices; see Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at paragraphs 122 to 123.

⁹³ Case C-209/07 *Competition Authority v Beef Industry Development Society Limited* [2008] ECR I-8637, at paragraph 17; and Case C-8/08 *T-Mobile Netherlands and Others v NMa*, [2009] ECR I-4529, at paragraphs 28 to 30.

⁹⁴ Case C-8/08 *T-Mobile Netherlands and Others v NMa*, [2009] ECR I-4529, at paragraph 31.

concerted practice must simply be capable in an individual case, having regard to the specific legal and economic context, of resulting in the prevention, restriction or distortion of competition'

- 3.39. The assessment of whether or not an agreement has as its object the prevention, restriction or distortion of competition should take account of a number of factors, including its content and the objective aims pursued by it.⁹⁵ It is also necessary to consider the legal and economic context of which the agreement or concerted practice forms part.⁹⁶
- 3.40. The object of an agreement or concerted practice is not assessed by reference to the parties' subjective intentions when they entered into it, but is determined by an analysis of its objective aims.⁹⁷ The OFT may, however, take into account evidence of the parties' subjective intention when demonstrating that an agreement or concerted practice has as its object the prevention, restriction or distortion of competition.⁹⁸
- 3.41. The way in which an agreement is actually implemented may also reveal a restriction by object.⁹⁹
- 3.42. Where the obvious consequence of an agreement or concerted practice is to prevent, restrict or distort competition, that will be its object for the purposes of the Chapter I prohibition.¹⁰⁰ That will be the case even if it also has other objectives.¹⁰¹

Collusive tendering

⁹⁵ *Ibid.*

⁹⁶ Joined cases C-501/06P etc *GlaxoSmithKline Unlimited v Commission* [2009] ECR I-9291, at paragraph 58; and Case C-8/08 *T-Mobile Netherlands and others v NMa* [2009] ECR I-4529, at paragraph 27 and 28.

⁹⁷ Case 96/82 *IAZ International Belgium v Commission* [1983] ECR 3369, at paragraphs 22 to 25.

⁹⁸ *Cityhook Limited v Office of Fair Trading* [2007] CAT 18, at [270], citing Case C-551/03 P *General Motors v Commission* [2006] ECR I-3173, at paragraphs 77 and 78.

⁹⁹ OJ C 101, 27.4.2004, pages 97 to 118, Commission Notice *Guidelines on the Application of Article 81(3) of the Treaty*, at paragraph 22.

¹⁰⁰ Case C-551/03 *General Motors v Commission* [2006] ECR I-3173, at paragraph 64.

¹⁰¹ Case 96/82 *IAZ v Commission* [1983] ECR 3369, at paragraphs 22 to 25.

3.43. The CAT has previously held that collusive tendering arrangements can have the object of preventing, restricting or distorting competition.¹⁰² In particular, in *Apex*, the CAT held that the submission of a 'cover-bid' has an anti-competitive object or effect in that:¹⁰³

- (a) *'it reduces the number of competitive bids submitted in respect of that particular tender;*
- (b) *it deprives the tenderee of the opportunity of seeking a replacement (competitive) bid;*
- (c) *it prevents other contractors wishing to place competitive bids in respect of that particular tender from doing so;*
- (d) *it gives the tenderee a false impression of the nature of competition in the market, leading at least potentially to future tender processes being similarly impaired.'*

3.44. In *Kier*, when considering the nature and seriousness of the infringements found for the purposes of assessing the appropriate amount of a financial penalty imposed by the OFT, the CAT held that '*simple*' cover pricing' is '*materially distinct*' from '*bid rigging*'.¹⁰⁴ The CAT considered that bid rigging '*implies an agreement or arrangement which determines, or assists in the determination of, the price which will actually be charged to the purchaser*',¹⁰⁵ in other words, the level of the winning bid is fixed. By comparison, the CAT held that '*simple cover pricing*' is a '*bilateral arrangement in the context of a multi-partite tendering exercise*', whose purpose is '*to identify a price which the client will not be willing to pay*'.¹⁰⁶

¹⁰² *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at [223] to [224]. More recently, see *Kier Group plc and Others v Office of Fair Trading* [2011] CAT 3, at [94] and [99]: '*cover pricing is certainly not an innocuous activity... It is an unlawful practice... which is capable of having anti-competitive effects on the particular tendering exercise and on future exercises*'.

¹⁰³ *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at [250] to [251]. More recently, the GC held that it is '*precisely with the aim of securing a choice that many undertakings and public institutions require the submission of several quotes*' (Case T-211/08 *Putters International v Commission* [2011] ECR II-3729, at paragraph 29).

¹⁰⁴ *Kier Group plc and Others v Office of Fair Trading* [2011] CAT 3, at [94].

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*, at [100].

3.45. However, it is important to note that the CAT's judgment in *Kier* did not address the question of whether *'simple cover pricing'* had the object of preventing, restricting or distorting competition because it was not the subject of the appeal proceedings. When considering the seriousness of *'simple cover pricing'* for the purposes of determining the appropriate amount of a penalty, although the CAT held that it was a less serious infringement than *'bid rigging'*,¹⁰⁷ it was of the view that *'simple cover pricing'* *'constitutes an infringement of the Chapter I prohibition'*,¹⁰⁸ that is *'certainly not an innocuous activity'*,¹⁰⁹ and that it is:¹¹⁰

'an unlawful practice which at the very least may deceive the customer about the source and extent of the competition which exists for the work in question, and which is capable of having anti-competitive effects on the particular tendering exercise and on future exercises.'

3.46. In *Kier*, the CAT considered that the most serious aspects of cover pricing were:¹¹¹

'... the possible exclusion of a substitute tenderer in place of the one who has received a cover; and the risk that the whole tendering exercise may be subverted if a large number of covers are given.'

3.47. The CAT also recognised that:¹¹²

'There is also the risk, depending on the particular facts, that the tender process could be more directly compromised by cover pricing. For example it is possible to envisage a situation where the number of requests for cover prices is such that the provider of the covers becomes aware that he faces no real competition. If that were to be the case, the provider might well be tempted to inflate his own bid.'

¹⁰⁷ *Kier Group plc and Others v Office of Fair Trading* [2011] CAT 3, at [94].

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*, at [99].

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*, at [101].

¹¹² *Ibid.*, at [97].

- 3.48. The notion that fewer tenderers can impact on a tenderer's bid is also a matter that the GC has previously recognised:

*'The Court agrees with the Commission that the fact that the relevant office can disclose to those notifying undertakings which so request the number of undertakings which have lodged a notification may be liable to restrict competition since **the notifying undertakings are thereby enabled to anticipate the intensity of competition between them and to modify their conduct accordingly, as well as to obtain information not yet available at that stage to undertakings which are not SPO members.**'¹¹³*

[Emphasis added]

- 3.49. Similar practices were also considered by the GC in *Putters*,¹¹⁴ concerning a cartel in the international removal services sector in Belgium which fixed prices, shared customers and manipulated the submission of tenders. When rejecting the applicant's argument that the arrangements did not seek to fix prices, even indirectly, the GC held:¹¹⁵

'As regards the quotes, the price indicated in a 'false' quote was determined by the requesting company and accepted by the company drawing up the cover quote, which enabled the former to set its price at a higher level than would have resulted from the free play of competition, close to the 'false' price agreed in common accord.'

II. **Anti-competitive effect**

- 3.50. As set out at paragraph 3.36 above, it is not necessary to prove an anti-competitive effect where an agreement or concerted practice has as its object the prevention, restriction or distortion of competition. Accordingly, it is not necessary for the OFT to set out the relevant case law in respect of anti-competitive effect.

G. **Appreciability**

¹¹³ Case T- 129/92 *SPO and Others v Commission* [1995] ECR II-289, at paragraph 16.

¹¹⁴ Case T-211/08 *Putters International v Commission* [2011] ECR II-3729.

¹¹⁵ *Ibid*, at paragraph 28.

- 3.51. An agreement or concerted practice will infringe the Chapter I prohibition if it has as its object or effect the appreciable prevention, restriction or distortion of competition in the UK.
- 3.52. Consistent with the Commission's de minimis notice,¹¹⁶ for agreements or concerted practices between competing undertakings, the OFT takes the view that an agreement or concerted practice will generally not appreciably prevent, restrict or distort competition if the aggregate market share of the parties to the agreement or concerted practice does not exceed 10 per cent of the relevant market(s) affected by the agreement or concerted practice.¹¹⁷
- 3.53. However, consistent with the Commission's de minimis notice,¹¹⁸ the OFT takes the view that any agreement or concerted practice which directly or indirectly fixes prices or allocates markets or customers will be capable of appreciably preventing, restricting or distorting competition even where the parties' combined market share falls below the 10 per cent threshold, provided that such agreements or concerted practices do not have only insignificant effects.¹¹⁹
- 3.54. Further, in *Expedia* the CJ ruled that an agreement that may affect trade between Member States and that has an anti-competitive object

¹¹⁶ OJ C 368, 22.12.2001, pages 13 to 15, *Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (de minimis)*, at paragraph 7(a).

¹¹⁷ OFT401 *Agreements and Concerted Practices* (December 2004), at paragraph 2.18.

¹¹⁸ OJ C 368, 22.12.2001, pages 13 to 15, *Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (de minimis)*, at paragraph 11. The 'hardcore' restrictions listed in that Commission Notice include agreements between competitors which '*directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object*' the '*fixing of prices when selling the products to third parties*' (paragraph 11(1)(a)) or the '*allocation of markets or customers*' (paragraph 11(1)(c)).

¹¹⁹ See Case 5/69 *Völk v Vervaecke* [1969] ECR 295: '*an agreement will fall outside the prohibition where it has only an insignificant effect on the market, taking into account the weak position which the persons concerted have on the market of the product in question*'; the market shares in that case were 0.2 per cent and 0.5 per cent respectively. See also OFT401 *Agreements and Concerted Practices* (December 2004), at paragraphs 2.16 and 2.17.

constitutes, by its very nature and independently of any concrete effect that it may have, an appreciable restriction on competition.¹²⁰

H. Effect on trade

I. Effect on trade within the UK

3.55. The Chapter I prohibition applies only to agreements or concerted practices which '*may affect trade within the United Kingdom*'.¹²¹ For the purposes of the Chapter I prohibition, the UK includes any part of the UK in which an agreement operates or is intended to operate.¹²² By their very nature, agreements or concerted practices that restrict price competition or allocate markets or customers are likely to affect trade.

3.56. To infringe the Chapter I prohibition, an agreement or concerted practice does not actually have to affect trade as long as it is capable of affecting trade. Further, effect on trade within the UK is a purely jurisdictional test to demarcate the boundary between the application of EU competition law and national competition law; this test is not read as importing a requirement that the effect on trade within the UK should be appreciable.¹²³

II. Effect on trade between Member States

3.57. Since 1 May 2004, where a national competition authority, such as the OFT, applies national competition law to agreements, decisions by associations of undertakings or concerted practices within the meaning of Article 101 TFEU that may have an effect on trade between EU Member States within the meaning of that provision, then it must also apply Article 101 TFEU.¹²⁴

3.58. For the purposes of assessing whether an agreement or concerted practice may affect trade between EU Member States the OFT follows

¹²⁰ Case C-226/11 *Expedia Inc v Autorité de la concurrence and Others*, judgment of 13 December 2012 (not yet reported), at paragraph 37.

¹²¹ Section 2(1)(a) of the Act.

¹²² Section 2(7) of the Act.

¹²³ *Aberdeen Journals v Director General of Fair Trading* [2003] CAT 11, at [459] to [460].

¹²⁴ OJ L 1, 4.1.2003, pages 1 to 25, Article 3(1) of Council Regulation (EC) No 1/2003 of 16 December 2002 on *the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty*,.

the approach set out in the Commission's published guidelines¹²⁵ and the case law of the European Courts.

- 3.59. The question of whether an agreement is capable¹²⁶ of affecting trade between EU Member States has been interpreted broadly in the case law of the European Courts, such that it is likely that in many cases agreements will fall within both Article 101(1) TFEU and the Chapter I prohibition.¹²⁷
- 3.60. In order for an agreement or concerted practice to have an effect on trade between EU Member States, it must impact, actual or potential, cross-border activity involving at least two Member States, whether all or part of them.¹²⁸ In order that trade between EU Member States may be affected by an agreement or concerted practice, it is sufficient that:¹²⁹

'it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that an agreement may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States.'

- 3.61. The application of the effect on trade between EU Member States criterion is independent of the definition of the relevant geographic market; trade between EU Member States may be affected where the relevant market is national or sub-national.¹³⁰
- 3.62. Finally, the agreement or concerted practice needs to be capable of affecting trade between EU Member States to an appreciable extent.¹³¹ This is a purely jurisdictional test to demarcate the boundary between

¹²⁵ OJ C 101 27.4.2004, pages 81 to 96, Commission Notice *Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty*.

¹²⁶ An agreement does not actually have to affect trade as long as it is capable of affecting trade; see Cases T-202/98 etc *Tate & Lyle plc v Commission* [2001] ECR II-2035, at paragraph 78.

¹²⁷ OFT401 *Agreements and concerted practices* (December 2004), at paragraphs 2.22 to 2.27.

¹²⁸ Commission Notice *Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty*, at paragraph 21.

¹²⁹ Case 56/65 *Société Technique Minière v Maschinenbau Ulm* [1966] ECR 235, at page 249.

¹³⁰ Commission Notice *Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty*, at paragraph 22.

¹³¹ See, for example, Case 22/71 *Béguelin* [1971] ECR 949, at paragraph 16.

the application of EU competition law and national competition law.¹³² Appreciability can be assessed in particular by reference to the market position and importance of the undertakings concerned on the relevant market.¹³³

I. Burden and standard of proof

I. Burden of proof

3.63. The burden of proving an infringement of the Chapter I prohibition lies upon the OFT.¹³⁴ However, this burden does not preclude the OFT from relying, where appropriate, on inferences or evidential presumptions.¹³⁵

II. Standard of proof

3.64. The standard of proof that the OFT is required to meet is the civil standard of balance of probabilities,¹³⁶ nothing more and nothing less.¹³⁷

J. Nature of evidence

3.65. In cases involving a possible infringement of the Chapter I prohibition the nature of the evidence may be fragmentary and sparse or circumstantial.¹³⁸

¹³² *Aberdeen Journals v Director General of Fair Trading* [2003] CAT 11, at [459] to [460].

¹³³ See Case 5/69 *Völk v Vervaecke* [1969] ECR 295, at paragraphs 5 to 7; and Commission Notice *Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty*, at paragraph 44.

¹³⁴ *Napp Pharmaceutical Holdings Limited v Director General of Fair Trading* [2002] CAT 1, at [95] and [100].

¹³⁵ *Ibid*, at [110]: 'That approach does not in our view preclude [the OFT], in discharging the burden of proof, from relying in certain circumstances, on inferences or presumptions that would, in the absence of any countervailing indications, normally flow from a given set of facts, for example... that an undertakings' presence at a meeting with a manifestly anti-competitive purpose implies, in the absence of explanation, participation in the cartel alleged'.

¹³⁶ *AH Willis and Sons Limited v Office of Fair Trading* [2011] CAT 13, at [46] and [47]. More recently, see *Tesco Stores Limited v Office of Fair Trading* [2012] CAT 31, at [88].

¹³⁷ *Re S-B* [2010] 2 WLR, at paragraph 34. See also *Re H (Minors)* [1986] AC 563, at paragraph 586; *Re D (Northern Ireland)* [2008] 1 WLR 1499, at paragraph 28; and *Re B* [2009] 1 AC 11, at paragraph 13.

¹³⁸ *Claymore Dairies Limited and Express Dairies plc v Office of Fair Trading* [2003] CAT 18, at [3]. See also *Joined Cases C-204/00 P etc Aalborg Portland and Others v Commission* [2004] ECR I-123, at paragraphs 55 to 57.

3.66. The CAT has since expanded on this:¹³⁹

*'As regards price fixing cases under the Chapter I prohibition, the Tribunal pointed out in Claymore Dairies 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 particular context and the particular circumstances, **may be sufficient to meet the required standard.**'*

[Emphasis added]

3.67. When considering the types of evidence presented in a case:¹⁴⁰

'... it is essential to look at evidence as a whole. Even if for example, particular documents or particular pricing patterns may appear inconclusive standing alone, nonetheless in our judgment the overall picture convincingly establishes the OFT's case'.

K. Exclusion or exemption

I. Exclusion

3.68. Section 3 of the Act provides that the Chapter I prohibition does not apply to any of the cases in which it is excluded by or as a result of Schedules 1 to 3 of the Act.

II. Exemption from the Chapter I prohibition

3.69. An agreement is exempt from the Chapter I prohibition if it satisfies the criteria set out in section 9.¹⁴¹

3.70. An agreement is also exempt from the Chapter I prohibition if it is exempt from Article 101(1) TFEU by virtue of a Regulation (known as a

¹³⁹ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24, at [312].

¹⁴⁰ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24, at [311].

¹⁴¹ Section 9 of the Act. The criteria are: that it contributes to improving production or distribution (section 9(1)(a)(i)) or promoting technical or economic progress (section 9(1)(a)(ii)), while allowing consumers a fair share of the resulting benefits, and does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives (section 9(1)(b)(i)) or afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question (section 9(1)(b)(ii)).

'block exemption' regulation).¹⁴² Such an agreement is also exempt if it does not affect trade between EU Member States but otherwise falls within a category of agreement which is exempt from Article 101(1) TFEU by virtue of a Regulation.¹⁴³

- 3.71. It is for the parties wishing to rely on these provisions to adduce evidence that the criteria are satisfied.
- 3.72. Agreements which have as their object the prevention, restriction or distortion of competition are unlikely to benefit from individual exemption. As the Commission has stated,¹⁴⁴ such restrictions generally fail the first two conditions (objective economic benefits and benefits to consumers) and the third condition (indispensability). However, each case ultimately falls to be assessed on its own merits.

¹⁴² Section 10(1) of the Act.

¹⁴³ Section 10(2) of the Act.

¹⁴⁴ OJ C 101, 27.4.2004, pages 97 to 118, at paragraph 46, Commission Notice *Guidelines on the application of Article 81(3) of the Treaty*.

4. INDUSTRY OVERVIEW AND THE RELEVANT MARKET

4.1. This section sets out:

- a brief description of the conditions of competition relevant to the Infringements;
- a brief overview of the industry, including the products and services affected by the Infringements (the 'Affected Products') and the Parties' activities in the industry; and
- the OFT's assessment of the markets affected by the Infringements (the 'Relevant Markets').

4.2. It should be noted that this section is principally relevant to determining the financial penalties that the OFT has decided to impose. The evidence that the OFT relies on in respect of the Infringements is set out in section 5.

A. Conditions of competition

4.3. The Infringements involve collusion in respect of a series of tendering exercises for the supply and installation of certain alarm and access systems in PMSL retirement homes. Accordingly, this section sets out some of the general principles of competition for tenders.

4.4. Tendering procedures are designed to provide structured competition in areas where it might otherwise be absent.

4.5. There are two broad forms of tender process; open and selective. Open tender processes enable any prospective supplier of the tendered products and/or services to submit bids, while in a selective tender process, the tenderer will select which suppliers it wishes to invite to bid for the contract. Each of the Tenders involved a selective tender process.

4.6. An essential feature of any tender process (whether open or selective) is that prospective suppliers should compete with each other and prepare

and submit bids independently.¹⁴⁵ Further, there will be an expectation on the part of the customer that it will receive independently formulated bids in response to the tender.¹⁴⁶

- 4.7. Any tender submitted following collusion between prospective suppliers (generally referred to as collusive tendering) will almost invariably amount to an infringement of the Chapter I prohibition.¹⁴⁷

B. Industry overview

- 4.8. In order to provide background to the Infringements, this section sets out in brief the products - types of alarm and access control systems - and services that the Parties supplied in respect of the Tenders during the Relevant Period.

I. Types of alarm and access control systems

- 4.9. During the Relevant Period, each of CCSL, Jackson, O'Rourke and Owens was active in the supply, installation, or combined supply and installation of alarm and access control systems. The functionality of those systems included:
- **Warden call systems**, which *'enable residents to summon help from a warden or a monitoring centre [...] either [by] pressing a button or pulling a cord on the unit fitted in their home'*.¹⁴⁸
 - **Fire detection and protection systems**, which *'include sensors, alarm devices and control devices designed to detect [...] fire and ensure safe evacuation'*.¹⁴⁹ There are a number of manufacturers of such systems.¹⁵⁰

¹⁴⁵ See OFT401 *Agreements and Concerted Practices* (December 2004), at paragraph 3.14; and, for example, *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at [208].

¹⁴⁶ See, for example, *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at [208].

¹⁴⁷ See OFT401 *Agreements and Concerted Practices* (December 2004), at paragraph 3.14.

¹⁴⁸ Leniency Application, at paragraph 4.3

¹⁴⁹ Leniency Application, at paragraph 4.13

¹⁵⁰ PGL stated that there are a large number of fire systems on the market that can be installed in retirement properties; see Leniency Application, paragraphs 5.9 to 5.12.

- **Door entry systems**,¹⁵¹ which *'increase security by enabling residents to control visitors entry to the development via telephones or videophones'*.¹⁵²
- A **CCTV** element, for example, as an integral part of the door entry system (such as CCTV functionality at the entry-phone).

II. Brands of warden call systems

4.10. For warden call systems, a number of different manufacturer brands were specified in the Tenders, including most commonly:

- **CCSL's PBX** system, which uses [...] alarm units,¹⁵³ and a [...] PBX switch (necessary for the integration of the alarms with telephony) [supplied by various companies], which are configured by Cirrus using its own software.¹⁵⁴ The distinctive feature of the Cirrus' PBX product is its integration with telephony and free calls between residents.
- [...] systems [supplied by another company], which are traditional warden call systems that do not include the telecommunication functionality offered by the PBX systems.¹⁵⁵
- [other] branded dispersed alarms, which is a type of alarm more usually used *'for residents living independently, away from a communal development'*.¹⁵⁶

4.11. While the Contractors did not manufacture their own warden call systems, they were able to purchase the required system from the relevant manufacturer and then supply it to the customer.

III. Installation services

¹⁵¹ Door entry systems are part of a wider set of *'access control'* products which include, for example, those related to vehicle entry control *Security Industry Market Review 2010*, Keynote, pages 146, 211 and 213.

¹⁵² Leniency Application, at paragraph 4.11.

¹⁵³ [A CCSL Contracts manager] interview transcript, CD 1 (Page 14 line 2 to page 17 line 4). [...].

¹⁵⁴ Leniency Application, at paragraph 4.10; and [a senior CCSL employee] interview transcript, Tape 2, pages 10 and 11.

¹⁵⁵ Leniency Application, at paragraphs 4.7 to 4.9 and 5.5.

¹⁵⁶ Leniency Application, page 8, at paragraphs 4.3 to 4.10.

4.12. The provision of installation services consists of the electrical wiring up of the alarm and access control systems into the relevant properties. Installation services can be provided by sub-contractors approved to install a particular system by its manufacturer.¹⁵⁷

C. Assessment of the Relevant Markets

I. Introduction

4.13. When applying the Chapter I prohibition, the OFT is only obliged to define the relevant market(s) where it is not possible, without such a definition, to determine whether the agreement or concerted practice is liable to affect trade in the UK, and whether it has as its object or effect the prevention, restriction or distortion of competition.¹⁵⁸

4.14. The OFT considers that the Infringements involve agreements and/or concerted practices which had as their object the prevention, restriction or distortion of competition regardless of how the relevant market is defined.¹⁵⁹ Accordingly, the OFT is not obliged to define the relevant market in order to consider that the arrangements in this case are infringements of the Chapter I prohibition.

4.15. However, the OFT does need to form a view of the relevant market for the purposes of assessing the relevant turnover when determining the appropriate level of a financial penalty.¹⁶⁰ Accordingly, the purpose of this section is to identify the Relevant Market in order to assess each Party's relevant turnover.

4.16. Relevant turnover is the turnover of the undertaking in the relevant product and geographic market(s) affected by the Infringements in the undertaking's last business year.¹⁶¹ Therefore, the OFT must consider what products or services are most likely to account for relevant turnover for the purposes of determining the appropriate level of the financial penalties.

¹⁵⁷ Transcript of interview with [a senior CCSL employee], CD 1, pages 14 and 23.

¹⁵⁸ Case T-62/98 *Volkswagen v Commission* [2000] ECR II-2707, at paragraph 230 and Case T-29/92 *SPO and Others v Commission* [1995] ECR II-289, at paragraph 74.

¹⁵⁹ Subject to the requirement of appreciability, which the OFT considers in Section 6 below.

¹⁶⁰ OFT423 *Guidance as to the appropriate amount of a penalty* (September 2012).

¹⁶¹ *Ibid*, at paragraph 2.7. In this context, an undertakings last business year is the financial year preceding the date when the infringement ended.

- 4.17. To that effect, the OFT must be '*satisfied, on a reasonable and properly reasoned basis, of what is the relevant product market affected by the infringement*'.¹⁶² The Court of Appeal has made clear that the market which is taken for the purposes of penalty assessments may properly be assessed on a broad view of the particular trade which has been affected by the proved infringement, rather than by a relatively exact application of principles that would be relevant for a formal analysis.¹⁶³ It is also relevant to consider the commercial reality, insofar as it can reasonably be shown, that the products so grouped were affected by the infringement.¹⁶⁴ The OFT considers that this principle also applies when assessing the relevant geographic market.
- 4.18. The OFT is not bound by market definitions adopted in previous cases, although earlier definitions can, on occasion, be informative when considering the appropriate market definition. Equally, although previous cases can provide useful information, the relevant market must be identified according to the particular facts of the case in hand.
- 4.19. In this case, the OFT has adopted a conservative approach to market definition which may result in a narrower Relevant Market being defined than would be the case if the OFT carried out a full economic analysis of the relevant market(s).
- 4.20. The analysis below first considers what products and services are part of the Relevant Market in this case (the relevant product market), then considers the geographic scope of the Relevant Market in this case (the relevant geographic market), and, finally, sets out the OFT's findings on the Relevant Market in this case (conclusion on the Relevant Market).

II. The relevant product market

- 4.21. In this case, the OFT considers that the relevant product market consists of all of those products and services that were affected by the Infringements (the 'Affected Products'). The OFT's approach to determining the relevant product market in this case is to identify each of the products and services that were the subject of at least one of the

¹⁶² *Argos Limited and Littlewoods Limited v Office of Fair Trading and JJB Sports plc v Office of Fair Trading* [2006] EWCA Civ 1318, at paragraph 170.

¹⁶³ *Ibid*, at paragraph 173.

¹⁶⁴ *Ibid*, at paragraphs 170 to 173 and 228.

Tenders - and so were affected by the Infringements - and treat those products and services as the relevant product market.

Supply and installation

4.22. All of the Tenders concerned the supply and installation of certain systems. Accordingly, the OFT considers that the Affected Products, and therefore the relevant product market, in this case includes both the supply of certain systems and the associated installation services of the systems.

4.23. In drawing this conclusion, the OFT also notes that each of CCSL, Jackson, O'Rourke and Owens was active in either the supply, installation, or supply and installation of these systems during the Relevant Period.

Systems

4.24. All of the Tenders concerned at least one of the following types of system:

- Warden call systems¹⁶⁵ (with occasional integral CCTV component)¹⁶⁶
- Door entry systems¹⁶⁷ (with occasional integral CCTV component)¹⁶⁸
- Fire detection and protection systems¹⁶⁹

4.25. Accordingly, the OFT considers that the Affected Products, and therefore the relevant product market, in this case includes warden call systems,¹⁷⁰ door entry systems,¹⁷¹ and fire detection and protection systems (together the 'Systems'). However, as warden call and door entry systems were invariably included in the same Tenders (whether

¹⁶⁵ See, for example, the Angel Court contract, considered in section 5 below.

¹⁶⁶ See, for example, the Livingstone Court contract, considered in section 5 below.

¹⁶⁷ See, for example, the Chapel Lodge contract, considered in section 5 below.

¹⁶⁸ See, for example, the Homespa House contract, considered in section 5 below.

¹⁶⁹ See, for example, the Abbey Court contract, considered in section 5 below.

¹⁷⁰ These occasionally included a CCTV element integral to the relevant system.

¹⁷¹ These occasionally included a CCTV element integral to the relevant system.

combined or standalone), the OFT refers to these two types of systems collectively in its conclusion.

- 4.26. Given the purpose of defining the relevant market in this case,¹⁷² the OFT does not consider it necessary to assess whether products other than the Systems also form part of the Relevant Market.

Brands of system

- 4.27. The Tenders concerned various different brands of System. For example, for warden call systems, some of the Tenders specified brands of system including [...], [...] and Cirrus PBX systems. In contrast, for fire detection and protection and door entry systems, the Tenders did not generally specify a particular brand of system.
- 4.28. Accordingly, the OFT does not consider it necessary to limit the Affected Products, and therefore the relevant product market, in this case by reference to particular brands of system. Instead, the OFT considers that the Affected Products should be defined by reference to the general functionality of the Systems only.
- 4.29. In drawing this conclusion, the OFT also notes that each of CCSL, Jackson, O'Rourke and Owens was active in the supply and/or installation of various brands of system during the Relevant Period.

Customers

- 4.30. The Tenders concerned the supply and installation of the Systems to retirement properties. Accordingly, the OFT considers that the Affected Products, and therefore the relevant product market, in this case include the supply and/or installation of the Systems to retirement properties.
- 4.31. In drawing this conclusion, the OFT also notes that each of CCSL, Jackson, O'Rourke and Owens was active in the supply and/or installation of the Systems to retirement properties during the Relevant Period.
- 4.32. Given the purpose of defining the relevant market in this case,¹⁷³ the OFT does not consider it necessary to assess whether supply and/or

¹⁷² See paragraph 4.15 above.

¹⁷³ See paragraph 4.15 above.

installation of the Systems to other types of customers also form part of the Relevant Market.

Conclusion on the relevant product market

4.33. In light of the above, the OFT finds that the Affected Products, and therefore the relevant product markets in this case, are the supply and/or installation of (i) warden call and door entry (whether combined or standalone),¹⁷⁴ and (ii) fire detection and protection systems, to retirement properties.

III. The relevant geographic market

4.34. In this case, the OFT has taken the same approach to determining the relevant geographic market as it has to determining the relevant product market.¹⁷⁵

4.35. The Tenders concern the supply and/or installation of the Systems to retirement homes in various locations across the UK. Accordingly, the OFT considers that the relevant geographic market is the UK.

4.36. In drawing this conclusion, the OFT also notes that each of CCSL, Jackson, O'Rourke and Owens was active in supplying and/or installing the Systems across the UK.¹⁷⁶

IV. Conclusion on the Relevant Market

4.37. The OFT has found that the Relevant Markets in this case are the supply and/or installation of (i) warden call and door entry (whether combined or standalone),¹⁷⁷ and (ii) fire detection and protection systems to retirement properties in the UK.

4.38. As explained at paragraph 4.15 above, the OFT is defining the Relevant Markets in this case for the sole purpose of determining the appropriate

¹⁷⁴ These occasionally included a CCTV element integral to the relevant system.

¹⁷⁵ See paragraph 4.21 above.

¹⁷⁶ In respect of Cirrus, see Leniency Application, pages 11-13 paragraphs 5.5, 5.8, 5.12 (A002, pages 11-13). See also, Owens response to section 26 notice, questions 15 and 16 ('*most work involves travelling*'); O'Rourke's response to section 26 notice, questions 15 and 16 ('*anywhere in the country from Dover to Scotland*'); and Jackson's response to section 26 notice, responses to question 15 and 16 ('*nearest 20 miles, farthest 350 miles*').

¹⁷⁷ These occasionally included a CCTV element integral to the relevant system.

level of financial penalties. It does so without prejudice to the OFT's discretion to adopt a different market definition in any subsequent case in the light of the relevant facts and other circumstances of the case, including the purpose for which the relevant market is defined.

5. EVIDENCE RELIED ON BY THE OFT IN RELATION TO THE AGREEMENTS AND/OR CONCERTED PRACTICES

5.1. The purpose of this section is to set out the OFT's infringement findings in relation to the Tenders and to outline the key evidence and information it has relied upon in making its findings. It is structured as follows:

- First, it provides an introduction to the Infringements and sets out the context for and inception of the Infringements (section 5.A).
- Second, it sets out the OFT's analysis and conclusions on the evidence in respect of CCSL's¹⁷⁸ and O'Rourke's actions (Section 5.B).
- Third, it sets out the OFT's analysis and conclusions on the evidence in respect of CCSL's and Owens' actions (Section 5.C).
- Fourth, it sets out the OFT's analysis and conclusions on the evidence in respect of CCSL's and Jackson's actions (Section 5.D).

A. Introduction to the Infringements

I. Purpose of this section

5.2. The purpose of this section is to present relevant background and contextual evidence to the Infringements and to summarise the key aspects of the OFT's infringement findings.

II. Overview of findings

5.3. The OFT finds three separate overall infringements of the Chapter I prohibition between November 2005 and November 2009 (the 'Infringements', each an 'Infringement'). These Infringements and the Parties to them are:

¹⁷⁸ As explained in section 2 above, the OFT attributes liability jointly and severally to Cirrus Communication Systems Limited, Careline UK Monitoring Limited and Peverel Building Technologies Limited (collectively, 'Cirrus') as follows: for the purposes of Infringement 1, 'Cirrus' is a reference to CCSL and CML; for the purposes of Infringements 2 and 3, Cirrus is a reference to CCSL, CML and PBTL.

- i. **Infringement 1:** concerning 19 Tenders involving CCSL and O'Rourke between on or around 23 November 2005 and on or around 30 March 2007.
 - ii. **Infringement 2:** concerning 9 Tenders involving CCSL and Owens between on or around 30 November 2007 and on or around 16 November 2009.
 - iii. **Infringement 3:** concerning 37 Tenders involving CCSL and Jackson between on or around 26 February 2009 and on or around 27 October 2009.
- 5.4. Further and/or in the alternative, the OFT finds separate agreements and/or concerted practices in respect of each Tender.
- 5.5. As part of the Immunity Agreement, Cirrus has accepted that the Infringements infringed the Chapter I prohibition. Additionally, Owens has admitted its involvement in Infringement 2 as part of the Owens Settlement Agreement.
- 5.6. The OFT has also considered whether PMSL (the Peverel subsidiary which, as tenderee, conducted all the Tenders) was involved in any or all of the Infringements. PGL informed the OFT that it was of the view that PMSL was involved in the Infringements and provided evidence to support that proposition.¹⁷⁹ The OFT has carefully considered this evidence, as well as the other evidence in the OFT's possession (in the form of contemporaneous documents and witness evidence of current and former PMSL and CCSL staff). However, following a careful review of all the relevant evidence in the round, the OFT's conclusion is that, although there are reasonable grounds to suspect PMSL's involvement in one or more of the Infringements the evidence is insufficient to make an infringement finding in respect of its conduct and that further work would be required before a clearer conclusion could be drawn in respect of this matter. The OFT has decided against seeking further evidence on PMSL's suspected involvement in the Infringements on administrative priority grounds.

¹⁷⁹ Leniency Application, paragraph 6.1

- 5.7. However, the OFT does retain reasonable grounds for suspecting that PMSL may have been involved in one or more of the Infringements.
- 5.8. During the course of the Investigation, the OFT has also considered whether the Infringements were wider than found in this Decision and involved collusive tendering in relation to more of or all the PMSL contracts involving CCSL and either O'Rourke, Jackson or Owens between 2005 and 2009. PGL informed the OFT that, at least from late 2006, it was of the view that there was collusive tendering in respect of every such contract. This would mean that a substantially larger number of bids would have been the subject of anti-competitive behaviour than is found in this Decision. However, following a careful review of all the relevant evidence and while it continues to have reasonable grounds for suspecting an infringement of the Chapter I prohibition in respect of a number of the contracts falling outside of the Infringements, the OFT's conclusion is that there is insufficient evidence to make infringement findings of that scope and that further work would be required before a clearer conclusion could be drawn in respect of these bids. The OFT has decided that it is not an administrative priority to carry out further work.
- 5.9. The OFT has concluded that the scope of the Infringements should be confined to those contracts in respect of which there is evidence that CCSL did, in fact, disclose its bid to either of O'Rourke, Jackson or Owens and that either of O'Rourke, Jackson or Owens participated in collusive tendering. In the latter regard, the OFT has considered whether the bidding process might have been corrupted in some way by behaviour other than collusive tendering. To exclude that possibility, the OFT has included within the Infringements only those contracts in respect of which there is evidence that CCSL did not act alone and either of O'Rourke, Jackson or Owens was contacted and did participate.

Duration

- 5.10. This section sets out the OFT's approach to the duration of each Infringement.

5.11. The nature of the evidence¹⁸⁰ is such that, although it is possible to find that a particular event took place, it is not always possible to be specific about the date on which it occurred. As a consequence, it is not always possible to identify a precise start and/or end date for either the Infringements or the collusive tendering conduct in relation to each Tender. For this reason, the OFT generally caveats its conclusions on duration and instead states that certain of these events occurred '*on or around*' a particular date. The OFT does not consider that this feature of the evidence undermines its findings in this Decision. For instance, it is not necessary for the OFT to be able to establish precisely the duration for the Infringements or the collusive tendering conduct in relation to each Tender.

Duration for each Infringement

5.12. The OFT's approach in determining the duration of each Infringement is:

- i. **Start date:** To take the start date of the earliest Tender which forms part of the relevant Infringement as the latest date on which that Infringement started.
- ii. **End date:** To take the end date of the latest Tender which forms part of the relevant Infringement as the earliest date on which that Infringement finished.

Duration for each Tender

5.13. The OFT's approach in determining the duration of each Tender is:

- i. **Start date:** To take the date of the earliest evidence which the OFT has of collusive conduct between the Parties to each Tender as the latest date on which that Tender started. This is often the date on which CCSL disclosed its bid to the relevant Contractor for each Tender or the approximate date on which CCSL submitted its own bid to PMSL¹⁸¹ (which the OFT finds would have been done in the

¹⁸⁰ For instance, a FOT dated 1 January 2001 can be reasonably concluded to have been submitted on or around 1 January 2001 (especially where other evidence supports that conclusion) but it is not possible to identify precisely which date it was submitted on.

¹⁸¹ In the absence of a related cover email or a fax header, the dates of submission of bids are necessarily approximate.

knowledge of the existence of a collusive tendering arrangement with the relevant Contractor).

- ii. **End date:** To take the latest evidence which the OFT has of collusive conduct between the Parties to each Tender. This is often the approximate date¹⁸² on which CCSL or the relevant Contractor (whichever is the later) submitted its bid for each Tender.

5.14. This approach will generally result in the OFT determining the minimum duration applicable for each Tender. It may well be that there was earlier and/or later collusive conduct in respect of each Tender but the OFT does not have evidence on its file to further determine this.

III. General evidence to support the OFT's findings of collusive tendering

Introduction

5.15. The purpose of this section is to present and analyse key witness and contemporaneous documentary evidence which the OFT is relying upon in making its infringement findings, together with contextual background information. This evidence supplements and supports the evidence specific to each Tender that is presented in sections 5.B to 5.D below. The OFT relies upon the evidence set out in this section, as well as in Sections 5B to 5D below, in making its infringement findings.

Background to collusive tendering: PMSL's tendering process

5.16. At all material times, PMSL operated as a company providing property management and ancillary services as a managing agent on behalf of the freeholders (landlords) of retirement properties for the leaseholders of the same. Its activities included procuring the supply and installation of the Affected Products. At all material times, PMSL tended to seek bids for such supply and installation contracts from two contractors, one of which was CCSL – which was part of the same corporate group.¹⁸³

¹⁸² As above, in the absence of a related cover email or a fax header, the dates of submission of bids are necessarily approximate.

¹⁸³ It appears that PMSL considered that it was obliged by law (under section 20 of the Landlord and Tenant Act 1984) to seek two tenders, one from a '*wholly unconnected*' company. Further it appears that it was believed that Cirrus would not be a '*wholly unconnected*' company so far as PMSL was concerned.

5.17. PMSL's tender process was captured in an internal document created in December 2004¹⁸⁴ and contained the following steps:

- i. PMSL produced Request to Tender documentation ('RTT') attaching a specification document for the relevant property, a cover letter, and blank tender documents for each tendering party to complete. These blank tender documents would typically be a Form of Tender ('FOT') and a Bill of Quantities ('BOQ');¹⁸⁵
- ii. PMSL sent the RTT documentation to at least two companies (one of whom would be CCSL, the other a contractor (one of O'Rourke, Owens or Jackson) nominated by CCSL);¹⁸⁶
- iii. CCSL and the contractor would then submit their tenders/quotations;¹⁸⁷ and
- iv. PMSL would then award the contract to the lowest bidder.

IV. Collusion in respect of PMSL tenders

Introduction

5.18. The OFT finds that for each Tender CCSL colluded with one of the Contractors in respect of bids submitted in response to a PMSL tender for the Affected Products. This collusion involved CCSL disclosing its own bid to the Contractor who it had selected to bid against it in advance of that Contractor submitting its bid. Having received CCSL's

¹⁸⁴ Exhibit 7 of the Leniency Application

¹⁸⁵ The FOT pro forma used by PMSL contained, among other things, a deadline for the bid and a space for the tenderor to insert its bid in pounds sterling inclusive of VAT and any contingency sum (the latter typically being £1,000). The BOQ (sometimes referred to as the '*equipment list*' or '*summary sheet*') would typically be a table which comprised entries identifying each the type of equipment/service required, the number of each type of equipment/service required, and a blank column for the tenderor to insert its price for that entry, with space for a total price and addition of contingency sum and VAT.

¹⁸⁶ There were occasions where other companies were also invited to submit bids.

¹⁸⁷ There are occasions where the OFT does not know whether the Contractor submitted a bid against all elements of a particular contract or whether the Contractor submitted, when asked, additional information (for instance, there are instances where Jackson submits a BOQ with a total price but without entering individual prices for each entry). If a Contractor submits only tender documentation incomplete in these ways, this is not considered to undermine the OFT's conclusions.

bid the Contractor would then submit a higher bid than the one CCSL had disclosed to it. Although it is not necessary for the OFT to demonstrate the motive for such behaviour the evidence in its possession suggests that it was intended to insulate CCSL from genuine competition when tendering for supply and installation contracts for the Affected Products.¹⁸⁸

Evidence demonstrating collusive tendering

- 5.19. Three contemporaneous internal CCSL documents (dated October 2006, January 2007 and September 2008) set out what appears to be a framework by which CCSL colluded with the Contractors in respect of PMSL tenders by disclosing its own bids to the Contractor in advance of them submitting their bids. There is also correspondence between CCSL and Owens in which CCSL sets out this framework (dated 30 November 2007).
- 5.20. In addition, the OFT presents and relies upon evidence from three individuals who were employed by CCSL at material times during the Infringements. These individuals are [a senior CCSL employee], [a CCSL Contracts Administrator] and [a CCSL Admin Support Supervisor].
- 5.21. The OFT considers that each of these individuals is a credible witness of fact in respect of the Infringements because they held positions within CCSL which meant that they would have been closely involved in either the establishment and/or operation of the collusive tendering process. For example, documentary evidence presented in section 5C and 5D demonstrates that not only did [a CCSL Contracts Administrator] and [a CCSL Admin Support Supervisor] have access to CCSL's bids for PMSL tenders, they also disclosed this information to CCSL's competitors (a key aspect of the OFT's infringement findings).
- 5.22. Further, not only was each of these CCSL employees closely involved in the establishment and/or implementation of the Infringements, there is a high degree of consistency between each of their accounts and a face-

¹⁸⁸ Exhibit 12 to the Leniency Application provides information, for most of the Tenders, on which of the Contractors Cirrus bid against and whether or not Cirrus won the tender. It is clear on the face of Exhibit 12 that Cirrus won most of the Tenders. However, the OFT's conclusions are not undermined where Cirrus was not in the event awarded a particular contract and/or the OFT does not know whether Cirrus was awarded a particular contract.

value reading of the contents of contemporaneous documents and this further supports their credibility.

- 5.23. The relevant documentary and witness interview evidence, together with relevant corroborative witness evidence, is set out and analysed in turn below.

CCSL internal document entitled, 'PMSL-CCSL request to tender process', dated October 2006

- 5.24. An internal CCSL document, entitled '*PMSL- CCSL Request To Tender Process*' dated October 2006¹⁸⁹ sets out the process CCSL used for the handling of PMSL tenders. The OFT considers that this document provides strong evidence to support its conclusion that CCSL engaged in a number of collusive tendering arrangements with the Contractors in respect of a number of PMSL tenders.

- 5.25. This document sets out a table with numbered entries, which appear to be sequential steps in the tendering process. These steps include:

'(1) - Cirrus provides PMSL with names of approved sub-contractors who should be contacted with 'Requests to Tender' (RTTs);

[...]

(8) Cirrus provide quotation to PMSL based on RTT [...]

(9) Cirrus contact Sub-contractor and advise Cirrus quotation price

(10) Sub-Contractor provides PMSL with additional quotation against their RTT;

[...]

(12) PMSL award Contract

(13) Cirrus deliver contract using nominated sub-contractor'

¹⁸⁹ The last edit date of this document (which was originally created on 15 April 2005) is 2 October 2006. The author ([a senior CCSL employee] document last saved by [a CCSL Administrator]) and date of the document is confirmed by the properties of the electronic version of the document.

- 5.26. The OFT particularly notes that Step 9 refers to CCSL disclosing its *'quotation price'* to the *'Sub-contractor'*. In the context of the document as a whole it is evident that this reference to *'Sub-contractor'* is a reference to the contractor PMSL had invited to provide the competing bid for the contract. Accordingly, a face-value interpretation of this document is that CCSL proposed to collude with its competitors by disclosing its bid to the competing bidder. CCSL's quote is clearly a business secret and from the evidence in the OFT's possession there is no legitimate commercial reason why CCSL would have needed to share its business secrets with its competitors.
- 5.27. The OFT also notes that Step 13 appears to envisage that CCSL would win the tendered work – which again is consistent with the existence of collusive tendering arrangements, as it indicates that having received CCSL's bid (Step 9) the contractor would then submit its own bid (Step 10) with CCSL ultimately being awarded the contract and delivering it through the nominated contractor (Step 13).

CCSL internal document, entitled 'PMSL process instructions', dated January 2007

- 5.28. A second CCSL internal document, dated *'January 2007'*, again sets out sequential steps for completing PMSL tenders. The document is entitled *'PMSL PROCESS INSTRUCTIONS'* and electronically named *'Instructions from [a CCSL Administrator]'*.¹⁹⁰ The document further demonstrates the collusive nature of the process:

'...

- Tender arrives. Update PMSL spreadsheet & inform [a CCSL Administrator] date tender arrived and due date (so she can update Tender list)*
- ...*

¹⁹⁰ P00005017. The OFT considers that this is a reference to [a CCSL Administrator]. Given that this is the full name given in the document and it is clear from other evidence that [a CCSL Administrator] was a Cirrus' employee involved with administering the tender process (see transcript of interview with [a CCSL Admin Support Supervisor], pages 37 to 38 who refers to [a CCSL Administrator] as having been responsible for tenders at CCSL's New Milton office and having sent through a process document).

- *Send tender Special Delivery, update PMSL spreadsheet, inform* [a CCSL Administrator]
- ***Send copies of equipment list to either*** [an individual acting on behalf of O'Rourke] *or* [an individual acting on behalf of Jackson]
- *Letter of intent arrives, update PMSL spreadsheet, inform* [a CCSL Administrator]'

[Emphasis added]

- 5.29. The OFT considers that this document supports the conclusion that CCSL colluded with third parties in respect of PMSL tenders. In this respect the OFT notes that the penultimate step refers to CCSL sending the '*equipment list*' to either O'Rourke or Jackson.
- 5.30. The OFT infers that the reference to '*equipment list*' is a reference to CCSL's completed equipment list, more commonly referred to as the BOQ. Disclosing this information would therefore amount to CCSL disclosing its completed bid to the relevant contractor (in this case O'Rourke and Jackson). Accordingly, the penultimate step in the process set out in the January 2007 was for CCSL to disclose its bid to Jackson or O'Rourke – its supposed competitors for the contract. The alternative interpretation of this statement would be that the step refers to CCSL sending a blank equipment list to either Jackson or O'Rourke, but, whilst that may have been necessary on occasion if the contractor mislaid its specification documents from PMSL including the blank BOQ, that is not a likely interpretation. This conclusion is strengthened when the document is considered in light of: (i) the October 2006 and September 2008 documents; (ii) the witness evidence from relevant CCSL staff that will be presented in this section and (iii) the substantial volume of documentary evidence which is set out in section 5.D below which shows CCSL did disclose its bids to Jackson and the price differential analysis in respect of O'Rourke's bidding pattern, considered in section 5.B below, which provides strong circumstantial evidence that CCSL disclosed its bid to O'Rourke.

CCSL internal document attached to an email entitled 'PMSL-CCSL Request To Tender Process', dated 5 September 2008

5.31. A third CCSL internal document entitled '*PMSL- CCSL Request To Tender Process*'¹⁹¹ further demonstrates the collusive nature of the relationship between CCSL and the Contractors in respect of PMSL tenders. The cover email stated:

*'Hello I have updated the process but think its best if we keep this one 'in house' as the bits in red are what we do behind the scenes and not an official part of the process (tee hee).'*¹⁹²

5.32. The tender process document attached to [a CCSL Contracts Administrator's] email included the following steps: '*(10)Cirrus provides PMSL with a Specification for proposed upgrade to Warden Call or Fire Detection System,*'¹⁹³ *containing equipment schedule based on-site survey information and briefing sheet'* and the following text then appears in red '*inform PMSL of alternative contractor to tender to (north [an individual on behalf of Owens], South [an individual on behalf of Jackson])'*'; and '*14) Alternative Contractor provides PMSL with additional quotation against the RTT specification'*, and the following text then appears in red: '*Send equ[ipment] list & unit sell price to alternative contractor'*'.

5.33. A face value interpretation of the statement '*Send equ[ipment] list & unit sell price to alternative contractor'* (in this case apparently Owens or Jackson) is that this again demonstrates that CCSL would disclose its bid to its competitor for a particular tender.

5.34. In his interview with OFT officials [a senior CCSL employee] confirmed the OFT's interpretation of this document stating that the text in red in step 14 meant: '*we [CCSL] send the equipment list and the unit cell price to the sub-contractor who is providing the second tender [...] that*

¹⁹¹ See document P00004874 (which was originally created on 15 April 2005). The author and date of the document are confirmed by the properties of the electronic version of the document.

¹⁹² See document P00004873.

¹⁹³ In light of the OFT's conclusion that this document encapsulates the collusive tendering process, this text also confirms that the collusive tendering process applied to upgrades of warden call as well as fire detection systems.

would be our sell price encompassing all of the materials, all of the equipment, all of the labour, all of the margin'.¹⁹⁴

- 5.35. Accordingly, the OFT concludes that the step of '*Send equ[ipment] list and unit sell price to alternative contractor*' refers to CCSL disclosing its bid to the contractor putting in the alternative bid and notes that this is the third occasion on which an internal CCSL document defining how the bidding process for PMSL tenders was supposed to function records a step that involves CCSL disclosing its bid to its competitor.

CCSL email to Owens, 30 November 2007

- 5.36. An email from CCSL to Owens on 30 November 2007 explicitly sets out the framework for collusion with CCSL:¹⁹⁵

'Hi [an individual acting on behalf of Owens] as per our telephone conversation today, I will be supplying your name to PMSL to supply an alternative tender as they require two quotes to put to the residents for all upgrades. You will then receive a tender pack from [a PMSL Senior Administrator]. I will email you our prices the day the tender lands with me, so that you can get out your price, if you can put in a higher cost than ours, i.e. 5%, 10%, 20% etc but vary it each time so it doesn't look suspicious.

Nothing will change work wise if you survey the site you get the job etc. It will mainly be the northern ones that I will ask you to quote for and someone else will do the south so you get the job. If you have any queries with the paperwork then give me a ring

Your first one! Isn't a tender but just a quote, our price is attached so you just need to send a normal quote to

[a PMSL Senior Administrator]

Pevel Management Services

¹⁹⁴ Transcript of interview with [a senior CCSL employee], CD2, page 25, lines 3 to 10. Later [a senior CCSL employee] confirmed '*that clearly involves us sending our complete tender price to the alternative tenderer*' (CD2, page 26).

¹⁹⁵ P00005409.

12 Centre Court

Vine Lane

Halsowen

Or [\[a PMSL Senior Administrator\]@peverel.co.uk](mailto:[a PMSL Senior Administrator]@peverel.co.uk)

She needs this by Tuesday or if you want to send it to me I can forward it on for you.'

[Emphasis added]

- 5.37. A face-value interpretation of this 30 November 2007 email demonstrates that:
- a. CCSL would provide Owens name to PMSL for alternative tenders;
 - b. CCSL would email its prices to Owens;
 - c. Owens was instructed to put in a higher bid than CCSL's bid; and
 - d. CCSL's bid for a particular contract was attached to that email (*'our price is attached'*).
- 5.38. The OFT's interpretation of the three internal CCSL documents and the 30 November 2007 email is not only corroborated by the evidence presented in sections 5.B to 5.D below, but also by witness evidence received from CCSL's witnesses.
- 5.39. For example, [a senior CCSL employee] (who played a key role in devising CCSL's approach to PMSL tenders) stated PMSL would:¹⁹⁶
- '...issue that [a] tender to us [CCSL] and they would also issue to a sub-contractor of ours that typically we would nominate and advise them [the sub-contractor] during the tender process of our price to make sure that they put a price in that was higher than ours.'*
- 5.40. Further, when specifically asked what the purpose of disclosing the price to the alternative contractor would be, [a senior CCSL employee] explained:¹⁹⁷

¹⁹⁶ Transcript of interview with [a senior CCSL employee], CD1, pages 25 to 26.

'To make sure that Cirrus was the cheapest tender'

- 5.41. In addition, [a senior CCSL employee] explained by reference to a hypothetical example what would actually happen during the process:¹⁹⁸

'Basically it would typically be a phone call. I'm sure there were occasions when there would have been emails exchanged between our admin team and the other sub-contractor.... Sometimes it was just a phone call: 'better get this tender in in two days' time. Our price is £20,000. Yours needs to be obviously appropriately more'...

- 5.42. It is therefore clear from the above excerpts from [a senior CCSL employee's] witness interview transcript that CCSL would disclose its bid to the contractor who CCSL itself would typically nominate so that the contractor in question would put in a higher bid price so that CCSL's was the cheapest tender. The OFT notes that [a senior CCSL employee's] statement is entirely consistent with the OFT's face value interpretation of the three internal CCSL documents and the email of 30 November 2007 set out above. The conduct [a senior CCSL employee] described would clearly be collusive.
- 5.43. [A senior CCSL employee's] witness evidence regarding CCSL's use of a collusive tendering process was corroborated by other relevant CCSL staff interviewed by the OFT (in particular, [a CCSL Contracts Administrator] and [a CCSL Admin Support Supervisor] who both confirmed that they engaged in and/or were aware of, collusive tendering involving the Contractors (acting as the other company nominated by CCSL) during the Relevant Periods relating to the three Infringements.
- 5.44. In interview with the OFT, when asked to explain the *'Peverel tender process'* [a CCSL Contracts Administrator] also made reference to CCSL disclosing its completed BOQ to the contractor:¹⁹⁹

'...we²⁰⁰ would be approached by Peverel for, to tender for a project. They would then ask me for an alternative contractor to,

¹⁹⁷ *Ibid*, CD1, page 46.

¹⁹⁸ Transcript of interview with [a senior CCSL employee], CD1, page 42

¹⁹⁹ Transcript of interview with [a CCSL Contracts Administrator], CD1, pages 12 to 13.

who they could approach to tender... I would supply them with a name, whoever they can approach for a tender ... I would then send a bill of quantities to that other contractor with our prices on and ... they added their prices on... We would send our tender back to Peverel and then they would send theirs back to Peverel...'

- 5.45. [A CCSL Contracts Administrator] also explained that the reason for CCSL disclosing its information to the competing contractor was so that the contractor would submit a higher bid than CCSL:²⁰¹

'... from what I understood it to be was they would then add their mark-up onto our prices and they would always go in at a higher price than us'

- 5.46. In her interview with the OFT, [a CCSL Admin Support Supervisor] also explained that CCSL would disclose its bid to the competing contractor in advance of the contractor also submitting its own bid:²⁰²

'... we [that is CCSL] would fill in the... bill of quantities page. And it would have all the quantities and then obviously our price at the bottom. And then that one sheet would be faxed or emailed to [an individual acting on behalf of Jackson]²⁰³ or [an individual acting on behalf of Owens]²⁰⁴. And then they would do their tender on whatever paperwork they used and send theirs back to [a PMSL Senior Administrator] ... Having seen sight of our price first'

- 5.47. Accordingly, the OFT notes that there is a high degree of consistency between the three contemporaneous internal CCSL documents and the email of 30 November 2007 set out above and the witness interview transcripts of the three CCSL staff involved in the PMSL tender process in terms of (i) CCSL disclosing its bid to the competing contractor in advance of the contractor submitting its own bid; and (ii) the reason for this disclosure being that the contractor in question would submit a

²⁰⁰ Given that [a CCSL Contracts Administrator] was a CCSL employee it is clear that 'we' is a reference to CCSL.

²⁰¹ Transcript of interview with [a CCSL Contracts Administrator], CD1, page 21.

²⁰² Transcript of interview with [a CCSL Admin Support Supervisor], pages 28 to 29.

²⁰³ It is clear from [a CCSL Admin Support Supervisor's] other references to [an individual acting on behalf of Jackson] and [an individual acting on behalf of Owens] that these are in fact the individuals which she is referring to in this quote.

²⁰⁴ *Ibid.*

higher bid enabling CCSL to be awarded the contract. The OFT notes that the pattern of evidence set out in sections 5.B to 5.D below shows such conduct occurring.

The involvement of the Contractors

- 5.48. The OFT finds that the purpose of the Infringements was to enable CCSL to submit the lowest bid and win the tendered work. Although it is not necessary for the OFT to demonstrate the Contractors' motives for the purposes of establishing an infringement, it does beg the question: why would the Contractors behave in this way if they did not win the tenders?
- 5.49. Based on the evidence in its possession the OFT believes it is reasonable to conclude that the Contractors benefitted from performing work for CCSL by, on occasion, being subcontracted to perform the work that was the subject of the Infringements.
- 5.50. In drawing this conclusion, the OFT notes that the October 2006 internal CCSL document entitled '*PMSL-Cirrus request to tender process*', includes the step of '*Cirrus deliver[ing the] contract using nominated sub-contractor*'. The face value interpretation of this statement is that once CCSL had won a contract through the collusive tendering arrangement, then it would deliver that contract through the '*sub-contractor*' who had submitted the other bid.
- 5.51. The OFT's conclusion is also corroborated by witness transcript evidence.
- 5.52. [A senior CCSL employee] gave the following answer when asked what incentive was there for the contractors to be involved in the Infringements:

'It would have been a conversation with the people involved that this is what we would like them to do... They were happy to do it I suppose because at the end of the day we gave them a lot of work....it just evolved.... I must have spoken to them at some stage

*and said right, oh by the way you're going to get a tender, basically you know we'll tell you the price we've put in*²⁰⁵

*'it was implied if you like that well, if we get more installation work, you get more installation work*²⁰⁶

- 5.53. Further, [a CCSL Contracts Administrator] explained that the other contractors participated because *'[t]hey were always guaranteed work'*.²⁰⁷
- 5.54. Moreover, it appears that over time CCSL developed a mechanism, to avoid residents getting suspicious, of delivering the work through a contractor who had not submitted the competing bid. On this point, the OFT's file contains a meeting note from March 2007, which records a meeting on 28 February 2007 between [a senior CCSL employee], [an individual acting on behalf of Jackson], [an individual acting on behalf of O'Rourke] and others. The meeting note records:²⁰⁸

'A brief discussion took place regarding PMSL and [a senior CCSL employee] reiterated the importance of ensuring that Tenders are returned on a timely basis. Also, Cirrus need to ensure that whenever possible, the Sub-contractor carrying out the work on site is not the same sub-contractor who provides the alternative tender'

- 5.55. In her witness interview with OFT officials [a CCSL Contracts Administrator] explained that this system was implemented by the competing bidder for contracts being located in a distinct geographic area from the property which was the subject matter of the bid, with northern based contractors being asked to submit a bid for southern based tenders and southern based contractors would be nominated to bid for contracts in the north. [A CCSL Contracts Administrator] explained how CCSL decided which contractor to nominate to PMSL to avoid *'the residents getting suspicious'*.²⁰⁹

²⁰⁵ Transcript of interview with [a senior CCSL employee] CD 1, pages 46 to 48.

²⁰⁶ *Ibid*, CD1, page 50.

²⁰⁷ Transcript of interview with [a CCSL Contracts Administrator], CD1, page 22.

²⁰⁸ Document 16807389.

²⁰⁹ Transcript of interview with [a CCSL Contracts Administrator], CD1 pages 14 to 15.

*'I'd look at what area it was in and then I would let them know which contractor to approach. So if it was a, a southern area, I'd give them [an individual acting on behalf of Jackson's] name. If it was up in northern area, I'd give them [an individual acting on behalf of Owens'] name'*²¹⁰

5.56. The OFT finds that [a CCSL Contracts Administrator]'s reference to *'looking at what area it was in'* was a reference to a feature of the collusive tendering process which evolved at some point during Infringements 2 and 3. The arrangement to avoid rousing resident's suspicions was to try and ensure that the contractor who provided the competing bid for a particular contract would not be the contractor instructed by CCSL to do the installation works on that property. In due course, it appears that the arrangement evolved to the effect that, pursuant to Infringement 2, Owens would provide the competing bid for properties in the north of England, and, pursuant to Infringement 3, Jackson would provide the competing bid for properties in the south of England.²¹¹ This is consistent with the CCSL internal document of September 2008 dealt with above, which recorded at Step 10 (in red): *'inform PMSL of alternative contractor to tender to (north [an individual acting on behalf of Owens], South [an individual acting on behalf of Jackson])'*.

5.57. This is also consistent with [a CCSL Admin Support Supervisor] evidence:

'... what had been agreed was that ... if [an individual acting on behalf of Owens] did a quote and then we [CCSL] won it, then [an individual acting on behalf of Jackson] would be given the job. ..And if [an individual acting on behalf of Jackson] did the quote

²¹⁰ Transcript of interview with [a CCSL Contracts Administrator], CD1 pages 14 to 15.

²¹¹ This conclusion is supported by other evidence. For example, [a senior CCSL employee] in interview explained *'...the routine developed because we didn't want a contractor who may be doing the installation for us when we won the job to be the contractor who provided the other quotation... typically if Owens Installations based in the south would have been doing the installation typically then we'd have asked [an individual acting on behalf of Jackson] in the north to provide the alternative quotation and vice versa'* (CD1, page 40).

*and we [CCSL] won it, then [an individual acting on behalf of Owens] would be given the job...*²¹²

- 5.58. Accordingly, the OFT finds that there was an informal arrangement by which the Contractors involved in the Infringements were compensated by being awarded installation works from CCSL as sub-contractors. This is corroborated by an email sent from [a CCSL Contracts manager] to Jackson on 4 September 2009 in response to a complaint from Jackson about how onerous its role was.²¹³

'This situation needs to be resolved without further delay

I am extremely disappointed with your last reply to [a CCSL Admin Support Supervisor] and must remind you that the works you are currently doing and are scheduled to do at Beechwood Court, Wolverhampton and Homeshire House Alsager are as a result of the alternative quotes being submitted on time and also free of charge by others.

Should you no longer wish to be involved in these installations please confirm so and we will arrange for an alternative installer to be allocated this work'

- 5.59. The OFT notes that this email demonstrates that Jackson benefitted from the arrangement (*'must remind you that the works you are currently doing and are scheduled to do at Beechwood Court, Wolverhampton and Homeshire House Alsager are as a result of the alternative quotes being submitted on time and also free of charge by others'*).

General evidence showing O'Rourke, Owens, and Jackson's involvement

- 5.60. The OFT's conclusion that O'Rourke was involved in the collusive tendering is supported by the evidence, including:
- i. the evidence set out at Section 5.B below;

²¹² Transcript of interview with [a CCSL Admin Support Supervisor] , pages 30 to 31.

²¹³ P00006783

- ii. the reference to O'Rourke in the January 2007 CCSL document in which, as set out above, is recorded a step of CCSL sharing its completed bid with O'Rourke;
- iii. the reference to [an individual acting on behalf of O'Rourke] in the 28 February 2007 meeting note in which, as the OFT sets out above, an ancillary feature of the collusive tendering arrangement was discussed (being the tactic of delivering the work through a contractor who had not submitted the competing bid)²¹⁴; and
- iv. references in witness evidence: when asked in interview *'who were the subcontractors that were involved in this process'* (that is, the process to ensure that CCSL's was the cheapest tender), [a senior CCSL employee] explained that:²¹⁵

'Glyn Jackson Communications, Owens Installations, [an individual acting on behalf of O'Rourke] for a period until, as I say, we split with him... It was almost entirely from what I can recall Owens, Jackson and O'Rourke'.

5.61. The OFT's conclusion that Owens was involved in the collusive tendering arrangement is supported by the evidence, including:

- i. the evidence set out at Section 5.C below;
- ii. the correspondence between CCSL and Owens on 30 November 2007 as set out above, in which CCSL sets out the framework for collusive tendering and also attaches CCSL's bid;
- iii. the reference to Owens in the September 2008 CCSL document in which, as set out above, are recorded steps of CCSL nominating Owens for properties in the north (which the OFT finds was an ancillary feature of the collusive tendering arrangement) and of CCSL sharing its completed bid with Owens;
- iv. references in witness evidence: as above, when asked in interview *'who were the subcontractors that were involved in this process'*

²¹⁴ Therefore it is reasonable to conclude that this piece of evidence demonstrates O'Rourke's knowledge and involvement in collusive tendering discussions, even if it does not directly demonstrate a discussion of collusive behaviour.

²¹⁵ Transcript of interview with [a senior CCSL employee] CD1, page 46

(that is, the process to ensure that CCSL was the cheapest tender), [a senior CCSL employee] explained that:²¹⁶

'Glyn Jackson Communications, Owens Installations, [an individual acting on behalf of O'Rourke] for a period until, as I say, we split with him... It was almost entirely from what I can recall Owens, Jackson and O'Rourke'

This is consistent with the evidence given by [a CCSL Contracts Administrator] and [a CCSL Admin Support Supervisor]. For instance, as set out above, [a CCSL Contracts Administrator] records that as part of the process she would email CCSL's BOQ to Owens.

- 5.62. The OFT's conclusion that Jackson was involved in the collusive tendering is supported by the evidence, including:
- i. the evidence set out at Section 5.D below;
 - ii. the reference to Jackson in the January 2007 CCSL document in which, as set out above, is recorded a step of CCSL sharing its completed bid with Jackson;
 - iii. the reference to [an individual acting on behalf of Jackson] in the 28 February 2007 meeting note in which, as the OFT sets out above, an ancillary feature of the collusive tendering arrangement was discussed (being the tactic of delivering the work through a contractor who had not submitted the competing bid);²¹⁷
 - iv. the reference to Jackson in the September 2008 CCSL document in which, as set out above, are recorded steps of CCSL nominating Jackson for properties in the south (which the OFT finds was an ancillary feature of the collusive tendering arrangement) and of CCSL sharing its completed bid with Jackson;
 - v. references in witness evidence: as above, when asked in interview *'who were the subcontractors that were involved in this process'*

²¹⁶ Transcript of interview with [a senior CCSL employee], CD1, page 46

²¹⁷ Therefore it is reasonable to conclude that this piece of evidence demonstrates Jackson's knowledge and involvement in collusive tendering discussions, even if it does not directly demonstrate a discussion of collusive behaviour.

(that is, the process to ensure that CCSL was the cheapest tender), [a senior CCSL employee] explained that:²¹⁸

'Glyn Jackson Communications, Owens Installations, [an individual acting on behalf of O'Rourke] for a period until, as I say, we split with him... It was almost entirely from what I can recall Owens, Jackson and O'Rourke'

This is consistent with the evidence given by [a CCSL Contracts Administrator] and [a CCSL Admin Support Supervisor]. For instance, as set out above, [a CCSL Contracts Administrator] records that as part of the process she would email CCSL's BOQ to Jackson.

5.63. When considering whether the evidence established that each of O'Rourke, Owens and Jackson had been involved in collusive tendering with CCSL, the OFT has carefully considered all of the evidence on the OFT's file. When considering all of the evidence, the OFT has also considered the evidence which might undermine the OFT's infringement findings. In particular, the OFT has carefully considered the interviews given by [an individual acting on behalf of Jackson] and [an individual acting on behalf of O'Rourke]. In these interviews, [an individual acting on behalf of Jackson]²¹⁹ and [an individual acting on behalf of O'Rourke]²²⁰ both denied participation in any collusive tendering arrangement. However, the OFT has concluded that totality of the evidence, in particular the contemporaneous documents as corroborated by the evidence of the CCSL witnesses, is such that [an individual acting

²¹⁸ Transcript of interview with [a senior CCSL employee] , CD1, page 46

²¹⁹ In interview, [an individual acting on behalf of Jackson] suggested that he bid for *'Peveler tenders'* in the hope that Jackson would be awarded the contract (see, for example, transcript of interview with [an individual acting on behalf of Jackson], CD 1, page 51 line 5 to page 57, line 19). [An individual acting on behalf of Jackson] specifically denied having any contact with Cirrus during *'the quotation process'* when bidding for *'Peveler tenders'* (transcript of interview with [an individual acting on behalf of Jackson], CD1, page 67 line 25 to page 68 line 11).

²²⁰ In interview, [an individual acting on behalf of O'Rourke] suggested that he bid for *'Peveler contracts'* in the hope that O'Rourke would be awarded the contract (transcript of interview with [an individual acting on behalf of O'Rourke], CD 1, line 19 to page 20, line 10). [An individual acting on behalf of O'Rourke] specifically denied any contact with *'other bidders who were quoting for Peveler'* and denied received anything *'to say 'This is a tender bid from your competitors' when [he was].. quoting for Peveler'* (transcript of interview with [an individual acting on behalf of O'Rourke], CD 2, page 9, line 2 to line 27).

on behalf of Jackson's] and [an individual acting on behalf of O'Rourke's] denials are not credible. In particular, the OFT relies upon those contemporaneous documents which, as set out in particular in this section and in section 5.B to 5.D below, the OFT considers demonstrates collusive tendering involving CCSL and Jackson and CCSL and O'Rourke.

5.64. The OFT considers that the contemporaneous documentary evidence and witness evidence in this section and in Sections 5B to 5D support its infringement findings. The OFT has considered all relevant evidence in the round and in the context of other evidence. This is particularly the case where certain evidence is circumstantial and the OFT has considered the evidence in the round to test the strength of its inferences.

B. Infringement 1: CCSL and O'Rourke

5.65. On the basis of the evidence assessed in Section 5.A above and at paragraphs 5.70 to 5.234 below, the OFT finds that CCSL and O'Rourke participated in a single overall agreement which had the object of preventing, restricting or distorting competition in respect of the supply and installation of the Affected Products thereby infringing the Chapter I prohibition (hereafter 'Infringement 1').

5.66. Further and/or in the alternative, the OFT finds that Infringement 1 was itself comprised of a number of separate agreements and/or concerted practices which each had the object of preventing, restricting or distorting competition in respect of the supply and installation of the Affected Products thereby infringing the Chapter I prohibition.

5.67. As part of the Immunity Agreement, Cirrus has accepted that the Infringements infringed the Chapter I prohibition.

5.68. The OFT has analysed the evidence in relation to each Tender in paragraphs 5.83 to 5.234 below by reference to the following framework:

- i. First, the OFT establishes that PMSL invited CCSL and O'Rourke to tender for a contract.
- ii. Second, the OFT establishes that CCSL disclosed its bid to O'Rourke.

- iii. Third, the OFT finds that O'Rourke did not distance itself from the information it received from CCSL.
- iv. Fourth, the OFT considers whether CCSL submitted the bid that it had disclosed to O'Rourke.
- v. Fifth, the OFT demonstrates that O'Rourke took the information it received regarding CCSL's bid into account and submitted a bid that was higher than the bid that CCSL disclosed to O'Rourke.
- vi. Sixth, where possible, the OFT establishes who was awarded the contract.

5.69. Paragraphs 5.70 to 5.80 below summarise the process the OFT has used for demonstrating the second step of the above framework, that is, that CCSL disclosed its bid to O'Rourke.

I. Process for establishing that CCSL disclosed its bid to O'Rourke

5.70. Relative to Infringements 2 (CCSL-Owens) and 3 (CCSL-Jackson) there is a paucity of contemporaneous documentary evidence demonstrating that CCSL disclosed its bid to O'Rourke. However, the OFT finds that these disclosures did, in fact, occur. In drawing this conclusion, the OFT has substantially relied upon price differential analysis (establishing the percentage difference in price between CCSL and O'Rourke's bids).

5.71. This price differential analysis was conducted to determine whether a pattern existed to support the proposition that the bids submitted by O'Rourke were calculated with reference to CCSL's bid (thereby supporting an inference that CCSL had disclosed its bid to O'Rourke and that O'Rourke had adapted its commercial behaviour as a result of this disclosure).

5.72. In its analysis, the OFT reviewed the 19 Tenders submitted by O'Rourke between 23 November 2005 and 30 March 2007 on the basis of the tender documentation (that is, the FOT and/or BOQ submitted by CCSL and O'Rourke for each of the 19 Tenders).

5.73. The OFT considers that the following observed patterns support the OFT's findings that CCSL disclosed its bid to O'Rourke in advance of O'Rourke submitting its bid.

- 5.74. First, as part of the pricing differential analysis, the OFT has compared CCSL's and O'Rourke's total bids, not including VAT or any contingency sum. The analysis demonstrates²²¹ that, for each of the 19 bids submitted by O'Rourke for the Tenders, O'Rourke's total bid is almost exactly ten or fifteen per cent higher than the equivalent bid by CCSL.
- 5.75. The OFT considers that it is extremely unlikely that competitors which do not exchange pricing information would by coincidence submit bids 10 or 15 per cent (+/-0.01 per cent) apart. Accordingly, the OFT believes that the reason why each of CCSL's and O'Rourke's bids was almost exactly 10 per cent or 15 per cent apart is that CCSL disclosed its bid to O'Rourke and that O'Rourke calculated its bid by adding a fixed percentage to the disclosed CCSL bid.
- 5.76. The OFT considers that this price differential is sufficient on its own to demonstrate that for each Tender CCSL disclosed its bid to O'Rourke.
- 5.77. However, the OFT's finding is further supported by the pattern observed of O'Rourke submitting 19 bids which is almost exactly 10 or 15 per cent higher than CCSL's bid. The OFT considers that this is extremely unlikely to have occurred at random or be mere coincidence. Accordingly, the OFT believes that the result of its price differential analysis (that is, 19 Tenders which respond to this pattern) demonstrates a pattern of conduct in which CCSL disclosed its bid to O'Rourke and O'Rourke calculating its bid by adding a fixed percentage to the bid that CCSL disclosed to O'Rourke.
- 5.78. This conclusion is also supported by other evidence. For instance, there is documentary evidence demonstrating that CCSL later explained to another Contractor (Owens)²²² that CCSL would *'email you [Owens] our [CCSL's] prices the day the tender lands with me, so that you can get out your price, if you can put in a higher cost than ours, i.e. 5%, 10%, 20% etc but vary it each time so it doesn't look suspicious'*. As set out in paragraph 5.249 below, the OFT considers that this is an instruction to Owens to add a percentage increase to the bid that CCSL disclosed to Owens when submitting its own bid. Although the email between CCSL

²²¹ The precise calculation for each Tender is set out in the analysis of the evidence for each Tender, in section 5.B.II below.

²²² The OFT finds that Owens was also party to a collusive tendering arrangement with CCSL, see paragraphs 5.242 to 5.243 below.

and Owens post-dates the collusive tendering arrangement between CCSL and O'Rourke there is no evidence to suggest that the arrangements between CCSL and O'Rourke operated in a materially different way.

- 5.79. As part of the pricing differential analysis, in respect of 14 of the 19 Tenders, the OFT is also able to compare not only CCSL and O'Rourke's total bids, but also to compare their prices for each entry in the BOQ.²²³ The analysis demonstrates that, for these 14 Tenders, each item of the BOQ submitted by O'Rourke is also priced 10 (or in one case 15)²²⁴ per cent higher than in the equivalent entry in the CCSL's bid (+/-0.1 per cent).
- 5.80. The OFT considers that it is extremely unlikely that such price differences would have occurred at random or be mere coincidence. Instead, the OFT considers that this further supports its conclusion that CCSL had disclosed its bid to O'Rourke and O'Rourke had calculated its bid by adding a percentage increase to CCSL's bid.
- 5.81. The OFT's conclusions set out above are corroborated by other evidence, in particular the contemporaneous documentary and witness evidence set out in section 5.A above which outlines the nature of the Infringements.
- 5.82. The OFT now sets out its analysis of the evidence for each Tender in respect of Infringement 1.

II. The Tenders

Beech Court contract (from on or around 23 November 2005 to on or around 25 November 2005)

- 5.83. The first contract that the OFT examines is in respect of Beech Court, a PMSL property in Nottingham. The contract was for the supply and installation of a warden call system and a door entry system.²²⁵

²²³ For the other bids, the OFT's file does not contain legible BOQs.

²²⁴ Homechester House contract.

²²⁵ The OFT relies on the description of the contract in exhibit 12 (PBX warden call installation) and in the contract specification document ('*Upgrade of Warden Call & Access Control Equipment*') and the FOT ('*Warden Call Upgrade*').

i. PMSL invites CCSL and O'Rourke to tender

5.84. RTT documents for the Beech Court contract with cover letters, from PMSL, to CCSL and O'Rourke dated 17 October 2005 demonstrate that PMSL invited both parties to tender for the Beech Court contract. The deadline set out for bids was 25 November 2005.

ii. CCSL discloses its bid to O'Rourke

5.85. CCSL's bid (not including VAT and contingency sum) was **£28,919.98** and O'Rourke's bid (not including VAT or contingency sum) was **£31,811.97**. O'Rourke's bid is exactly 10 per cent higher than CCSL's bid. For the reasons explained at paragraphs 5.70 to 5.80 above, the OFT considers that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

iii. O'Rourke does not distance itself from the information it receives from CCSL

5.86. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.87. The OFT's file contains tender documentation completed by CCSL for the Beech Court contract dated 23 November 2005 and notes that CCSL was awarded the contract. Therefore, the OFT finds that CCSL submitted a bid for Beech Court to PMSL. CCSL's bid was **£28,919.98** (not including VAT or any contingency sum).²²⁶

v. O'Rourke submits a higher bid than CCSL

5.88. O'Rourke submitted this bid to PMSL on 25 November 2005.²²⁷ O'Rourke's bid was **£31,811.97** (not including VAT or any contingency

²²⁶ This figure is based on the handwritten total given in CCSL's tender documentation under '*Schedule of Repairs*' and the typed total in CCSL's '*Equipment Schedule*'.

²²⁷ This conclusion is also supported by other evidence including: the existence of a document which appears to be an internal PMSL record of receipt of bids for the Beech Court contract from CCSL and from O'Rourke; the existence of correspondence to CCSL (dated 6 December 2005) and O'Rourke (dated 10 January 2006) thanking them for their bids for the Beech Court contract and notifying them of the result of the tender exercise; and the entry for the Beech

sum)²²⁸ and was therefore higher than the bid that CCSL disclosed to O'Rourke (and submitted to PMSL).

5.89. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.90. CCSL was awarded this contract.²²⁹

Westminster Court contract (on or around 11 January 2006 to on or around 12 January 2006)

5.91. The next contract that the OFT examines is in respect of Westminster Court, a PMSL property in London. The contract was for the supply and installation of a warden call system and a door entry system.²³⁰

i. PMSL invites CCSL and O'Rourke to tender

5.92. RTT documents for the Westminster Court contract with cover letters, from PMSL, to CCSL and O'Rourke dated 6 December 2005 demonstrate that PMSL invited both parties to tender for the Westminster Court contract. The deadline set out for bids was 16 January 2006.

ii. CCSL discloses its bid to O'Rourke

5.93. CCSL's bid (not including VAT and contingency sum) was **£30,245.97** and O'Rourke's bid (not including VAT and contingency sum) was **£33,270.47**. O'Rourke's bid was almost exactly 10 per cent higher²³¹

Court contract in Exhibit 12 which records that CCSL and O'Rourke bid against each other and CCSL won the contract.

²²⁸ This figure is based on a handwritten total at the bottom of O'Rourke's BOQ not including any VAT or contingency sum.

²²⁹ Exhibit 12 records 'Won'.

²³⁰ The OFT relies on the description of the contract in exhibit 12 (PBX warden call installation) and in the contract specification document ('Upgrade of Warden Call & Access Control Equipment') and the FOT ('Warden Call Upgrade')

²³¹ Precisely 10 per cent higher than £30,245.97 is £33,270.57, being 10p more than O'Rourke's total bid. The OFT considers that this minor discrepancy does not undermine its conclusions.

than CCSL's bid. Further, a comparison of the entries in CCSL's and O'Rourke's BOQ reveals that all of O'Rourke's entries are between 9.98 per cent and 10 per cent higher than CCSL's, with 20 of the 24 entries being exactly 10 per cent higher. For the reasons explained at paragraphs 5.70 to 5.80 above, the OFT considers that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

iii. O'Rourke does not distance itself from the information it receives from CCSL

5.94. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.95. CCSL submitted a bid of **£30,245.97** (not including VAT or any contingency sum) on or around 11 January 2006.²³² Exhibit 12 records that CCSL submitted a bid, as do what appears to be an internal PMSL record dated 16 January 2006 recording bids by CCSL and a PMSL Notice to All Leaseholders dated 1 March 2006 recording a bid by CCSL.

v. O'Rourke submits a higher bid than CCSL

5.96. O'Rourke submitted a bid of **£33,270.47** (not including VAT or any contingency sum) on 12 January 2006.²³³ This was therefore higher than the bid that CCSL disclosed to O'Rourke (and submitted to PMSL). Exhibit 12 records that O'Rourke submitted a bid, as do what appears to be an internal PMSL record dated 16 January 2006 recording bids by O'Rourke, a PMSL Notice to All Leaseholders dated 1 March 2006 recording a bid by O'Rourke and a letter to O'Rourke dated 3 April 2006 recording that O'Rourke's bid was unsuccessful.

5.97. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and submitted a higher bid.

²³² This figure is calculated by totalling the entries in the CCSL BOQ (which includes multiplying the price given for a particular unit by the number of that unit) and not including sums for VAT or contingency sums.

²³³ This figure is based on the handwritten total on O'Rourke's BOQ, from which the £1,000 contingency sum which is recorded has been subtracted.

vi. Contract award

5.98. CCSL was awarded this contract.²³⁴

Homeridings House contract (on or around 2 March 2006 to on or around 3 March 2006)

5.99. The next contract that the OFT examines is in respect of Homeridings House, a PMSL property in Milton Keynes. The contract was for the supply and installation of a warden call system and a door entry system.²³⁵

i. PMSL invites CCSL and O'Rourke to tender

5.100. RTT documents for the Homeridings House contract with cover letters, from PMSL, to CCSL and O'Rourke dated 24 January 2006 demonstrate that PMSL invited CCSL and O'Rourke to tender for the Homeridings House contract. The deadline set out for bids was 6 March 2006.

ii. CCSL discloses its bid to O'Rourke

5.101. CCSL's bid (not including VAT and contingency sum) was **£19,788.93** and O'Rourke's bid (not including VAT and contingency sum) was **£21,767.94**. O'Rourke's bid was almost exactly 10 per cent²³⁶ higher than CCSL's bid. Further, a comparison of the entries in CCSL's and O'Rourke's BOQ reveals that all of O'Rourke's entries are between 10 and 10.3 per cent higher than CCSL's, with 18 of the 25 entries being exactly 10 per cent higher. For the reasons explained at paragraphs 5.70 to 5.80 above, the OFT considers that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

iii. O'Rourke does not distance itself from the information it receives from CCSL

²³⁴ Exhibit 12 records 'Won'.

²³⁵ The OFT relies on the description of the contract in exhibit 12 (PBX warden call installation) and in the contract specification document ('*Upgrade of Warden Call & Access Control Equipment*') and the FOT ('*Warden Call Upgrade*').

²³⁶ Precisely 10 per cent more than £19,788.93 is £21,767.83, being 11p less than O'Rourke's total bid. The OFT considers that this minor discrepancy does not undermine its conclusions.

5.102. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.103. The OFT's file contains tender documentation completed by CCSL for Homeridings House and notes that CCSL was awarded the contract, as does a letter to CCSL dated 3 April 2006 recording that its tender had been successful. Therefore, the OFT considers that CCSL submitted this bid for Homeridings House to PMSL. It is likely that CCSL submitted its bid on or around 2 March 2006 because that is the date of CCSL's FOT. CCSL's bid was **£19,788.93** (not including VAT or contingency sum).²³⁷

v. O'Rourke submits a higher bid than CCSL

5.104. O'Rourke submitted a bid of **£21,767.94** (not including VAT or any contingency sum) on 3 March 2006.²³⁸ This bid was therefore higher than the bid that CCSL disclosed to O'Rourke (and submitted to PMSL). Exhibit 12 records that O'Rourke submitted a bid, as does a letter to O'Rourke dated 5 May 2006 recording that its bid had been unsuccessful.

5.105. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.106. CCSL was awarded this contract.²³⁹

Homeflyde House contract (on or around 16 December 2005 to on or around 3 March 2006)

²³⁷ This figure is calculated by totalling the entries in the CCSL BOQ (which includes multiplying the price given for a particular unit by the number of that unit) and not including sums for VAT or contingency sums.

²³⁸ This figure is taken from the handwritten total on O'Rourke's BOQ page, having subtracted the £1,000 contingency sum said to be added thereto.

²³⁹ Exhibit 12 records 'Won'.

5.107. The next contract that the OFT examines is in respect of Homeflyde House, a PMSL property in Blackpool. The contract was for the supply and installation of a warden call system and a door entry system.²⁴⁰

i. PMSL invites CCSL and O'Rourke to tender

5.108. RTT documents for the Homeflyde House contract with cover letters, from PMSL, to CCSL (dated 11 November 2005) and O'Rourke (dated 17 February 2006) demonstrate that PMSL invited CCSL and O'Rourke to tender for the Homeflyde House contract. The deadline set out for bids seems to have changed, having been 20 December 2005 in the letter to CCSL, to 3 March 2006 in the letter to O'Rourke.

ii. CCSL discloses its bid to O'Rourke

5.109. CCSL's bid (not including VAT and contingency sum) was **£27,037.93**. O'Rourke's bid (not including VAT and contingency sum) was **£30,585.54**. However, the OFT considers that O'Rourke made errors in calculating this bid, which, when corrected, result in a bid of **£29,741.63**.²⁴¹ O'Rourke's corrected bid of **£29,741.63** was 10 per cent higher²⁴² than CCSL's bid. Further, a comparison of the entries in CCSL's and O'Rourke's corrected BOQ reveals that all of O'Rourke's entries are between 9.98 per cent and 10 per cent higher than CCSL's, with 22 of the 25 entries being exactly 10 per cent higher. For the reasons explained at paragraphs 5.70 to 5.80 above, the OFT considers

²⁴⁰ The OFT relies on the description of the contract in exhibit 12 (PBX warden call installation) and in the contract specification document (*'Upgrade of Warden Call & Access Control Equipment'*) and the FOT (*'Warden Call Upgrade'*)

²⁴¹ This figure is calculated by totalling the entries in O'Rourke's BOQ and not including VAT or any contingency sum and correcting for two apparent errors in O'Rourke's completion of the entries in its BOQ. The two errors were: (1) O'Rourke's BOQ failed to include the entry for lock release; and (2) O'Rourke's BOQ calculated the price of 78 *'Gang Surface back box'* as £969.54, whereas CCSL charged £88.14, founding the reasonable inference that O'Rourke miscalculated by a factor of 10. If one totals O'Rourke's BOQ, charging £28.68 for the lock release entry (which the OFT has calculated as 10 per cent above CCSL's charge of £26.08) and charging £96.54 for the *'Gang Surface back box'* entry (which the OFT has calculated as 10 per cent above CCSL's charge of £88.14), the total bid the OFT finds that O'Rourke intended to charge is £29,741.63.

²⁴² Precisely 10 per cent higher than £27,037.93 is £29,741.72, being 9p more than O'Rourke's total (corrected) bid. The OFT considers that this minor discrepancy does not undermine its conclusions.

that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

iii. O'Rourke does not distance itself from the information it receives from CCSL

5.110. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.111. The OFT's file contains tender documentation completed by CCSL for Homeflyde House and notes that CCSL was awarded the contract. Therefore, the OFT considers that CCSL submitted a bid for Homeflyde House to PMSL. It is likely that CCSL submitted its bid on or around 16 December 2005 because that is the date of CCSL's FOT. CCSL's bid was **£27,037.93** (not including VAT or any contingency sum).²⁴³

v. O'Rourke submits a higher bid than CCSL

5.112. O'Rourke submitted a bid of **£30,585.54** (not including VAT or any contingency sum) on 3 March 2006. O'Rourke's bid was therefore higher than the bid that CCSL disclosed to O'Rourke (and submitted to PMSL).²⁴⁴ Exhibit 12 records that O'Rourke submitted a bid.

5.113. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.114. CCSL was awarded this contract.²⁴⁵

Springwood Court contract (on or around 7 March 2006 to on or around 9 March 2006)

²⁴³ This figure was calculated by way of totalling the entries on CCSL's BOQ not including VAT or any contingency sum.

²⁴⁴ The bid which the OFT finds above was O'Rourke's bid had 2 errors of calculation not been made (£29,741.63 - see footnote 241 above) is also higher than CCSL's bid.

²⁴⁵ Exhibit 12 records 'Won'.

5.115. The next contract that the OFT examines is in respect of Springwood Court, a PMSL property in Kent. The contract was for the installation of a fire system.²⁴⁶

i. PMSL invites CCSL and O'Rourke to tender

5.116. RTT documents for the Springwood Court contract with cover letters, from PMSL, to CCSL and O'Rourke dated 30 January 2006 demonstrate that PMSL invited CCSL and O'Rourke to tender for the Springwood Court contract. The deadline set out for bids was 10 March 2006.

ii. CCSL discloses its bid to O'Rourke

5.117. CCSL's bid (not including VAT and contingency sum) was **£13,019.69** and O'Rourke's bid (not including VAT and contingency sum) was **£14,321.72**. O'Rourke's bid was 10 per cent higher²⁴⁷ than CCSL's bid. Further, a comparison of the entries in CCSL's and O'Rourke's BOQ reveals that all of O'Rourke's entries are between 10 and 10.2 per cent higher than CCSL's, with 10 of the 12 entries being exactly 10 per cent higher. For the reasons explained at paragraphs 5.70 to 5.80 above, the OFT considers that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

iii. O'Rourke does not distance itself from the information it receives from CCSL

5.118. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.119. The OFT's file contains tender documentation completed by CCSL for the Springwood Court contract and notes that CCSL was awarded the contract. Therefore, the OFT considers that CCSL submitted a bid for the Springwood Court contract to PMSL. It is likely that CCSL submitted

²⁴⁶ The OFT relies on the description of the contract in exhibit 12 (Fire System all installation) and in the contract specification document ('*Upgrade of Fire Detection and Emergency Lighting Equipment*') and the FOT ('*Fire Detection System and emergency lighting*').

²⁴⁷ Precisely 10 per cent higher than £13,019.69 is £14,321.66, being 6p less than O'Rourke's total bid. The OFT considers that this minor discrepancy does not undermine its conclusions.

its bid on or around 7 March 2006 because that is the date of CCSL's FOT. CCSL's bid was **£13,019.69** (not including any VAT or contingency sum).²⁴⁸

v. O'Rourke submits a higher bid than CCSL

5.120. O'Rourke submitted a bid of **£14,321.72** (not including VAT or any contingency sum)²⁴⁹ on 9 March 2006. O'Rourke's bid was therefore higher than the bid that CCSL disclosed to O'Rourke (and submitted to PMSL). Exhibit 12 records that O'Rourke submitted a bid.

5.121. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.122. CCSL was awarded this contract.²⁵⁰

Homecroft House contract (on or around 21 March 2006 to on or around 3 April 2006)

5.123. The next contract that the OFT examines is in respect of Homecroft House, a PMSL property in Bognor Regis. The contract was for the supply and installation of a warden call system and a door entry system.²⁵¹

i. PMSL invites CCSL and O'Rourke to tender

5.124. RTT documents for the Homecroft House contract with cover letters, from PMSL, to CCSL and O'Rourke, dated 21 February 2006, demonstrate that PMSL invited CCSL and O'Rourke to tender for the

²⁴⁸ This is the figure given in CCSL's tender documentation as the total for the '*Schedule of Repairs*'.

²⁴⁹ This figure is taken from the handwritten total on O'Rourke's BOQ, having subtracted the £1,000 contingency sum which is recorded as having been added on before the entries were totalled.

²⁵⁰ Exhibit 12 records '*Won*'.

²⁵¹ The OFT relies on the description of the contract in exhibit 12 (PBX warden call installation) and in the contract specification document ('*Upgrade of Warden Call & Access Control Equipment*') and the FOT ('*Upgrade of Warden Call & Access Control*').

Homecroft House contract. The deadline set out for bids was 3 April 2006.

ii. CCSL discloses its bid to O'Rourke

5.125. CCSL's bid (not including VAT and contingency sum) was **£38,710.32** and O'Rourke's bid (not including VAT and contingency sum) was **£42,581.79**. O'Rourke's bid was almost exactly 10 per cent higher²⁵² than CCSL's bid. Further, a comparison of the entries in CCSL's and O'Rourke's BOQ reveals that all of O'Rourke's entries are between 10 per cent and 10.1 per cent higher than CCSL's, with 16 of the 21 entries being exactly 10 per cent higher. For the reasons explained at paragraphs 5.70 to 5.80 above, the OFT considers that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

iii. O'Rourke does not distance itself from the information it receives from CCSL

5.126. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.127. The OFT's file contains tender documentation completed by CCSL for the Homecroft House contract and notes that CCSL was awarded the contract. Therefore, the OFT considers that CCSL submitted a bid for the Homecroft House contract to PMSL. It is likely that CCSL submitted its bid on or around 21 March 2006 because that is the date of CCSL's FOT. CCSL's bid was **£38,710.32** (not including VAT or any contingency sum).²⁵³

v. O'Rourke submits a higher bid than CCSL

5.128. O'Rourke submitted a bid of **£42,581.79** (not including VAT or any contingency sum)²⁵⁴ on or around 3 April 2006.²⁵⁵ O'Rourke's bid was

²⁵² Precisely 10 per cent higher than £38,710.32 is £42,581.35, being 44p less than O'Rourke's total bid. The OFT considers that this minor discrepancy does not undermine its conclusions.

²⁵³ This figure is the typed 'TOTAL' in CCSL's BOQ.

²⁵⁴ This figure is the handwritten total set out on O'Rourke's BOQ.

therefore higher than the bid that CCSL disclosed to O'Rourke (and submitted to PMSL). Exhibit 12 records that O'Rourke submitted a bid, as does a letter to O'Rourke dated 21 September 2006 recording that its tender had been unsuccessful.

5.129. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.130. CCSL was awarded this contract.²⁵⁶

Homevale House contract (on or around 24 July 2006 to on or around 2 August 2006)

5.131. The next contract that the OFT examines is in respect of Homevale House, a PMSL property in Folkestone. The contract was for the supply and installation of a warden call system and a door entry system.²⁵⁷

i. PMSL invites CCSL and O'Rourke to tender

5.132. RTT documents for the Homevale House contract with cover letters, from PMSL, to CCSL and O'Rourke, dated 19 July 2006, demonstrate that PMSL invited CCSL and O'Rourke to tender for the Homevale House contract. The deadline set out for bids was 2 August 2006.

ii. CCSL discloses its bid to O'Rourke

5.133. CCSL bid (not including VAT and contingency sum) was **£22,140** and O'Rourke's bid (not including VAT and contingency sum) was **£24,356.49**. O'Rourke's bid was almost exactly 10 per cent higher²⁵⁸ than CCSL's bid. Further, a comparison of the entries in CCSL's and

²⁵⁵ This is based upon the date on O'Rourke's FOT. The OFT concludes in all the circumstances that the fax header date ('19 Feb 99') is an error (the handwritten date on the FOT is 3 April 2006 and the deadline given is 3 April 2006).

²⁵⁶ Exhibit 12 records 'Won'.

²⁵⁷ The OFT relies on the description of the contract in exhibit 12 (PBX warden call installation) and in the contract specification document ('Upgrade of Warden Call & Access Control Equipment') and the FOT ('Warden Call Upgrades').

²⁵⁸ Precisely 10 per cent higher than £22,140 is £24,354, being £2.49 less than O'Rourke's total bid. The OFT considers that this minor discrepancy does not undermine its conclusions.

O'Rourke's BOQ reveals that all of O'Rourke's entries are between 10 and 10.1 per cent higher than CCSL's, with 16 of the 21 entries being exactly 10 per cent higher. For the reasons explained at paragraphs 5.70 to 5.80 above, the OFT considers that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

iii. O'Rourke does not distance itself from the information it receives from CCSL

5.134. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.135. The OFT's file contains tender documentation completed by CCSL for the Homevale House contract and notes that CCSL was awarded the contract. Therefore, the OFT considers that CCSL submitted this bid for Homevale House to PMSL. It is likely that CCSL submitted its bid on or around 24 July 2006 because that is the date of CCSL's FOT. CCSL's bid was **£22,140** (not including VAT or any contingency sum).²⁵⁹

v. O'Rourke submits a higher bid than CCSL

5.136. O'Rourke submitted a bid of **£24,356.49** (not including VAT or any contingency sum)²⁶⁰ on 2 August 2006. O'Rourke's bid was therefore higher than the bid that CCSL disclosed to O'Rourke (and submitted to PMSL). Exhibit 12 records that O'Rourke submitted a bid.

5.137. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.138. CCSL was awarded this contract.²⁶¹

²⁵⁹ This figure is the typed entry in the row marked 'TOTAL' in CCSL's BOQ, to which it is clear that VAT and contingency sums have not yet been added.

²⁶⁰ This figure is the handwritten total entered into the BOQ before the addition of contingency sum or VAT

²⁶¹ Exhibit 12 records 'Won'.

Averill Court contract (on or around 16 August 2006)

5.139. The next contract that the OFT examines is in respect of Averill Court, a PMSL property in Somerset. The contract was for the supply and installation of a warden call system and a door entry system.²⁶²

i. PMSL invites CCSL and O'Rourke to tender

5.140. RTT documents for the Averill Court contract with cover letters, from PMSL, to CCSL and O'Rourke, dated 26 July 2006, demonstrate that PMSL invited CCSL and O'Rourke to tender for the Averill Court contract. The deadline set out for bids was 9 August 2006.

ii. CCSL discloses its bid to O'Rourke

5.141. CCSL's bid (not including VAT and contingency sum) was **£15,122.37** and O'Rourke's bid (not including VAT and contingency sum) was **£16,634.66**. O'Rourke's bid was almost exactly 10 per cent higher²⁶³ than CCSL's bid. Further, a comparison of the entries in CCSL's and O'Rourke's BOQ reveals that all of O'Rourke's entries are between 9.99 per cent and 10 per cent higher than CCSL, with 18 of the 20 entries being exactly 10 per cent higher. For the reasons explained at paragraphs 5.70 to 5.80 above, the OFT considers that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

iii. O'Rourke does not distance itself from the information it receives from CCSL

5.142. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.143. The OFT's file contains tender documentation completed by CCSL for the Averill Court contract and notes that CCSL was awarded the

²⁶² The OFT relies on the description of the contract in exhibit 12 (PBX warden call installation) and in the contract specification document ('*Upgrade of Warden Call & Access Control Equipment*') and the FOT ('*Warden Call Upgrades*'). (This specification may also have included elements of a fire system installation.)

²⁶³ Precisely, 10 per cent higher than £15,122.37 is £16,634.61, being 5p less than O'Rourke's total bid. The OFT considers that this minor discrepancy does not undermine its conclusions.

contract. Therefore, the OFT considers that CCSL submitted a bid for Averill Court to PMSL on an unknown date.²⁶⁴ CCSL's bid was **£15,122.35** (not including VAT or any contingency sum).²⁶⁵

v. O'Rourke submits a higher bid than CCSL

5.144. O'Rourke submitted a bid of **£16,634.66** (not including VAT or any contingency sum)²⁶⁶ on 16 August 2006. O'Rourke's bid was therefore higher than the bid that CCSL disclosed to O'Rourke (and submitted to PMSL). Exhibit 12 records that O'Rourke submitted a bid.

5.145. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.146. CCSL was awarded this contract.²⁶⁷

Birnbeck Court contract (on or around 31 October 2006 to on or around 15 November 2006)

5.147. The next contract that the OFT examines is in respect of Birnbeck Court, a PMSL property in Weston-Super-Mare. The contract was for the installation of a fire system.²⁶⁸

i. PMSL invites CCSL and O'Rourke to tender

5.148. RTT documents for the Birnbeck Court contract with cover letters, from PMSL, to CCSL and O'Rourke, dated 11 October 2006, demonstrate that PMSL invited CCSL and O'Rourke to tender for the Birnbeck Court contract. The deadline set out for bids was 17 November 2006.

²⁶⁴ The CCSL tender documentation is undated.

²⁶⁵ This figure is calculated by totalling the entries in the CCSL BOQ (which includes multiplying the price given for a particular unit by the number of that unit) and not including sums for VAT or contingency sums.

²⁶⁶ This figure is the handwritten entry in O'Rourke's BOQ which appears to be a total of the entries before contingency sum or VAT are added.

²⁶⁷ Exhibit 12 records 'Won'.

²⁶⁸ The OFT relies on the description of the contract in exhibit 12 (Fire System all installation) and in the contract specification document ('Upgrade of Fire Detection Equipment Only') and the FOT ('Fire Detection Upgrade').

ii. CCSL discloses its bid to O'Rourke

5.149. CCSL's bid (not including VAT and contingency sum) was **£9,699.85** and O'Rourke's bid (not including VAT and contingency sum) was **£10,669.81**. O'Rourke's bid was almost exactly 10 per cent higher²⁶⁹ than CCSL's bid. Further, a comparison of the entries in CCSL's and O'Rourke's BOQ reveals that all of O'Rourke's entries are between 9.96 per cent and 10 per cent higher than CCSL's, with six of the eight entries being exactly 10 per cent higher. For the reasons explained at paragraphs 5.70 to 5.80 above, the OFT considers that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

iii. O'Rourke does not distance itself from the information it receives from CCSL

5.150. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.151. The OFT's file contains tender documentation completed by CCSL for the Birnbeck Court contract and notes that CCSL was awarded the contract, as does what appears to be a PMSL Notice to All Leaseholders dated 27 November 2006 recording a CCSL bid, a PMSL record dated 17 November 2006 recording a CCSL bid and a letter to CCSL dated 27 November 2006 recording that CCSL's bid had been successful. It is likely that CCSL submitted its bid on or around 31 October 2006 because that is the date of CCSL's FOT. CCSL's bid was **£9,699.85** (not including VAT or any contingency sum).²⁷⁰

v. O'Rourke submits a higher bid than CCSL

²⁶⁹ Precisely 10 per cent higher than £9,669.85 is £10,636.84, being 3p more than O'Rourke's total bid. The OFT considers that this minor discrepancy does not undermine its conclusions.

²⁷⁰ This figure is the typed figure given in the 'TOTAL' row of CCSL's BOQ, to which it is clear that VAT and contingency sum have not been added. It is noted that there are two versions of CCSL's FOTs on the file, one with a marking of '*wrong figure*'. It appears that CCSL made an arithmetic error when adding on the contingency sum and VAT. This does not affect the comparison the OFT has done between O'Rourke's and CCSL's bid not including VAT and contingency sums.

5.152. O'Rourke submitted a bid of **£10,669.81** (not including VAT or any contingency sum)²⁷¹ on or around the 15 November 2006.²⁷² O'Rourke's price was therefore higher than the bid that CCSL disclosed to O'Rourke (and submitted to PMSL). Exhibit 12 records that O'Rourke submitted a bid, as does what appears to be a PMSL Notice to All Leaseholders dated 27 November 2006 recording an O'Rourke bid and a PMSL record dated 17 November 2006 recording an O'Rourke bid.

5.153. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. *Contract award*

5.154. CCSL was awarded this contract.²⁷³

Albion Court contract (on or around 20 November 2006 to on or around 13 December 2006)

5.155. The next contract that the OFT examines is in respect of Albion Court, a PMSL property in Essex. The contract was for the supply and installation of a warden call system and a door entry system.²⁷⁴

i. *PMSL invites CCSL and O'Rourke to tender*

5.156. RTT documents for the Albion Court contract with cover letters, from PMSL, to CCSL and O'Rourke, dated 6 November 2006, demonstrate that PMSL invited CCSL and O'Rourke to tender for the Albion Court contract. The deadline set out for bids was 15 December 2006.

ii. *CCSL discloses its bid to O'Rourke*

5.157. CCSL's bid (not including VAT and contingency sum) was **£32,924** and the OFT considers that, for the reasons set out below at paragraph

²⁷¹ That figure is based on the handwritten total given on the O'Rourke BOQ which includes a £1,000 contingency sum and subtracting that £1,000 sum.

²⁷² This date is based on the date on O'Rourke's FOT – the date on the fax header is not legible.

²⁷³ Exhibit 12 records 'Won'.

²⁷⁴ The OFT relies on the description of the contract in exhibit 12 (PBX warden call installation) and in the contract specification document ('Upgrade of Warden Call & Access Control Equipment') and the FOT ('Warden Call Upgrade'). (This specification may have included elements of fire.)

5.160 below, O'Rourke's bid (not including VAT and contingency sum) was **£36,215.64**. O'Rourke's bid is almost exactly 10 per cent higher²⁷⁵ than CCSL's bid.²⁷⁶ For the reasons explained at paragraphs 5.70 to 5.80 above, the OFT considers that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

iii. O'Rourke does not distance itself from the information it receives from CCSL

5.158. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.159. The OFT's file contains tender documentation completed by CCSL for the Albion Court contract and notes that CCSL was awarded the contract. Therefore, the OFT considers that CCSL submitted a bid for the Albion Court contract to PMSL. It is likely that CCSL submitted its bid on or around 20 November 2006 because that is the date of CCSL's FOT. CCSL's bid was **£32,924** (not including VAT or any contingency sum).²⁷⁷

v. O'Rourke submits a higher bid than CCSL

5.160. O'Rourke submitted a bid on or around 13 December 2006.²⁷⁸ O'Rourke's tender documents are partly illegible but there is strong evidence to support a finding that O'Rourke's bid was **£36,215.64** (not including VAT or any contingency sum).²⁷⁹ O'Rourke's bid was therefore

²⁷⁵ Precisely 10 per cent higher than £32,924 is £36,216.40, being 76p more than O'Rourke's total bid. The OFT considers that this minor discrepancy does not undermine its conclusions.

²⁷⁶ Given the illegibility of O'Rourke's BOQ, it has not been possible to compare the entries within O'Rourke's and CCSL's BOQ.

²⁷⁷ That is the figure given in the typed 'TOTAL' row in CCSL's BOQ, to which VAT and contingency figure clearly have not yet been added.

²⁷⁸ This date is based on the date in O'Rourke's FOT as the date in the fax header is illegible.

²⁷⁹ This figure is calculated in the following way: the O'Rourke FOT lists the VAT and contingency inclusive sum. It is partly illegible but it can be seen that the final six digits of the price are '3728.37'. The O'Rourke BOQ is illegible. The OFT has considered the CCSL inclusive figure of £39,861. On the assumption that O'Rourke's figure is likely to be higher than CCSL's, the OFT assumes that the figure written into the FOT was '£43728.37'. This assumption is

higher than the bid that CCSL disclosed to O'Rourke (and submitted to PMSL). Exhibit 12 records that O'Rourke submitted a bid.

5.161. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.162. CCSL was awarded this contract.²⁸⁰

Brandreth Court contract (during the course of November and/or December 2006)

5.163. The next contract that the OFT examines is in respect of Brandreth Court, a PMSL property in Middlesex. The contract was for the supply and installation of a warden call system and a door entry system.²⁸¹

i. PMSL invites CCSL and O'Rourke to tender

5.164. RTT documents for the Brandreth Court contract with cover letters, from PMSL, to CCSL and O'Rourke, dated 16 November 2006, demonstrate that PMSL invited CCSL and O'Rourke to tender for the Brandreth Court contract. The deadline set out for bids was 18 December 2006.

ii. CCSL discloses its bid to O'Rourke

5.165. CCSL's bid (not including VAT and contingency sum) was **£24,350** and the OFT considers that, for the reasons set out at paragraph 5.168 below, O'Rourke's bid (not including VAT and contingency sum) was **£26,785.06**. O'Rourke's bid was almost exactly 10 per cent higher²⁸² than CCSL's bid.²⁸³ For the reasons explained at paragraphs 5.70 to

supported by reference to the fact that the figure of £43,728.37 once one removes the contingency sum and VAT produces a figure which responds to the 10 per cent pattern.

²⁸⁰ Exhibit 12 records 'Won'.

²⁸¹ The OFT relies on the description of the contract in exhibit 12 (PBX warden call installation) and in the contract specification document ('Upgrade of Warden Call & Access Control Equipment') and the FOT ('Warden Call Upgrades').

²⁸² Precisely 10 per cent higher than £24,350 is £26,785, being 6p less than O'Rourke's total bid. The OFT considers that this minor discrepancy does not undermine its conclusions.

²⁸³ Given the absence of any O'Rourke BOQ, it has not been possible to compare the entries within O'Rourke's and CCSL's BOQ.

5.80 above, the OFT considers that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

iii. O'Rourke does not distance itself from the information it receives from CCSL

5.166. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.167. The OFT's file contains tender documentation completed by CCSL for the Brandreth Court contract and notes that CCSL was awarded the contract. Therefore, the OFT considers that CCSL submitted a bid for the Brandreth Court contract to PMSL on an unknown date.²⁸⁴ CCSL's bid was **£24,350** (not including VAT or any contingency sum).²⁸⁵

v. O'Rourke submits a higher bid than CCSL

5.168. O'Rourke submitted a bid of on an unknown date in December 2006.²⁸⁶ O'Rourke's tender documentation is partly illegible but there is strong evidence to support a finding that O'Rourke's bid was **£26,785.06** (not including VAT or any contingency sum).²⁸⁷ O'Rourke's bid was therefore higher than the bid that CCSL disclosed to O'Rourke (and submitted to PMSL). Exhibit 12 records that O'Rourke submitted a bid.

5.169. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and submitted a higher bid.

²⁸⁴ The CCSL tender documentation is undated.

²⁸⁵ This figure is the figure given in the 'TOTAL' row in the CCSL's BOQ before any VAT or contingency sum is added.

²⁸⁶ The month and year on the FOT of tender is legible; the day is not.

²⁸⁷ This figure is calculated in the following way: the O'Rourke FOT lists the VAT and contingency inclusive sum. It is partly illegible but it can be seen that the final five digits of the price are '647.45'. The OFT has considered the CCSL inclusive figure of £29,786. On the assumption that O'Rourke's figure is likely to be higher than CCSL's, the OFT assumes that the figure written into the FOT was '£32,647.45'. This assumption is shown to be correct in part by reference to the fact that the figure of £32,647.45 once one removes the contingency sum and VAT produces a figure which responds to the 10 per cent pattern.

vi. Contract award

5.170. CCSL was awarded this contract.²⁸⁸

Rosebery Court contract (on or around 11 December 2006 to on or around 14 December 2006)

5.171. The next contract that the OFT examines is in respect of Rosebery Court, a PMSL property in Leighton Buzzard. The contract was for the supply and installation of a warden call system and door entry system.²⁸⁹

i. PMSL invites CCSL and O'Rourke to tender

5.172. RTT documents for the Rosebery Court contract with cover letters, from PMSL, to CCSL and O'Rourke, dated 16 November 2006, demonstrate that PMSL invited CCSL and O'Rourke to tender for the Rosebery Court contract. The deadline set out for bids was 18 December 2006.

ii. CCSL discloses its bid to O'Rourke

5.173. CCSL's bid (not including VAT and contingency sum) was **£35,321.29** and O'Rourke's bid (not including VAT and contingency sum) was **£38,851.65**. O'Rourke's bid was almost exactly 10 per cent higher²⁹⁰ than CCSL's bid. Further, a comparison of the entries in CCSL's and O'Rourke's BOQ reveals that all of O'Rourke's entries were between 9.96 per cent and 10 per cent higher than CCSL's, with 14 of the 21 entries being exactly 10 per cent higher. For the reasons explained at paragraphs 5.70 to 5.80 above, the OFT considers that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

iii. O'Rourke does not distance itself from the information it receives from CCSL

²⁸⁸ Exhibit 12 records 'Won'.

²⁸⁹ The OFT relies on the description of the contract in exhibit 12 (PBX warden call installation) and in the contract specification document ('Upgrade of Warden Call & Door Entry Equipment') and the FOT ('Warden Call / Door entry Upgrade').

²⁹⁰ Precisely 10 per cent higher than £35,321.29 is £38,853.42, being £1.76 more than O'Rourke's total bid. The OFT considers that this minor discrepancy does not undermine its conclusions.

5.174. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.175. The OFT's file contains tender documentation completed by CCSL for the Rosebery Court contract and notes that CCSL was awarded the contract. Therefore, the OFT considers that CCSL submitted this bid for the Rosebury Court contract to PMSL on or around 11 December 2006 as this is the date on CCSL's FOT. CCSL's bid was **£35,321.29** (not including VAT or any contingency sum).²⁹¹

v. O'Rourke submits a higher bid than CCSL

5.176. O'Rourke submitted a bid of **£38,851.65** (not including VAT or any contingency sum)²⁹² on 14 December 2006. O'Rourke's bid was therefore higher than the bid that CCSL disclosed to O'Rourke (and submitted to PMSL).

5.177. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.178. CCSL was awarded this contract.²⁹³

Homelace House contract (on or around 18 December 2006 to on or around 20 December 2006)

5.179. The next contract that the OFT examines is in respect of Homelace House, a PMSL property in Devon. The contract was for the supply and installation of a warden call system and a door entry system.²⁹⁴

²⁹¹ This figure is calculated by totalling the entries in the CCSL BOQ (which includes multiplying the price given for a particular unit by the number of that unit) and not including sums for VAT or contingency sums.

²⁹² This figure is the handwritten total entered into O'Rourke's BOQ before any VAT or contingency sum is added on.

²⁹³ Exhibit 12 records 'Won'.

i. PMSL invites CCSL and O'Rourke to tender

5.180. RTT documents for the Homelace House contract with cover letters, from PMSL, to CCSL and O'Rourke, dated 17 November 2006, demonstrate that PMSL invited CCSL and O'Rourke to tender for the Homelace House contract. The deadline set out for bids was 20 December 2006.

ii. CCSL discloses its bid to O'Rourke

5.181. CCSL's bid (not including VAT and contingency sum) was **£17,437** and the OFT considers that, for the reasons set out at paragraph 5.184 below, O'Rourke's bid (not including VAT and contingency sum) was **£19,180.58**. O'Rourke's bid was almost exactly 10 per cent higher²⁹⁵ than CCSL's bid.²⁹⁶ For the reasons explained at paragraphs 5.70 to 5.80 above, the OFT considers that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

iii. O'Rourke does not distance itself from the information it receives from CCSL

5.182. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.183. The OFT's file contains tender documentation completed by CCSL for the Homelace House contract and notes that CCSL was awarded the contract. Therefore, the OFT considers that CCSL submitted a bid for the Homelace House contract to PMSL. It is likely that the bid was submitted on or around 18 December 2006 as that is the date on

²⁹⁴ The OFT relies on the description of the contract in exhibit 12 (Dispersed alarm system installation) and in the contract specification document ('*Upgrade of Warden Call & Door Entry Equipment*') and the FOT ('*Warden Call /Door entry Upgrade*').

²⁹⁵ Precisely 10 per cent higher than £17,437 is £19,180.70, being 12p more than O'Rourke's total bid. The OFT considers that this minor discrepancy does not undermine its conclusions.

²⁹⁶ Given the absence of O'Rourke's BOQ, it has not been possible to compare the entries within O'Rourke's and CCSL's BOQ.

CCSL's FOT. CCSL's bid was **£17,437** (not including VAT or any contingency sum).²⁹⁷

v. *O'Rourke submits a higher bid than CCSL*

5.184. O'Rourke submitted a bid on 20 December 2006. O'Rourke's tender documentation is partly illegible but there is strong evidence to support a finding that O'Rourke's bid was **£19,180.58** (not including VAT or any contingency sum).²⁹⁸ O'Rourke's bid was therefore higher than the bid that CCSL disclosed to O'Rourke (and submitted to PMSL). Exhibit 12 records that O'Rourke submitted a bid.

5.185. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. *Contract award*

5.186. CCSL was awarded this contract.²⁹⁹

Carfax Court contract (on or around 10 January 2007 to on or around 11 January 2007)

5.187. The next contract that the OFT examines is in respect of Carfax Court, a PMSL property in Bristol. The contract was for the installation of a fire alarm system.³⁰⁰

i. *PMSL invites CCSL and O'Rourke to tender*

²⁹⁷ This figure is the typed entry in the 'TOTAL' row in CCSL's BOQ before any VAT or contingency sum is added.

²⁹⁸ This figure is calculated in the following way: the O'Rourke FOT lists the VAT and contingency inclusive sum. It is partly illegible but it can be seen that the final five digits of the price are '712.18'. The OFT has considered the CCSL inclusive figure of £21,663. On the assumption that O'Rourke's figure is likely to be higher than CCSL's, the OFT assumes that the figure written into the FOT was '£23,712.18'. This assumption is shown to be correct in part by reference to the fact that the figure of £23,712.18 once one removes the contingency sum and VAT produces a figure which responds to the 10 per cent pattern.

²⁹⁹ Exhibit 12 records 'Won'.

³⁰⁰ The OFT relies on the description of the contract in exhibit 12 (Fire System all installation) and in the contract specification document ('Upgrade of Fire Detection and Emergency Lighting Equipment') and the FOT ('Fire Upgrades').

5.188. RTT documents for the Carfax Court contract with cover letters, from PMSL, to CCSL (dated 13 May 2005) and O'Rourke (dated 12 December 2006³⁰¹) demonstrate that PMSL invited CCSL and O'Rourke to tender for the Carfax Court contract. The deadline for bids was 15 January 2007.

ii. CCSL discloses its bid to O'Rourke

5.189. CCSL's bid (not including VAT and contingency sum) was **£31,062.77** and O'Rourke's bid (not including VAT and contingency sum) was **£34,168.79**. O'Rourke's bid was almost exactly 10 per cent higher³⁰² than CCSL's bid. Further, a comparison of the entries in CCSL's and O'Rourke's BOQ reveals that all of O'Rourke's entries were 10 per cent higher than CCSL's. For the reasons explained at paragraphs 5.70 to 5.80 above, the OFT considers that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

iii. O'Rourke does not distance itself from the information it receives from CCSL

5.190. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.191. The OFT's file contains tender documentation completed by CCSL for the Carfax Court contract and notes that CCSL was awarded the contract. Therefore, the OFT finds that CCSL submitted a bid for the Carfax Court contract to PMSL. It is likely that the bid was submitted on or around 10 January 2007 as that is the date on the CCSL FOT.

³⁰¹ The OFT infers that the date of 13 May 2005 was a typographical error and both letters were actually sent out on or around 12 December 2006, given that the deadline for tenders given in both documents is 15 January 2007.

³⁰² Precisely 10 per cent higher than £31,062.77 is £34,169.05, being 26p more than O'Rourke's total bid. The OFT considers that this minor discrepancy does not undermine its conclusions.

CCSL's bid was **£31,062.77** (not including VAT or any contingency sum).³⁰³

v. O'Rourke submits a higher bid than CCSL

5.192. O'Rourke submitted a bid of **£34,168.79** (not including VAT or any contingency sum)³⁰⁴ on 11 January 2007. O'Rourke's bid was therefore higher than the bid that CCSL disclosed to O'Rourke (and submitted to PMSL).

5.193. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.194. CCSL was awarded this contract.³⁰⁵

Homan/St Elizabeth Court contract (on or around 2 February 2007 to on or around 9 February 2007)

5.195. The next contract that the OFT examines is in respect of Homan/St Elizabeth Court, a PMSL property in London. The contract was for the supply and installation of a warden call system and a door entry system.³⁰⁶

i. PMSL invites CCSL and O'Rourke to tender

5.196. RTT documents for the Homan/St Elizabeth Court contract with cover letters, from PMSL, to CCSL and O'Rourke, dated 29 December 2006, demonstrate that PMSL invited CCSL and O'Rourke to tender for the Homan/St Elizabeth Court contract. The deadline set out for bids was 7 February 2007.

³⁰³ This figure is calculated by adding up the entries in CCSL's BOQ before adding any VAT or contingency sum.

³⁰⁴ This figure is the handwritten total in O'Rourke's BOQs, from which the £1,000 contingency sum has been subtracted.

³⁰⁵ Exhibit 12 records '*Won but cancelled due to insufficient funds*'.

³⁰⁶ The OFT relies on the description of the contract in exhibit 12 (PBX warden call installation) and in the contract specification document ('*Upgrade of Warden Call & Door Entry Equipment*') and the FOT ('*Warden Call Upgrade*'). (This specification may have included elements of CCTV.)

ii. CCSL discloses its bid to O'Rourke

5.197. CCSL's bid (not including VAT and contingency sum) was **£30,236** and O'Rourke's bid (not including VAT and contingency sum) was **£33,258.18**. O'Rourke's bid was almost exactly 10 per cent higher³⁰⁷ than CCSL's bid. Further, a comparison of the entries in CCSL's and O'Rourke's BOQ reveals that all of O'Rourke's entries were between 9.95 per cent and 10 per cent higher than CCSL's, with 20 of 30 items being 10 per cent higher. For the reasons explained at paragraphs 5.70 to 5.80 above, the OFT considers that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

iii. O'Rourke does not distance itself from the information it receives from CCSL

5.198. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.199. The OFT's file contains tender documentation completed by CCSL for the Homan/St Elizabeth Court contract and notes that CCSL was awarded the contract. Therefore, the OFT considers that CCSL submitted a bid for the Homan/St Elizabeth Court contract to PMSL. It is likely that this bid was submitted on or around 2 February 2007 as this is the date on the CCSL FOT. CCSL's bid was **£30,236** (not including VAT or any contingency sum).³⁰⁸

v. O'Rourke submits a higher bid than CCSL

5.200. O'Rourke submitted a bid of **£33,258.18** (not including VAT or any contingency sum)³⁰⁹ on 9 February 2007. O'Rourke's bid was therefore higher than the bid that CCSL disclosed to O'Rourke (and submitted to PMSL). Exhibit 12 records that O'Rourke submitted a bid.

³⁰⁷ Precisely 10 per cent higher than £30,236 is £33,259.60, being £1.42 more than O'Rourke's total bid. The OFT considers that this minor discrepancy does not undermine its conclusions.

³⁰⁸ This figure is the typed figure in the 'TOTAL' column in the CCSL BOQ before any VAT or contingency sum is added

³⁰⁹ This figure is the handwritten figure on O'Rourke's BOQ totalling up the entries, and before any VAT or contingency sum is added.

5.201. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.202. CCSL was awarded this contract.³¹⁰

Homewillow House contract (on or around 1 March 2007 to on or around 2 March 2007)

5.203. The next contract that the OFT examines is in respect of Homewillow House, a PMSL property in London. The contract was for the supply and installation of a warden call system and a door entry system.³¹¹

i. PMSL invites CCSL and O'Rourke to tender

5.204. RTT documents for the Homewillow House contract with cover letters, from PMSL, to CCSL and O'Rourke, dated 27 February 2007, demonstrate that PMSL invited CCSL and O'Rourke to tender for the Homewillow House contract. The deadline set out for bids was 30 March 2007.

ii. CCSL discloses its bid to O'Rourke

5.205. CCSL's bid (not including VAT and contingency sum) was **£28,867** and O'Rourke's bid (not including VAT and contingency sum) was **£31,752.85**. O'Rourke's bid was almost exactly 10 per cent higher³¹² than CCSL's bid. Further, a comparison of the entries in CCSL's and O'Rourke's BOQ reveals that all of O'Rourke's entries were between 9.95 per cent and 10 per cent higher than CCSL's, with 12 of 21 items being 10 per cent higher. For the reasons explained at paragraphs 5.70 to 5.80 above, the OFT considers that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

³¹⁰ Exhibit 12 records 'Won'.

³¹¹ The OFT relies on the description of the contract in exhibit 12 (PBX warden call installation) and in the contract specification document ('*Upgrade of Warden Call & Door Entry Equipment*') and the FOT ('*Warden Call Upgrade*').

³¹² Precisely 10 per cent higher than £28,867 is £31,753.70, being 85p more than O'Rourke's total bid. The OFT considers that this minor discrepancy does not undermine its conclusions.

iii. O'Rourke does not distance itself from the information it receives from CCSL

5.206. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.207. The OFT's file contains tender documentation completed by CCSL for the Homewillow House contract and notes that CCSL was awarded the contract. Therefore, the OFT considers that CCSL submitted a bid for the Homewillow House contract to PMSL. This is likely to have been on or around 2 March 2007 as this is the date on CCSL's FOT. CCSL's bid was **£28,867** (not including VAT or any contingency sum).³¹³

v. O'Rourke submits a higher bid than CCSL

5.208. O'Rourke submitted a bid of **£31,752.85** (not including VAT or any contingency sum)³¹⁴ on 1 March 2007. O'Rourke's bid was therefore higher than the bid CCSL disclosed to O'Rourke (and submitted to PMSL). Exhibit 12 records that O'Rourke submitted a bid.

5.209. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.210. CCSL was awarded this contract.³¹⁵

Homechester House contract (on or around 12 January 2007 to on or around 1 March 2007)

5.211. The next contract that the OFT examines is in respect of Homechester House, a PMSL property in Dorset. The contract was for the supply and installation of a warden call system and a door entry system.³¹⁶

³¹³ This figure is the typed figure in the CCSL BOQ totalling the entries, before any VAT or contingency sum is added.

³¹⁴ This figure is the handwritten total in O'Rourke's BOQs, from which the £1,000 contingency sum has been subtracted.

³¹⁵ Exhibit 12 records 'Won'.

i. PMSL invites CCSL and O'Rourke to tender

5.212. RTT documents for the Homechester House contract with a cover letter, from PMSL, to CCSL dated 12 October 2005 demonstrate CCSL was invited to tender for this contract. O'Rourke submitted a bid for this contract demonstrating that it was also invited to tender. The deadline set out for bids in the cover letter was 10 November 2005.

ii. CCSL discloses its bid to O'Rourke

5.213. The OFT finds that CCSL in error only disclosed part of its intended bid to O'Rourke, being the cost of the PBX element of the contract: **£24,146.**³¹⁷ O'Rourke's bid in its FOT (including VAT) was **£27,767.95** which was 15 per cent higher than CCSL's PBX bid.³¹⁸ For the reasons explained at paragraphs 5.70 to 5.80 above, the OFT considers that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

iii. O'Rourke does not distance itself from the information it receives from CCSL

5.214. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

³¹⁶ The OFT relies on the description of the contract in exhibit 12 (PBX warden call installation) and in the contract specification document (*'Upgrade of Warden Call & Access Control Equipment'*) and the FOT (*'Warden Call Upgrades'*). (This specification may also have included elements of a fire system installation.)

³¹⁷ CCSL only having disclosed part of its bid to O'Rourke is consistent with the fact, as found at footnote 320, that whomever completed the CCSL FOT entered, in error, only the price for the PBX system only (not including VAT), rather than the price of all the elements (plus VAT). This conclusion that CCSL disclosed only the PBX part of its bid, leading to O'Rourke quoting only for the PBX part, is also supported by the fact that the Notice to Leaseholders notes that CCSL's bid of £31,880.10, including VAT, *'includes for the replacement smoke detectors'* whereas the O'Rourke bid of £27,767.95, including VAT, *'doesn't allow for replacement smoke detectors'*.

³¹⁸ The OFT considers that it is more likely than not that, as set out in the CCSL FOT, CCSL disclosed to O'Rourke a bid of £24,146 as inclusive of VAT (which was in fact exclusive of VAT and only for the PBX element of the contract). The OFT considers that O'Rourke would have then simply have added 15 per cent to, supposedly, achieve a VAT inclusive figure to cover the PBX and other elements of the contract. That calculation results in a figure 5p less than the figure recorded in O'Rourke's FOT (27,767.9). The OFT considers that this minor discrepancy does not undermine its conclusions.

iv. CCSL submits a bid

5.215. CCSL submitted its bid on or around 12 January 2007.³¹⁹ The OFT notes that it is recorded that CCSL was awarded the contract. CCSL's bid was **£27,132** (not including VAT or contingency sum).³²⁰

v. O'Rourke submits a higher bid than CCSL

5.216. O'Rourke's submitted a bid on 1 March 2007 of **£23,632.30** (not including VAT or contingency figure). This was, in fact, cheaper than CCSL's bid, but only because O'Rourke had failed to include a price for the non-PBX element of the contract for the reasons set out in paragraph 5.213 above.

5.217. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and intended to submit a higher bid.

vi. Contract award

5.218. CCSL was awarded this contract.³²¹

Alexander Court contract (on or around 20 March 2007 to on or around 21 March 2007)

5.219. The next contract that the OFT examines is in respect of Alexander Court, a PMSL property in Lancashire. The contract was for the supply and installation of a warden call system and a door entry system.³²²

³¹⁹ This is based upon the date on CCSL's FOT '12 day of January 2006' and on other evidence that suggests that '2006' should have been amended by hand to read '2007' (for instance, the date on CCSL's BOQ is '20 December 2006').

³²⁰ CCSL's FOT give its bid as £24,146 including VAT. However, in CCSL's other tender documents it sets out 'PBX SYSTEM - £24146 PLUS VAT' and 'SMOKE DETECTOR OPTION - £2,986 PLUS VAT'. Next to these entries, there is a handwritten annotation of '£31880.10' which is the total from those two sums plus VAT. The OFT concludes from this that whoever completed the CCSL FOT entered, in error, only the price for the PBX system only and not including VAT. The figure of £31,880.10 should have been entered into the CCSL FOT (as it is entered as CCSL's bid in the Notice to Residents). The figure of £27,132 is the sum of the two aforementioned figures without adding VAT or any contingency sum.

³²¹ Exhibit 12 records 'Won'.

i. PMSL invites CCSL and O'Rourke to tender

5.220. RTT documents for the Alexander Court contract with cover letters, from PMSL, to CCSL and O'Rourke, dated 20 February 2007, demonstrate that PMSL invited CCSL and O'Rourke to tender for the Alexander Court contract. The deadline set out for bids was 2 April 2007.

ii. CCSL discloses its bid to O'Rourke

5.221. CCSL's bid (not including VAT and contingency sum) was **£19,120.44** and O'Rourke's bid (not including VAT and contingency sum) was **£21,031.98**. O'Rourke's bid was almost exactly 10 per cent higher³²³ than CCSL's bid. Further, a comparison of the entries in CCSL's and O'Rourke's BOQ reveals that all of O'Rourke's entries were between 9.95 per cent and 10 per cent higher than CCSL's, with 12 of 21 items being 10 per cent higher. For the reasons explained at paragraphs 5.70 to 5.80 above, the OFT considers that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

iii. O'Rourke does not distance itself from the information it receives from CCSL

5.222. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.223. The OFT's file contains tender documentation completed by CCSL for the Alexander Court contract and notes that CCSL was awarded the contract. Therefore, the OFT considers that CCSL submitted a bid for the Alexander Court contract to PMSL. It is likely that this was on or

³²² The OFT relies on the description of the contract in exhibit 12 (PBX warden call installation) and in the contract specification document ('*Upgrade of Warden Call & Door Entry Equipment*') and the FOT ('*Warden Call Upgrade*').

³²³ Precisely 10 per cent higher than £19,120.44 is £21,032.48, being 50p more than O'Rourke's total bid. The OFT considers that this minor discrepancy does not undermine its conclusions.

around 20 March 2007 as this is the date on CCSL's FOT. CCSL's bid was **£19,120.44** (not including VAT or contingency sum).³²⁴

v. O'Rourke submits a higher bid than CCSL

5.224. O'Rourke submitted a bid of **£21,031.98** (not including VAT or contingency sum)³²⁵ on 21 March 2007. O'Rourke's bid was therefore higher than the bid that CCSL disclosed to O'Rourke (and submitted to PMSL). Exhibit 12 records that O'Rourke submitted a bid.

5.225. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.226. CCSL was awarded this contract.³²⁶

Homethwaite House contract (on or around 22 March 2007 to on or around 30 March 2007)

5.227. The next contract that the OFT examines is in respect of Homethwaite House, a PMSL property in Cumbria. The contract was for the supply and installation of a warden call system and a door entry system.³²⁷

i. PMSL invites CCSL and O'Rourke to tender

5.228. RTT documents for the Homethwaite House contract with cover letters, from PMSL, to CCSL (dated 21 March 2007) and O'Rourke (dated 17 March 2004³²⁸) demonstrate that PMSL invited CCSL and O'Rourke to

³²⁴ This figure is calculated by totalling the entries on CCSL's BOQ.

³²⁵ This figure is the handwritten figure in the O'Rourke BOQ totalling all the entries before VAT or contingency sum are added.

³²⁶ Exhibit 12 records 'Won'.

³²⁷ The OFT relies on the description of the contract in exhibit 12 ('Dispersed alarm system installation') and in the contract specification document ('Upgrade of Warden Call & Door Entry Equipment') and the FOT ('Warden Call Upgrades').

³²⁸ As the deadline for bids in both letters is given as 30 April 2007 the OFT has inferred that the date on the O'Rourke letter was an error. Given the circumstances including that the two letters have the same deadline for bids, it is likely that the letter to O'Rourke was written on or around 21 March 2007.

tender for the Homethwaite House contract. The deadline for bids in both letters was 30 April 2007.

ii. CCSL discloses its bid to O'Rourke

5.229. CCSL's bid (not including VAT and contingency sum) was **£25,940** and O'Rourke's bid (not including VAT and contingency sum) was **£28,533.37**. O'Rourke's bid was almost exactly 10 per cent higher³²⁹ than CCSL's bid. Further, a comparison of the entries in CCSL's and O'Rourke's BOQ reveals that all of O'Rourke's entries were between 9.95 per cent and 10 per cent higher than CCSL's, with 13 of 22 items being 10 per cent higher. For the reasons explained at paragraphs 5.70 to 5.80 above, the OFT considers that this price difference demonstrates that CCSL disclosed its bid to O'Rourke.

iii. O'Rourke does not distance itself from the information it receives from CCSL

5.230. There is no evidence on the OFT's file to suggest that O'Rourke complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.231. The OFT's file contains tender documentation completed by CCSL for the Homethwaite House contract and notes that CCSL was awarded the contract. Therefore, the OFT considers that CCSL submitted a bid for the Homethwaite House contract to PMSL. This is likely to have been on or around 22 March 2007 as this is the date on CCSL's FOT. CCSL's bid was **£25,940** (not including VAT or any contingency sum).³³⁰

v. O'Rourke submits a higher bid than CCSL

5.232. O'Rourke submitted a bid of **£28,533.37** (not including VAT or any contingency sum)³³¹ on 30 March 2007. O'Rourke's bid was therefore

³²⁹ Precisely 10 per cent higher than £25,940 is £28,534, being 63p more than O'Rourke's total bid. The OFT considers that this minor discrepancy does not undermine its conclusions.

³³⁰ This is the handwritten figure given in CCSL's tender documentation next to Schedule of Repairs.

³³¹ This figure is calculated by adding up the totals in the O'Rourke BOQ, before adding any VAT or contingency sum.

higher than the bid that CCSL disclosed to O'Rourke (and submitted to PMSL). Exhibit 12 records that O'Rourke submitted a bid.

5.233. Taking account of the wider context, the OFT finds that O'Rourke took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.234. Despite having a lower bid than O'Rourke, CCSL does not appear to have been awarded the contract.³³² This may have been the result of a lower bid by another company.

III. Conclusions

5.235. The OFT considers that the evidence assessed in paragraphs 5.83 to 5.234 above demonstrates that each of the following steps occurred in respect of each of the 19 Tenders that form Infringement 1:

- i. both CCSL and O'Rourke were invited to tender for contracts by PMSL as part of a selective tender process (that is, only a limited number of bidders were invited to bid);
- ii. CCSL disclosed its bid to O'Rourke prior to O'Rourke submitting its bid;
- iii. O'Rourke did not reject or distance itself from CCSL's disclosed bid;
- iv. O'Rourke took the information it received regarding CCSL's bid into account and submitted a bid at a higher price than that disclosed by CCSL;³³³
- v. CCSL submitted its bid; and
- vi. CCSL was awarded the contract on most occasions.

³³² Exhibit 12 records 'Lost'. As O'Rourke had a more expensive bid, O'Rourke would not have been awarded the contract. Further, in interview, [an individual acting on behalf of O'Rourke] explained that he did not think O'Rourke had ever won a Peverel contract (see, for example, transcript of interview with an [individual acting on behalf of O'Rourke] , CD1, page 18, line 19 to 20 and CD1, page 23, line 12 to 13).

³³³ With the exception of O'Rourke's bid for Homechester House but in fact this bid is consistent with the OFT's conclusions for the reasons set out paragraph 5.213.

- 5.236. The OFT finds that the 19 Tenders that form Infringement 1 formed a single overall infringement between O'Rourke and CCSL which existed from on or around 23 November 2005 to on or around 30 March 2007 and had the object of preventing, restricting or distorting competition in respect of the supply and installation of the Affected Products, thereby infringing the Chapter I prohibition. The OFT finds that the pattern of evidence set out above satisfies the criteria for a single overall infringement.
- 5.237. Further and/or in the alternative, the OFT considers that Infringement 1 is itself composed of a number of agreements and/or concerted practices which on their own amount to nineteen separate infringements of the Chapter I prohibition.
- 5.238. The documentary evidence, as corroborated by other evidence including the witness and documentary evidence set out in section 5.A above shows that both O'Rourke and CCSL had a common aim and a meeting of minds. CCSL would provide O'Rourke with its bid price so that O'Rourke could submit a higher bid supposedly enabling CCSL to win each Tender. The OFT finds that O'Rourke would take this agreement with CCSL into account when determining its bid. The OFT also finds that CCSL could not have failed to take into account, when determining its own bid, the existence of an ongoing arrangement by which its competitor had agreed to put in a higher bid when determining its own bid.
- 5.239. It is also evident that both O'Rourke and CCSL took action to bring the aim about. CCSL disclosed its bid to O'Rourke for each Tender and O'Rourke submitted a higher bid.³³⁴
- 5.240. In drawing this conclusion, the OFT considers that, for each Tender in respect of which the OFT finds that CCSL and O'Rourke behaved in the aforementioned way, it provides strong evidence of a pre-existing agreement between CCSL and O'Rourke that O'Rourke would put in a higher bid than CCSL.³³⁵ Additionally, the fact that O'Rourke's own bid prices were almost always 10 per cent above the bid that the OFT infers

³³⁴ As above, with the exception of O'Rourke's bid for Homechester House.

³³⁵ In particular, as above, the OFT considers that an agreement would have been in place not later than the date of CCSL disclosing its bid to O'Rourke, because CCSL would not have disclosed its bid to O'Rourke but for such an agreement.

had been disclosed by CCSL represents further evidence of an agreement in that it suggests O'Rourke would price at a specified level above the CCSL bid.

5.241. Further, each instance of CCSL disclosing its bid and O'Rourke's receipt of it and failure to distance itself whilst remaining active on the market is sufficient to establish the existence of a concerted practice. It has been demonstrated that CCSL disclosed its bid to O'Rourke at least once for each Tender that forms Infringement 1. Having received this information, O'Rourke could not have failed to take it into account when determining its own bid price. Indeed, O'Rourke's subsequent conduct on the market (it submitted a higher bid in respect of every Tender³³⁶) shows that it did take account of CCSL's bid.

C. Infringement 2: CCSL and Owens

5.242. On the basis of the evidence assessed in Section 5.A above and at paragraphs 5.247 to 5.359 below, the OFT finds that CCSL and Owens participated in a single overall infringement which had the object of preventing, restricting or distorting competition in respect of the supply and installation of the Products thereby infringing the Chapter I prohibition (hereafter 'Infringement 2').

5.243. Further and/or in the alternative, the OFT finds that Infringement 2 was itself comprised of a number of separate agreements and/or concerted practices which each had the object of preventing, restricting or distorting competition in respect of the supply and installation of the Affected Products thereby infringing the Chapter I prohibition.

5.244. As part of the Immunity Agreement, Cirrus has accepted that the Infringements infringed the Chapter I prohibition. Further, Owens has admitted its involvement in Infringement 2 as part of the Owens Settlement Agreement.

5.245. The OFT has analysed the evidence in relation to each Tender in paragraphs 5.247 to 5.359 below by reference to the following framework:

³³⁶ As above, with the exception of O'Rourke's bid for Homechester House.

- i. First, the OFT establishes that PMSL invited CCSL and Owens to tender for a contract.
- ii. Second, the OFT establishes that CCSL disclosed its bid to Owens.
- iii. Third, the OFT finds that Owens did not distance itself from the information it received from CCSL.
- iv. Fourth, the OFT considers whether CCSL submitted the bid that it had disclosed to Owens.
- v. Fifth, the OFT demonstrates that Owens took the information it received regarding CCSL's bid into account and submitted a bid that was higher than the bid that CCSL disclosed to Owens.
- vi. Sixth, where possible, the OFT establishes who was awarded the contract.

5.246. Paragraphs 5.247 to 5.359 below sets out the OFT's analysis of the evidence for each Tender in respect of Infringement 2.

I. The Tenders

Home York House contract (on or around 30 November 2007 to on or around 3 December 2007)

5.247. The first contract that the OFT examines is in respect of Home York House, a PMSL property in York. The contract was for the installation of a fire system.³³⁷

i. PMSL invites CCSL and Owens to tender

5.248. An email dated 30 November 2007 from [a CCSL Contracts Administrator] to Owens shows that Owens was informed that CCSL would be supplying Owens' name to PMSL in order to invite it to tender for the Home York House contract. Given that CCSL informed PMSL whom it should approach to provide the second tender for work it is reasonable to infer that [a CCSL Contracts Administrator] information

³³⁷ The OFT relies upon the description of the contract in CCSL's bid attached to the email of 30 November 2007 ('*Upgrade of Existing Fire Alarm System and Emergency Lighting*') (see paragraph 5.252).

was credible.³³⁸ Further, for the reasons set out below, the OFT considers that both CCSL and Owens submitted bids for this contract. Accordingly, the OFT considers that PMSL invited both CCSL and Owens to tender for the Home York House contract.

5.249. The content of [a CCSL Contracts Administrator's] email clearly demonstrates that CCSL and Owens had discussed and agreed the implementation of a collusive tendering arrangement not only in respect of the Home York House contract, but also more generally. [A CCSL Contracts Administrator] informed [an individual acting on behalf of Owens] that he would receive the CCSL bid when it had been prepared and that he should then put in a higher bid than CCSL.³³⁹

'Hi [an individual acting on behalf of Owens] as per our telephone conversation today, I will be supplying your name to PMSL to supply an alternative tender as they require two quotes to put to the residents for all upgrades. You will then receive a tender pack from [a PMSL Senior Administrator]. I will email you our prices the day the tender lands with me, so that you can get out your price, if you can put in a higher cost than ours, i.e. 5%, 10%, 20% etc but vary it each time so it doesn't look suspicious.

Nothing will change work wise if you survey the site you get the job etc. It will mainly be the northern ones that I will ask you to quote for and someone else will do the south so you get the job. If you have any queries with the paperwork then give me a ring

Your first one! Isn't a tender but just a quote³⁴⁰, our price is attached so you just need to send a normal quote to

³³⁸ There is witness evidence to the effect that PMSL would ask CCSL whom to approach for a second tender (see for instance the evidence of [a CCSL Contracts Administrator] quoted at paragraph 5.44). This is supported by the contemporaneous documentary evidence. For instance, the October 2006 document set out in section 5.A above begins the process with step 1 of 'Cirrus provid[ing] PMSL with names of approved sub-contractors who should be contacted with 'Requests to Tender''.

³³⁹ P00005409.

³⁴⁰ The OFT does not consider that this phrase '*its just a quote*' undermines the OFT's conclusions in respect of Home York House. The surrounding text makes it clear that Owens was being asked to put in a bid as a second bidder: for example '[PMSL] require two quotes to put to the residents for all upgrades' which is consistent with PMSL approach at the time of

[a PMSL Senior Administrator]

Pevel Management Services

12 Centre Court

Vine Lane

Halsowen

Or [a PMSL Senior Administrator's email address]

She needs this by Tuesday or if you want to send it to me I can forward it on for you.'

[Emphasis added]

5.250. The deadline for bids was 4 December 2007.³⁴¹

ii. CCSL discloses its bid to Owens

5.251. The OFT finds from the 30 November 2007 email that [a CCSL Contracts Administrator] also disclosed CCSL's bid for the Home York House contract to Owens:³⁴²

*'Your first one! Isn't a tender but just a quote, **our price is attached** so you just need to send a normal quote...'*

[Emphasis added]

5.252. The attachment to the email was entitled '*Homeyork House*' and set out CCSL's bid of **£11,912** (not including VAT or any contingency sum).³⁴³

iii. Owens does not distance itself from the information it receives from CCSL

seeking two tenders before awarding its contract. Had this been otherwise (for instance, had CCSL been requesting that Owens act as its subcontractor and do its installation once CCSL won the contract), then there would be no question, for example, of Owens' name being put to PMSL or of Owens needing to '*put in a higher cost than*' CCSL's.

³⁴¹ P00005409: '*She needs this [Owens' quote] by Tuesday*'.

³⁴² P00005409.

³⁴³ P00005411. This figure is the total given on CCSL's attachment in the row called '*Our Quote price (not inc vat)*'.

5.253. There is no evidence on the OFT's file to suggest that Owens complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.254. CCSL submitted a bid on an unknown date. The OFT has inferred this from the above evidence which shows that CCSL intended to submit a bid and there is no evidence in the OFT's possession to suggest that a bid was not submitted. It certainly would have been highly unusual to have disclosed a bid (as CCSL did) and then not submit it.

v. Owens submits a higher bid than CCSL

5.255. Subsequent to receiving CCSL's bid, Owens submitted its bid by an email to CCSL on 3 December 2007:³⁴⁴

'Hi [a CCSL Contracts Administrator], Please find attached the tender for Homeyork House.'

5.256. Attached to this email was Owens' bid.³⁴⁵ The bid was **£13,025.30** (not including VAT or any contingency sum)³⁴⁶ and was therefore higher than the bid that CCSL disclosed to Owens (and submitted to PMSL).

5.257. Taking into account the contents of the 30 November 2007 email from [a CCSL Contracts Administrator], the OFT finds that Owens took account of the information it had received regarding CCSL's bid and submitted a higher bid.

5.258. The OFT notes that Owens submitted its bid to CCSL rather than PMSL. However, the OFT infers from the terms of [a CCSL Contracts Administrator's] 30 November 2007 email that Owens did this so that CCSL would forward it to PMSL (*'She [a PMSL Senior Administrator] needs this by Tuesday or if you want to send it to me I can forwarded [sic] it on for you'*).

³⁴⁴ P00005413.

³⁴⁵ P00005415.

³⁴⁶ This figure is calculated by adding together the subtotals (not including VAT) within Owens' BOQ.

5.259. The following day (4 December 2007), [a CCSL Contracts Administrator] replied, thanking Owens for its bid.³⁴⁷

vi. Contract award

5.260. The OFT does not know whether CCSL was awarded the Home York contract. However, this does not affect the fact that CCSL clearly colluded with Owens in respect of the bidding process for this contract and set out a framework to achieve collusive tendering for future contracts.

The Fountains contract (on or around 18 August 2008 to on or around 16 September 2008)

5.261. The next contract that the OFT examines is in respect of The Fountains, a PMSL property in Lancashire. The contract was for the supply and installation of a warden call system and a door entry system.³⁴⁸

i. PMSL invites CCSL and Owens to tender

5.262. In respect of CCSL, contemporaneous documentary evidence in the form of a RTT and a cover letter addressed to CCSL from PMSL, dated 4 August 2008, demonstrate that it was invited to tender for this contract by PMSL.

5.263. In respect of Owens, an email from [a CCSL Contracts Administrator] to Owens, dated 21 August 2008, stated that Owens should have received '*a tender from Peverel* [PMSL]' for The Fountains contract. Given that CCSL informed PMSL who it should approach to provide the second tender for work it is reasonable to infer that [a CCSL Contracts Administrator's] information was credible.³⁴⁹ Further, the documentary evidence demonstrates that Owens did submit a bid for this contract. Therefore, the OFT considers that PMSL invited Owens' to bid for this work.

³⁴⁷ P00005421.

³⁴⁸ The OFT has referred to the description of the contract in PMSL's specification document ('*Upgrade of Warden Call & Access Control Equipment [...] System*') and the entry in exhibit 12 which describes this contract as '*Dispersed alarm system installation*'.

³⁴⁹ See footnote 338 above.

5.264. The deadline for bids was 5 September 2008.³⁵⁰

ii. CCSL discloses its bid to Owens

5.265. On 21 August 2008, [a CCSL Contracts Administrator] sent an email to Owens, disclosing CCSL's bid:³⁵¹

*'...you should have received a tender from Peverel for the above³⁵²
here are our prices so you can add your bit and send it off'³⁵³*

5.266. The reference to Owens adding on its '*bit*' before submitting to PMSL is consistent with other evidence (including the [a CCSL Contracts Administrator] email of 30 November 2007) that there was an arrangement that Owens would submit a higher bid than CCSL's disclosed bid.

5.267. CCSL's disclosed bid was **£41,105.85** (not including VAT or any contingency sum).³⁵⁴

iii. Owens does not distance itself from the information it receives from CCSL

5.268. There is no evidence on the OFT's file to suggest that Owens complained about or in any way rejected the information it received from CCSL.

³⁵⁰ This is the deadline set out in PMSL's cover letter. Further, in an email dated 5 September 2008 from CCSL to Owens CCSL explained that the deadline for bids was 5 September 2008 (P00005632).

³⁵¹ The OFT concludes that this is CCSL's bid in light of [a CCSL Contracts Administrator]'s (a CCSL employee) use of the phrase '*our prices*' in the context of The Fountains contract. This conclusion is supported by other evidence set out in this Decision of CCSL disclosing its bid to Owens. The OFT notes that CCSL's entries in its BOQ (apparently submitted on 18 August 2008 – see paragraph 5.269) are not the same as the entries in the 21 September 2008 email. However, the OFT considers that this does not undermine its conclusions – it may be, for instance, that [a CCSL Contracts Administrator] shared a previous version of the BOQ with Owens by mistake. In any event, the CCSL prices in the 21 September 2008 email were higher than those in the CCSL BOQ actually submitted to PMSL. This means that this would have guaranteed that Owens' prices were considerably higher than CCSL's prices.

³⁵² The subject line of this email is '*PMSL Tender – The Fountains*'.

³⁵³ P00005632.

³⁵⁴ This figure is based on totalling the entries within the '*BOQ*' style list in the email of 21 August 2008 not including any VAT or contingency sum (and not including the '*option*' element which Owens did not seem to include in its bid).

iv. CCSL submits a bid

5.269. CCSL's tender documentation and cover letter, dated 18 August 2008,³⁵⁵ demonstrate that CCSL submitted a bid on or around 18 August 2008.³⁵⁶ CCSL's bid was **£35,829.81** (not including VAT or any contingency sum).³⁵⁷

v. Owens submits a higher bid than CCSL

5.270. Owens' bid, which was submitted by fax on 16 September 2008, was **£45,577.21** (not including VAT or contingency sum)³⁵⁸ and was therefore higher than the bid that CCSL disclosed to Owens.³⁵⁹

5.271. Taking into account the contents of the 30 November 2007 email from and the 21 August 2008 email from [a CCSL Contracts Administrator], the OFT finds that Owens took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.272. Despite having a lower bid than Owens it is recorded that CCSL lost this contract.³⁶⁰ This may have been the result of a lower bid by another company.³⁶¹

³⁵⁵ With the exception of the FOT which is dated '*18 August 2007*', which in the circumstances the OFT considers should have been amended to '*2008*'.

³⁵⁶ The conclusion that CCSL submitted a bid is also supported by the entry for The Fountains contract in Exhibit 12 which records that CCSL and Owens both submitted bids for this contract and that CCSL was awarded the contract.

³⁵⁷ This figure is the handwritten figure on CCSL's tender documentation next to Schedule of Repairs.

³⁵⁸ This figure is calculated by deducting the contingency sum of £1,000 from the handwritten total on Owens' BOQ, which also does not include VAT. As above, this does not appear to include the option element.

³⁵⁹ See paragraphs 5.265 to 5.266 above.

³⁶⁰ Exhibit 12 records '*Lost*'.

³⁶¹ This possibility is supported by the following evidence: the OFT's file contains an email from CCSL to Jackson on 6 November 2008, requesting: '*...Please let me have your best price for this install. We [CCSL] need to beat a price submitted by others ([another company]??)*' [P00005827]. From this the OFT infers that Jackson was CCSL's sub-contractor for the installation works at the Fountains and CCSL was hoping to re-price its bid so as to come in cheaper than the bid submitted by another company other than Owens. This is consistent with

5.273. However, the fact CCSL did not win this work does not affect the fact that CCSL clearly colluded with Owens in respect of the bidding process for this contract.

Priory Court contract (on or around 4 February 2009 at on or around 2 March 2009)

5.274. The next contract that the OFT examines is in respect of Priory Court, a PMSL property in Blackpool.³⁶² The contract was for the supply and installation of a warden call system, a door entry system and a fire system.³⁶³

i. PMSL invites CCSL and Owens to tender

5.275. Contemporaneous documentary evidence demonstrates that PMSL invited both CCSL and Owens to bid for the Priory Court Contract. In particular, both companies submitted bids for the contract. The deadline for bids was 13 February 2009.³⁶⁴

ii. CCSL discloses its bid to Owens

5.276. CCSL disclosed its bid to Owens on two separate occasions during this bidding process. The first disclosure took place on 4 February 2009 and the second on 2 March 2009. It was necessary for CCSL to make a second disclosure because it erroneously only disclosed part of its bid for the Priory Court contract to Owens on 4 February 2009 and this led to Owens submitting an incomplete first bid. Owens therefore needed more information from CCSL in order to submit a complete second bid.

an internal CCSL meeting note of 9 October 2008 which records that *'the fountains to be repriced'* [P00004303].

³⁶² It appears that PMSL had conducted a separate tender exercise a contract at Priory Court in early 2008 in which CCSL and Owens bid against each other. This is considered to explain the presence of documents dated 2008 for Priory Court.

³⁶³ The OFT relies on the description of the contract in exhibit 12 (*'PBX warden call installation and Fire system installation'*) and the FOT (*'Warden Call / Fire System Upgrades'*).

³⁶⁴ This deadline is set out in the FOT.

5.277. CCSL's first disclosure occurred on 4 February 2009, when [a CCSL Admin Support Supervisor] emailed CCSL's bid³⁶⁵ to Owens:³⁶⁶

'As per our earlier conversation, I don't know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative revised tender³⁶⁷ for Priory Court, Blackpool.

If you have, then here are our prices and a reminder that it's due back by the 13th February 09'

5.278. CCSL's bid was **£15,904.72** for the warden call and PAC option elements of the contract (not including VAT or any contingency sum).³⁶⁸ However, this bid omitted pricing on the fire and emergency light upgrade aspects of the contract and, as stated above, resulted in Owens submitting an incomplete bid.

5.279. On 2 March 2009, [a PMSL Senior Administrator] emailed [a CCSL Contracts Administrator] and others at CCSL to inform them of Owens incomplete bid and asked CCSL to ask Owens to provide a price for a fire and emergency light upgrade.³⁶⁹

5.280. Following [a PMSL Senior Administrator]'s email, [a CCSL Contracts Administrator] emailed [an individual acting on behalf of Owens], forwarding PMSL emails and informed him of CCSL's bid for the additional aspects of the Priory Court contract:³⁷⁰

'Please see email below from [a PMSL Senior Administrator], could you re-submit your tender ASAP, just in case you need them our costs are'

³⁶⁵ The OFT concludes that this is CCSL's bid in light of [a CCSL Admin Support Supervisor's] (a CCSL employee) use of the phrase *'our prices'* in the context of Priory Court. This conclusion is supported by other evidence set out in this Decision of CCSL disclosing its bid to Owens.

³⁶⁶ P00006008.

³⁶⁷ It is not entirely clear but this may be a reference to a revision from the previous tender exercise for Priory Court which took place in 2008 (see footnote 362 above).

³⁶⁸ This figure is calculated by totalling the entries in the email of 4 February 2009 email

³⁶⁹ P00006025. [A PMSL Senior Administrator's] email reads as follows: *'I have now received Owens price for this upgrade but he has not filled out fire and emergency light upgrade prices (see enclosed). Can you get him to complete asap and email back to me as this is now urgent and the notices should have gone out on Friday'*.

³⁷⁰ P00006025.

5.281. The email then sets out CCSL's list of price for a fire alarm system upgrade. CCSL's bid (for the fire element) was **£8,159.94** (not including VAT or contingency sum).³⁷¹

iii. Owens does not distance itself from the information it receives from CCSL

5.282. There is no evidence on the OFT's file to suggest that Owens complained about or in any way rejected the information it received from CCSL on either 4 February or 2 March 2009.

iv. CCSL submits a bid

5.283. It is evident from PMSL's email to CCSL of 2 March (which only mentions that Owens' bid was outstanding) that CCSL had submitted a bid for this contract.

v. Owens submits a bid

5.284. An email dated 2 March 2009 from [a PMSL Senior Administrator] to [a CCSL Contracts Administrator] and others at CCSL, demonstrates that PMSL had received Owens' bid for the warden call and PAC option elements of the Priory Court contract that day: *'I have received Owens price today for this upgrade'*.³⁷² Attached to that email were tender documents in Owens' name, signed and dated 5 February 2009.

5.285. Owens' bid for the warden call system and PAC option elements was **£16,581.85** (not including VAT or any contingency sum)³⁷³ and was therefore higher than the bid CCSL disclosed to Owens for the warden call and PAC option elements.

5.286. Taking into account the contents of previous emails to Owens from [a CCSL Contracts Administrator] on 30 November 2007 (set out at paragraphs 5.248 to 5.249 above) and 21 August 2008 (set out at paragraphs 5.265 to 5.266 above), both of which requested that Owens submit a higher bid than CCSL for contracts, the OFT finds that Owens

³⁷¹ This figure is calculated by adding up the totals in the 2 March 2009 email.

³⁷² P00006025.

³⁷³ This figure is calculated by totalling the handwritten totals for the warden call and PAC elements on Owens' BOQ, not including any VAT or contingency sum, P00006027.

took account of the information it had received regarding CCSL's bid and submitted a higher bid.

5.287. It is not clear whether Owens did submit a bid for the fire alarm element of the contract.³⁷⁴

vi. Contract award

5.288. It is not clear from the evidence whether CCSL won this contract. However, this does not affect the fact that CCSL clearly colluded with Owens in respect of the bidding process for this contract.

Mill Lodge contract (on or around 30 March 2009 to on or around 7 April 2009)

5.289. The next contract that the OFT examines is in respect of Mill Lodge, a PMSL property in Boston, Lincolnshire. The contract was for the supply and installation of a warden call system and a door entry system.³⁷⁵

i. PMSL invites CCSL and Owens to tender

5.290. Contemporaneous RTT documentation and cover letters from PMSL to CCSL and Owens, dated 9 March 2009, demonstrate that PMSL invited both CCSL and Owens to tender for this contract. The deadline for bids was 9 April 2009.³⁷⁶

ii. CCSL discloses its bid to Owens

5.291. On 6 April 2009, [a CCSL Contracts Administrator] sent an email to Owens, disclosing CCSL's bid:³⁷⁷

³⁷⁴ Even if Owens did not, the OFT considers that this would not undermine its conclusions with respect to this Tender.

³⁷⁵ The OFT refers to the description of the contract in the PMSL specification document ('*Upgrade of Warden Call & Access Control Equipment [.....] System*') and the entry in exhibit 12 ('[...] *warden call system*'). (This specification included an option for a CCTV system and may also have included elements of a fire system installation.)

³⁷⁶ This is the deadline given in PMSL's cover letter.

³⁷⁷ The OFT concludes that this is CCSL's bid in light of [a CCSL Admin Support Supervisor's] (a CCSL employee) use of the phrase '*our prices*' in the context of Mill Lodge. This conclusion is supported by other evidence set out in this Decision of CCSL disclosing its bid to Owens. The OFT notes that CCSL only disclosed its bid for the warden call element of the contract, not the CCTV/MATV option, which in the event Owens does not bid for. The OFT also notes that entries in the 6 April 2009 email are the same as the entries in CCSL's BOQ submitted to PMSL.

*'I don't know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for the site detailed above.'*³⁷⁸

*If you have, then here are our prices and a reminder that it's due back by the 09/04/09'*³⁷⁹

5.292. CCSL's disclosed bid was **£14,558.77** (not including VAT or contingency sum).³⁸⁰

iii. Owens does not distance itself from the information it receives from CCSL

5.293. There is no evidence on the OFT's file to suggest that Owens complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.294. Contemporaneous documents in the form of CCSL tender documents and a cover letter dated 30 March 2009 demonstrate that CCSL submitted a bid of **£14,558.77** (not including VAT or any contingency sum) on or around 30 March 2009.³⁸¹ Exhibit 12 records that CCSL submitted a bid.

v. Owens submits a higher bid than CCSL

5.295. Owens' tender documents dated 7 April 2009 demonstrate that Owens submitted a bid of **£18,077.83** (not including VAT or any contingency sum) on or around 7 April 2009³⁸² and was therefore higher than the bid that CCSL disclosed to Owens. Exhibit 12 records that Owens submitted a bid.

³⁷⁸ The subject line of this email was *'Mill Lodge - Tender'*.

³⁷⁹ P00006275.

³⁸⁰ This figure is calculated by totalling the entries in the list in the 6 April 2009 email.

³⁸¹ This figure is calculated by totalling the entries in CCSL's BOQ for the warden call element (CCSL's bid for the CCTV element, which was not disclosed to Owens and which Owens does not bid against, is £958.94).

³⁸² This figure is based on the handwritten total in Owens' BOQ, once the £1,000 contingency sum said to have been added is subtracted, and without adding VAT.

5.296. Taking into account the surrounding context, the OFT finds that Owens took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.297. CCSL was awarded this contract.³⁸³

Abbey Court contract (on or around 27 April 2009 to on or around 3 June 2009)

5.298. The next contract that the OFT examines is in respect of Abbey Court, a PMSL property in Hexham, Northumberland. The contract was for a fire system upgrade.³⁸⁴

i. PMSL invites CCSL and Owens to tender

5.299. Contemporaneous RTT documentation and cover letters from PMSL to CCSL and Owens, dated 17 April 2009, demonstrate that PMSL invited CCSL and Owens to tender. The deadline for bids was 17 May 2009.³⁸⁵

ii. CCSL discloses its bid to Owens

5.300. The evidence demonstrates that CCSL disclosed its bid to Owens on two occasions: on 28 April 2009 and on 13 May 2009, the latter being a revised bid. The OFT does not know why CCSL decided to revise its bid.

5.301. On 28 April 2009, [a CCSL Contracts Administrator] sent an email to Owens, disclosing CCSL's bid:³⁸⁶

'I don't know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for the site detailed above.

³⁸³ Exhibit 12 records 'Won'.

³⁸⁴ The OFT refers to the description of the contract in the PMSL specification document ('Upgrade of Fire Detection Equipment') and in Exhibit 12 ('fire system installation').

³⁸⁵ This is set out in the cover letter.

³⁸⁶ The OFT concludes that this is CCSL's bid in light of [a CCSL Contracts Administrator] (a CCSL employee) use of the phrase 'our prices' in the context of Abbey Court. This conclusion is supported by other evidence set out in this Decision of CCSL disclosing its bid to Owens. The OFT notes that the entries in the 28 April 2009 email are the same as the entries in CCSL's BOQ.

*If you have, then here are our prices and a reminder that this is now required urgently*³⁸⁷

5.302. CCSL's bid was **£34,474.80** (not including VAT or any contingency sum).³⁸⁸

5.303. However, an email from [a CCSL Admin Support Supervisor] at CCSL to Owens, dated 13 May 2009, shows not only that CCSL had decided it needed to revise its bid, but also that it **disclosed** its revised bid to Owens by way of setting out a BOQ style list of equipment and prices to be charged for each item. Further, the email also asks Owens to increase its own bid:³⁸⁹

'We have had to revise our price... please would you be kind enough to do the same'

5.304. CCSL's revised bid was **£26,350.08** (not including VAT or contingency sum).³⁹⁰

iii. Owens does not distance itself from the information it receives from CCSL

5.305. There is no evidence on the OFT's file to suggest that Owens complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.306. Exhibit 12 records that CCSL submitted a bid. Contemporaneous documentation in the form of CCSL tender documents demonstrate that CCSL submitted two bids to PMSL on or around 27 April 2009 and on or around 2 June 2009, in that the OFT's file contains:

- (i) a CCSL BOQ dated 27 April 2009 with the same entries as disclosed to Owens in the 28 April 2009 email (that is, CCSL's

³⁸⁷ P00006327

³⁸⁸ This figure is calculated by totalling the entries in the 28 April 2009 email.

³⁸⁹ P00006423

³⁹⁰ This figure is calculated by totalling the entries on the 13 May 2009 email, which does not include VAT or any contingency sum.

original bid) which totals **£34,474.80** (not including VAT or any contingency sum); and

- (ii) a CCSL BOQ dated 2 June 2009 with entries either the same or very similar to the those disclosed to Owens in the 13 May 2009 email (that is, CCSL's revised bid) which totals **£26,369.80** (not including VAT or any contingency sum).

v. *Owens submits a higher bid than CCSL*

5.307. Owens' tender documents³⁹¹ show that, after receiving CCSL's first bid, Owens submitted a bid to PMSL. Owens' original bid dated 29 April 2009 was **£43,166.54** (not including VAT or any contingency sum)³⁹² and was therefore higher than the original bid that CCSL disclosed to Owens (and CCSL had submitted).

5.308. Contemporaneous documentary evidence in the form of Owens's tender documents dated 3 June 2009 show that, after receiving CCSL's revised bid, Owens submitted a revised bid of **£35,327.75** (not including VAT or any contingency sum)³⁹³ by fax to PMSL on 3 June 2009 that was therefore higher than the revised bid that CCSL disclosed to Owens. Exhibit 12 also records that Owens submitted a bid.

5.309. Taking into account the surrounding evidence, the OFT finds that Owens took account of the information it had received regarding CCSL's bid and submitted a higher bid than CCSL on both occasions.

vi. *Contract award*

5.310. CCSL was awarded this contract.³⁹⁴

Beechwood Court contract (on or around 11 May 2009 to on or around 14 May 2009)

³⁹¹ P00006513. These were, in fact, attached to emails sent to Owens as a result of Owens' request on 13 May 2009 for a copy of its tender to assist it in complying with CCSL's request for it to revise its quote (P0006511).

³⁹² This figure is calculated by subtracting the £1,000 contingency sum from the handwritten subtotal on Owens' BOQ, which also does not include any VAT.

³⁹³ This figure is calculated by subtracting the £1,000 contingency sum from the handwritten subtotal on Owens' BOQ, which also does not include any VAT.

³⁹⁴ Exhibit 12 records 'Won'.

5.311. The next contract that the OFT examines is in respect of Beechwood Court, a PMSL property in Tettenhall, West Midlands. The contract was for the supply and installation of a warden call system.³⁹⁵

i. PMSL invites CCSL and Owens to tender

5.312. RTT documentation together with a cover letter from PMSL to CCSL, dated 16 April 2009, demonstrate that PMSL invited CCSL to tender for Beechwood Court.³⁹⁶ The deadline for bids was 14 May 2009.³⁹⁷ Further, the documentary evidence demonstrates that Owens did submit a bid for this contract. Therefore the OFT considers that PMSL invited Owens to bid for this work.

ii. CCSL discloses its bid to Owens

5.313. On 11 May 2009, [a CCSL Contracts Administrator] sent an email to Owens, disclosing CCSL's bid:³⁹⁸

'I don't know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for the site detailed above.

*If you have, then here are our prices and a reminder that it's due back by 14/05/09. Could I please also remind you that a £1,000 contingency should be included in your price.'*³⁹⁹

5.314. CCSL's bid was **£38,156.83** (not including VAT or any contingency sum).⁴⁰⁰

³⁹⁵ The OFT refers to the description of the contract in PMSL's specification document ('*Upgrade of Warden Call Equipment*') and in exhibit 12 ('*PBX warden call system installation*'). (This specification may also have included elements of a door entry system.)

³⁹⁶ The conduct of CCSL and Owens also supports a finding that PMSL invited them to tender.

³⁹⁷ This is set out in the cover letter.

³⁹⁸ The OFT concludes that this is CCSL's bid in light of [a CCSL Contracts Administrator] (a CCSL employee) use of the phrase '*our prices*' in the context of Beechwood Court. This conclusion is supported by other evidence set out in this Decision of CCSL disclosing its bid to Owens. The OFT notes that the entries in the 11 May 2009 are the same as the entries in CCSL's BOQ dated 11 May 2009. The OFT also notes that it is not at all unusual for the PMSL specification to require the contractor to include a £1,000 contingency sum in its bid.

³⁹⁹ P00006403.

⁴⁰⁰ This figure is calculated to totalling the entries in the 11 May 2009 email, which does not include VAT or any contingency sum.

iii. Owens does not distance itself from the information it receives from CCSL

5.315. There is no evidence on the OFT's file to suggest that Owens complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.316. Contemporaneous documents in the form of CCSL tender documents dated 11 May 2009 demonstrates that CCSL submitted a bid of **£38,156.83** (not including VAT or any contingency sum)⁴⁰¹ on or around 11 May 2009. Exhibit 12 also records that CCSL submitted a bid.

v. Owens submits a higher bid than CCSL

5.317. Owens' own tender documents dated 14 May 2009 demonstrate that, subsequent to receiving CCSL's bid, Owens submitted a bid of **£49,0165.94** (not including VAT or any contingency sum)⁴⁰² on or around 14 May 2009. Owens' bid was therefore higher than the bid that CCSL disclosed to Owens. Exhibit 12 also records that Owens submitted a bid.

5.318. Taking account of the wider context, the OFT finds that Owens took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.319. CCSL was awarded this contract.⁴⁰³

Taylorsfield contract (on or around 19 May 2009 to on or around 20 May 2009)

5.320. The next contract that the OFT examines is in respect of Taylorsfield, a PMSL property in Drifffield, Yorkshire. The contract was for the supply and installation of a warden call system and a door entry system.⁴⁰⁴

⁴⁰¹ This figure is calculated to totalling the entries in CCSL's BOQ, which does not include VAT or any contingency sum.

⁴⁰² This figure is the handwritten total on Owens' BOQ, after one subtracts the £1,000 contingency said which is said to have been added on.

⁴⁰³ Exhibit 12 records 'Won'.

i. PMSL invites CCSL and Owens to tender

5.321. Contemporaneous RTT documentation and cover letters from PMSL to both CCSL and Owens, dated 28 April 2009, demonstrate that PMSL invited both parties to tender. The deadline for tenders was 26 May 2009.⁴⁰⁵

ii. CCSL discloses its bid to Owens

5.322. On 19 May 2009, [a CCSL Contracts Administrator] sent an email to Owens, disclosing CCSL's bid:⁴⁰⁶

*'I don't know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for the site detailed above.'*⁴⁰⁷

*If you have, then here are our prices and a reminder that it's due back by 26/05/09. Could I please also remind you that a £1,000 contingency should be included in your price.'*⁴⁰⁸

5.323. CCSL's bid was **£35,363.76** (not including VAT or any contingency sum).⁴⁰⁹

iii. Owens does not distance itself from the information it receives from CCSL

5.324. There is no evidence on the OFT's file to suggest that Owens complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits the bid that it discloses to Owens

⁴⁰⁴ The OFT refers to the description of the contract in the PMSL specification document (*'Upgrade of Warden Call Equipment'*) and in exhibit 12 (*'PBX warden call system installation'*). (This specification may also have included elements of a fire system installation.)

⁴⁰⁵ The deadline is set out in the cover letters.

⁴⁰⁶ The OFT concludes that this is CCSL's bid in light of [a CCSL Contracts Administrator's] (a CCSL employee) use of the phrase *'our prices'* in the context of Taylorsfield. This conclusion is supported by other evidence set out in this Decision of CCSL disclosing its bid to Owens. The OFT notes that the entries in the 19 May 2009 are the same as the entries in CCSL's BOQ.

⁴⁰⁷ The subject line of this email is *'Taylorsfield, Driffield – Tender'*.

⁴⁰⁸ P00006482.

⁴⁰⁹ This figure is calculated by totalling the entries in the 19 May 2009 email, which does not include any contingency sum or VAT.

5.325. CCSL's tender documents dated 19 May 2009 demonstrate that it submitted a bid of **£35,363.76** (not including VAT or any contingency sum) on or around 19 May 2009.⁴¹⁰ Exhibit 12 also records that CCSL submitted a bid.

v. Owens submits a higher bid than CCSL

5.326. Owens' own tender documents dated 20 May 2009 demonstrate that, it put in a bid of **£45,898.75** (not including VAT or any contingency sum)⁴¹¹ on or around 20 May 2009. Owens' bid was therefore higher than the bid that CCSL disclosed to Owens. Exhibit 12 also records that Owens submitted a bid.

5.327. Taking account of the wider context, the OFT finds that Owens took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.328. CCSL was awarded this contract.⁴¹²

Homeshire House (on or around 21 May 2009)

5.329. The next contract that the OFT examines is in respect of Homeshire House, a PMSL property in Alsager, Chester. The contract was for the supply and installation of a warden call system and a door entry system.⁴¹³

i. PMSL invites CCSL and Owens to tender

5.330. Contemporaneous RTT documents and cover letters from PMSL to CCSL (dated 29 April 2009) and Owens (dated 5 May 2009) demonstrate that

⁴¹⁰ This figure is calculated by totalling the entries in the CCSL BOQ, which does not include any contingency sum or VAT.

⁴¹¹ This figure is calculated by subtracting the £1,000 contingency sum from the handwritten subtotal on Owens' BOQ, which does not include VAT.

⁴¹² Exhibit 12 records 'Won'.

⁴¹³ The OFT refers to the description of the contract in PMSL's specification document ('Upgrade of warden call equipment') and in exhibit 12 ('PBX warden call system installation').

PMSL invited both parties to tender for this contract. The deadline for bids was 27 May 2009 (for CCSL) and 2 June 2009 (for Owens).⁴¹⁴

ii. CCSL discloses its bid to Owens

5.331. On 21 May 2009, [a CCSL Contracts Administrator] sent an email to Owens, disclosing CCSL's bid:⁴¹⁵

*'I don't know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for the site detailed above.'*⁴¹⁶

*If you have, then here are our prices and a reminder that it's due back by 27/05/09. Could I please also remind you that a £1,000 contingency should be included in your price.'*⁴¹⁷

5.332. CCSL's bid was **£25,285.16** (not including VAT or any contingency sum).⁴¹⁸

iii. Owens does not distance itself from the information it receives from CCSL

5.333. There is no evidence on the OFT's file to suggest that Owens complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits the bid that it discloses to Owens

5.334. CCSL's tender documents dated 21 May 2009 demonstrate that it submitted a bid of **£25,285.16** (not including VAT or any contingency

⁴¹⁴ This is the deadline given in PMSL's cover letter to CCSL, whereas PMSL's cover letter to Owens, in fact, gave Owens until 2 June 2009.

⁴¹⁵ The OFT concludes that this is CCSL's bid in light of [a CCSL Contracts Administrator's] (a CCSL employee) use of the phrase *'our prices'* in the context of Homeshire House. This conclusion is supported by other evidence set out in this Decision of CCSL disclosing its bid to Owens. The OFT notes that the entries in the 21 May 2009 are the same as the entries in CCSL's BOQ.

⁴¹⁶ The subject line of this email was *'Homeshire House – Tender'*.

⁴¹⁷ P00006540.

⁴¹⁸ This figure is calculated by totalling the entries in the 21 May 2009 email, which does not include VAT or any contingency sum.

sum) on or around 21 May 2009.⁴¹⁹ Exhibit 12 also records that CCSL submitted a bid.

v. *Owens submits a higher bid than CCSL*

5.335. Owens submitted its bid on an unknown date.⁴²⁰ Based on the considerable amount of surrounding evidence demonstrating that Owens was engaging in a collusive tendering arrangement with CCSL, the OFT has inferred that Owens submitted its bid **after** it had received CCSL's bid.⁴²¹ Exhibit 12 also records that Owens submitted a bid.

5.336. Owens' bid was **£31,741.56** (not including VAT or contingency sum).⁴²² Owens' bid was therefore higher than the bid that CCSL disclosed to Owens.

5.337. Taking account of the wider context, the OFT finds that Owens took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. *Contract award*

5.338. CCSL was awarded this contract.⁴²³

Court Lodge (on or around 4 November 2009 to on or around 16 November 2009)

⁴¹⁹ This figure is calculated by totalling the entries in CCSL's BOQ (dated 21 May 2009), which does not include VAT or any contingency sum.

⁴²⁰ This finding is based on a handwritten BOQ (by contrast to the CCSL's typed BOQ on CCSL headed paper) containing the same total bid (£37,652.79 inclusive of VAT and contingency sum) as the bid described as Owens' bid in the Notice to Residents dated 24 June 2009.

⁴²¹ The conclusion that Owens submitted a bid is supported after receipt of CCSL's bid by other evidence set out in this Decision including of CCSL disclosing its bid to Owens, as well as by an email sent by CCSL to Jackson reminding Jackson that installation works it is doing at Homeshire House '*are as a result of the alternative quotes being submitted on time and also free of charges by others*' which the OFT considers is a reference to Owens having submitted a bid for Homeshire House [P00006792]; and the entry for Homeshire House in Exhibit 12 indicating that CCSL and Owen bid against each other and CCSL won.

⁴²² This figure is the handwritten total given in the Owens BOQ once one subtracts the £1,000 contingency sum which has been added on.

⁴²³ Exhibit 12 records '*Won*'.

5.339. The next contract that the OFT examines is in respect of Court Lodge, a PMSL property in Belvedere, Kent. The contract was for the installation of a fire system.⁴²⁴

i. PMSL invites CCSL and Owens to tender

5.340. RTT documentation and a cover letter from PMSL to CCSL, dated 29 October 2009, demonstrate that PMSL invited CCSL to tender for this contract.⁴²⁵ The OFT relies on the fact Owens submitted a bid for this contract to demonstrate that Owens must have been invited to tender by PMSL. The deadline for tenders was 6 November 2009.⁴²⁶

ii. CCSL discloses its bid to Owens

5.341. Contemporaneous documents demonstrate a particularly high degree of co-ordination between CCSL and Owens in the disclosure of bid in connection with this contract.

5.342. It is evident that a first round of bidding involved CCSL disclosing its bid to Owens. However, the process resulted in the undesired conclusion of Owens being the cheapest bidder and as a result Owens was asked to revise its bid. The OFT finds that CCSL then disclosed its bid to Owens on a second occasion.

5.343. Although the OFT does not possess any documentary evidence in respect of the first bidding round, the OFT finds from an email from [a CCSL Contracts Administrator] to Owens, dated 11 November 2009, that the bids had been submitted either on or before the 11 November

⁴²⁴ The OFT relies on the description of the contract in PMSL's specification document ('*Upgrade of Fire Detection Equipment*') and in exhibit 12 ('*fire system installation*')

⁴²⁵ It is noted that the OFT's file also contains what appears to be RTT documentation from PMSL addressed to CCSL from May 2009. The OFT does not know why two letters were sent out. This does not, however, undermine the OFT's conclusions. The OFT also notes that the 29 October 2009 letter, though signed by the same individual who signed the May 2009 letter and though it also requests a response be sent to [a PMSL Senior Administrator], is not on PMSL headed paper. The paper is headed '*Peveler Retirement*'. The attached specification by contrast is headed as the PMSL specifications usually are ('*Peveler Management Services*'). In all those circumstances, the OFT considers that this RTT of October 2009 should be considered as being sent out by or on behalf of PMSL.

⁴²⁶ This is based upon the deadline given in the 29 October 2009 letter to CCSL.

2009. In the email [a CCSL Contracts Administrator] requested that Owens:⁴²⁷

'[...] redo [its] tender for the fire half of this quote and get it back to [a PMSL Senior Administrator] ASAP as you have got a lower price then [sic] us [that is CCSL]'

5.344. The OFT finds from this email that bids had been submitted to PMSL for this contract by both Owens and CCSL and that Owens' bid had been lower.

5.345. In an email from Owens to CCSL on the same day, [an individual acting on behalf of Owens] explained why his company's bid had come in under CCSL:⁴²⁸

*'I will need another blank form to redo this tender. Please can you ensure that it contains **all the same info as Peverel's tender**. The last form did not include the same items hence why the quote was cheaper.'*

[Emphasis added]

5.346. The OFT considers that [an individual acting on behalf of Owens'] email clearly shows that Owens had received CCSL's bid prior to submitting its own, cheaper bid because he stated that *'[t]he last form'* was incomplete. The OFT considers that the reference to *'[t]he last form'*, when considered in its surrounding context, is a reference to the FOT. This is consistent with the documentary evidence, in that the blank FOT has 12 entries, whereas CCSL's FOT had 15 entries.

5.347. The email chain continued on 12 November 2009, when [a CCSL Contracts Administrator] at CCSL asked Owens to:

'... please ensure that you [that is, Owens] always quote from our bill of qtys [that is BOQ] the items might not always show up in the spec [that is, PMSL's specification] as these are installations costs. Please feel free to add any items that are missing on the bill of qtys that you send back.'

⁴²⁷ P00007064.

⁴²⁸ P00007066.

5.348. Attached to [a CCSL Contracts Administrator]'s email of 12 November 2009 was a PDF copy of CCSL's BOQ for Court Lodge.⁴²⁹ The OFT considers that this was the second time CCSL had disclosed its bid to Owens.

5.349. The pattern of evidence in these emails is also clearly inconsistent with the premise of companies acting independently of collusion. The OFT finds from these emails that Owens had no intention of submitting more competitive bids than CCSL and was guided in pricing not by the tender documents, but the contents of CCSL's own bid.

5.350. CCSL's bid was **£21,272.14** (not including VAT or any contingency sum).⁴³⁰

iii. Owens does not distance itself from the information it receives from CCSL

5.351. There is no evidence on the OFT's file to suggest that Owens complained about or in any way rejected the information it received from CCSL.

5.352. In fact, by explaining why it had made a lower bid than CCSL and explaining that it needed more complete information from CCSL in order to prepare its bid, the OFT finds that Owens expected to receive CCSL's information prior to preparing and submitting its own bid.

iv. CCSL submits a bid

5.353. CCSL's tender documents dated 4 November 2009 show it submitted a bid of **£21,272.14** (not including VAT or any contingency sum)⁴³¹ on or around 4 November 2009. Exhibit 12 also records that CCSL submitted a bid.

v. Owens submits a higher bid than CCSL

⁴²⁹ P00007065. This document has the heading one would expect for a CCSL BOQ and refers to 'Court Lodge'. Further, it appears to be the same document as CCSL submitted as its BOQ to PMSL.

⁴³⁰ This figure is the typed figure in CCSL's BOQ in the 'TOTAL' row, to which it is clear that the contingency sum and the VAT have not been added.

⁴³¹ This figure is the typed entry in the row marked 'TOTAL' in CCSL's BOQ which is before VAT or any contingency sum is added.

- 5.354. Subsequent to receiving CCSL's bid, Owens submitted its bid on or before 11 November 2009.
- 5.355. This is demonstrated by CCSL's email of 11 November 2009 explaining that Owens bid was '*a lower price then [sic] us*',⁴³² indicating that Owens had submitted its bid.
- 5.356. Subsequent to CCSL's request that Owens' '*redo*' its bid, Owens submitted its revised bid on or around 13 November 2009 by post. This is demonstrated by a FOT and BOQ (with 26 entries) signed and dated 6 November 2009 by Owens, which has a date stamp of 16 November 2009 and an email of 16 November 2009 from Owens to CCSL explaining that it had resubmitted its bid by post on 13 November 2009.⁴³³
- 5.357. Owens' revised bid was **£27,992.34** (not including VAT or any contingency sum).⁴³⁴ Owens' bid was therefore higher than the bid than CCSL disclosed to Owens.
- 5.358. Taking account of the wider context, including the email dialogue during the course of this tender in which Owens actually explained why it had submitted a lower bid than CCSL, the OFT finds that Owens took account of the information it had received regarding CCSL's bid, intended to submit a higher bid and did so in its revised bid.

vi. Contract award

- 5.359. The OFT does not know whether CCSL won this contract.⁴³⁵ However, this does not affect the fact that CCSL clearly colluded with Owens in respect of the bidding process for this contract.

II. Conclusions

⁴³² P00007064.

⁴³³ This is also supported by Owens explaining to CCSL on 16 November 2009 that Owens had resubmitted its bid by post on the 13 November (P00007107); Owens' confirmation was in response to CCSL querying on 13 November 2009 whether Owens had submitted its bid (P00007087).

⁴³⁴ That figure is based on the handwritten total in Owens' BOQ once one subtracts the £1,000 contingency sum which has been added on. It is also clear that this does not include VAT.

⁴³⁵ Exhibit 12 records '*No decision made yet*'.

- 5.360. The OFT considers that the evidence assessed in paragraphs 5.247 to 5.359 above demonstrates that each of the following steps occurred in respect of each of the nine Tenders concerning CCSL and Owens:
- i. both CCSL and Owens were invited to tender for contracts by PMSL as part of a selective tender process (that is, only a limited number of bidders were invited to bid);
 - ii. CCSL disclosed its bid to Owens prior to Owens submitting its bid on at least one occasion;
 - iii. Owens did not reject or distance itself from CCSL's disclosed bid;
 - iv. Owens took the information it received regarding CCSL's bid into account and submitted a bid at a higher price than that disclosed by CCSL;
 - v. CCSL submitted its bid; and
 - vi. CCSL was awarded the contract on the majority of occasions.
- 5.361. The OFT further finds that the nine Tenders that form Infringement 2 formed a single overall infringement between Owens and CCSL which existed from on or around 30 November 2007 to on or around 16 November 2009 and had the object of preventing, restricting or distorting competition in respect of the supply and installation of the Affected Products thereby infringing the Chapter I prohibition. The OFT finds that the pattern of evidence set out above satisfies the criteria for a single overall infringement.
- 5.362. Further and/or in the alternative, the OFT considers that Infringement 2 is itself composed of a number of agreements and/or concerted practices which on their own amount to nine separate infringements of the Chapter I prohibition.
- 5.363. The documentary evidence as corroborated by other evidence including the witness and documentary evidence set out in section 5.A above shows that both Owens and CCSL had a common aim and a meeting of minds. CCSL would provide Owens with its bid price so that Owens could submit a higher bid supposedly enabling CCSL to win each Tender. The OFT finds that Owens would take this arrangement with CCSL into account when determining its bid. The OFT also finds that CCSL could

not have failed to take into account, when determining its own bid, the existence of this ongoing arrangement with its competitor to put in a higher bid than CCSL's. This is most clearly set out by 30 November 2007 email from [a CCSL Contracts Administrator] to Owens which essentially set out the framework for the cover pricing to occur. In this email [a CCSL Contracts Administrator] said that CCSL would disclose its bid for contracts to Owens and that Owens should then submit a higher bid. The correspondence generally is also consistent with the parties having a collusive tendering agreement. For example, on the occasion that Owens submitted a lower bid than CCSL (for the Court Lodge contract), when that was brought to Owens' attention, Owens explained that it was cheaper because of a problem with the documentation, and after that discussion Owens submitted a revised bid which was more expensive than CCSL's bid.

- 5.364. It is also evident that both Owens and CCSL took action to bring the aim about. CCSL disclosed its bid to Owen for each Tender and Owens submitted a higher bid.
- 5.365. The OFT also considers that Infringement 2 is itself composed of a number of agreements and/or concerted practices which on their own amount to separate infringements of the Chapter I prohibition.
- 5.366. In drawing this conclusion, the OFT considers that, for each Tender in respect of which the OFT finds that CCSL and Owens behaved in the aforementioned way, it provides strong evidence of a pre-existing agreement between CCSL and Owens that Owens would put in a higher bid than CCSL.⁴³⁶
- 5.367. Further, each instance of CCSL disclosure of its bid and Owens' receipt of it and failure to distance itself whilst remaining active on the market is sufficient to establish the existence of a concerted practice. It has been demonstrated that CCSL disclosed its bid to Owens at least once (and, on three occasions, disclosed its bid to Owens twice) for each Tender that forms Infringement 2. Having received this information Owens could not have failed to take it into account when determining its own bid

⁴³⁶ In particular, as above, the OFT considers that an agreement would have been in place not later than the date of CCSL disclosing its bid to Owens, because CCSL would not have disclosed its bid to Owens but for such an agreement.

price. Indeed, Owens' subsequent conduct on the market (it submitted a higher bid in respect of every Tender) shows that it did take account of CCSL's bid.

D. Infringement 3: CCSL and Jackson

5.368. On the basis of the evidence assessed in Section 5.A above and at paragraphs 5.373 to 5.819 below, the OFT finds that CCSL and Jackson participated in a single overall infringement which had the object of preventing, restricting or distorting competition in respect of the supply and installation of the Affected Products thereby infringing the Chapter I prohibition (hereafter 'Infringement 3').

5.369. Further and/or in the alternative, the OFT finds that Infringement 3 was itself comprised of a number of separate agreements and/or concerted practices which each had the object of preventing, restricting or distorting competition in respect of the supply and installation of the Affected Products thereby infringing the Chapter I prohibition.

5.370. As part of the Immunity Agreement, Cirrus has accepted that the Infringements infringed the Chapter I prohibition.

5.371. The OFT has analysed the evidence in relation to each Tender in paragraphs 5.373 to 5.819 below by reference to the following framework:

- i. First, the OFT establishes that PMSL invited CCSL and Jackson to tender for a contract.
- ii. Second, the OFT establishes that CCSL disclosed its bid to Jackson.
- iii. Third, the OFT finds that Jackson did not distance itself from the information it received from CCSL.
- iv. Fourth, the OFT considers whether CCSL submitted the bid that it had disclosed to Jackson.
- v. Fifth, the OFT demonstrates that Jackson took the information it received regarding CCSL's bid into account and submitted a bid that was higher than the bid that CCSL disclosed to Jackson.

- vi. Sixth, where possible, the OFT establishes who was awarded the contract.

5.372. Paragraphs 5.373 to 5.819 below sets out the OFT's analysis of the evidence for each Tender in respect of Infringement 3.

I. The Tenders

Homeborough House contract (on or around 26 February 2009 to on or around 26 March 2009)

5.373. The first contract that the OFT examines is in respect of Homeborough House, a PMSL property in Hythe. The contract was for the supply and installation of warden call system.⁴³⁷

i. PMSL invites CCSL and Jackson to tender

5.374. The OFT infers that both CCSL and Jackson were asked to tender for this contract given both submitted bids (with CCSL ultimately being awarded the contract).⁴³⁸ Further, the OFT's file contains an email in which PMSL provides copies of the FOT, apparently in response to a request from Jackson.⁴³⁹

ii. CCSL discloses its bid to Jackson

5.375. On 26 February 2009, [a CCSL Contracts Administrator] emailed details of CCSL's bid⁴⁴⁰ to Jackson:

'...I don't know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for Homeborough House, Hythe

⁴³⁷ The OFT relies upon the description of the contract in Exhibit 12 ('PBX warden call installation') and in the FOT ('Warden Call Upgrades'). (This specification may have included elements of door entry and fire system installations.)

⁴³⁸ This is recorded in Exhibit 12

⁴³⁹ P00006131

⁴⁴⁰ The OFT concludes that this email contained CCSL's bid based on the author's (a CCSL employee) use of the words '*our prices*' in the context of '*Homeborough House*', and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision. Furthermore, the entries in the table in the 26 February 2009 email are identical to the entries in CCSL's BOQ for the Homeborough Home contract referred to in paragraph 5.378 below.

*If you have, then here are our prices and a reminder that its due back by 6th March 09...*⁴⁴¹

5.376. The email then set out a BOQ style list of equipment with CCSL's prices. CCSL's bid was **£27,564.81** (not including VAT or any contingency figure).⁴⁴²

iii. Jackson does not distance itself from the information it receives from CCSL

5.377. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.378. CCSL contemporaneous tender documents dated 26 February 2009 support the conclusion that CCSL submitted a bid for Homeborough House on or around 26 February 2009. CCSL submitted a bid of **£27,564.81** (not including VAT or any contingency sum).⁴⁴³ This conclusion is further supported by the entry in Exhibit 12 recording that CCSL bid for and was awarded this contract, as well as in the Notice to Residents dated 9 April 2009.

v. Jackson submits a higher bid than CCSL

5.379. Jackson submitted a bid for this contract (by submitting tender documentation to PMSL, being a FOT and a BOQ). This conclusion is on the basis of:

- i. an email from PMSL on 25 March 2009 to Jackson and CCSL in which Jackson is thanked for sending FOTs to PMSL for a number of properties including Homeborough House;⁴⁴⁴ and
- ii. a copy of a Jackson BOQ for Homeborough House, with associated emails between Jackson, CCSL and PMSL in respect of

⁴⁴¹ P00006019

⁴⁴² This has been calculated by adding up the figures in the 'TOTAL' column in the 26 February 2009 email.

⁴⁴³ This was calculated by adding up the figures in CCSL's BOQ for Homeborough House dated 26 February 2009.

⁴⁴⁴ P00006162.

Homeborough House and other contracts,⁴⁴⁵ from which the OFT infers that Jackson supplied a BOQ for Homeborough House on 26 March 2009.⁴⁴⁶

5.380. This conclusion is further supported by other evidence: an entry in Exhibit 12 records that Jackson and CCSL both submitted bids for this contract and that CCSL was awarded the contract; and what appears to be a PMSL notice to the residents dated 9 April 2009 of Homeborough House records the receipt of bids from CCSL and Jackson.

5.381. Jackson's bid in the BOQ is **£28,444.02** (not including VAT or any contingency sum)⁴⁴⁷ and was therefore higher than the bid that CCSL disclosed to Jackson.

⁴⁴⁵ The associated emails (all on 26 March 2009) referred to in paragraph 5.379.ii are as follows:

- At the same time as thanking Jackson for a number of FOTs for various contracts (being Homeborough House, Harvest Close (PBX), Homespa House, St Nicholas Court, St Marys Court, Fairview Court, Springdale Court contracts and others), [a PMSL Senior Administrator] adds *'Howwever [sic] you have only sent the Form of tender and not the bill of quantities summary page. Can you send these over asap please...'* [P00006162];
- CCSL was copied in and emailed Jackson to the effect *'...Can you please make the return of all the required information for [a PMSL Senior Administrator] a top priority as there is a significant amount of work potentially outstanding here which will be of benefit to us all? Your assistance with this is appreciated'* [P00006172];
- Jackson responded *'Can you let me know what see requires'* [P00006178]. In the circumstances, the OFT infers that when Jackson said *'see'* it meant *'she'* and was a reference to [a PMSL Senior Administrator] and a request for clarification for what [a PMSL Senior Administrator] required (these circumstances include the previous email exchanges summarised above); and
- Shortly thereafter an email was sent by CCSL to PMSL copying Jackson attaching Jackson BOQs for a number of contracts (being Homeborough House, Harvest Close (PBX), Homespa House, St Nicholas Court, St Marys Court, Fairview Court, Springdale Court contracts) (and CCSL also requested that Jackson also provide an outstanding BOQ for another contract) [P00006183].

In the circumstances, the OFT considers that Jackson had provided these Jackson BOQs to CCSL on 26 March 2009 to be submitted on to PMSL.

⁴⁴⁶ The Jackson BOQ is date-stamped as *'RECEIVED 20 MAR 2009'*. In all the circumstances, the OFT considers that that is likely to have been back-dated from 26 March 2009 (see email evidence set out at footnote 445).

⁴⁴⁷ This figure is calculated by totalling the sub-totals on Jackson's BOQ, which clearly do not include VAT or any contingency sum. It is noted that Jackson's BOQ contains an arithmetic error (the figure of £492 should read £49.20). This reduces Jackson's true bid to £28,001.22 (not including VAT or any contingency figure). This is still higher than CCSL's bid.

5.382. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.383. CCSL was awarded this contract.⁴⁴⁸

Harvest Close (PBX) contract⁴⁴⁹ (on or around 16 March 2009 to on or around 26 March 2009)

5.384. The next contract that the OFT examines is in respect of Harvest Close, a PMSL property in Lindfield. The contract was for the supply and installation of a warden call system.⁴⁵⁰

i. PMSL invites CCSL and Jackson to tender

5.385. Contemporaneous RTT documentation and letters dated 23 February 2009 addressed to CCSL and Jackson demonstrate that PMSL invited CCSL and Jackson to bid [...].⁴⁵¹ The deadline for tenders was 23 March 2009.⁴⁵²

ii. CCSL discloses its bid to Jackson

5.386. On 16 March 2009 [a CCSL Contracts Administrator] emailed details of CCSL's bid to Jackson:⁴⁵³

'I dont know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for Harvest Close....

⁴⁴⁸ Exhibit 12 records 'Won'.

⁴⁴⁹ This contract is to be distinguished from a contract, at the same property, for a [different] warden call system [...] later in 2009: see paragraph 5.734 onwards.

⁴⁵⁰ The OFT relies upon the description of the contract in Exhibit 12 ('PBX warden call installation') and the description in the FOT ('Warden Call Upgrades'). (This specification may have included elements of a fire system installation.)

⁴⁵¹ [Paragraph 5.385 and footnote 451 of this Decision have been amended to remove a factual inaccuracy].

⁴⁵² This is the deadline recorded in the letters and FOT.

⁴⁵³ The OFT concludes that this email contained CCSL's bid for Harvest Close (PBX) contract based on the author's (a CCSL employee) use of the words 'our prices' in the context of 'Harvest Close', and on other evidence to the effect that CCSL would disclose its price to a Jackson on the occasions set out in this Decision.

*If you have, then here are our prices and a reminder that it's due back 23^d March*⁴⁵⁴

[Emphasis added]

5.387. The email then set out a BOQ style list of equipment and the CCSL's prices for each entry.

5.388. CCSL's bid was **£15,994.57** (not including VAT or any contingency sum).⁴⁵⁵

iii. Jackson does not distance itself from the information it receives from CCSL

5.389. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.390. CCSL submitted a bid on an unknown date. The OFT infers this from the above evidence which makes it clear that CCSL intended to submit a bid and there is no evidence in the OFT's possession to suggest that a bid was not submitted. Given the surrounding evidence, it certainly would have been highly unusual to have prepared and disclosed a bid (as CCSL did) and then not submit it. Further, as above, Exhibit 12 records that Jackson and CCSL both submitted bids for this contract, even though CCSL was not ultimately awarded the contract.

v. Jackson submits a higher bid than CCSL

5.391. Jackson submitted a bid for this contract (by submitting tender documentation to PMSL, being a FOT and a BOQ). This conclusion is based on:

- i. a contemporaneous email from PMSL on 25 March 2009 to Jackson and CCSL in which Jackson is thanked for sending PMSL FOTs for a number of properties including Harvest Close; and

⁴⁵⁴ P00006078.

⁴⁵⁵ This is calculated by totalling the entries in the 16 March 2009 email, which does not include VAT or contingency sum.

- ii. a copy of a Jackson BOQ for Harvest Close,⁴⁵⁶ with associated emails between Jackson, CCSL and PMSL in respect of Harvest Close and other contracts,⁴⁵⁷ from which the OFT infers that Jackson supplied a BOQ for Harvest Close on 26 March 2009.⁴⁵⁸

5.392. The conclusion that Jackson submitted a bid is further supported by an entry in Exhibit 12 recording that Jackson and CCSL both submitted bids for this contract, even though CCSL was not ultimately awarded the contract.

5.393. Jackson's bid for this contract was **£17,593.43** (not including VAT or any contingency sum)⁴⁵⁹ and was therefore higher than the bid that CCSL disclosed to Jackson.

5.394. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.395. It appears that CCSL was not awarded this contract.⁴⁶⁰ Given that Jackson's bid was more expensive than the bid CCSL disclosed to Jackson and [an individual acting on behalf of Jackson's] evidence in interview was that Jackson was never awarded a PMSL contract,⁴⁶¹ the OFT considers that it is likely that this contract was awarded to a third party bidder.

⁴⁵⁶ P00006187.

⁴⁵⁷ The associated emails referred to in paragraph 5.391.ii are the same emails set out in footnote 445 above, which were in respect of a number of PMSL contracts, including the Harvest Close (PBX) contract. Again, in the circumstances, the OFT finds that Jackson had provided the BOQ for Harvest Close (PBX) contract which was attached to CCSL's 26 March 2009 email to CCSL to be submitted on to PMSL.

⁴⁵⁸ The Jackson BOQ is date-stamped as '*RECEIVED 20 MAR 2009*'. In all the circumstances, the OFT considers that that is likely to have been back-dated from 26 March 2009 (see email evidence set out in footnote 445).

⁴⁵⁹ This figure is the subtotal given in Jackson's BOQ, which does not include VAT or any contingency sum

⁴⁶⁰ Exhibit 12 records '*Lost*'.

⁴⁶¹ Transcript of interview with [an individual acting on behalf of Jackson], CD1, page 46, lines 21 to 24 and CD2, page 7, line 24 to 27.

Homespa House contract (on or around 16 March 2009 to on or around 20 May 2009)

5.396. The next contract that the OFT examines is in respect of Homespa House, a PMSL property in Cheltenham. The contract was for the supply and installation of a warden call system and a door entry system.⁴⁶²

i. PMSL invites CCSL and Jackson to tender

5.397. Contemporaneous RTT letters and documentation addressed to CCSL and Jackson dated 5 March 2009 demonstrate that PMSL invited CCSL and Jackson to bid.⁴⁶³ The deadline for tenders was 5 April 2009.⁴⁶⁴

ii. CCSL discloses its bid to Jackson

5.398. Contemporaneous documentation demonstrates that CCSL disclosed its bid twice to Jackson. This appears to be because PMSL revised its specification for the warden call element – from originally requiring 26 types of equipment in its BOQ to only requiring 23 types of equipment.⁴⁶⁵

5.399. The first disclosure of CCSL's bid occurred on 16 March 2009 in an email sent by [a CCSL Contracts Administrator] to Jackson:⁴⁶⁶

'...I dont know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for Homespa House....

⁴⁶² The OFT relies upon the description of the contract in Exhibit 12 ('PBX warden call system installation') and in the specification document ('Upgrade of Social Alarm & Access Control Equipment') and on the FOT ('Warden Call Upgrades'). (This specification included an option for a CCTV system and may have included elements of a fire system installation.)

⁴⁶³ Further the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Homespa House contract.

⁴⁶⁴ This is based on the deadline set out in the letters to CCSL and Jackson and on the FOT.

⁴⁶⁵ Contemporaneous documents demonstrate that the revision was because PMSL realised that it no longer required the door entry element of the upgrade: see [a PMSL Senior Administrator] 's email to CCSL of 21 April 2009, [P0006380]: '*... You have tendered for the warden call door entry upgrade on this site, but we have suince [sic] found the door entry part was done 6 years ago*'

⁴⁶⁶ The OFT concludes that this email contained CCSL's bid based on the author's (a CCSL employee) use of the words '*our prices*' in the context of '*Homespa House*', and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision.

*If you have, then **here are our prices** and a reminder that it's due back 5th April⁴⁶⁷*

[Emphasis added]

5.400. The email then set out a BOQ style list of equipment and CCSL's prices for each entry.

5.401. CCSL's bid was **£22,980.04** (not including VAT or any contingency sum).⁴⁶⁸ The price for the warden call element was based on the prices of 26 entries.⁴⁶⁹

5.402. The second disclosure of CCSL's bid occurred on 1 May 2009 in an email sent by [a CCSL Admin Support Supervisor] to Jackson:⁴⁷⁰

*'... Please find our **revised price below**, can you revise your cost and re-submit to [a PMSL Senior Administrator].... Prices for the options for PAC and Smoke Detector have remained the same⁴⁷¹*

[Emphasis added]

5.403. The email then set out a BOQ style list of equipment and CCSL's prices under the heading '*Warden call system upgrade*'.

5.404. In the circumstances,⁴⁷² the OFT infers that this is CCSL's revised bid for the main element of this contract based on fewer entries. CCSL's revised bid was **£17,345.37** (not including VAT or any contingency

⁴⁶⁷ P00006060.

⁴⁶⁸ This figure is calculated by totalling the entries in the 16 March 2009 email.

⁴⁶⁹ Totalling £19,522.93 (not including VAT or any contingency sum).

⁴⁷⁰ The OFT concludes that this email contained CCSL's bid based on the author's (a CCSL employee) use of the words '*our revised price*' in an email the subject line of which is '*FW: Homespa House*', and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision.

⁴⁷¹ P00006380.

⁴⁷² This includes that CCSL's bid in the 1 May 2009 email are very similar to that set out in the email of 16 March 2009 above, except that it only deals with the warden call element and contains only 23 entries. Further the entries in the 1 May 2009 email are the same as in the revised CCSL BOQ (containing 23 entries).

sum),⁴⁷³ meaning that CCSL's total bid (not including VAT or any contingency sum) was **£20,847.53**.⁴⁷⁴

iii. Jackson does not distance itself from the information it receives from CCSL

5.405. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL on either 16 March or 1 May 2009.

iv. CCSL submits a bid

5.406. Contemporaneous documentary evidence demonstrates that CCSL submitted a bid in response to the original tender request. This is shown by an email sent by PMSL to CCSL on 21 April 2009 confirming receipt of the CCSL bid: '*[y]ou have tendered for the warden call door entry upgrade on this site...*'.⁴⁷⁵

5.407. Contemporaneous CCSL tender documentation for Homespa House with 23 entries dated 26 April 2009 for the warden call element demonstrates that CCSL submitted a bid based on its revised figure for Homespa House.⁴⁷⁶ CCSL's revised bid was **£17,345.42** (not including VAT or any contingency sum), as above making its total bid **£20,847.53**

5.408. The conclusion that CCSL submitted a bid is further supported by other evidence: an entry in Exhibit 12 records that Jackson and CCSL both submitted bids for this contract and that CCSL was awarded the contract, as does what appears to be a PMSL Notice to All Residents dated 21 May 2009 recording a CCSL bid.

v. Jackson submits a higher bid than CCSL

5.409. Jackson submitted a bid for this contract (by submitting tender documentation to PMSL, being a FOT and a BOQ). This conclusion is based on:

⁴⁷³ This figure is calculated by totalling the entries in the 1 May 2009 email.

⁴⁷⁴ This figure is calculated by totalling the entries in the 1 May 2009 email and the prices for PAC and Smoke detector set out in the 16 March 2009 email.

⁴⁷⁵ P00006380; subject line of the email is '*Homespa House*'.

⁴⁷⁶ P00006380. This conclusion is supported as well by the existence of the cover email to PMSL of 26 April 2009 to which CCSL apparently attached its revised BOQ (P00006380).

- i. an email from PMSL on 25 March 2009 to Jackson and CCSL in which Jackson is thanked for sending PMSL FOTs for a number of properties including Homespa House; and
- ii. a copy of a Jackson BOQ for Homespa House,⁴⁷⁷ with associated emails between Jackson, CCSL and PMSL in respect of Homespa House and other contracts⁴⁷⁸ which demonstrate that Jackson supplied a BOQ for Homespa House on 26 March 2009.⁴⁷⁹

5.410. Jackson's bid was **£24,657.29** (not including VAT or any contingency sum)⁴⁸⁰ and was therefore higher than the bid that CCSL disclosed to Jackson in the 16 March 2009 email (not including VAT or any contingency sum).

5.411. Further, Jackson emailed a BOQ dated 20 May 2009 to PMSL and CCSL for the Homespa House contract on 20 May 2009.⁴⁸¹ Based on the timing of the email (some time after Jackson had been provided with CCSL's revised BOQ on 1 May to reflect 23 entries rather than the original 26) and the fact it quoted for 23 entries for the warden call

⁴⁷⁷ P00006190. With 26 entries for the warden call element.

⁴⁷⁸ The associated emails referred to in paragraph 5.409ii are the same emails set out in footnote 445 above, which were in respect of a number of PMSL contracts, including the Homespa House contract. Again, in the circumstances, the OFT considers that Jackson had provided the BOQ for Homespa House contract which was attached to CCSL's 26 March 2009 email to CCSL to be submitted on to PMSL.

⁴⁷⁹ The Jackson BOQ is date-stamped as '*RECEIVED 20 MAR 2009*'. In all the circumstances, the OFT considers that that is likely to have been back-dated from 26 March 2009 (see email evidence set out at footnote 445).

⁴⁸⁰ This figure is calculated by totalling all of the subtotals on Jackson's BOQ which clearly do not take into account VAT or contingency sum. It is further noted that Jackson's price for the CCTV/MATV option part of the bid is cheaper than CCSL's price for the CCTV/MATV option. This appears to be because Jackson made an error and neglected to enter a price for the fourth entry ('*modulator*').

⁴⁸¹ P00006519, P00006520. This was also preceded by an email from PMSL to CCSL requesting that CCSL '*chase*' Jackson for its '*revised tender for this one*' (the subject line of the email being '*HOMESPA*') [P00006425]. CCSL queried this with Jackson directly [P00006425]. Jackson responded making it clear that it would submit the revised tender documentation when it received a FOT from PMSL [P00006425]. This PMSL provided [P00006460]. PMSL sent a similar request to CCSL on 20 May 2009, which CCSL again raised directly with Jackson [P00006515].

element, the OFT has inferred that this is Jackson's revised bid for the warden call element.⁴⁸²

5.412. The conclusion that Jackson submitted a bid is further supported by other evidence: an entry in Exhibit 12 records that Jackson and CCSL both submitted bids for this contract and that CCSL was awarded the contract, as does what appears to be a PMSL Notice to All Residents dated 21 May 2009 recording a Jackson bid.

5.413. Jackson's revised bid was **£19,947.07** for the warden call (not including VAT or any contingency sum),⁴⁸³ meaning that Jackson's total bid was **£24,686.65**.⁴⁸⁴ Jackson's bid was therefore higher than the revised bid that CCSL disclosed to Jackson in the 1 May 2009 email.

5.414. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.415. CCSL was awarded this contract.⁴⁸⁵

Fairview Court contract (on or around 6 March 2009 to on or around 26 March 2009)

⁴⁸² The OFT notes that, on 21 May 2009, PMSL requested from Jackson that it also email the quote for the two other elements of the contract for Homespa House contract (which had not been revised) [P00006546]. Jackson's response was to seek disclosure from CCSL of CCSL's bid for the PAC element. (The OFT reaches this conclusion on the basis of an email Jackson sent to CCSL asking '*Can you send me the Pac quote please*' [P00006546]. In all the circumstances, the OFT finds that '*the*' Pac quote is a reference to CCSL's bid for the Pac element the contract.) The OFT does not know whether CCSL replied or whether Jackson did in fact supply a BOQ covering the two other elements of the contract for the Homespa House contract. It would seem unnecessary given that those elements of the contract had not been revised. The OFT's file does contain a third version of the Jackson BOQ which contains both a 23-entry quote for warden call and the PAC and smoke detector quotes, though this may just be the page one of Jackson's revised BOQ and page two of Jackson's original BOQ. In any event, any failure to provide by Jackson does not undermine the OFT's conclusions.

⁴⁸³ This figure is the subtotal on Jackson's emailed BOQ dated 20 May 2009 for 23 entries for warden call, subtracting the £1,000 contingency sum which is said to have been included.

⁴⁸⁴ This figure is calculated by totalling the subtotals on Jackson's BOQs for warden call, PAC and smoke detector elements, which clearly do not include VAT or contingency sum (noting that the subtotal relating to warden call is £19,947.07).

⁴⁸⁵ Exhibit 12 records '*Won*'.

5.416. The next contract that the OFT examines is in respect of Fairview Court, a PMSL property in Kingston-on-Thames, Surrey. The contract was for the supply and installation of a warden call system and a door entry system.⁴⁸⁶

i. PMSL invites CCSL and Jackson to tender

5.417. Contemporaneous RTT documents and cover letters addressed to CCSL and Jackson, dated 6 March 2009, demonstrate that PMSL invited CCSL and Jackson to tender.⁴⁸⁷ The deadline for tenders was '*as soon as possible*'.⁴⁸⁸

ii. CCSL discloses its bid to Jackson

5.418. On 9 March 2009, [a CCSL Contracts Administrator] emailed CCSL's bid⁴⁸⁹ to Jackson:

'...I dont know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for Fairview Court....

*If you have, **then here are our prices and a reminder that it's due back ASAP***⁴⁹⁰

[Emphasis added]

5.419. The email then set out a BOQ style list of equipment and CCSL's prices for each entry.

5.420. CCSL's bid was **£23,654.19** (not including VAT or any contingency sum).⁴⁹¹

⁴⁸⁶ The OFT relies upon the description of the contract in Exhibit 12 ('PBX warden call system installation') and in the specification document ('Upgrade of Social Alarm & Access Control Equipment') and on the FOT ('Warden Call Upgrades').

⁴⁸⁷ Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for this contract.

⁴⁸⁸ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁴⁸⁹ The OFT concludes that this email contained CCSL's bid based on the author's (a CCSL employee) use of the words '*our prices*' in the context of '*Fairview Court*', and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision. Further, the entries in the email are identical to those in CCSL's BOQ dealt with at paragraph 5.422 below.

⁴⁹⁰ P00006032.

iii. Jackson does not distance itself from the information it receives from CCSL

5.421. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.422. Contemporaneous CCSL tender documentation dated 6 March 2009 demonstrates that CCSL submitted a bid for this contract on or around 6 March 2009. CCSL's bid was **£23,654.19** (not including VAT or any contingency sum).⁴⁹²

5.423. The conclusion that CCSL submitted a bid is further supported by an entry in Exhibit 12 recording that Jackson and CCSL both submitted bids for this contract and that CCSL was awarded the contract.

v. Jackson submits a higher bid than CCSL

5.424. Jackson submitted a bid (a FOT and a BOQ). This conclusion is on the basis of:

- i. an email from PMSL on 25 March 2009 to Jackson and CCSL in which Jackson is thanked for sending PMSL FOTs for a number of properties including Fairview Court; and
- ii. a copy of a Jackson BOQ for Fairview Court,⁴⁹³ with associated emails between Jackson, CCSL and PMSL in respect of Fairview Court and other contracts,⁴⁹⁴ from which the OFT infers that Jackson supplied a BOQ for Fairview Court on 26 March 2009.⁴⁹⁵

⁴⁹¹ This figure is calculated by totalling the entries in the 9 March 2009 email.

⁴⁹² This figure is calculated by totalling the entries in CCSL's BOQ dated 6 March 2009, which does not include any VAT or contingency sum.

⁴⁹³ P00006186.

⁴⁹⁴ The associated emails referred to in paragraph 5.424ii are the same emails set out in footnote 445 above, which were in respect of a number of PMSL contracts, including the Fairview Court contract. Again, in the circumstances, the OFT finds that Jackson had provided the BOQ for Fairview Court contract which was attached to CCSL's 26 March 2009 email to CCSL to be submitted on to PMSL.

⁴⁹⁵ The Jackson BOQ is date-stamped as '*RECEIVED 20 MAR 2009*'. In all the circumstances, the OFT considers that that is likely to have been back-dated from 26 March 2009 (see email evidence set out at footnote 445).

5.425. This conclusion is further supported by an entry in Exhibit 12 recording that Jackson and CCSL both submitted bids for this contract and that CCSL was awarded the contract.

5.426. Jackson's bid was **£26,009.33** (not including VAT or any contingency sum)⁴⁹⁶ and was therefore higher than the bid that CCSL disclosed to Jackson in the 9 March 2009 email (not including VAT or any contingency sum).

5.427. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.428. CCSL was awarded the contract.⁴⁹⁷

Springdale Court contract (on or around 13 March 2009 to on or around 26 March 2009)

5.429. The next contract that the OFT examines is in respect of Springdale Court, a PMSL property in Totton. The contract was for the installation of a warden call system and a door entry system.⁴⁹⁸

i. PMSL invites CCSL and Jackson to tender

5.430. Contemporaneous RTT documentation and letters addressed to CCSL and Jackson, dated 23 February 2009, demonstrate that PMSL invited CCSL and Jackson to tender.⁴⁹⁹ The deadline for tenders was 23 March 2009.⁵⁰⁰

ii. CCSL discloses its bid to Jackson

⁴⁹⁶ This figure is calculated by totalling the subtotals on Jackson's BOQ, which obviously do not take into account VAT or any contingency sum.

⁴⁹⁷ Exhibit 12 records 'Won'.

⁴⁹⁸ The OFT relies upon the description of the contract in Exhibit 12 ('PBX warden call system installation') and in the specification document ('Upgrade of Social Alarm & Access Control Equipment') and on the FOT ('Warden Call Upgrades'). (This specification included an option for a CCTV system and may have included elements of a fire system installation.)

⁴⁹⁹ Further the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for this contract.

⁵⁰⁰ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

5.431. On 16 March 2009, [a CCSL Contracts Administrator] emailed details of CCSL's bid⁵⁰¹ to Jackson:

'...I dont know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for Springdale Court....

*If you have, **then here are our prices** and a reminder that it's due back 23rd March⁵⁰²*

[Emphasis added]

5.432. The email then set out a BOQ style list of equipment and the prices CCSL proposed to charge for each entry.

5.433. CCSL's bid was **£25,020.24** (not including VAT or any contingency sum).⁵⁰³

iii. Jackson does not distance itself from the information it receives from CCSL

5.434. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.435. Contemporaneous CCSL tender documentation dated 13 March 2009 for Springdale Court demonstrates that CCSL submitted a bid on or around 13 March 2009. CCSL's bid was **£25,020.24** (not including VAT or any contingency sum).⁵⁰⁴

⁵⁰¹ The OFT concludes that this email contained CCSL's bid based on the author's (a CCSL employee) use of the words '*our prices*' in the context of '*Springdale Court*', and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision. Further, the entries in the email are identical to those in CCSL's BOQ dealt with at paragraph 5.435.

⁵⁰² P00006069.

⁵⁰³ This figure is calculated by totalling the entries on the 16 March 2009 email.

⁵⁰⁴ This figure is calculated by totalling the entries in CCSL's BOQ which clearly do not include VAT or contingency sum.

5.436. This conclusion is further supported by an entry in Exhibit 12 recording that Jackson and CCSL both submitted bids for this contract and that CCSL was awarded the contract.

v. Jackson submits a higher bid than CCSL

5.437. Jackson submitted a FOT and a BOQ. The OFT draws this conclusion based on:

- i. a copy of a Jackson FOT dated 23 March 2009, and an email from PMSL on 25 March 2009 to Jackson and CCSL in which Jackson is thanked for sending PMSL FOTs for a number of properties including Springdale Court; and
- ii. a copy of a Jackson BOQ for Springdale Court,⁵⁰⁵ with associated emails between Jackson, CCSL and PMSL in respect of Springdale Court and other contracts⁵⁰⁶ which demonstrate that Jackson supplied a BOQ for Springdale Court on 26 March 2009.⁵⁰⁷

5.438. This conclusion is further supported by an entry in Exhibit 12 recording that Jackson and CCSL both submitted bids for this contract and that CCSL was awarded the contract.

5.439. Jackson's bid in the BOQ for the Springdale Court contract was **£27,658.46** (not including VAT or any contingency sum)⁵⁰⁸ and was therefore higher than the bid that CCSL to Jackson (not including VAT or any contingency sum).

5.440. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

⁵⁰⁵ P00006194.

⁵⁰⁶ The associated emails referred to in paragraph 5.437ii are the same emails set out in footnote 445 above, which were in respect of a number of PMSL contracts, including the Springdale Court contract. Again, in the circumstances, the OFT considers that Jackson had provided the BOQ for Springdale Court contract which was attached to CCSL's 26 March 2009 email to CCSL to be submitted on to PMSL.

⁵⁰⁷ The Jackson BOQ is date-stamped as '*RECEIVED 20 MAR 2009*'. In all the circumstances, the OFT considers that that is likely to have been back-dated from 26 March 2009 (see email evidence set out at footnote 445).

⁵⁰⁸ This figure is calculated by totalling the subtotals on Jackson's BOQ, which clearly do not include VAT or any contingency sum.

vi. *Contract award*

5.441. CCSL was awarded the contract.⁵⁰⁹

St Nicholas Court contract (on or around 13 March 2009 to on or around 26 March 2009)

5.442. The next contract that the OFT examines is in respect of St Nicholas Court, a PMSL property in Lindfield. The contract was for the supply and installation of a warden call system.⁵¹⁰

i. *PMSL invites CCSL and Jackson to tender*

5.443. Contemporaneous RTT documentation and letters addressed to CCSL and Jackson dated 5 March 2009 demonstrate that PMSL invited CCSL and Jackson to tender.⁵¹¹ The deadline for tenders was 5 April 2009.⁵¹²

ii. *CCSL discloses its bid to Jackson*

5.444. On 16 March 2009, [a CCSL Contracts Administrator] emailed CCSL's bid⁵¹³ to Jackson:

'...I dont know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for St Nicholas Court....

*If you have, **then here are our prices** and a reminder that it's due back ASAP'*⁵¹⁴ [emphasis added]

⁵⁰⁹ Exhibit 12 records 'Won'.

⁵¹⁰ The OFT relies upon the description of the contract in Exhibit 12 ('Dispersed alarm system installation') and in the specification document ('Removal & De-Commissioning of obsolete [...] Dispersed Alarms and the Supply & Installation of new Dispersed Alarms') and on the FOT ('Dispersed alarm upgrade'). (This specification may have included elements of a fire system installation.)

⁵¹¹ Further the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the St Nicholas Court contract.

⁵¹² This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁵¹³ The OFT concludes that this email contained CCSL's bid based on the author's (a CCSL employee) use of the words '*our prices*' in the context of '*St Nicholas Court*', and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision. Further, the entries in the email are identical to those in CCSL's BOQ dealt with at paragraph 5.448.

5.445. The email then set out a BOQ style list of equipment and CCSL's prices for that equipment.

5.446. CCSL's bid was **£5,695.50** (not including VAT or any contingency sum).⁵¹⁵

iii. Jackson does not distance itself from the information it receives from CCSL

5.447. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.448. CCSL's tender documentation dated 13 March 2009 for St Nicholas Court demonstrates that CCSL submitted a bid for this contract on or around 13 March 2009. CCSL bid was **£5,695.50** (not including VAT or any contingency sum).

5.449. This conclusion is further supported by an entry in Exhibit 12 recording that Jackson and CCSL both submitted bids for this contract and that CCSL was awarded the contract.

v. Jackson submits a higher bid than CCSL

5.450. Jackson submitted a bid for this contract (by submitting tender documentation to PMSL, being a FOT and a BOQ). This conclusion is based on:

- i. A copy of a Jackson FOT dated 23 March 2009, and an email from PMSL on 25 March 2009 to Jackson and CCSL in which Jackson is thanked for sending PMSL Forms of Tenders for a number of properties including St Nicholas Court.; and
- ii. a copy of a Jackson BOQ for St Nicholas Court,⁵¹⁶ and further emails between Jackson, CCSL and PMSL in respect of St Nicholas

⁵¹⁴ P00006083.

⁵¹⁵ This figure is calculated by totalling the entries in the 16 March 2009 email, which does not include VAT or any contingency sum.

⁵¹⁶ P00006192.

Court and other contracts,⁵¹⁷ from which the OFT infers that Jackson supplied a BOQ for St Nicholas Court on 26 March 2009.⁵¹⁸

5.451. This conclusion is further supported by an entry in Exhibit 12 recording that Jackson and CCSL both submitted bids for this contract and that CCSL was awarded the contract.

5.452. Jackson's bid was **£6,264.90** (not including VAT or any contingency sum)⁵¹⁹ and was therefore higher than the bid that CCSL disclosed to Jackson.

5.453. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.454. CCSL was awarded this contract.⁵²⁰

St Marys Court contract (on or around 13 March 2009 to on or around 26 March 2009)

5.455. The next contract that the OFT examines is in respect of St Marys Court, a PMSL property in Bournemouth. The contract was for the supply and installation of a warden call system and a door entry system.⁵²¹

i. PMSL invites CCSL and Jackson to tender

⁵¹⁷ The associated emails referred to in paragraph 5.450ii are the same emails set out in footnote 445 above, which were in respect of a number of PMSL contracts, including the St Nicholas Court contract. Again, in the circumstances, the OFT considers that Jackson had provided the BOQ for St Nicholas Court contract which was attached to CCSL's 26 March 2009 email to CCSL to be submitted on to PMSL.

⁵¹⁸ The Jackson BOQ is date-stamped as '*RECEIVED 20 MAR 2009*'. In all the circumstances, the OFT considers that that is likely to have been back-dated from 26 March 2009 (see email evidence set out at footnote 445).

⁵¹⁹ This figure is the total given in Jackson's BOQ before VAT or any contingency sum is given.

⁵²⁰ Exhibit 12 records '*Won*'.

⁵²¹ The OFT relies upon the description of the contract in Exhibit 12 ('*PBX warden call system installation*') and in the specification document ('*Upgrade of Social Alarm & Access Control Equipment*') and on the FOT ('*Warden Call Upgrades*').

5.456. Contemporaneous RTT documentation and letters from PMSL addressed to CCSL dated 5 March 2009, and that to Jackson dated 5 April 2009 demonstrate that PMSL invited CCSL and Jackson to tender. It is likely that the date of the Jackson letter contained a mistake as the deadline for tendering was itself 5 April 2009⁵²² and (as set out below) Jackson submitted its tender documentation on 25 and 26 March 2009. However the date of this letter is not material to the assessment of the evidence for the purposes of demonstrating an infringement.⁵²³

ii. CCSL discloses its bid to Jackson

5.457. On 16 March 2009, [a CCSL Contracts Administrator] emailed details of CCSL's bid⁵²⁴ to Jackson:

'...I dont know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for St Marys Court....

*If you have, then **here are our prices** and a reminder that it's due back 5th April'*⁵²⁵

[Emphasis added]

5.458. The email then set out a BOQ style list of equipment and CCSL's prices for each entry.

5.459. CCSL's bid was **£25,432.98** (not including VAT or any contingency sum).⁵²⁶

iii. Jackson does not distance itself from the information it receives from CCSL

⁵²² This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁵²³ In any event, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the St Marys Court contract.

⁵²⁴ The OFT concludes that this email contained CCSL's bid based on the author's (a CCSL employee) use of the words '*our prices*' in the context of '*St Mary's Court*', and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision. Further, the entries in the email are identical to those in CCSL's BOQ dealt with at paragraph 5.461 below.

⁵²⁵ P00006053

⁵²⁶ This figure is calculated by totalling the entries in the 16 March 2009 email, which does not include VAT or any contingency sum.

5.460. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.461. Contemporaneous CCSL tender documentation dated 13 March 2009 for St Marys Court demonstrates that CCSL submitted a bid for this contract on or around 13 March 2009. CCSL's bid was **£25,432.98** (not including VAT or any contingency sum).⁵²⁷

5.462. This conclusion is further supported by an entry in Exhibit 12 recording that Jackson and CCSL both submitted bids for this contract and that CCSL was awarded the contract.

v. Jackson submits a higher bid than CCSL

5.463. Jackson submitted a bid for this contract (by submitting tender documentation to PMSL, being a FOT and a BOQ). This conclusion is based on:

- i. an email from PMSL on 25 March 2009 to Jackson and CCSL in which Jackson is thanked for sending PMSL FOTs for a number of properties including St Marys Court; and
- ii. a copy of a Jackson BOQ for St Marys Court⁵²⁸, and further emails between Jackson, CCSL and PMSL in respect of St Marys Court and other contracts,⁵²⁹ from which the OFT infers that Jackson supplied a BOQ for St Marys Court on 26 March 2009.⁵³⁰

⁵²⁷ This figure is calculated by totalling the entries in CCSL's BOQ dated 13 March 2009, not including any VAT or contingency sum.

⁵²⁸ P00006193.

⁵²⁹ The associated emails referred to in paragraph 5.463ii are the same emails set out in footnote 445 above, which were in respect of a number of PMSL contracts, including the St Marys Court contract. Again, in the circumstances, the OFT considers that Jackson had provided the BOQ for the St Marys Court contract which was attached to CCSL's 26 March 2009 email to CCSL to be submitted on to PMSL.

⁵³⁰ The Jackson BOQ is date-stamped as '*RECEIVED 20 MAR 2009*'. In all the circumstances, the OFT considers that that is likely to have been back-dated from 26 March 2009 (see email evidence set out at footnote 445).

5.464. This conclusion is further supported by an entry in Exhibit 12 recording that Jackson and CCSL both submitted bids for this contract and that CCSL was awarded the contract.

5.465. Jackson's bid was **£28,493.04** (not including VAT or any contingency sum)⁵³¹ and was therefore higher than the bid that CCSL disclosed to Jackson in the 16 March 2009 email (not including VAT or any contingency sum).

5.466. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.467. CCSL was awarded the contract.⁵³²

Forest Dene contract (on or around 26 March 2009 to on or around 7 April 2009)

5.468. The next contract that the OFT examines is in respect of Forest Dene, a PMSL property in Surrey. The contract was for the supply and installation of a warden call system and a door entry system.⁵³³

i. PMSL invites CCSL and Jackson to tender

5.469. The OFT's file contains RTT letters and documentation sent by PMSL to CCSL and Jackson, with cover letters dated 10 March 2009.⁵³⁴ The deadline for tenders was 7 April 2009.⁵³⁵

ii. CCSL discloses its bid to Jackson

⁵³¹ This figure is calculated by totalling the subtotals on Jackson's BOQ, which obviously do not take into account VAT or any contingency sum.

⁵³² Exhibit 12 records 'Won'.

⁵³³ The OFT relies upon the description of the contract in Exhibit 12 ('PBX warden call system installation') and in the specification document ('Upgrade of Social Alarm & Access Control Equipment') and on the FOT ('Warden Call Upgrades'). (This specification may have included elements of a CCTV system and a fire alarm system installation.)

⁵³⁴ Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Forest Dene contract.

⁵³⁵ This deadline is set out in the letters and in the FOT.

5.470. On 30 March 2009, [a CCSL Contracts Administrator] emailed details of CCSL's bid⁵³⁶ to Jackson:

'...I dont know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for the site detailed above [The subject line of the email refers to 'Forest Dene Court, Surrey – Tender']....

*If you have, **then here are our prices and a reminder that it's due back by 07/04/09***⁵³⁷

[Emphasis added]

5.471. The email then set out a BOQ style list of equipment and the prices CCSL proposed to charge for each entry.

5.472. CCSL's bid was **£57,281.59** (not including VAT or any contingency sum).⁵³⁸

iii. Jackson does not distance itself from the information it receives from CCSL

5.473. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid a bid

5.474. CCSL submitted its tender dated 26 March 2009 of **£57,281.19** (not including VAT or any contingency sum) on or around 26 March 2009.⁵³⁹ Exhibit 12 records that CCSL bid, as does what appears to be a PMSL Notice to All Residents dated 3 September 2009 recording a CCSL bid

⁵³⁶ The OFT concludes that this email contained CCSL's bid based on the author's (a CCSL employee) use of the words '*our prices*' in the context of '*Forest Dene*', and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision.

⁵³⁷ P00006227.

⁵³⁸ This figure is calculated by totalling the entries in the email of 30 March 2009 which does not include VAT or contingency sum. Further, the entries in the email are identical to those in CCSL's BOQ dealt with at paragraph 5.474 below.

⁵³⁹ This figure is calculated by totalling the entries in CCSL's BOQ dated 26 March 2009, which clearly does not include any VAT or contingency sum.

and a letter to CCSL dated 5 October 2009 recording that its bid had been successful.

v. *Jackson submits a higher bid than CCSL*

5.475. Jackson submitted a tender which is date-stamped 7 April 2009 on or around 7 April 2009. Exhibit 12 records that CCSL bid, as does what appears to be a PMSL Notice to All Residents dated 3 September 2009 recording a Jackson bid and a letter to Jackson dated 5 October 2009 recording that its bid had been unsuccessful.

5.476. Jackson's bid was **£65,868.43** (not including VAT or any contingency sum)⁵⁴⁰ and was therefore higher than the bid CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.477. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. *Contract award*

5.478. CCSL was awarded the contract.⁵⁴¹

Hanbury Court contract (on or around 24 March 2009 to on or around 14 April 2009)

5.479. The next contract that the OFT examines is in respect of Hanbury Court, a PMSL property in Middlesex. The contract was for the supply and installation of a fire protection and detection system and the supply and installation of a warden call system.⁵⁴²

i. *PMSL invites CCSL and Jackson to tender*

⁵⁴⁰ This figure is calculated by totalling the subtotals on Jackson's BOQ, which clearly do not include any VAT or contingency sum.

⁵⁴¹ Exhibit 12 records 'Won'.

⁵⁴² The OFT relies upon the descriptions of the contract in Exhibit 12 ('*Fire system installation*' and '*PBX warden call system installation*') and in the specification documents ('*Upgrade of Fire Detection Equipment*' and '*Upgrade of Social Alarm & Access Control Equipment*') and on the (joint) FOT ('*Warden Call / Fire Upgrades*'). (This contract included an option for a CCTV system and may have included elements of a door entry system.)

5.480. RTT letters, dated 17 March 2009,⁵⁴³ and associated tender documentation sent by PMSL to CCSL and Jackson demonstrate both were invited to tender for this contract. The deadline for tenders was 31 March 2009.⁵⁴⁴

ii. CCSL discloses its bid to Jackson

5.481. On 30 March 2009, [a CCSL Contracts Administrator] emailed details of CCSL's bid⁵⁴⁵ for this contract to Jackson:

'...I dont know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for the site detailed above [The subject line of the email refers to 'Hanbury Court – Fire & Warden Call System – Tender']...

If you have, then here are our prices and a reminder that it's due back by 31/03/09'

[Emphasis added]

5.482. The email then set out a BOQ style list of equipment and CCSL's prices for each entry.

5.483. CCSL's bid was **£45,118.39** (not including VAT or any contingency sum).⁵⁴⁶

iii. Jackson does not distance itself from the information it receives from CCSL

5.484. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

⁵⁴³ Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Hanbury Court contract.

⁵⁴⁴ This deadline is set out in the letters and in the FOT.

⁵⁴⁵ P00006214. The OFT concludes that this email contained CCSL's bid based on the author's (a CCSL employee) use of the words '*our prices*' in the context of '*Hanbury Court*', and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision. Further, the entries in the 30 March 2009 email are the same as in the CCSL BOQ referred to in paragraph 5.485.

⁵⁴⁶ This figure is calculated by totalling the entries in the 30 March 2009 email.

5.485. CCSL submitted a FOT and BOQ and cover letter dated 24 March 2009 on or around 24 March 2009. An entry in Exhibit 12 also records that CCSL won the contract, as does what appears to be a PMSL Notice to All Residents dated 29 June 2009 recording a CCSL bid. CCSL's bid was **£45,118.39** (not including VAT or any contingency sum).⁵⁴⁷

v. Jackson submits a higher bid than CCSL

5.486. Jackson submitted a bid, being a FOT (dated 6 April 2009) and BOQ (date stamped '*RECEIVED 14 Apr 2009*'). Exhibit 12 also records that Jackson submitted a bid, as does what appears to be a PMSL Notice to All Residents dated 29 June 2009 recording a Jackson bid.

5.487. Jackson's bid was **£51,075.22** (not including VAT or any contingency sum)⁵⁴⁸ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.488. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.489. CCSL was awarded these contracts.⁵⁴⁹

Chatsworth Lodge contract (on or around 14 April 2009 to on or around 24 April 2009)

5.490. The next contract that the OFT examines is in respect of Chatsworth Lodge, a PMSL property in Kent. The contract was for the supply and installation of a fire protection and detection system.⁵⁵⁰

i. PMSL invites CCSL and Jackson to tender

⁵⁴⁷ This figure is calculated by totalling the entries in CCSL's BOQ, not including VAT or any contingency sum.

⁵⁴⁸ This figure is calculated by totalling the subtotals in Jackson's BOQ, which do not include VAT or contingency sum.

⁵⁴⁹ Exhibit 12 records '*Won*'.

⁵⁵⁰ The OFT relies upon the description of the contract in Exhibit 12 ('*Fire system installation*') and in the specification document ('*Upgrade of Fire Detection Equipment*') and on the FOT ('*Fire Alarm Upgrades*').

5.491. Contemporaneous RTT documentation and letters to both CCSL and Jackson dated 30 March 2009 demonstrate that PMSL invited CCSL and Jackson to tender.⁵⁵¹ The deadline for tenders was 1 May 2009.⁵⁵²

ii. CCSL discloses its bid to Jackson

5.492. On 14 April 2009, [a CCSL Contracts Administrator] emailed CCSL's bid⁵⁵³ for this contract to Jackson:

'...I dont know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for the site detailed above [The subject line of the email refers to 'Chatsworth Lodge – Tender']...

*If you have, **then here are our prices** and a reminder that it's due back by 01/05/09'*

[Emphasis added]⁵⁵⁴

5.493. The email then set out a BOQ style list of equipment and CCSL's prices for each entry.

5.494. CCSL's bid was **£17,573.33** (not including VAT or any contingency sum).⁵⁵⁵

iii. Jackson does not distance itself from the information it receives from CCSL

5.495. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

⁵⁵¹ Further the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Chatsworth Lodge contract.

⁵⁵² This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁵⁵³ The OFT concludes that this email contained CCSL's bid based on the author's (a CCSL employee) use of the words '*our prices*' in the context of '*Chatsworth Lodge*', and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision. Further, the entries in the email are identical to those in CCSL's BOQ dealt with at paragraph 5.496.

⁵⁵⁴ P00006308.

⁵⁵⁵ This figure is calculated by totalling the entries in the 14 April 2009 email.

5.496. CCSL's tender documents for this contract (FOT dated 14 April 2009) show that it submitted a bid on or around 14 April 2009. CCSL's bid was **£17,573.33** (not including VAT or any contingency sum).⁵⁵⁶

v. Jackson submits a higher bid than CCSL

5.497. Exhibit 12 records that Jackson submitted a bid for this contract and the OFT is in possession of Jackson's BOQ dated 24 April 2009.

5.498. Jackson's BOQ sets out a bid of **£20,209.23** (not including VAT or any contingency sum)⁵⁵⁷ and was therefore higher than the bid that CCSL disclosed to Jackson.

5.499. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.500. The OFT does not know whether CCSL was awarded this contract.⁵⁵⁸

Homeleigh House contract (on or around 7 May 2009 to on or around 20 May 2009)

5.501. The next contract that the OFT examines is in respect of Homeleigh House, a PMSL property in Bournemouth. The contract was for the supply and installation of a warden call system and door entry system.⁵⁵⁹

i. PMSL invites CCSL and Jackson to tender

5.502. RTT letters and documentation sent by PMSL to CCSL and Jackson, with cover letters dated 16 April 2009,⁵⁶⁰ demonstrate that PMSL

⁵⁵⁶ This figure is calculated by totalling the entries in CCSL's BOQ, which does not include VAT or contingency sum.

⁵⁵⁷ This figure is the total given in Jackson's BOQ before VAT or contingency sum is added.

⁵⁵⁸ Exhibit 12 records '*on hold – insufficient funds*'.

⁵⁵⁹ The OFT relies upon the description of the contract in Exhibit 12 ('*PBX warden call system installation*') and in the specification document ('*Upgrade of Social Alarm & Access Control Equipment*') and on the FOT ('*Warden Call Upgrades*'). (This specification may have included elements of a fire system installation.)

⁵⁶⁰ Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Homeleigh House contract.

invited both companies to bid for this contract. The deadline for tenders was 14 May 2009.⁵⁶¹

ii. CCSL discloses its bid to Jackson

5.503. On 8 May 2009, [a CCSL Contracts Administrator] emailed CCSL's bid⁵⁶² for this contract to Jackson:

'...I dont know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for the site detailed above [The subject line of the email refers to 'Homeleigh House, Bournemouth – Tender']...

If you have, then here are our prices and a reminder that it's due back by 14/05/09. Could I please also remind you that a £1,000 contingency should be included in your price'⁵⁶³

[Emphasis added]

5.504. The email then set out a BOQ style list of equipment and CCSL's prices for each entry.

5.505. CCSL's bid was **£28,105.15** (not including VAT or any contingency sum).⁵⁶⁴

iii. Jackson does not distance itself from the information it receives from CCSL

5.506. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

⁵⁶¹ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁵⁶² The OFT concludes that this email contained CCSL's bid based on the author's (a CCSL employee) use of the words '*our prices*' in the context of '*Homeleigh House*', and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision. Further, the entries in the email are identical to those in CCSL's BOQ dealt with at paragraph 5.507.

⁵⁶³ P00006383.

⁵⁶⁴ This figure is calculated by totalling the entries on 8 May 2009 email, not including VAT or any contingency sum.

5.507. Contemporaneous CCSL tender documentation dated 7 May 2009 demonstrate that CCSL submitted a bid for this contract on or around 7 May 2009. CCSL's bid was **£28,105.15** (not including VAT or any contingency sum).⁵⁶⁵ Exhibit 12 also records that CCSL submitted a bid.

v. *Jackson submits a higher bid than CCSL*

5.508. Jackson submitted FOT and BOQ for this contract on or around 20 May 2009 (both documents are dated 20 May 2009, the latter date stamped '*RECEIVED 22 MAY 2009*').⁵⁶⁶ Exhibit 12 also records that Jackson submitted a bid.

5.509. The Jackson BOQ set out a bid of **£31,323.77** (not including VAT or any contingency sum)⁵⁶⁷ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.510. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. *Contract award*

5.511. CCSL was awarded the contract.⁵⁶⁸

Angel Court contract (on or around 11 May 2009 to on or around 20 May 2009)

5.512. The next contract that the OFT examines is in respect of Angel Court, a PMSL property in Norfolk. The contract was for the supply and installation of a warden call system.⁵⁶⁹

⁵⁶⁵ This figure is calculated by adding the main subtotal on CCSL's BOQ dated 7 May 2009 to the three entries for the smoke detector option, not including any VAT or contingency sum.

⁵⁶⁶ This is consistent with PMSL's email to CCSL to request that CCSL '*chase*' Jackson for its tenders for the Homeleigh House contract (and the Angel Court contract) on 18 May 2009, in response to which CCSL emailed Jackson seeking a date for when PMSL would receive Jackson's tenders [P00006480].

⁵⁶⁷ This figure is calculated by totalling the main subtotal on Jackson's BOQ and the three entries for the smoke detector option, not taking into account VAT and subtracting £1,000 for contingency sum which has been added on.

⁵⁶⁸ Exhibit 12 records '*Won*'.

⁵⁶⁹ The OFT relies upon the description of the contract in Exhibit 12 ('*PBX warden call system installation*') and in the specification document ('*Upgrade of Warden Call Equipment*') and on the

i. PMSL invites CCSL and Jackson to tender

5.513. PMSL sent RTT letters and documentation to CCSL and Jackson with cover letter dated 16 April 2009.⁵⁷⁰ The deadline for tenders was 14 May 2009.⁵⁷¹

ii. CCSL discloses its bid to Jackson

5.514. On 11 May 2009, [a CCSL Contracts Administrator] emailed CCSL's bid⁵⁷² to Jackson:

'...I dont know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for the site detailed above [The subject line of the email refers to 'Angel Court, Norfolk – Tender']...

If you have, then here are our prices and a reminder that it's due back by 14/05/09. Could I please also remind you that a £1000 contingency should be included in your price'

[Emphasis added]⁵⁷³

5.515. The email then set out a BOQ style list of equipment and CCSL's prices for each entry.

5.516. CCSL's bid was **£13,604.36** (not including VAT or any contingency sum).⁵⁷⁴

iii. Jackson does not distance itself from the information it receives from CCSL

FOT ('Warden Call Upgrade'). (This specification may have included elements of a door entry system.)

⁵⁷⁰ Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Angel Court contract.

⁵⁷¹ This deadline is set out in the cover letters and in the FOT.

⁵⁷² The OFT concludes that this email contained CCSL's bid based on the author's (a CCSL employee) use of the words '*our prices*' in the context of '*Angel Court*', and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision. Further, the entries in the email are identical to those in CCSL's BOQ dealt with at paragraph 5.518.

⁵⁷³ P00006391.

⁵⁷⁴ This figure is calculated by totalling the entries in 11 May 2009 email.

5.517. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.518. Contemporaneous CCSL tender documentation (FOT and BOQ dated 11 May 2009) demonstrate that CCSL submitted a bid for this contract on or around 11 May 2009. CCSL's bid was **£13,604.36** (not including VAT or any contingency sum).⁵⁷⁵ This conclusion is further supported by an entry in Exhibit 12 recording that Jackson and CCSL both submitted bids for this contract and that CCSL was awarded this contract.

v. Jackson submits a higher bid than CCSL

5.519. Jackson submitted a FOT and BOQ dated 20 May 2009 on or around 20 May 2009 for Angel Court.⁵⁷⁶ This conclusion is further supported by the entry in Exhibit 12 recording that Jackson and CCSL both submitted bids for this contract and that CCSL was awarded this contract.

5.520. The Jackson BOQ set out a bid of **£15,517.36** (not including VAT or any contingency sum)⁵⁷⁷ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.521. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.522. CCSL was awarded the contract.⁵⁷⁸

Ashridge Court contract (on or around 11 May 2009 to on or around 20 May 2009)

⁵⁷⁵ This figure is calculated by totalling the entries in CCSL's BOQ which does not include any VAT or contingency sum.

⁵⁷⁶ This is consistent with PMSL's email to CCSL to request that CCSL 'chase' Jackson for its tenders for the Angel Court contract (and the Homeleigh House contract) on 18 May 2009, in response to which CCSL emailed Jackson seeking a date for when PMSL would receive Jackson's tenders [P00006480].

⁵⁷⁷ This is the total given in Jackson's BOQ before any VAT is added and once one has subtracted the £1,000 contingency sum which had been added thereon.

⁵⁷⁸ Exhibit 12 records 'Won'.

5.523. The next contract that the OFT examines is in respect of Ashridge Court, a PMSL property in Berkshire. The contract was for the supply and installation of a warden call system and a door entry system.⁵⁷⁹

i. PMSL invites CCSL and Jackson to tender

5.524. Contemporaneous RTT letters and documentation to CCSL and Jackson, with cover letters dated 16 April 2009,⁵⁸⁰ demonstrate that PMSL invited CCSL and Jackson to tender. The deadline for tenders was 14 May 2009.⁵⁸¹

ii. CCSL discloses its bid to Jackson

5.525. On 11 May 2009, [a CCSL Contracts Administrator] emailed CCSL bid⁵⁸² to Jackson:⁵⁸³

'...I dont know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for the site detailed above [The subject line of the email refers to 'Ashridge Court, Newbury – Tender']...

*If you have, then **here are our prices** and a reminder that it's due back by 14/05/09. Could I please also remind you that a £1,000 contingency should be included in your price'*

[Emphasis added]

5.526. The email then set out a BOQ style list of equipment and CCSL's prices for each entry.

⁵⁷⁹ The OFT relies upon the description of the contract in Exhibit 12 ('PBX warden call system installation') and in the specification document ('Upgrade of Social Alarm & Access Control Equipment') and on the FOT ('Warden Call Upgrade').

⁵⁸⁰ Further the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Ashridge Court contract.

⁵⁸¹ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁵⁸² The OFT concludes that this email contained CCSL's bid based on the author's (a CCSL employee) use of the words '*our prices*' in the context of '*Ashridge Court*', and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision. Further, the entries in the email are identical to those in CCSL's BOQ dealt with at paragraph 5.529 below.

⁵⁸³ P00006396.

5.527. CCSL's bid was **£29,659.92** (not including VAT or any contingency sum).⁵⁸⁴

iii. Jackson does not distance itself from the information it receives from CCSL

5.528. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.529. Contemporaneous CCSL tender documentation dated 11 May 2009 for Ashridge Court demonstrates that CCSL submitted a bid on or around 11 May 2009. This conclusion is further supported by a Notice to Residents dated 17 June 2009 which records that '*Cirrus*' submitted a bid and an entry in Exhibit 12 recording that CCSL bid for and was awarded this contract.

5.530. CCSL's bid was **£29,659.92** (not including VAT or any contingency sum).⁵⁸⁵

v. Jackson submits a higher bid than CCSL

5.531. Jackson submitted a BOQ for this contract dated 20 May 2009 on or around 20 May 2009. This conclusion is further supported by the entry in Exhibit 12 recording that Jackson and CCSL both submitted bids and that CCSL was awarded this contract; and a Notice to Residents dated 17 June 2009 recording that '[an individual acting on behalf of Jackson]' submitted a bid.

5.532. Jackson's bid was **£34,108.76** (not including VAT or any contingency sum)⁵⁸⁶ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

⁵⁸⁴ This figure is calculated by totalling the entries in 11 May 2009 email, which do not include VAT or contingency sum.

⁵⁸⁵ This figure is calculated by totalling the subtotal on CCSL's BOQ dated 11 May 2009 with the entries for the CCTV/MATV option, not taking into account any VAT or contingency sum.

⁵⁸⁶ This figure is calculated by totalling the subtotals on Jackson's BOQ dated 20 May 2009 not including VAT and subtracting the £1,000 contingency sum which had been added thereto.

5.533. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.534. CCSL was awarded the contract.⁵⁸⁷

The Lodge contract (on or around 13 May 2009 to on or around 20 May 2009)

5.535. The next contract that the OFT examines is in respect of The Lodge, a PMSL property in Wrington. The contract was for the supply and installation of a fire protection and detection system.⁵⁸⁸

i. PMSL invites CCSL and Jackson to tender

5.536. Contemporaneous RTT letters and documentation to CCSL and Jackson, with cover letters dated 17 April 2009,⁵⁸⁹ demonstrate that PMSL invited CCSL and Jackson to tender. The deadline for tenders was 17 May 2009.⁵⁹⁰

ii. CCSL discloses its bid to Jackson

5.537. On 13 May 2009, [a CCSL Contracts Administrator] emailed CCSL's bid⁵⁹¹ to Jackson:

'...I dont know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for the site detailed above [The subject line of the email refers to 'The Lodge, Wrington – Tender']...

⁵⁸⁷ Exhibit 12 records 'Won'.

⁵⁸⁸ As set out on PMSL's FOT.

⁵⁸⁹ Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for The Lodge contract.

⁵⁹⁰ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁵⁹¹ The OFT concludes that this email contained CCSL's bid based on the author's (a CCSL employee) use of the words '*our prices*' in the context of '*The Lodge*', and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision.

*If you have, **then here are our prices** and a reminder that it's due back by 17/05/09. Could I please also remind you that a £1,000 contingency should be included in your price*⁵⁹²

[Emphasis added]

5.538. The email then set out a BOQ style list of equipment and CCSL's prices for each entry.

5.539. CCSL's bid was **£11,282.26** (not including VAT or any contingency sum).⁵⁹³

iii. Jackson does not distance itself from the information it receives from CCSL

5.540. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.541. CCSL submitted its bid dated 13 May 2009 for The Lodge on or around 13 May 2009. This conclusion is further supported by an entry in Exhibit 12 recording that Jackson and CCSL both submitted bids for this contract. CCSL's bid was **£11,020.94** (not including VAT or any contingency sum).⁵⁹⁴

v. Jackson submits a higher bid than CCSL

5.542. Jackson submitted a BOQ dated 20 May 2009 on or around 20 May 2009. This conclusion is further supported by an entry in Exhibit 12 recording that Jackson and CCSL both submitted bids for this contract.

⁵⁹² P00006411.

⁵⁹³ This figure is calculated by totalling the entries in 13 May 2009 email.

⁵⁹⁴ This sum has been calculated by taking the inclusive figure on the CCSL FOT dated 13 May 2009 and subtracting the VAT and contingency sum. There is no CCSL BOQ so it is not possible to say precisely which entry was varied (with the result that the submitted bid total differs slightly from that disclosed by CCSL on 13 May 2009).

5.543. The Jackson BOQ set out a bid of **£12,974.53** (not including VAT or any contingency sum)⁵⁹⁵ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.544. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.545. The OFT does not know whether CCSL was awarded this contract.⁵⁹⁶

Sefton Court contract (on or around 19 May 2009 to on or around 28 May 2009)

5.546. The next contract that the OFT examines is in respect of Sefton Court, a PMSL property in Devon. The contract was for the supply and installation of a fire protection and detection system.⁵⁹⁷

i. PMSL invites CCSL and Jackson to tender

5.547. Contemporaneous RTT letters and documentation to both CCSL and Jackson, with cover letters dated 21 April 2009⁵⁹⁸ demonstrate that PMSL invited CCSL and Jackson to bid. The deadline for tenders was 22 May 2009.⁵⁹⁹

ii. CCSL discloses its bid to Jackson

⁵⁹⁵ This figure is the subtotal given in Jackson's BOQ dated 20 May 2009 not including any VAT and subtracting the £1,000 contingency sum.

⁵⁹⁶ Exhibit 12 records '*on hold – insufficient funds*'.

⁵⁹⁷ The OFT relies upon the description of the contract in Exhibit 12 ('*Fire system installation*') and in the specification document ('*Upgrade of Fire Detection Equipment*') and on the FOT ('*Fire Alarm Upgrades*').

⁵⁹⁸ Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for Sefton Court contract.

⁵⁹⁹ 22 May 2009 is the deadline in the letter to CCSL and in the FOT. The deadline in the letter to Jackson is 21 April 2009. The OFT considers this to be an error in the circumstances and Jackson's deadline was also 22 May 2009 (given the deadline in the other letter and the FOT).

5.548. On 19 May 2009, [a CCSL Contracts Administrator] emailed CCSL's bid⁶⁰⁰ to Jackson:

'...I dont know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for the site detailed above [The subject line of the email refers to 'Sefton Court, Devon-Tender']...

*If you have, **then here are our prices** and a reminder that it's due back by 22/05/09. Could I please also remind you that a £1,000 contingency should be included in your price'* ⁶⁰¹

[Emphasis added]

5.549. The email then set out a BOQ style list of equipment and CCSL's prices for each entry.

5.550. CCSL's bid was **£9,752.06** (not including VAT or any contingency sum).⁶⁰²

iii. Jackson does not distance itself from the information it receives from CCSL

5.551. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.⁶⁰³

⁶⁰⁰ The OFT concludes that this email contained CCSL's bid based on the author's (a CCSL employee) use of the words '*our prices*' in the context of '*Sefton Court*', and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision. Further, the entries in the email are identical to those in CCSL's BOQ dealt with at paragraph 5.552 below.

⁶⁰¹ P00006493.

⁶⁰² This figure is calculated by totalling the entries in 19 May 2009 email, which does not include VAT or any contingency sum.

⁶⁰³ [An individual acting on behalf of Jackson] emailed CCSL in response to the email disclosing CCSL's bid for Sefton Court to complain in the following terms:

'...In future if you cant give me more notice to return the quotes then you may need to make alternative arrangements' [P00006507]

However, the OFT considers that this is not a rejection or complaint about receiving the information. The OFT considers that this email is consistent with the existence of a collusive tendering arrangement. Jackson appears to be of the view that it is providing a service to CCSL by submitting bids to PMSL, rather than genuinely competing and intending to win the contract. For completeness, the OFT notes that CCSL responded to the effect:

iv. CCSL submits a bid

5.552. CCSL submitted its bid dated 19 May 2009 for the Sefton Court contract on or around 19 May 2009. CCSL's bid was **£9,752.06** (not including VAT or any contingency sum).⁶⁰⁴

v. Jackson submits a higher bid than CCSL

5.553. Jackson submitted a BOQ dated 20 May 2009 on or around 28 May 2009⁶⁰⁵ (the document is date stamped '*RECEIVED 28 MAY 2009*') for this Contract.

5.554. The Jackson BOQ set out a bid of **£11,214.78** (not including VAT or any contingency sum)⁶⁰⁶ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.555. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.556. The OFT does not know whether CCSL was awarded this contract.⁶⁰⁷

Averill Court contract (on or around 19 May 2009 to on or around 8 June 2009)

5.557. The next contract that the OFT examines is in respect of Averill Court, a PMSL property in Clevedon. The contract was for the supply and installation of a fire protection and detection system.⁶⁰⁸

'... I would be very grateful if you could let me know how much notice you require to be able to return your tenders on time' [P00006507]

⁶⁰⁴ This figure is calculated by totalling the entries in CCSL's BOQ dated 19 May 2009, which does not include any VAT or contingency sum.

⁶⁰⁵ Although Jackson's BOQ is dated 20 May 2009, this is likely to be back-dated because on 20 May 2009 Jackson emailed CCSL seeking a copy of the blank FOT for the Sefton Court contract, which CCSL provided by email on 21 May 2009 [P00006523].

⁶⁰⁶ This figure is the subtotal in Jackson's BOQ, not including VAT and once the £1,000 contingency sum has been subtracted.

⁶⁰⁷ Exhibit 12 records '*no decision made yet*'.

⁶⁰⁸ The OFT relies upon the description of the contract in Exhibit 12 ('*Fire system installation*') and in the specification document ('*Upgrade of Fire Detection Equipment*') and on the FOT ('*Fire Alarm Upgrades*').

i. PMSL invites CCSL and Jackson to tender

5.558. PMSL sent RTT letters and documentation to both CCSL and Jackson, with cover letters dated 24 April 2009.⁶⁰⁹ The deadline for tenders was 25 May 2009.⁶¹⁰

ii. CCSL discloses its bid to Jackson

5.559. On 19 May 2009, [a CCSL Contracts Administrator] emailed CCSL's bid⁶¹¹ for this contract to Jackson:

'...I dont know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for the site detailed above [The subject line of the email refers to 'Averill Court, Clevedon – Tender']...

*If you have, **then here are our prices** and a reminder that it's due back by 25/05/09. Could I please also remind you that a £1,000 contingency should be included in your price'*⁶¹²

[Emphasis added]

5.560. The email then set out a BOQ style list of equipment and CCSL's prices for each entry.

5.561. CCSL's bid was **£14,870.80** (not including VAT or any contingency sum).⁶¹³

iii. Jackson does not distance itself from the information it receives from CCSL

⁶⁰⁹ Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Averill Court contract.

⁶¹⁰ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁶¹¹ The OFT concludes that this email contained CCSL's bid based on the author's (a CCSL employee) use of the words '*our prices*' in the context of '*Averill Court*', and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision. Further, the entries in the email are identical to those in CCSL's BOQ dealt with at paragraph 5.563.

⁶¹² P00006498.

⁶¹³ This figure is calculated by totalling the entries in 19 May 2009 email which does not include any VAT or contingency sum.

5.562. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.563. CCSL submitted its bid dated 19 May 2009 for the Averill Court contract on or around 19 May 2009. CCSL's bid was **£14,870.80** (not including VAT or any contingency sum).⁶¹⁴

v. Jackson submits a higher bid than CCSL

5.564. Jackson submitted a FOT dated 5 June 2009, and a BOQ dated 20 May 2009 on or around 8 June 2009⁶¹⁵ for this contract.

5.565. The Jackson BOQ set out a bid of **£17,101.36** (not including VAT or any contingency sum)⁶¹⁶ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.566. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.567. The OFT does not know whether CCSL was awarded this contract.⁶¹⁷

Fayre Green contract (on or around 21 May 2009 to on or around 28 June 2009)

5.568. The next contract that the OFT examines is in respect of Fayre Green, a PMSL property in Norfolk. The contract was for the supply and installation of a warden call system.⁶¹⁸

⁶¹⁴ This figure is calculated by totalling the entries in CCSL's BOQ dated 19 May 2009, not including VAT or contingency sum.

⁶¹⁵ Both of these Jackson documents appear to have been back-dated on the basis of an email from PMSL to CCSL on 8 June 2009 requesting that CCSL 'chase' Jackson for its tender for Averill Court and an internal email exchange between different CCSL employees on 8 June 2009 which suggests that Jackson had indicated that it had posted the tender documents for Averill Court to PMSL earlier that day (P00006651).

⁶¹⁶ This figure is the subtotal in Jackson's BOQ not including VAT and once the £1,000 contingency sum is subtracted.

⁶¹⁷ Exhibit 12 records 'on hold – insufficient funds'.

i. PMSL invites CCSL and Jackson to tender

5.569. Contemporaneous RTT letters and documentation addressed to CCSL and Jackson, with cover letters dated 29 April 2009,⁶¹⁹ demonstrate that PMSL invited CCSL and Jackson to tender. The deadline for tenders was 27 May 2009.⁶²⁰

ii. CCSL discloses its bid to Jackson

5.570. On 21 May 2009, [a CCSL Contracts Administrator] emailed CCSL's bid⁶²¹ to Jackson:

'...I dont know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for the site detailed above [The subject line of the email refers to 'Fayre Green, Norfolk – Tender']....

*If you have, then **here are our prices** and a reminder that it's due back by 27/05/09. Could I please also remind you that a £1,000 contingency should be included in your price'*⁶²²

[Emphasis added]

5.571. The email then set out a BOQ style list of equipment and CCSL's prices for each entry.

5.572. CCSL's bid was **£26,375.24** (not including VAT or any contingency sum).⁶²³

⁶¹⁸ The OFT relies upon the description of the contract in Exhibit 12 ('PBX warden call system installation') and in the specification document ('Upgrade of Warden Call Equipment') and on the FOT ('Warden Call Upgrade'). (This specification may have included elements of door entry and fire protection and detection systems.)

⁶¹⁹ Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Fayre Green contract.

⁶²⁰ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁶²¹ The OFT concludes that this email contained CCSL's bid based on the author's (a CCSL employee) use of the words '*our prices*' in the context of '*Fayre Green*', and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision. Further, the entries in the email are identical to those in CCSL's BOQ dealt with at paragraph 5.574 below.

⁶²² P00006528.

⁶²³ This figure is calculated by totalling the entries in 21 May 2009 email.

iii. Jackson does not distance itself from the information it receives from CCSL

5.573. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.574. Contemporaneous CCSL tender documentation dated 21 May 2009 demonstrates that CCSL submitted a bid for the Fayre Green contract on or around 21 May 2009. This conclusion is further supported by: an entry in Exhibit 12 recording that CCSL and Jackson both submitted bids for this contract and that CCSL was awarded this contract; and what appears to be a PMSL Notice to All Residents dated 2 July 2009 recording a CCSL bid. CCSL's bid was **£26,375.24** (not including VAT or any contingency sum).⁶²⁴

v. Jackson submits a higher bid than CCSL

5.575. Jackson submitted a FOT dated 28 June 2009, and a BOQ, dated 16 June 2009, on or around 28 June 2009⁶²⁵ for Fayre Green. This conclusion is further supported by: an entry in Exhibit 12 recording that CCSL and Jackson both submitted bids for this contract and that CCSL was awarded this contract; what appears to be a PMSL Notice to All Residents dated 2 July 2009 recording a Jackson bid; and email evidence consistent with Jackson submitting this bid.⁶²⁶

⁶²⁴ This is the subtotal in CCSL's BOQ dated 21 May 2009 before any VAT or contingency sum is added.

⁶²⁵ This conclusion is supported by the following email chain [P00006651]: On 8 June 2009 PMSL emailed CCSL requesting that CCSL 'chase' Jackson for outstanding tender documentation for the Fayre Green contract and others. [A CCSL Contracts manager] responded to PMSL to the effect that he had 'spoken with [an individual acting on behalf of Jackson] who has said ...he will get Fayregreen [sic] back as soon as possible...'. On 25 June 2009, PMSL again emailed CCSL again requesting that CCSL 'chase' Jackson for outstanding tender documentation for the Fayre Green contract. CCSL emailed Jackson seeking an update, and Jackson responded to CCSL that 'You should have it by Monday'. The OFT notes that the date of Jackson's FOT (28 June 2009) is consistent with Jackson having submitted it on the Monday.

⁶²⁶ This is a reference to the email chain set out at footnote 625 (P00006651).

5.576. The Jackson BOQ⁶²⁷ set out a bid of **£29,012.74** (not including VAT or any contingency sum)⁶²⁸ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.577. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.578. CCSL was awarded the contract.⁶²⁹

Priory Park contract (on or around 21 May 2009 to on or around 16 June 2009)

5.579. The next contract that the OFT examines is in respect of Priory Park, a PMSL property in Bedfordshire. The contract was for the supply and installation of a warden call system and a door entry system.⁶³⁰

i. PMSL invites CCSL and Jackson to tender

5.580. Contemporaneous RTT letters and documentation addressed to CCSL and Jackson, with cover letters dated 11 May 2009,⁶³¹ demonstrate that PMSL invited CCSL and Jackson to tender. The deadline for tenders was 11 June 2009.⁶³²

ii. CCSL discloses its bid to Jackson

5.581. On 21 May 2009, [a CCSL Contracts Administrator] emailed CCSL's bid⁶³³ to Jackson:

⁶²⁷ The Jackson BOQ appears to have been back-dated on the basis of the email chain as set out at footnote 625 [P00006651].

⁶²⁸ This is the subtotal given in Jackson's BOQ, which does not include VAT or any contingency sum.

⁶²⁹ Exhibit 12 records 'Won'.

⁶³⁰ The OFT relies upon the description of the contract in Exhibit 12 ('[...] warden call system') and in the specification document ('Upgrade of Warden Call & Access Control Equipment') and on the FOT ('Warden Call Upgrades').

⁶³¹ Further the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Priory Park contract.

⁶³² This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁶³³ The OFT concludes that this email contained CCSL's bid based on the author's (a CCSL employee) use of the words 'our prices' in the context of 'Priory Park', and on other evidence to

'...I dont know whether you've been asked by [a PMSL Senior Administrator] to provide an alternative tender for the site detailed above [The subject line of the email refers to 'Priory Park, Dunstable- Tender']...

*If you have, **then here are our prices** and a reminder that it's due back by 11/06/09. Could I please also remind you that a £1,000 contingency should be included in your price⁶³⁴*

[Emphasis added]

5.582. The email then set out a BOQ style list of equipment and the price CCSL intended to charge for each entry.

5.583. CCSL's bid was **£18,822.46** (not including VAT or any contingency sum).⁶³⁵

iii. Jackson does not distance itself from the information it receives from CCSL

5.584. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.585. Contemporaneous CCSL documentation demonstrates that CCSL submitted a bid for the Priory Park contract. This was likely to have been on or around 21 May 2009 as CCSL's FOT was dated 21 May 2009. CCSL's bid was **£18,822.46** (not including VAT or any contingency sum).⁶³⁶

v. Jackson submits a higher bid than CCSL

the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision. Further, the entries in the email are identical to those in CCSL's BOQ dealt with at paragraph 5.585.

⁶³⁴ P00006534.

⁶³⁵ This figure is calculated by totalling the entries in 21 May 2009 email and not including VAT and contingency sum.

⁶³⁶ This figure is the subtotal given in CCSL's BOQ before any VAT or contingency sum is added.

5.586. Jackson submitted a BOQ, dated 16 June 2009, for Priory Park on or around 16 June 2009. The Jackson BOQ set out a bid of **£20,442.64** (not including VAT or any contingency sum)⁶³⁷ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.587. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.588. The OFT does not know whether CCSL was awarded this contract.⁶³⁸

Pavilion Gardens contract (on or around 17 August 2009 to on or around 12 October 2009)

5.589. The next contract that the OFT examines is in respect of Pavilion Gardens, a PMSL property in Kent. The contract was for the supply and installation of fire protection and detection system.⁶³⁹

i. PMSL invites CCSL and Jackson to tender

5.590. Contemporaneous RTT letters and documentation addressed to CCSL and Jackson, with cover letters dated 12 August 2009,⁶⁴⁰ demonstrate that PMSL invited CCSL and Jackson to bid. The deadline was 14 September 2009.⁶⁴¹

ii. CCSL discloses its bid to Jackson

5.591. In summary, for the reasons set out below, the OFT finds that CCSL disclosed its bid to Jackson on two occasions: on or before 19 August 2009 and on 12 October 2009.

⁶³⁷ This is the subtotal given in Jackson's BOQ before any VAT or contingency sum is added.

⁶³⁸ The relevant column in Exhibit 12 for Priory Park is blank.

⁶³⁹ The OFT relies upon the description of the contract in Exhibit 12 ('*Fire system installation*') and in the specification document ('*Upgrade of Fire Detection Equipment*') and on the FOT ('*Fire Alarm Upgrades*').

⁶⁴⁰ Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Pavilion Gardens contract.

⁶⁴¹ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

5.592. The first disclosure occurred on an unknown date on or before 19 August 2009 and is demonstrated by an email dated 19 August 2009 from [a CCSL Admin Support Supervisor] of CCSL to Jackson in which [a CCSL Admin Support Supervisor] stated that:

'I have just taken a call from [a PMSL Senior Administrator], advising she has received the following tenders from you today.

Pavilion Gardens – Fire

Tiverton Court – Warden Call

Homepeak- Fire

Glendale – Fire & Warden Call

However she has received the form of tender ok, but you have submitted the summary sheet with equipment & pricing using CCSL layout/colour etc.

Please resend these summary pages on blank white paper, as [a PMSL Senior Administrator] doesn't think this is very good...⁶⁴²

5.593. The OFT finds that CCSL had disclosed to Jackson CCSL's bid for the Pavilion Gardens contract by emailing Jackson an attached CCSL BOQ, which Jackson converted into its own BOQ ('summary sheet') using CCSL's formatting to save time. This finding is supported by the email exchange which followed: on 19 August 2009 [an individual acting on behalf of] Jackson responded to CCSL:⁶⁴³

'I was told I could do this now by yourselves'

5.594. However, [a CCSL Admin Support Supervisor] at CCSL corrected [an individual acting on behalf of Jackson's] understanding:

'No you we're told you could copy the table'⁶⁴⁴

5.595. [A CCSL Admin Support Supervisor's] response strongly suggests that [an individual acting on behalf of Jackson] had been sent CCSL's BOQ

⁶⁴² P00006753.

⁶⁴³ P00006754.

⁶⁴⁴ P00006777.

and had adapted that table in preparing Jackson's bid. The OFT's conclusion on this point is strongly supported by other evidence⁶⁴⁵ and the surrounding contextual evidence which shows a clear pattern of disclosure by CCSL of its tender prices to Jackson.

5.596. The second disclosure occurred on 12 October 2009 when [a CCSL Admin Support Supervisor] emailed CCSL's bid to Jackson:⁶⁴⁶

'... Please find attached bill of qtys [BOQ] as requested'

5.597. The OFT infers from the face of this email that [a CCSL Admin Support Supervisor] had attached CCSL's BOQ for Pavilion Gardens to this email.⁶⁴⁷

⁶⁴⁵ The OFT's conclusion on this point is further supported by:

- An email from [a PMSL Technical Administrator] to CCSL on 2 September 2009, with the subject line *'Tenders for [an individual acting on behalf of Jackson]'* referring to various contracts (being, Pavilion Gardens, Tiverton Court, Homepeak House, Glendale (Warden Call) and Parkside Court contracts) complaining that *'All these came on CCSL letterheads. Can you see if you can get him [an individual acting on behalf of Jackson] to re-send on his own paper'* [P00006775];
- Jackson's email to CCSL on 4 September 2009 asking CCSL to *'re-send me your quote [that is, CCSL's bid]'* [emphasis added] which is in the context of an email chain which relating to various contracts (being, to Pavilion Gardens Tiverton Court, Homepeak House, Glendale (Warden Call), Glendale (Fire) and Parkside Court contracts) [P00006780];
- An example of a Jackson BOQ using CCSL formatting (consistent with [a PMSL Senior Administrator's] and [a PMSL Technical Administrator's] complaints as above), which related to the Glendale (Fire) contract (dealt with in more detail at paragraph 5.609).
- In interview, when asked about [a PMSL Senior Administrator] 's email of 19 August 2009, [a CCSL Admin Support Supervisor] explained *'Basically [a PMSL Senior Administrator] phoned to say [an individual acting on behalf of Jackson] had sent the sheet we'd sent him and left our logo on it, but put his prices in it'* (Transcript of interview with [a CCSL Admin Support Supervisor] , page 53).
- An email on 19 August 2009 from CCSL to Jackson disclosing CCSL BOQs for other contracts (Livingstone Court and Chapel Lodge) with the warning of *'Please make sure you DO NOT use our template for sensing [sic] you [sic] response back to Peverel (copy & paste the table onto your headed paper)'* which is consistent with the OFT's conclusion [P00006755].
- An email on 1 September 2009, in which Jackson, being chased for other contracts (Chapel Lodge) asked [...] *'Is this the one were i used the Peverel quote paper. If it is can you resend me your quote to price again please'* [P00006772].

⁶⁴⁶ P00006935.

iii. *Jackson does not distance itself from the information it receives from CCSL*

5.598. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.⁶⁴⁸

⁶⁴⁷ This conclusion that [a CCSL Admin Support Supervisor]'s email of 12 October 2009 had CCSL's BOQ for Pavilion Gardens attached thereto is supported by the following emails:

- CCSL emailed Jackson on 2 September 2009 to ask *'when these tenders will be re-sent on your letter headed paper'*, which related to various contracts (being Pavilion Gardens, Tiverton Court, Homepeak House, Glendale (Warden Call) and Parkside contracts) [P00006775]. [An individual acting on behalf of Jackson] responded to CCSL on 4 September 2009 that *'you will need to re-send me your quote as i don't keep copies...'* [P00006780], which explains why CCSL would have felt it necessary to disclose its price to Jackson again. It is not clear whether CCSL responded to this email.
- On 7 October 2009, [a PMSL Senior Administrator] asks CCSL to *'talk to'* [an individual acting on behalf of Jackson] *again please'* for bids PMSL required *'asap'* (being for the Pavilion Gardens, Parkside Court, Ashdene Gardens, Chapel Lodge contract for warden call, Harvest Close, Alexandria Court contracts and others). In respect of Pavilion Gardens, PMSL is said to be *'waiting for his tender on non CCSL paper!'* [P00006948]. CCSL forwards this message to Jackson commenting that *'this is getting extremely embarrassing and needs to be addressed without delay... We cannot afford for this working relationship to deteriorate as this will impact on future works not only for us but also for yourself...'* [P00006948];
- On 11 October 2009, [an individual acting on behalf of Jackson] emailed [a CCSL Admin Assistant] in the following terms:

'...Could you please send me your quotes for the following sites please.

Parkside Crt.

Pavilion Gardens'

which Jackson then forwarded to [a CCSL Admin Support Supervisor] on 11 October 2009 [P00006934]; In response, [a CCSL Admin Support Supervisor] sent an email to Jackson (as quoted at paragraph 5.596) referring to attached BOQs. [P00006935]. The OFT notes as well that [an individual acting on behalf of Jackson's] response on 12 October 2009 was: *'Thanks [a CCSL Admin Support Supervisor]. Could you also send me Alexandria Crt as well pls'*, which supports the conclusion that [a CCSL Admin Support Supervisor's] email of 12 October 2009 did, as the terms of the email suggest, attach the CCSL BOQs for Pavilion Gardens and Parkside Court.

The OFT also relies on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision.

⁶⁴⁸ There are related emails between Jackson and CCSL (as set out in this footnote) which the OFT considers do not amount to a rejection or complaint about receiving CCSL's bid by Jackson. Instead, the OFT considers that Jackson is complaining about the burden placed on it by its participation in Infringement 3. These related emails are as follows:

when Jackson emailed [a CCSL Admin Support Supervisor] requesting another copy of CCSL's bids for Pavilion Gardens and other contracts (being, Tiverton Court, Homepeak House, Glendale

iv. *CCSL submits a bid*

5.599. Contemporaneous CCSL tender documentation dated 14 and 17 August 2009 demonstrates that CCSL submitted a bid on or around 17 August 2009. CCSL's bid was **£8,909.33** (not including VAT or any contingency sum).⁶⁴⁹

v. *Jackson submits a higher bid than CCSL*

5.600. The OFT finds that Jackson submitted two successive bids for Pavilion Gardens: the first on or before 19 August 2009 and the second on 12 October 2009.

(Fire), Glendale (Warden call) and Parkside Court contracts) [an individual acting on behalf of Jackson] also stated:

'I will also need to revise this as i haven't got time to keep doing these as you are aware i do these for free' [P00006780].

Then on 4 September 2009 [a CCSL Contracts manager] emailed Jackson:

'This situation needs to be resolved without further delay

I am extremely disappointed with your last reply to [a CCSL Admin Support Supervisor] and must remind you that the works you are currently doing and are scheduled to do at Beechwood Court, Wolverhampton and Homeshire House Alsager are as a result of the alternative quotes being submitted on time and also free of charge by others.

Should you no longer wish to be involved in these installations please confirm so and we will arrange for an alternative installer to be allocated this work' [P00006783]

And also on 4 September 2009, [an individual acting on behalf of Jackson] responded to [a CCSL Contracts manager]:

'Can you ask the girls to send me the quotes you require and your quotes so I can redo the outstanding ones and any new ones. I am not trying to be difficult but i have only installed 5x PMSL sites this year yet have done quotes for over 20 sites and have not surveyed one for over 3 months' [P00006792]

The OFT considers that these emails are consistent with the existence of a collusive tendering arrangement. In particular, the OFT considers that Jackson's concern (about submitting bids to PMSL 'for free') is not what one would expect a genuine bidder to say and is consistent with the existence of a collusive tendering arrangement. Further CCSL's internal response to these emails is consistent with the existence of a collusive tendering arrangement: Within CCSL, on 12 October 2009 [a senior CCSL employee] emailed [a CCSL Contracts manager] to ask whether *'this [is] now sorted'*. [A senior CCSL employee] outlined that:

'We can not go on treating our biggest and most important customer this way. If [an individual acting on behalf of Jackson] is unwilling / unable to support this procedure properly then we will need to find an alternative method' P00006948]. [A CCSL Contracts manager] reported back to [a senior CCSL employee] to the effect that Jackson had committed to providing the information by that day [P00006948].

⁶⁴⁹ This figure is the subtotal given in the CCSL BOQ before any VAT or contingency sum is added.

- 5.601. As above, the OFT finds that the first bid was submitted by Jackson on or before 19 August 2009 using CCSL formatting, based on the terms of the 19 August 2009 email⁶⁵⁰ and other email evidence relating to Glendale (Fire) and other contracts summarised above.
- 5.602. Jackson then submitted a bid on Jackson headed paper by email⁶⁵¹ on 12 October 2009 to PMSL and CCSL. Attached to this email were Jackson BOQs on Jackson headed paper for five contracts including for Pavilion Gardens.⁶⁵²
- 5.603. The Jackson BOQ attached to the 12 October 2009 email⁶⁵³ set out a bid of **£10,244.04** (not including VAT or any contingency sum) and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).
- 5.604. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

- 5.605. The OFT does not know whether CCSL was awarded this contract.⁶⁵⁴

Glendale Court (Fire) contract (on or around 17 August 2009 to on or around 12 October 2009)

- 5.606. The next contract that the OFT examines is in respect of Glendale Court, a PMSL property in Kent. The contract was for the supply and installation of fire protection and detection system.⁶⁵⁵

i. PMSL invites CCSL and Jackson to tender

⁶⁵⁰ P00006753.

⁶⁵¹ P00006952.

⁶⁵² P00006965.

⁶⁵³ The Jackson BOQ was dated 14 September 2009 but in all the circumstances the OFT considers that it has been back-dated.

⁶⁵⁴ Exhibit 12 says '*on hold*'.

⁶⁵⁵ The OFT relies upon the description of the contract in Exhibit 12 ('*Fire system installation*') and in the specification document ('*Upgrade of Fire Detection Equipment*') and on the FOT ('*Fire Alarm Upgrades*').

5.607. Contemporaneous RTT letters and documentation addressed to CCSL and Jackson, with cover letters dated 12 August 2009,⁶⁵⁶ demonstrate that PMSL invited CCSL and Jackson to bid. The deadline for tenders was 14 September 2009.⁶⁵⁷

ii. CCSL discloses its bid to Jackson

5.608. In summary, for the reasons set out below, the OFT finds that CCSL disclosed its bid to Jackson on two occasions: on or before 19 August 2009 and on 4 September 2009.

5.609. The first disclosure occurred on an unknown date on or before 19 August 2009. As with Pavilion Gardens and other contracts, the OFT finds that CCSL had disclosed to Jackson CCSL's bid for this contract by emailing Jackson an attached CCSL BOQ, which Jackson converted into its own BOQ (*'summary sheet'*) using CCSL's formatting to save time. As well as this conclusion being supported by other evidence,⁶⁵⁸ this conclusion is in particular supported by a document which is clearly Jackson's BOQ for this contract set out using CCSL formatting.⁶⁵⁹

⁶⁵⁶ Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Glendale Court (Fire) contract.

⁶⁵⁷ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁶⁵⁸ The OFT's conclusion is further supported by:

- the email exchange between CCSL and Jackson on 19 August 2009, set out at paragraphs 5.592 to 5.595 above;
- Jackson's email to CCSL on 4 September 2009 asking CCSL to *'re-send me your quote [that is, CCSL's bid]'* [emphasis added] which is in the context of an email chain which related to Glendale Court (Fire) contract and other contracts [P00006780];
- PMSL's email of 12 October 2009 asking Jackson to *'re-send the attached on your own letterhead'* [P00006941], the attachment being Jackson's BOQ with CCSL's formatting [P00006943]; and
- In interview, when asked about [a PMSL Senior Administrator] 's email of 19 August 2009, a CCSL Admin Support Supervisor explained *'Basically [a PMSL Senior Administrator] phoned to say [an individual acting on behalf of Jackson] had sent the sheet we'd sent him and left our logo on it, but put his prices in it* (Transcript of interview with [a CCSL Admin Support Supervisor], page 53).

⁶⁵⁹ P00006943: This was attached to an email of 12 October 2009 from PMSL to Jackson requesting that it be redone on Jackson's own paper [P00006941].

5.610. The second disclosure occurred on 4 September 2009 when [a CCSL Admin Support Supervisor] emailed CCSL's bid to Jackson saying:⁶⁶⁰

'...Please see attached copies of our quote for reference. If you've [sic] haven't got copies of the tenders you will need to liaise with Peverel to get them re-sent'

[Emphasis added]

5.611. Attached to the email were CCSL BOQs for four contracts, one of which was the CCSL BOQ for the Glendale Court (Fire) contract.⁶⁶¹ CCSL's bid was **£17,977** (not including VAT or any contingency sum).⁶⁶²

iii. Jackson does not distance itself from the information it receives from CCSL

5.612. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.⁶⁶³

iv. CCSL submits a bid

5.613. Contemporaneous CCSL tender documentation dated 14 and 17 August 2009 demonstrates that CCSL submitted a bid for the Glendale Court (Fire) contract on or around 17 August 2009. CCSL's bid was **£17,977** (not including VAT or any contingency sum).⁶⁶⁴

⁶⁶⁰ P00006796.

⁶⁶¹ P00006802; The OFT concludes that this was CCSL's bid based on the circumstances including Jackson's request for a copy of '*your quote*' in the context of Glendale Court (Fire) and the CCSL author's use of '*our quote*' [P00006796], and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision.

⁶⁶² This figure is the subtotal given in CCSL's BOQ, before any contingency sum or VAT is added. The total and the individual entries are the same as in CCSL's BOQ referred to at paragraph 5.613.

⁶⁶³ As set out at footnote 648, on 4 September 2009 Jackson emailed [a CCSL Admin Support Supervisor] seeking another copy of CCSL's bids for Glendale Court (Fire) and other contracts [P00006780]. [An individual acting on behalf of Jackson] added: '*I will also need to revise this as i haven't got time to keep doing these as you are aware i do these for free*'. As set out at footnote 648 above, the OFT does not consider that this amounts to a rejection or complaint about receiving CCSL's bid. The OFT considers that this exchange is consistent with the existence of the collusive tendering arrangement.

⁶⁶⁴ This figure is the subtotal given in the CCSL BOQ before any VAT or contingency sum is added.

v. *Jackson submits a higher bid than CCSL*

5.614. In summary, for the reasons set out below, the OFT finds that Jackson submitted three successive bids for Glendale Court (Fire): the first on or before 19 August 2009 and the second on 9 September 2009 and the third on 12 October 2009.

5.615. As above, the OFT finds that the first bid was submitted by Jackson on or before 19 August 2009 using CCSL formatting, based on the Jackson BOQ for Glendale (Fire) using CCSL formatting⁶⁶⁵ and the email and other evidence in respect of Glendale Court (Fire) and other contracts summarised above.

5.616. The Jackson BOQ set out a bid of **£19,208.15** (not including VAT or any contingency sum)⁶⁶⁶ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.617. Jackson then submitted a further bid dated 7 September 2009 on Jackson headed paper by email⁶⁶⁷ on 9 September 2009 to PMSL and CCSL. Attached to this email were Jackson BOQs on Jackson headed paper for five contracts including for Glendale Court (Fire) dated '7/09/09'.⁶⁶⁸

5.618. The Jackson BOQ set out a bid of **£20,673.50** (not including VAT or any contingency sum)⁶⁶⁹ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.619. Jackson then submitted a bid by email⁶⁷⁰ on 12 October 2009 to PMSL and CCSL.⁶⁷¹ Attached to this email were Jackson BOQs on Jackson headed paper for five contracts including for Glendale Court (Fire).⁶⁷²

⁶⁶⁵ P00006943; this is dated '14th August 2009'.

⁶⁶⁶ This figure is the subtotal given in the Jackson BOQ before any VAT or contingency sum is added.

⁶⁶⁷ P0006813.

⁶⁶⁸ P00006816.

⁶⁶⁹ This figure is the subtotal given in the Jackson BOQ before any VAT or contingency sum is added.

⁶⁷⁰ P00006952.

⁶⁷¹ This 12 October 2009 email from Jackson was in response to a PMSL email request to Jackson [P00006941] for a bid on Jackson headed paper ([a PMSL Technical Administrator]

5.620. The Jackson BOQ set out a bid of **£21,744.96** (not including VAT or any contingency sum)⁶⁷³ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.621. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.622. The OFT does not know whether CCSL was awarded this contract.⁶⁷⁴

Glendale Court (Warden Call) contract (on or before 19 August 2009 to on or around 10 October 2009)

5.623. The next contract that the OFT examines is also in respect of Glendale Court, a PMSL property in Kent. The contract was for supply and installation of a warden call system and door entry system.⁶⁷⁵

i. PMSL invites CCSL and Jackson to tender

5.624. Contemporaneous RTT letters and documentation addressed to CCSL and Jackson, with cover letters dated 12 August 2009,⁶⁷⁶ demonstrate that PMSL invited CCSL and Jackson to tender. The deadline for tenders was 14 September 2009.⁶⁷⁷

ii. CCSL discloses its bid to Jackson

apparently mistakenly not realising that a Jackson BOQ had already been received under cover of email of 9 September 2009).

⁶⁷² P00006955; this is dated '12/10/1994' which the OFT considers to be a typing error by Jackson and should read '12/10/2009'.

⁶⁷³ This figure is the subtotal given in the Jackson BOQ before any VAT or contingency sum is added. In addition, the OFT's file includes a Jackson FOT in dated 17 August 2009 for Glendale Court (Fire), with the same figure as the 12 October 2009 Jackson BOQ, indicating that the FOT was back-dated.

⁶⁷⁴ Exhibit 12 records 'no decision made yet'.

⁶⁷⁵ The OFT relies upon the description of the contract in Exhibit 12 ('PBX warden call system installation') and in the specification document ('Upgrade of Social Alarm & Access Control Equipment') and on the FOT ('Warden Call Upgrades'). (This specification may have included elements of a CCTV system.)

⁶⁷⁶ Further the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Glendale Court (warden call) contract.

⁶⁷⁷ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

5.625. In summary, for the reasons set out below, the OFT finds that CCSL disclosed its bid to Jackson on two occasions: on or before 19 August 2009 and on 4 September 2009.

5.626. The first disclosure occurred on an unknown date on or before 19 August 2009. As with Pavilion Gardens and other contracts, the OFT finds that CCSL had disclosed to Jackson CCSL's bid for this contract by emailing Jackson an attached CCSL BOQ, which Jackson converted into its own BOQ (*summary sheet*) using CCSL's formatting to save time. This conclusion is supported by the evidence set out above at paragraph 5.592 to 5.595 and footnote 645.

5.627. The second disclosure occurred on 4 September 2009 when [a CCSL Admin Support Supervisor] emailed CCSL's bid to Jackson :⁶⁷⁸

'...Please see attached copies of our quote for reference. If you've [sic] haven't got copies of the tenders you will need to liaise with Peverel to get them re-sent'

[Emphasis added]

5.628. Attached to the email were CCSL BOQs for four contracts, one of which was the Glendale Court (Warden Call) contract.⁶⁷⁹ CCSL's bid was **£35,079.64** (not including VAT or any contingency sum).⁶⁸⁰

iii. Jackson does not distance itself from the information it receives from CCSL

5.629. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.⁶⁸¹

⁶⁷⁸ P00006796.

⁶⁷⁹ P00006803; The OFT concludes that this was CCSL's bid based on the circumstances including Jackson's request for a copy of '*your quote*' in the context of Glendale Court (Warden Call) and the CCSL author's use of '*our quote*' [P00006796], and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision. Further, the total and entries in the attachment are identical to those in CCSL's BOQ dealt with at paragraph 5.630.

⁶⁸⁰ This figure is the subtotal in CCSL's BOQ, not including contingency sum or any VAT.

⁶⁸¹ As noted above at footnote 648, on 4 September 2009 Jackson emailed [a CCSL Admin Support Supervisor] seeking another copy of CCSL's bids for Glendale Court (Warden Call) and other contracts [P00006780]. [An individual acting on behalf of Jackson] added: '*I will also*

iv. CCSL submits a bid

5.630. Contemporaneous CCSL tender documentation dated 17 and 24 August 2009 demonstrates that CCSL submitted a bid for the Glendale Court (Warden Call) contract. This is likely to have been on or around 24 August 2009 as CCSL's FOT was dated 24 August 2009. CCSL's bid was **£35,079.64** (not including VAT or any contingency sum).⁶⁸²

v. Jackson submits a higher bid than CCSL

5.631. In summary, for the reasons set out below, the OFT finds that Jackson submitted three successive bids for Glendale Court (Warden Call): the first on or before 19 August 2009 and the second on 9 September 2009 and the third on or around 10 October 2009.

5.632. As with Pavilion Gardens, the OFT finds that the first bid was submitted by Jackson on or before 19 August 2009 using CCSL formatting, based on the terms of the email and other evidence relating to Glendale Court (Warden Call) and other contracts set out above.

5.633. Jackson then submitted a bid on Jackson headed paper by email⁶⁸³ sent on 9 September 2009 to PMSL and CCSL. Attached to this email were Jackson BOQs on Jackson headed paper for five contracts including for Glendale Court (Warden Call).⁶⁸⁴

5.634. The Jackson BOQ attached to the email of 9 September 2009 set out a bid of **£36,637.47** (not including VAT or any contingency sum)⁶⁸⁵ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

need to revise this as i haven't got time to keep doing these as you are aware i do these for free'. As set out at footnote 648, the OFT does not consider that this amounted to a rejection or complaint about receiving CCSL's bid.

⁶⁸² This figure is the subtotal given in the CCSL BOQ before any VAT or contingency sum is added.

⁶⁸³ P00006813.

⁶⁸⁴ P00006814. This BOQ is dated '07/07/09'. In light of the email evidence set out at above referring to Glendale Court (Warden Call) and the date of the cover email (9 September 2009), the OFT considers that this BOQ has been back-dated.

⁶⁸⁵ This figure is the subtotal given in the Jackson BOQ before any VAT or contingency sum is added.

5.635. Jackson then submitted a further BOQ for Glendale Court (Warden Call) dated '10/10/2009'.⁶⁸⁶

5.636. The Jackson BOQ dated 10 October 2009 set out a bid of **£41,454.66** (not including VAT or any contingency sum)⁶⁸⁷ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.637. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.638. The OFT does not know whether CCSL was awarded this contract.⁶⁸⁸

Homepeak House contract (on or before 19 August 2009 to on or around 9 September 2009)

5.639. The next contract that the OFT examines is in respect of Homepeak House, a PMSL property in Hampshire. The contract was for the supply and installation of fire protection and detection system.⁶⁸⁹

i. PMSL invites CCSL and Jackson to tender

5.640. The OFT's file does not contain copies of any RTT letters and documentation addressed to CCSL and Jackson in respect of the Homepeak House contract. However, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTTs to CCSL and Jackson for the Homepeak House contract.

ii. CCSL discloses its bid to Jackson

⁶⁸⁶ The OFT does not know why Jackson submitted a third bid for this contract. In addition, the OFT's file includes a Jackson FOT in dated 17 August 2009 for Glendale Court (Warden Call), with the same figure as the '10/10/2009' Jackson BOQ, indicating that the FOT was back-dated.

⁶⁸⁷ This figure is the subtotal given in the Jackson BOQ before any VAT or contingency sum is added.

⁶⁸⁸ Exhibit 12 says '*no decision made yet*'.

⁶⁸⁹ The OFT relies upon the description of the contract in Exhibit 12 ('*Fire system installation*') and in the header to CCSL's BOQ ('*Fire Alarm system*') and Jackson's BOQ ('*Fire alarm system*').

5.641. In summary, for the reasons set out below, the OFT considers that CCSL disclosed its intended bid to Jackson on two occasions: on or before 19 August 2009 and on 4 September 2009.

5.642. The first disclosure occurred on an unknown date on or before 19 August 2009. As with Pavilion Gardens and other contracts, the OFT finds that CCSL had disclosed to Jackson CCSL's bid for the Homepeak House contract by emailing Jackson an attached CCSL BOQ, which Jackson converted into its own BOQ ('*summary sheet*') using CCSL's formatting to save time. This conclusion is supported by the evidence set out above at paragraph 5.592 to 5.595 and footnote 645.

5.643. The second disclosure occurred on 4 September 2009 when [a CCSL Admin Support Supervisor] emailed CCSL's bid to Jackson:⁶⁹⁰

'...Please see attached copies of our quote for reference. If you've [sic] haven't got copies of the tenders you will need to liaise with Peverel to get them re-sent'

[Emphasis added]

5.644. Attached to the email were CCSL's BOQs for four contracts, one of which was the Homepeak House contract.⁶⁹¹ CCSL's bid was **£11,827.37** (not including VAT or any contingency sum).⁶⁹²

iii. Jackson does not distance itself from the information it receives from CCSL

5.645. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.⁶⁹³

⁶⁹⁰ P00006796.

⁶⁹¹ P00006805; The OFT concludes that this was CCSL's bid based on the circumstances including the CCSL author's use of '*our quote*' and Jackson's reference to '*your quote*' [P00006796], and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision.

⁶⁹² This figure is the subtotal on the CCSL BOQ, not including VAT or any contingency sum.

⁶⁹³ As set out at footnote 648, on 4 September 2009 Jackson emailed [a CCSL Admin Support Supervisor] seeking another copy of CCSL's bids for Homepeak House and other contracts [P00006780]. Jackson added: '*I will also need to revise this as i haven't got time to keep doing these as you are aware i do these for free*'. As set out at footnote above 648, the OFT does not consider that this amounts to a rejection or complaint about receiving CCSL's bid.

iv. CCSL submits a bid

5.646. CCSL submitted a bid on an unknown date. The OFT infers this from the above evidence which makes it clear that CCSL intended to submit a bid and there is no evidence in the OFT's possession to suggest that a bid was not submitted. It certainly would have been highly unusual to have disclosed a bid (as CCSL did) and then not submit it.

v. Jackson submits a higher bid than CCSL

5.647. In summary, for the reasons set out below, the OFT considers that Jackson submitted two successive bids for Homepeak House: the first on or before 19 August 2009 and the second on 9 September 2009.

5.648. As above, the OFT finds that the first bid was submitted by Jackson on or before 19 August 2009 using CCSL formatting, based on the email and other evidence relating to Homepeak House and other contracts as set out above.

5.649. Jackson then emailed⁶⁹⁴ a bid dated 7 September 2009 on Jackson headed paper on 9 September 2009. Attached to this email were five Jackson BOQs, including for Homepeak House⁶⁹⁵ on Jackson headed paper dated '07/07/09'.

5.650. The Jackson BOQ attached to the email of 9 September 2009 set out a bid of **£12,702.33** (not including VAT or any contingency sum) for Homepeak House⁶⁹⁶ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.651. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

⁶⁹⁴ P00006813.

⁶⁹⁵ P00006819.

⁶⁹⁶ This figure is the subtotal given in the Jackson BOQ before any VAT or contingency sum is added.

5.652. The OFT does not know whether CCSL was awarded this contract.⁶⁹⁷

Tiverton Court contract (on or around 17 August 2009 to on or around 12 October 2009)

5.653. The next contract that the OFT examines is in respect of Tiverton Court, a PMSL property in Hampshire. The contract was for the supply and installation of warden call system and a door entry system.⁶⁹⁸

i. PMSL invites CCSL and Jackson to tender

5.654. Contemporaneous RTT letters and documentation addressed to CCSL and Jackson, with cover letters dated 12 August 2009,⁶⁹⁹ demonstrate that PMSL invited CCSL and Jackson to tender. The deadline for tenders was 14 September 2009.⁷⁰⁰

ii. CCSL discloses its bid to Jackson

5.655. In summary, for the reasons set out below, the OFT considers that CCSL disclosed its bid to Jackson on two occasions: on or before 19 August 2009 and on 9 September 2009.

5.656. The first disclosure occurred on an unknown date on or before 19 August 2009. As with Pavilion Gardens and other contracts, the OFT finds that CCSL had disclosed to Jackson CCSL's bid for the Tiverton Court contract by emailing Jackson an attached CCSL BOQ, which Jackson converted into its own BOQ ('*summary sheet*') using CCSL's formatting to save time. This conclusion is supported by the evidence set out above at paragraph 5.592 - 5.595 and footnote 645.

5.657. The second disclosure occurred on 4 September 2009 when [a CCSL Admin Support Supervisor] emailed CCSL's bid to Jackson:⁷⁰¹

⁶⁹⁷ Exhibit 12 records '*no decision made yet*'.

⁶⁹⁸ The OFT relies upon the description of the contract in Exhibit 12 ('*PBX warden call system installation*') and in the specification document ('*Upgrade of Social Alarm & Access Control Equipment*') and on the FOT ('*Warden Call Upgrades*'). (This specification may have included elements of a CCTV system and of a fire protection and detection system.)

⁶⁹⁹ Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Tiverton Court contract.

⁷⁰⁰ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁷⁰¹ P00006796.

'...Please see attached copies of our quote for reference. If you've [sic] haven't got copies of the tenders you will need to liaise with Peverel to get them re-sent'

[Emphasis added]

5.658. Attached to the email were CCSL BOQs for four contracts, one of which was the Tiverton Court contract.⁷⁰² CCSL's bid was **£29,230.12** (not including VAT or any contingency sum).⁷⁰³

iii. Jackson does not distance itself from the information it receives from CCSL

5.659. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.⁷⁰⁴

iv. CCSL submits a bid

5.660. Contemporaneous CCSL tender documentation dated 14 and 17 August 2009 for Tiverton Court demonstrates that CCSL submitted a bid for this contract on or around 17 August 2009. CCSL's bid was **£29,230.12** (not including VAT or any contingency sum).⁷⁰⁵

v. Jackson submits a higher bid than CCSL

5.661. In summary, for the reasons set out below, the OFT considers that Jackson submitted two successive bids for Tiverton Court: the first on or before 19 August 2009 and the second on 9 September 2009.

⁷⁰² P00006800; The OFT concludes that this was CCSL's bid based on the circumstances the CCSL author's use of *'our quote'* and Jackson's use of *'your quote'* [P00006796], and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision. Further, the total and entries in the attachment are identical to those in CCSL's BOQ dealt with at paragraph 5.660.

⁷⁰³ This figure is the sum of the subtotals in CCSL's BOQ for the warden call element and for the smoke detector element of the contract, not including any VAT or contingency sum.

⁷⁰⁴ As noted above at footnote 648, on 4 September 2009 Jackson emailed [a CCSL Admin Support Supervisor] seeking another copy of CCSL's bids for Tiverton Court and other contracts. Jackson added: *'I will also need to revise this as i haven't got time to keep doing these as you are aware i do these for free'*. As set out at footnote 648, the OFT does not consider that this amounts to Jackson rejecting or complaining about receiving this information from CCSL.

⁷⁰⁵ This figure is the total given in the CCSL BOQ dated 17 August 2009, not including any VAT or contingency sum.

- 5.662. As with Pavilion Gardens, the OFT finds that the first bid was submitted by Jackson on or before 19 August 2009 using CCSL formatting, based on the terms of the email and other evidence relating to Tiverton Court and other contracts as set out above.
- 5.663. Jackson then submitted a bid by email on Jackson headed paper on 9 September 2009.⁷⁰⁶ Attached to that email were Jackson BOQs for five contracts, including for Tiverton Court⁷⁰⁷ on Jackson headed paper.⁷⁰⁸
- 5.664. The Jackson BOQ set out a bid of **£33,614.51** (not including VAT or any contingency sum)⁷⁰⁹ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).
- 5.665. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

- 5.666. The OFT does not know whether CCSL was awarded this contract.⁷¹⁰

Parkside Court contract (on or around 14 August 2009 to on or around 12 October 2009)

- 5.667. The next contract that the OFT examines is in respect of Parkside Court, a PMSL property in Kent. The contract was for the supply and installation of fire protection and detection system.⁷¹¹

i. PMSL invites CCSL and Jackson to tender

- 5.668. Contemporaneous RTT letters and documentation addressed to CCSL and Jackson, with cover letters dated 12 August 2009, demonstrate

⁷⁰⁶ P00006813.

⁷⁰⁷ P00006821.

⁷⁰⁸ The Jackson BOQ is dated '7/7/09'. Given the nature of the emails set out at paragraph 5.592 to 5.595 and footnote 645, the OFT considers that this BOQ has been back-dated.

⁷⁰⁹ This figure is calculated by totalling the subtotals in Jackson's BOQ, not including any VAT or contingency sum.

⁷¹⁰ Exhibit 12 records '*no decision made yet*'.

⁷¹¹ The OFT relies upon the description of the contract in Exhibit 12 ('*Fire system installation*') and in the specification document ('*Upgrade of Fire Detection Equipment*') and on the FOT ('*Fire Alarm Upgrades*').

that PMSL invited CCSL and Jackson to tender.⁷¹² The deadline for tenders was 14 September 2009.⁷¹³

ii. CCSL discloses its bid to Jackson

5.669. In summary, for the reasons set out below, the OFT considers that CCSL disclosed its bid to Jackson on 2 occasions: on or before 2 September 2009 and on 12 October 2009.

5.670. The first disclosure occurred on an unknown date on or before 2 September 2009. Although Parkside Court is not recorded as having been mentioned by [a PMSL Senior Administrator] as a contract for which Jackson submitted its *'summary sheet using CCSL layout/colour'* on 19 August 2009,⁷¹⁴ Parkside Court is mentioned in [a PMSL Technical Administrator's] email of 2 September 2009 complaining about Jackson *'tenders'* on *'Cirrus letterheads'*.⁷¹⁵ As with Pavilion Gardens and other contracts, the OFT finds that CCSL had disclosed to Jackson CCSL's bid for the Parkside Court contract by emailing Jackson an attached CCSL BOQ, which Jackson converted into its own BOQ using CCSL's formatting to save time.⁷¹⁶

5.671. The second disclosure occurred on 12 October 2009 when [a CCSL Admin Support Supervisor] emailed CCSL's bid to Jackson:⁷¹⁷

'... Please find attached bill of qtys [BOQ] as requested'

5.672. The OFT infers from the face of the email that [a CCSL Admin Support Supervisor] had attached the CCSL BOQ for Parkside Court to the email.⁷¹⁸

⁷¹² Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Parkside Court contract.

⁷¹³ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁷¹⁴ P00006753.

⁷¹⁵ P00006775.

⁷¹⁶ The OFT notes that, whilst in the email of 7 October 2009 from [a PMSL Senior Administrator] to CCSL asking CCSL to *'chase'* outstanding tenders from Jackson, Parkside Court was included as *'waiting for his tender'* and [a PMSL Senior Administrator] did not add *'on non CCSL paper!'* (as she did for Pavilion Gardens) [P00006948], the OFT considers that [a PMSL Technical Administrator's] email of 2 September 2009, which does specifically list Parkside Court as one of the bids on *'CCSL letterheads'*, is sufficient evidence for this conclusion [P00006775].

⁷¹⁷ P00006935.

iii. Jackson does not distance itself from the information it receives from CCSL

5.673. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.⁷¹⁹

iv. CCSL submits a bid

5.674. Contemporaneous CCSL tender documentation dated 14 August 2009 for Parkside Court demonstrates that CCSL submitted a bid for this on or around 14 August 2009. CCSL's bid was **£15,751.22** (not including VAT or any contingency sum).⁷²⁰

v. Jackson submits a higher bid than CCSL

5.675. In summary, for the reasons set out below, the OFT considers that Jackson submitted two successive bids for Parkside Court: the first on or before 2 September 2009 and the second on 12 October 2009.

5.676. The OFT finds that the first bid was submitted by Jackson on or before 2 September 2009 using CCSL formatting, based on the terms of the 2 September 2009 email⁷²¹ and other evidence relating to Parkside Court and other contracts set out above.

5.677. Jackson then submitted a bid on Jackson headed paper by email⁷²² on 12 October 2009 by Jackson to PMSL and CCSL.⁷²³ Attached to this

⁷¹⁸ The conclusion that [a CCSL Admin Support Supervisor's] email of 12 October 2009 had CCSL's BOQ for Parkside Court attached thereto is supported by the evidence set out at footnote 647 above.

⁷¹⁹ As set out at footnote 648, on 4 September 2009 Jackson emailed [a CCSL Admin Support Supervisor] at CCSL seeking another copy of CCSL's bids for Parkside Court and other contracts [P00006780]. [An individual acting on behalf of Jackson] added: '*I will also need to revise this as i haven't got time to keep doing these as you are aware i do these for free*'. As set out at footnote 648, the OFT does not consider that this amounts to Jackson rejecting or complaining about receiving CCSL's bid.

⁷²⁰ This figure is the subtotal given in the CCSL BOQ dated 14 August before any VAT or contingency sum is added.

⁷²¹ P00006775.

⁷²² P00006952.

⁷²³ Jackson's bid having been '*chased*' by PMSL via CCSL on 15 September 2009 [P00006849]

email were Jackson BOQs on Jackson headed paper for six contracts including Parkside Court.⁷²⁴

5.678. The Jackson BOQ attached to the 12 October 2009 email set out a bid of **£18,108.96** (not including VAT or any contingency sum)⁷²⁵ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.679. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.680. The OFT does not know whether CCSL was awarded this contract.⁷²⁶

Livingstone Court contract (on or around 20 July 2009 to on or around 16 September 2009)

5.681. The next contract that the OFT examines is in respect of Livingstone Court, a PMSL property in Hertfordshire. The contract was for the supply and installation of a warden call system.⁷²⁷

i. PMSL invites CCSL and Jackson to tender

5.682. Contemporaneous RTT letters and documentation addressed to CCSL and Jackson, with cover letters dated 29 June 2009,⁷²⁸ demonstrate that PMSL invited CCSL and Jackson to tender. The deadline for tenders was 27 July 2009.⁷²⁹

ii. CCSL discloses its bid to Jackson

⁷²⁴ P00006963; this is dated '12/10/1994' which is the OFT considers to be a typing error by Jackson and should read '12/10/2009'.

⁷²⁵ This figure is the subtotal given in the Jackson BOQ before any VAT or contingency sum is added.

⁷²⁶ Exhibit 12 records 'no decision made yet'.

⁷²⁷ The OFT relies upon the description of the contract in Exhibit 12 ('PBX warden call system installation') and in the specification document ('Upgrade of Warden Call Equipment') and on the FOT ('Warden Call Upgrade'). (This specification included an option for a CCTV system and may have included elements of door entry.)

⁷²⁸ Further the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Livingstone Court contract

⁷²⁹ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

5.683. In summary, for the reasons set out below, the OFT considers that CCSL disclosed its bid to Jackson on at least⁷³⁰ two occasions: on 19 August 2009 and on 9 September 2009.

5.684. The first disclosure occurred on 19 August 2009, [a CCSL Admin Support Supervisor] emailed CCSL's bid to Jackson:

'..Please find attached bill of quantities, for the ones you say you are missing.

Please make sure you DO NOT use our template for sensing [sic] you [sic] response back to Peverel (copy & paste the table onto your headed paper) ...⁷³¹

5.685. Attached to the email were CCSL BOQs for a number of contracts, one of which was the Livingstone Court contract.⁷³² CCSL's bid was **£29,849.02** (not including VAT or any contingency sum).⁷³³

⁷³⁰ The terms of the disclosure on 19 August 2009 suggest that it is likely that CCSL had disclosed its bid to Jackson for Livingstone Court on a previous occasion, which would have been before 10 August 2009, given that there is an email chain on 10 August 2009 in which PMSL 'chases' CCSL for Jackson's tenders for a number of contracts including Livingstone Court, and in which CCSL 'chases' Jackson [P00006724]. Jackson responded that it would 'check the tenders later today' [P00006726].

⁷³¹ The OFT's conclusion that this was CCSL's bid for Livingstone Court was disclosed in this 19 August 2009 email to Jackson is supported by the following earlier email evidence (all on 19 August 2009 [P0006755]):

- [A PMSL Senior Administrator] emailed CCSL requesting that CCSL 'chase [an individual acting on behalf of Jackson] ' for its bids for Livingstone Court, Chapel Lodge 'door entry and warden call' and Alexandria Court.
- CCSL then emailed Jackson seeking an update on 'when Peverel will receive these outstanding tenders'.
- [An individual acting on behalf of Jackson] responded to CCSL 'Chaple [sic] lodge and livingston [sic] I don't have your quote only your form of tender'. The OFT considers that this was a request by Jackson for a copy of CCSL's BOQ for Livingstone Court and for the Chapel Lodge contracts, which CCSL replied to with the email quoted in paragraph 5.684 above. This is consistent with the existence of the collusive tendering arrangement. Further, the total and entries in the attachment are identical to those in CCSL's BOQ dealt with at paragraph 5.689. (The OFT also notes that the warning by CCSL ('Please ...DO NOT...') is consistent with Jackson having, in relation to other contracts (Pavilion Gardens and others) completing its own BOQ using CCSL formatting and CCSL's disclosed BOQ).

⁷³² P00006757.

5.686. The second disclosure occurred on 9 September 2009, [a CCSL Admin Support Supervisor] emailed⁷³⁴ CCSL's bid to Jackson:

*'.. Please find attached, as requested'*⁷³⁵

5.687. Attached to the email again were CCSL BOQs for a number of contracts, one of which was the Livingstone Court contract.⁷³⁶ This appears to be the same BOQ as was attached to the 19 August 2009 email.

iii. Jackson does not distance itself from the information it receives from CCSL

5.688. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.689. Contemporaneous CCSL tender documentation dated 20 July 2009 demonstrates that CCSL submitted a bid for the Livingstone Court contract on or around 20 July 2009. CCSL's bid was **£29,849.02** (not including VAT or any contingency sum).⁷³⁷ This conclusion is further supported by an entry in Exhibit 12 recording that CCSL and Jackson both submitted bids for this contract and that CCSL was awarded the contract.

v. Jackson submits a higher bid than CCSL

⁷³³ This figure is calculated by totalling the subtotals in CCSL's BOQ, not including VAT or any contingency sum.

⁷³⁴ P00006825.

⁷³⁵ The OFT's conclusion that this was CCSL's bid for Livingstone Court was disclosed in this 19 August 2009 email to Jackson is supported by the following earlier email evidence [P00006825] (demonstrating that Jackson had, as the terms of [a CCSL Admin Support Supervisor]'s email suggest, requested a copy of CCSL's bid for Livingstone Court and for Chapel Lodge):

- On 8 September 2009, [a PMSL Technical Administrator] emailed CCSL requesting that it '*chase* [an individual acting on behalf of Jackson]' for its tender for Livingstone Court;
- CCSL emailed Jackson as requested;
- [An individual acting on behalf of Jackson] responded to CCSL '*Can you resend your quote for Livingston [sic] and Chaple [sic] Lodge...*', that is, Livingstone Court, to which CCSL replied with the email quoted at paragraph 5.686. This is again a request by Jackson for a copy of CCSL's bid and consistent with the existence of the collusive tendering arrangement.

⁷³⁶ P00006830.

⁷³⁷ This figure is calculated by totalling the subtotals in CCSL's BOQ.

- 5.690. Jackson submitted a bid by email⁷³⁸ on 16 September 2009 to PMSL and CCSL. Attached to this email are Jackson BOQs for five contracts including Livingstone Court dated '14/09/2009'.⁷³⁹ This conclusion is further supported by an entry in Exhibit 12 recording that CCSL and Jackson both submitted bids for this contract and that CCSL was awarded this contract.
- 5.691. The Jackson BOQ set out a bid of **£34,326.27** (not including VAT or any contingency sum)⁷⁴⁰ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).
- 5.692. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

- 5.693. CCSL was awarded the contract.⁷⁴¹

Chapel Lodge contracts (on or before 19 August 2009 to on or around 12 October 2009)

- 5.694. The next contracts that the OFT examines are in respect of Chapel Lodge, a PMSL property in Essex. The contracts were for: (i) the supply and installation of a warden call system⁷⁴² and; (ii) the supply and installation of a door entry system.⁷⁴³

⁷³⁸ P00006852.

⁷³⁹ P00006858. In addition, the OFT's file also contains a Jackson FOT, apparently dated 27 July 2009. Given the email evidence that Jackson was being 'chased' for its tender up to 9 September 2009, it is likely that this FOT was back-dated. The OFT notes that Jackson's address is listed as [...] rather than [...], however, the OFT considers that this was a typing error by Jackson.

⁷⁴⁰ This figure is calculated by totalling the subtotals on Jackson's BOQ, not including any VAT or contingency sum.

⁷⁴¹ Exhibit 12 records '*Won – installation not started*'.

⁷⁴² The OFT relies upon the description of the contract in Exhibit 12 ('*PBX warden call system installation*') and in the specification documents ('*Upgrade of Warden Call Equipment*') and on the FOT ('*Warden Call Upgrade*'). (The warden call specification may have included elements of a fire detection and protection system.)

⁷⁴³ The OFT relies upon the description of the contract in Exhibit 12 ('*Door entry control system installation*') and in the specification documents ('*Upgrade of Door Entry Equipment*') and on the FOT ('*Door Entry Upgrade*').

i. PMSL invites CCSL and Jackson to tender

5.695. Contemporaneous RTT letters and documentation addressed to CCSL and Jackson, with cover letters dated 29 June 2009,⁷⁴⁴ demonstrate that PMSL invited CCSL and Jackson to bid. The deadline for tenders was 27 July 2009.⁷⁴⁵

ii. CCSL discloses its bid to Jackson

5.696. In summary, for the reasons set out below, the OFT considers that CCSL disclosed its bid to Jackson on at least⁷⁴⁶ two occasions: on or before 19 August 2009 and on 12 October 2009.

5.697. The first disclosure occurred on 19 August 2009, [a CCSL Admin Support Supervisor] emailed CCSL's bid to Jackson:

'..Please find attached bill of quantities, for the ones you say you are missing.

Please make sure you DO NOT use our template for sensing [sic] you [sic] response back to Peverel (copy & paste the table onto your headed paper) ...'

5.698. Attached to the email were CCSL's BOQs for a number of contracts, two of which were the Chapel Lodge contracts (being separate CCSL BOQs for warden call and door entry⁷⁴⁷). CCSL's bid was, for warden

⁷⁴⁴ Further the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Chapel Lodge contract.

⁷⁴⁵ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁷⁴⁶ The terms of the disclosure on 19 August 2009 suggest that CCSL had disclosed its bid to Jackson for Chapel Lodge on a previous occasion, which would have been before 10 August 2009, given that there is an email chain on 10 August 2009 in which PMSL 'chases' CCSL for Jackson's tenders for a number of contracts including Chapel Lodge, and in which CCSL 'chases' Jackson [P00006724]. Jackson responded that it would 'check the tenders later today' [P00006726].

⁷⁴⁷ P00006759 and P00006761; The OFT considers that these BOQs were CCSL's bids based on the circumstances including the layout of the attachments (which was identical to that used for other CCSL BOQs), on the basis of the email evidence (as it relates to Chapel Lodge) set out at footnote 731 and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision. Further, the total and entries in the attachment are identical to those in CCSL's BOQs dealt with at paragraph 5.702.

call, **£14,628.66** (not including VAT or any contingency sum)⁷⁴⁸ and, for door entry, **£5,924.40** (not including VAT or any contingency sum).⁷⁴⁹

5.699. The second disclosure occurred on 9 September 2009 when [a CCSL Admin Support Supervisor] emailed CCSL's bid to Jackson:⁷⁵⁰

*'.. Please find attached, as requested'*⁷⁵¹

5.700. Attached to the email again were CCSL BOQs for a number of contracts, two of which were the Chapel Lodge contracts (being separate CCSL BOQs for warden call and door entry)⁷⁵². These appear to be the same documents as were attached to the 19 August 2009 email. CCSL's bids were, for warden call, **£14,628.66** (not including VAT or any

⁷⁴⁸ This figure is the subtotal in the CCSL BOQ for the warden call contract, not including VAT or any contingency sum.

⁷⁴⁹ This figure is the subtotal in the CCSL BOQ for the door entry contract, not including VAT or any contingency sum.

⁷⁵⁰ P00006825.

⁷⁵¹ On the basis of the following email evidence, the OFT considers that Jackson had requested (as the terms of [a CCSL Admin Support Supervisor] 's email suggests) a copy of CCSL's bids for the Chapel Lodge contracts:

- On 28 August 2009, [a PMSL Senior Administrator] emailed CCSL with a request to '*chase* [an individual acting on behalf of Jackson]' for its tender for warden call, which CCSL forwarded to Jackson on 28 August 2009 and 1 September 2009 [P00006768];
- On 1 September 2009, Jackson emailed CCSL asking '*Is this the one were i used the Peverel quote paper. If it is can you resend me your quote to price again please*' [P00006772];
- On 8 September 2009, [a PMSL Technical Administrator] at PMSL emailed CCSL requesting that it '*chase* [an individual acting on behalf of Jackson]' for its tender for Livingstone Court, which CCSL forwarded to Jackson and Jackson responded to CCSL '*Can you resend your quote for Livingston [sic] and Chaple [sic] Lodge...*', [P00006825], to which CCSL replied with the email quoted at paragraph 5.699. This is again a request by Jackson for a copy of CCSL's bid and consistent with the existence of the collusive tendering arrangement.

⁷⁵² P00006827 and P00006829. The OFT concludes that this was CCSL's bid based on the circumstances including the layout of the attachment (which was identical to that used for other CCSL BOQs), the evidence set out at footnote 735 above and on other evidence to the effect that CCSL would disclose its price to Jackson on the occasions set out in this Decision [P00006823]. These emails from Jackson are again requests by Jackson for a copy of CCSL's bid.

contingency sum)⁷⁵³ and, for door entry, **£5,924.40** (not including VAT or any contingency sum).⁷⁵⁴

iii. Jackson does not distance itself from the information it receives from CCSL

5.701. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.702. Contemporaneous CCSL tender documentation for Chapel Lodge demonstrates that CCSL submitted its bids for the Chapel Lodge contracts on 20 July 2009. CCSL's bids were, for warden call, **£14,628.66** (not including VAT or any contingency sum)⁷⁵⁵ and, for door entry, **£5,924.40** (not including VAT or any contingency sum).⁷⁵⁶

v. Jackson submits a higher bid than CCSL

5.703. In summary, for the reasons set out below, the OFT considers that Jackson submitted two successive bids for Chapel Lodge: the first on 16 September 2009 and the second on or around 12 October 2009.

5.704. Jackson submitted a bid by email⁷⁵⁷ on 16 September 2009 to PMSL and CCSL. Attached to the email were Jackson BOQs for six contracts including BOQs for the Chapel Lodge warden call contract⁷⁵⁸ and for the Chapel Lodge door entry contract.⁷⁵⁹

5.705. The Jackson BOQ for the warden call contract set out a bid of **£16,822.85** (not including VAT or any contingency sum)⁷⁶⁰ and was

⁷⁵³ This figure is the subtotal in the CCSL BOQ for the warden call contract, not including VAT or any contingency sum.

⁷⁵⁴ This figure is the subtotal in the CCSL BOQ for the door entry contract, not including VAT or any contingency sum.

⁷⁵⁵ This figure is the subtotal in the CCSL BOQ for the warden call contract, not including VAT or any contingency sum.

⁷⁵⁶ This figure is the subtotal in the CCSL BOQ for the door entry contract, not including VAT or any contingency sum.

⁷⁵⁷ P00006852.

⁷⁵⁸ P00006853.

⁷⁵⁹ P00006854.

⁷⁶⁰ This is the subtotal given in the Jackson BOQ, not including VAT or contingency sum.

therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.706. The Jackson BOQ for the door entry contract set out a bid of **£3,640.66** (not including VAT or any contingency sum).⁷⁶¹ This was **lower** than CCSL's bid (not including VAT or any contingency sum), which appears to be because Jackson had only quoted for blocks 1, 2 and 3 and not blocks 1 to 6.⁷⁶²

5.707. This oversight led to emails between PMSL, CCSL and Jackson '*chasing*' the outstanding element of Jackson's bid.⁷⁶³

5.708. Jackson then submitted a further bid for the door entry contract, by way of a Jackson BOQ which bid for all blocks 1 to 6.⁷⁶⁴

5.709. The Jackson BOQ for Chapel Lodge (Door Entry) including all six blocks set out a bid of **£6,809.45** (not including VAT or any contingency sum)⁷⁶⁵ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.710. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

⁷⁶¹ This is the subtotal given in the Jackson BOQ, not including VAT or contingency sum.

⁷⁶² The OFT considers that this was likely to have been because CCSL failed to supply the second page of that BOQ to Jackson, or because Jackson failed to complete its bid for Blocks 4 to 6 in error (it may be that Jackson failed to read the second page of the CCSL BOQ which dealt with Blocks 4 to 6).

⁷⁶³ In that:

- on 7 October 2009, [a PMSL Senior Administrator] emailed [a CCSL Contracts manager] requesting that CCSL '*chase*' Jackson for its tenders for a number of contracts including Chapel Lodge '*Warden call – waiting for his option prices for blocks 4,5, and 6*' [P00006948];
- as set out above, on 7 October 2009 CCSL forwarded this email to Jackson [P00006948]; and
- an internal email on 12 October 2009 within CCSL records that Jackson had committed that the '*outstanding information would be with Peverel by today 11/10/09*' [P00006948].

⁷⁶⁴ Given the email evidence set out at footnote 763 above, it is likely that Jackson submitted this BOQ on or around 12 October 2009. This is consistent with the date on the Jackson FOTs for the warden call contract and for the door entry contract (11 October 2009).

⁷⁶⁵ This is calculated by totalling the subtotals in Jackson's BOQ, not including any VAT or contingency sum.

vi. Contract award

5.711. It appears that CCSL was not awarded the contract.⁷⁶⁶ Given that Jackson's bid was more expensive and [an individual acting on behalf of Jackson's] evidence in interview was that Jackson was never awarded a PMSL contract,⁷⁶⁷ it is likely that this contract was awarded to a third party bidder.

Holly Tree Walk contract (on or around 3 September 2009 to on or around 9 September 2009)

5.712. The next contract that the OFT examines is in respect of Holly Tree Walk, a PMSL property in Wiltshire. The contract was for the supply and installation of a warden call system.⁷⁶⁸

i. PMSL invites CCSL and Jackson to tender

5.713. Contemporaneous RTT letters and documentation addressed to CCSL and Jackson, with cover letters dated 1 September 2009, demonstrates that PMSL invited CCSL and Jackson to tender.⁷⁶⁹ The deadline for tenders was 1 October 2009.⁷⁷⁰

ii. CCSL discloses its bid to Jackson

5.714. On 3 September 2009, [a CCSL Contracts Administrator] emailed CCSL's bid⁷⁷¹ to Jackson:

'...FYI...Thanks'

⁷⁶⁶ Exhibit 12 records *'Lost'*.

⁷⁶⁷ Transcript of interview with [an individual acting on behalf of Jackson], CD1, page 46, lines 21 to 24 and CD2, page 7, line 24 to 27

⁷⁶⁸ The OFT relies upon the description of the contract in Exhibit 12 (*'[...] dispersed alarm system installation'*) and in the specification document (*'....Supply & Installation of [...] Dispersed Alarms'*) and on the FOT (*'Dispersed Alarm Upgrade'*).

⁷⁶⁹ Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Holly Tree Walk contract.

⁷⁷⁰ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁷⁷¹ P00006779: The OFT concludes that this was CCSL's bid based on the circumstances including the subject line of the email (*'Holly Tree Walk Tender'*) and the pattern of evidence of CCSL disclosing its price to Jackson on those occasions set out in this Decision. Further, the entries in the email are identical to those in CCSL's BOQ dealt with at paragraph 5.717.

5.715. The email then sets out a BOQ style list of equipment and prices charged for each entry. CCSL's bid was **£1,367.84** (not including VAT or any contingency sum).⁷⁷²

iii. Jackson does not distance itself from the information it receives from CCSL

5.716. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.717. Contemporaneous CCSL tender documentation dated 3 September 2009 for Holly Tree Walk demonstrates that CCSL submitted a bid for this contract on or around 3 September 2009. CCSL's bid was **£1,376.84** (not including VAT or any contingency sum).⁷⁷³

5.718. This conclusion is further supported by an entry in Exhibit 12 recording that CCSL and Jackson both submitted bids for this contract and that CCSL was awarded this contract.

v. Jackson submits a higher bid than CCSL

5.719. Jackson submitted a bid by email⁷⁷⁴ on 9 September 2009 to PMSL and CCSL. Attached to this email was a Jackson BOQ dated 7 July 2009 for Holly Tree Walk.⁷⁷⁵

5.720. This is further supported by an entry in Exhibit 12 recording that CCSL and Jackson both submitted bids for this contract and that CCSL was awarded this contract.

5.721. The Jackson BOQ set out a bid of **£1,573.00** (not including VAT or any contingency sum)⁷⁷⁶ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

⁷⁷² This is the subtotal given in the 3 September 2009 email, not including any VAT or contingency sum.

⁷⁷³ This is the subtotal given in the CCSL BOQ not including any VAT or contingency sum.

⁷⁷⁴ P00006813.

⁷⁷⁵ P00006818: Given the date of the cover email, the OFT considers that this BOQ was likely to have been back-dated. In addition, the OFT's file includes a FOT in Jackson's name dated 7 September 2009 for Holly Tree Walk.

5.722. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.723. CCSL was awarded the contract.⁷⁷⁷

Jack Branch Court contract (on or around 7 September 2009 to on or around 16 September 2009)

5.724. The next contract that the OFT examines is in respect of Jack Branch Court, a PMSL property in Essex. The contract was for the supply and installation of a warden call system.⁷⁷⁸

i. PMSL invites CCSL and Jackson to tender

5.725. Contemporaneous RTT letters addressed to CCSL and Jackson, with cover letters dated 4 September 2009, demonstrate that PMSL invited CCSL to Tender. Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for this Court contract. The deadline for was 5 October 2009.⁷⁷⁹

ii. CCSL discloses its bid to Jackson

5.726. On 8 September 2009, [a CCSL Contracts Administrator] emailed CCSL's bid⁷⁸⁰ to Jackson:

'...Please find our costs for the tender response for dispersed alarms at the above site [The subject line of the email refers to 'Jack Branch Court']'

⁷⁷⁶ This is the subtotal given in Jackson BOQ, not including any VAT or contingency sum.

⁷⁷⁷ Exhibit 12 records 'Won'.

⁷⁷⁸ The OFT relies upon the description of the contract in Exhibit 12 ('[...] *dispersed alarm system installation*') and on the FOT ('*Dispersed Alarm Upgrade*'). (This specification may have had elements of a fire protection and detection system.)

⁷⁷⁹ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁷⁸⁰ P00006806; The OFT concludes that this was CCSL's bid based on the circumstances including the CCSL author's use of '*our costs*', and on other evidence to the effect that CCSL would disclose its price to Jackson on those occasions set out in this Decision. Further, the entries in the email are identical to those in CCSL's BOQ dealt with at paragraph 5.729.

[Emphasis added]

5.727. The email then set out a BOQ' style list of equipment and the prices charged for each entry. CCSL's bid was **£9,330.93** (not including VAT or any contingency sum).⁷⁸¹

iii. Jackson does not distance itself from the information it receives from CCSL

5.728. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.729. Contemporaneous CCSL tender documentation dated 7 September 2009 for Jack Branch Court demonstrate that CCSL submitted a bid for this contract on or around 7 September 2009. CCSL's bid was **£9,330.93** (not including VAT or any contingency sum).⁷⁸²

v. Jackson submits a higher bid than CCSL

5.730. Jackson submitted a bid dated 14 September 2009 by email⁷⁸³ on 16 September 2009 to PMSL and CCSL. Attached to that email were Jackson BOQs for a number of contracts including Jack Branch Court.⁷⁸⁴

5.731. The Jackson BOQ set out a bid of **£10,730.55** (not including VAT or any contingency sum)⁷⁸⁵ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.732. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

⁷⁸¹ This is the subtotal given in the 8 September 2009 email, not including any VAT or contingency sum.

⁷⁸² This is the subtotal given in the CCSL BOQ, not including any VAT or contingency sum.

⁷⁸³ P00006852.

⁷⁸⁴ P00006857. In addition, the OFT's file includes a FOT in Jackson's name dated 14 September 2009 for Jack Branch Court.

⁷⁸⁵ This is the subtotal given in the Jackson BOQ, not including any VAT or contingency sum.

5.733. The OFT does not know whether CCSL was awarded this contract.⁷⁸⁶

Harvest Close ([...]) contract (on or around 10 July 2009 to on or around 16 September 2009)

5.734. The next contract that the OFT examines is (again) in respect of Harvest Close, a PMSL property in Lindfield. The contract was for the supply and installation of a warden call system.⁷⁸⁷

i. PMSL invites CCSL and Jackson to tender

5.735. The OFT's file does not contain any letters or RTT documents in respect of this contract. However, the conduct of PMSL, CCSL and Jackson supports the conclusion that PMSL did send out RTT documentation to CCSL and Jackson for this contract.

ii. CCSL discloses its bid to Jackson

5.736. On 8 September 2009, [a CCSL Admin Support Supervisor] emailed CCSL's bid⁷⁸⁸ to Jackson:

*'Please can you advise when Peverel, can expect your revised [...] quote. **Attached is a copy of our price, in case you can't find it**'⁷⁸⁹*

[Emphasis added]

5.737. Attached to the email was a CCSL BOQ for Harvest Close.⁷⁹⁰ CCSL's bid at that stage was **£13,612.02** (not including VAT or any contingency sum).⁷⁹¹

⁷⁸⁶ Exhibit 12 records '*on hold - insufficient funds*'.

⁷⁸⁷ The OFT relies upon the description of the contract on the CCSL BOQ ('*Warden Call system*' defined as '[...] *System*'), the Jackson BOQ ('*Warden Call upgrade*') and the PMSL note of opening the bids (marked '*Warden call upgrade* [...]'). In its limited written representations on the SO, Cirrus explained there were two tenders for warden call systems for Harvest Close within months of each other probably because the plans to install the PBX system were abandoned in favour of a plan to install a [different warden call] system, necessitating a new tender.

⁷⁸⁸ The OFT concludes that this was CCSL's bid based on the circumstances including the CCSL author's use of '*our price*', and on other evidence to the effect that CCSL would disclose its price to Jackson on those occasions set out in this Decision. Further, the total and entries in the attachment are identical to those in CCSL's BOQ dealt with at paragraph 5.739.

⁷⁸⁹ The terms of CCSL's email ('*in case you can't find it*') suggests that this was not the first time CCSL had disclosed its bid to Jackson.

iii. Jackson does not distance itself from the information it receives from CCSL

5.738. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.739. Contemporaneous CCSL tender documentation dated 10 July 2009 for Harvest Close demonstrates that CCSL submitted a bid for this contract on or around 10 July 2009. CCSL's bid was **£13,612.02** (not including VAT or any contingency sum).⁷⁹²

5.740. This conclusion is further supported by what appears to be an internal PMSL note recording bids for Harvest Close from 'CCSL' and 'G Jackson'.

v. Jackson submits a higher bid than CCSL

5.741. In summary, for the reasons set out below, the OFT considers that Jackson submitted two successive bids for this contract: the first on an unknown date and the second on 16 September 2009.

5.742. Jackson submitted a bid to PMSL on an unknown date (though in all the circumstances, the OFT infers that it would have been after the date of CCSL's first disclosure of its bid to Jackson⁷⁹³). This conclusion is based on an email⁷⁹⁴ on 24 September 2009 from PMSL to Jackson attaching a Jackson BOQ for Harvest Close asking '*Can you please re-send the attached with a breakdown of costs*'. This BOQ (dated '16/6/09' and appearing to be date-stamped '26 AUG 2009') does not have prices for each entry but does have a total bid of **£39,656.53** (not including VAT or any contingency sum).⁷⁹⁵

⁷⁹⁰P0000809, P00006811.

⁷⁹¹ This figure is calculated by totalling the entries in the 8 September 2009 email, not including VAT or any contingency sum.

⁷⁹² This is the total in the CCSL BOQ, not including any VAT or contingency sum.

⁷⁹³ In all the circumstances, it is likely that this would have been after the date of CCSL's first disclosure of its price to Jackson, as referred to in [a CCSL Admin Support Supervisor]'s email of 8 September 2009 ('*in case you can't find it*') as set out in paragraph 5.736 above.

⁷⁹⁴ P00006870.

⁷⁹⁵ P00006871.

5.743. Jackson then submitted a further bid by email⁷⁹⁶ on 16 September 2009 to PMSL and CCSL. Attached to that email were Jackson BOQs for a number of contracts including Harvest Close, which included prices for each entry.⁷⁹⁷

5.744. The Jackson BOQ attached to the 16 September 2009 email set out a bid of **£15,653.75** (not including VAT or any contingency sum) and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum). This conclusion is further supported by what appears to be an internal PMSL note of PMSL employees opening bids for Harvest Close from '*Cirrus*' and '*G Jackson*'. On this internal note, the entry for Jackson's bid is **£19,151.81** which is the total on the BOQ Jackson submitted by email on 16 September 2009 (including VAT and contingency sum).⁷⁹⁸

5.745. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.746. The OFT does not know whether CCSL was awarded this contract.⁷⁹⁹

Ashdene Gardens contract (on or around 10 September 2009 to on or around 27 October 2009)

5.747. The next contract that the OFT examines is in respect of Ashdene Gardens, a PMSL property in Warwickshire. The contract was for the supply and installation of fire protection and detection system.⁸⁰⁰

i. PMSL invites CCSL and Jackson to tender

⁷⁹⁶ P00006852.

⁷⁹⁷ P00006856.

⁷⁹⁸ This is despite an apparent misunderstanding that led PMSL and CCSL to chase Jackson for a BOQ with a total price and prices for each entry in late September 2009 and October 2009 (which Jackson had already supplied attached to the email of 16 September 2009) [P00006890 and P00006948].

⁷⁹⁹ The tender for Harvest Close for [this] warden call system does not seem to appear in Exhibit 12.

⁸⁰⁰ The OFT relies upon the description of the contract in Exhibit 12 ('*Fire system installation*') and in the specification document ('*Upgrade of Fire Detection Equipment*') and on the FOT ('*Fire Detection Upgrade*').

5.748. Contemporaneous RTT letters and documentation addressed to CCSL and Jackson, with cover letters dated 3 September 2009, demonstrate that PMSL invited CCSL and Jackson to tender.⁸⁰¹ The deadline for tenders was 3 October 2009.⁸⁰²

ii. CCSL discloses its bid to Jackson

5.749. On 11 September 2009, [a CCSL Contracts Administrator] emailed CCSL's bid⁸⁰³ to Jackson:⁸⁰⁴

*'...Here are our costs for the above tender [The subject line of the email refers to 'Ashdene Gardens, Kenilworth – Fire alarm']...
Thanks'*

[Emphasis added]

5.750. The email then set out a BOQ style list of equipment and the prices charges. CCSL's bid was **£18,556.91** (not including VAT or any contingency sum).⁸⁰⁵

iii. Jackson does not distance itself from the information it receives from CCSL

5.751. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.752. Contemporaneous CCSL tender documentation dated 9 and 10 September 2009 for Ashdene Gardens demonstrate that CCSL submitted

⁸⁰¹ Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Ashdene Gardens contract.

⁸⁰² This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁸⁰³ The OFT concludes that this was CCSL's bid based on the circumstances including the CCSL author's use of '*our costs*', and on other evidence to the effect that CCSL would disclose its price to Jackson as set out in this Decision. Further, the total and entries in the attachment are identical to those in CCSL's BOQ dealt with at paragraph 5.752.

⁸⁰⁴ P00006840.

⁸⁰⁵ This is the subtotal given in the 11 September 2009 email, not including any VAT or contingency sum.

its bid for this contract on or around 10 September 2009. CCSL's bid was **£18,556.91** (not including VAT or any contingency sum).⁸⁰⁶

v. Jackson submits a higher bid than CCSL

5.753. Jackson submitted a bid consisting of a FOT, dated 27 October 2009, and a BOQ, dated 10 September 2009,⁸⁰⁷ for Ashdene Gardens on or around 27 October 2009.

5.754. The Jackson BOQ set out a bid of **£21,333.43** (not including VAT or any contingency sum)⁸⁰⁸ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.755. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.756. The OFT does not know whether CCSL was awarded this contract.⁸⁰⁹

Kingfisher Court contract (on or around 11 September 2009 to on or around 10 October 2009)

5.757. The next contract that the OFT examines is in respect of Kingfisher Court, a PMSL property in Droitwich. The contract was for the supply and installation of fire protection and detection system.⁸¹⁰

i. PMSL invites CCSL and Jackson to tender

5.758. Contemporaneous RTT letters addressed to CCSL and Jackson, with cover letters dated 8 September 2009, demonstrate that that PMSL invited CCSL and Jackson to tender. Further, the conduct of PMSL,

⁸⁰⁶ This is the subtotal given in the CCSL BOQ, not including any VAT or contingency sum.

⁸⁰⁷ This conclusion is reached because the OFT considers that the date on the BOQ is likely to have been back-dated: on 7 October 2009, PMSL asked CCSL to chase Jackson for Ashdene Gardens ('*waiting for his tender*') [P00006948] and on 12 October 2009 Jackson, when asked by CCSL when PMSL would receive Jackson's tender for Ashdene Gardens, Jackson emailed '*Sent yesterday*' though it appears there was then a further slight delay [P00006944].

⁸⁰⁸ This is the subtotal given in the Jackson BOQ, not including any VAT or contingency sum.

⁸⁰⁹ Exhibit 12 records '*no decision made yet*'.

⁸¹⁰ The OFT relies upon the description of the contract in Exhibit 12 ('*Fire system installation*') and in the CCSL email ('*Fire alarm*') and the Jackson BOQ ('*Fire alarm*').

CCSL and Jackson supports a finding that PMSL did send out full RTT documentation to CCSL and Jackson for this contract. The deadline for tenders was 9 October 2009.⁸¹¹

ii. CCSL discloses its bid to Jackson

5.759. On 11 September 2009, [a CCSL Contracts Administrator] emailed CCSL's bid⁸¹² to Jackson:⁸¹³

'...Here are our costs for the above tender [The subject line of the email refers to *'Kingfisher Court – Alarm'*].*'*

[Emphasis added]

5.760. The email then set out a BOQ style list of equipment and prices charged for each entry. CCSL's bid was **£16,771.50** (not including VAT or any contingency sum).⁸¹⁴

iii. Jackson does not distance itself from the information it receives from CCSL

5.761. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.762. CCSL submitted a bid on an unknown date. The OFT infers this from the above evidence which makes it clear that CCSL intended to submit a bid and there is no evidence in the OFT's possession to suggest that a bid was not submitted. It certainly would have been highly unusual to have disclosed a bid (as CCSL did) and then not submit it.

v. Jackson submits a higher bid than CCSL

⁸¹¹ This deadline is set out in the letters to CCSL and Jackson.

⁸¹² The OFT concludes that this was CCSL's bid based on the circumstances including the CCSL author's use of *'our costs'*, and on other evidence to the effect that CCSL would disclose its price to Jackson as set out in this Decision.

⁸¹³ P00006835.

⁸¹⁴ This is the subtotal given in the 11 September 2009 email, not including any VAT or contingency sum.

- 5.763. Jackson submitted a bid to PMSL in the form of a BOQ, dated 10 October 2009, for Kingfisher Court on or around 10 October 2009.
- 5.764. The Jackson BOQ set out a bid of **£19,280.92** (not including VAT or any contingency sum)⁸¹⁵ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).
- 5.765. Taking account of the wider context, it is clear that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

- 5.766. The OFT does not know whether CCSL was awarded this contract.⁸¹⁶

Homefleet House contract (on or around 23 September 2009 to on or around 12 October 2009)

- 5.767. The next contract that the OFT examines is in respect of Homefleet House, a PMSL property in Kent. The contract was for the supply and installation of fire protection and detection system.⁸¹⁷

i. PMSL invites CCSL and Jackson to tender

- 5.768. Contemporaneous RTT letters and documentation addressed to CCSL and Jackson, with cover letters dated 17 September 2009,⁸¹⁸ demonstrate that PMSL invited CCSL and Jackson to tender. The deadline for tenders was 25 October 2009.⁸¹⁹

ii. CCSL discloses its bid to Jackson

- 5.769. On 25 September 2009, [a CCSL Contracts Administrator] emailed CCSL's bid to Jackson:⁸²⁰

⁸¹⁵ This is the subtotal given in the Jackson BOQ, not including any VAT or contingency sum.

⁸¹⁶ Exhibit 12 records '*no decision made yet*'.

⁸¹⁷ The OFT relies upon the description of the contract in Exhibit 12 ('*Fire system installation*') and in the specification document ('*Upgrade of Fire Detection and Emergency Lighting Equipment*') and on the FOT ('*Fire Upgrade*').

⁸¹⁸ Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Homefleet House contract.

⁸¹⁹ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁸²⁰ P00006872.

'...Hiya mate, please find attached a couple of tenders'

5.770. Attached to the email are two CCSL BOQs, one relating to Homefleet House.⁸²¹ CCSL's bid was **£31,868.76** (not including VAT or any contingency sum).⁸²²

iii. Jackson does not distance itself from the information it receives from CCSL

5.771. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.772. Contemporaneous CCSL tender documentation dated 22 and 23 September 2009 for Homefleet House demonstrate that CCSL submitted a bid for this contract on or around 23 September 2009. CCSL's bid was **£31,868.76** (not including VAT or any contingency sum).⁸²³

v. Jackson submits a higher bid than CCSL

5.773. On 12 October 2009, Jackson emailed⁸²⁴ PMSL and CCSL a number of Jackson BOQs, including for Homefleet House.

5.774. The Jackson BOQ dated '12/10/2009' set out a bid of **£36,637.23** (not including VAT or any contingency sum)⁸²⁵ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

⁸²¹ P00006875: The OFT concludes that this was CCSL's bid based on the circumstances including the layout of the document and the evidence that CCSL would disclose its price to Jackson on those occasions set out in this Decision. Further, the total and entries in the attachment are identical to those in CCSL's BOQ dealt with at paragraph 5.772.

⁸²² This is the subtotal given in the attachment to the 25 September 2009 email, not including any VAT or contingency sum.

⁸²³ This figure is calculated by totalling the subtotals in CCSL's BOQ, not including VAT or any contingency sum.

⁸²⁴ P00006952, P00006960. In addition, the OFT's file includes a FOT in Jackson's name dated 12 October 2009.

⁸²⁵ This is the subtotal given in the Jackson BOQ, not including any VAT or contingency sum.

5.775. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.776. The OFT does not know whether CCSL was awarded this contract.⁸²⁶

Hedingham Place contract (on or around 23 September 2009 to on or around 12 October 2009)

5.777. The next contract that the OFT examines is in respect of Hedingham Place, a PMSL property in Essex. The contract was for the supply and installation of a warden call system and a door entry system.⁸²⁷

i. PMSL invites CCSL and Jackson to tender

5.778. Contemporaneous RTT letters and documentation addressed to CCSL and Jackson, with cover letters dated 10 September 2009,⁸²⁸ demonstrate that CCSL and Jackson were invited to bid. The deadline for tenders was 25 October 2009.⁸²⁹

ii. CCSL discloses its bid to Jackson

5.779. On 25 September 2009, [a CCSL Contracts Administrator] emailed CCSL's bid to Jackson:⁸³⁰

'...Hiya mate, please find attached a couple of tenders'

5.780. Attached to the email were two CCSL BOQs, one relating to Hedingham Place.⁸³¹ CCSL's bid was **£20,944.31** (not including VAT or any contingency sum).⁸³²

⁸²⁶ Exhibit 12 records *'no decision made yet'*.

⁸²⁷ The OFT relies upon the description of the contract in Exhibit 12 (*'PBX warden call system installation'*) and in the specification document (*'Upgrade of Social Alarm & Access Control Equipment'*) and on the FOT (*'Warden Call Upgrade'*).

⁸²⁸ Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Hedingham Place contract.

⁸²⁹ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁸³⁰ P00006872.

⁸³¹ P00006873: The OFT concludes that this was CCSL's bid based on the circumstances including the layout of the attachment and the pattern of evidence that CCSL would disclose its

iii. Jackson does not distance itself from the information it receives from CCSL

5.781. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.782. Contemporaneous CCSL tender documentation dated 23 September 2009 for Hedingham Place demonstrates that CCSL submitted a bid for this contract on or around 23 September 2009. CCSL's bid was **£20,944.31** (not including VAT or any contingency sum).⁸³³

v. Jackson submits a higher bid than CCSL

5.783. Jackson submitted a bid by email⁸³⁴ on 12 October 2009 to PMSL and CCSL. Attached were a number of Jackson BOQs, including for Hedingham Place dated 12 October 2009.⁸³⁵

5.784. The Jackson BOQ set out a bid of **£24,082.79** (not including VAT or any contingency sum)⁸³⁶ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.785. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.786. The OFT does not know whether CCSL was awarded this contract.⁸³⁷

price to Jackson on those occasions set out in this Decision. Further, the total and entries in the attachment are identical to those in CCSL's BOQ dealt with at paragraph 5.782.

⁸³² This figure is calculated by totalling the subtotals in the attachment to the 25 September 2009 email, not including VAT or any contingency sum.

⁸³³ This figure is calculated by totalling the subtotals in the CCSL BOQ, not including VAT or any contingency sum.

⁸³⁴ P00006952.

⁸³⁵ P00006957. In addition, the OFT's file includes a FOT in Jackson's name dated 12 October 2009.

⁸³⁶ This figure is calculated by totalling the subtotals in the Jackson BOQ, not including VAT or any contingency sum.

⁸³⁷ Exhibit 12 records '*on hold – insufficient funds*'.

Alexandria Court contract (on or around 24 July 2009 to on or around 12 October 2009)

5.787. The next contract that the OFT examines is in respect of Alexandria Court, a PMSL property in Dorset. The contract was for the supply and installation of a warden call system.⁸³⁸

i. PMSL invites CCSL and Jackson to tender

5.788. Contemporaneous RTT letters dated 7 July 2009 (with a deadline of 4 August 2009) addressed to CCSL and Jackson demonstrate that PMSL invited CCSL and Jackson to tender. Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for this contract.

ii. CCSL discloses its bid to Jackson

5.789. The OFT considers that CCSL disclosed its bid to Jackson on at least one⁸³⁹ occasion: on 12 October 2009. On 12 October 2009 [a CCSL Admin Support Supervisor] emailed CCSL bid to Jackson:⁸⁴⁰

'...Please find attached, as requested'⁸⁴¹

5.790. Attached to the email is a CCSL BOQ for Alexandria Court.⁸⁴² CCSL's bid was **£24,382.65** (not including VAT or any contingency sum).

⁸³⁸ The OFT relies upon the description of the contract in Exhibit 12 ('PBX warden call system installation and Door entry control system installation') and on the CCSL BOQ ('...Warden Call System') and the Jackson BOQ ('...Warden call system'). (This specification may have included elements of door entry and CCTV.)

⁸³⁹ In the circumstances, it is likely that CCSL had also disclosed its bid to Jackson for Alexandria Court on or before 24 September 2009 and that Jackson had submitted its bid to be higher than CCSL's bid but with insufficient documentation (see below).

⁸⁴⁰ P00006937; the subject line of the email is 'Bill of Qtys [BOQ] Alexandria Court, Dorset.doc'.

⁸⁴¹ The OFT considers that Jackson had requested (as the terms of [a CCSL Admin Support Supervisor's] email suggests) a copy of CCSL's bids for the Alexandria Court contract (and others) in that, by email on 11 October 2009, Jackson requested 'your quotes' (that is, CCSL's bid) for Parkside Court and Pavilion Gardens, and on 12 October, in the same email chain, requested 'Alexandria Court as well' (that is, CCSL's bid for Alexandria Court) [P00006935].

⁸⁴² P00006939; The OFT concludes that this was CCSL's bid based on the circumstances including the layout of the document (which is identical to the layout of other CCSL BOQs), the fact that Jackson had requested CCSL's bid for Alexandria Court (in that on 11 October 2009, Jackson requested 'your quotes' (that is, CCSL's bid) for Parkside Court and Pavilion Gardens,

iii. Jackson does not distance itself from the information it receives from CCSL

5.791. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.792. Contemporaneous CCSL tender documentation dated 24 July 2009 demonstrates that CCSL submitted a bid for Alexandria Court. CCSL's bid was **£24,382.65** (not including VAT or any contingency sum).⁸⁴³ Exhibit 12 also records that CCSL bid.

v. Jackson submits a higher bid than CCSL

5.793. In summary, for the reasons set out below, the OFT considers that Jackson bid by submitting tender documentation to PMSL. In fact, the OFT considers that Jackson submitted two successive bids for Alexandria Court: the first on or before 24 September 2009 and the second on 12 October 2009. Exhibit 12 also records that Jackson bid.

5.794. Jackson submitted a BOQ for Alexandria Court on or before 24 September 2009,⁸⁴⁴ which PMSL emailed back to Jackson by email of 24 September 2009.⁸⁴⁵

5.795. The undated Jackson BOQ attached to the 24 September 2009 email to PMSL set out a bid of **£28,040.04** (not including VAT or any contingency sum) and was therefore higher than the bid (not including VAT or any contingency sum) which CCSL, in all the circumstances, is likely to have disclosed to Jackson on or before 24 September 2009.

and on 12 October, in the same email chain, requested '*Alexandria Court as well*' (that is, CCSL's bid for Alexandria Court) [P00006935] and the evidence that CCSL would disclose its price to Jackson on those occasions set out in this Decision. Further, the total and entries in the attachment are identical to those in CCSL's BOQ dealt with at paragraph 5.792.

⁸⁴³ This figure is the subtotal given in the CCSL BOQ dated 24 July 2009 before any VAT or contingency sum is added.

⁸⁴⁴ P00006867. Jackson's submission of a bid on or before 24 September 2009 is consistent with PMSL and CCSL '*chasing*' Jackson for its tender for Alexandria Court throughout August 2009 [P00006724, P00006726].

⁸⁴⁵ P00006868.

5.796. In any event, Jackson submitted a further bid by email⁸⁴⁶ on 12 October 2009 (after receiving CCSL's disclosed bid earlier on 12 October 2009) to PMSL and CCSL. Attached was a Jackson BOQ for Alexandria Court dated 12 October 2009.⁸⁴⁷

5.797. The Jackson BOQ set out a bid of **£31,890.46** (not including VAT or any contingency sum) and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.798. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.799. CCSL was awarded the contract.⁸⁴⁸

Greville Court contract (on or around 15 October 2009 to on or around 27 October 2009)

5.800. The next contract that the OFT examines is in respect of Greville Court, a PMSL property in Surrey. The contract was for the supply and installation of a warden call system.⁸⁴⁹

i. PMSL invites CCSL and Jackson to tender

⁸⁴⁶ P00006952. Jackson emailing a further BOQ on 12 October 2009 is consistent with the fact that, by email on 24 September 2009, PMSL returned Jackson's BOQ to it saying '*Hi [an individual acting on behalf of Jackson]. Can you please re-send to show costs*' (the Jackson BOQ setting out a total price but not setting out prices for the individual entries). PMSL then emailed CCSL requesting CCSL '*chase*' Jackson in regards to a number of contracts including '*Alexandria Court - .. - got his tender but its not summarised, just got total figure and no form of tender received*' which CCSL forwarded on to Jackson, encouraging it to supply what PMSL require '*without delay*' [P00006948]. The BOQ Jackson emailed to PMSL on 12 October 2009 [P00006953] set out, as requested, both the total price and the prices for the individual entries.⁸⁴⁷ P00006953.

⁸⁴⁸ Exhibit 12 records '*Won - installation not started*'.

⁸⁴⁹ The OFT relies upon the description of the contract in Exhibit 12 ('*warden call system installation*') and in the specification document ('*Upgrade of Social Alarm & Access Control Equipment*') and on the FOT ('*Warden Call & Door entry*') and on the RTT cover letter ('*Warden call & Door entry upgrade*'). (This specification may have included elements of door entry and a fire detection and protection system.)

5.801. Contemporaneous RTT letters and documentation addressed to CCSL and Jackson, with cover letters dated 13 October 2009,⁸⁵⁰ demonstrate that PMSL invited CCSL and Jackson to tender. The deadline for tenders was 10 November 2009.⁸⁵¹

ii. CCSL discloses its bid to Jackson

5.802. On 16 October 2009, [a CCSL Contracts Administrator] emailed CCSL bid to Jackson:⁸⁵²

'...Hiya two tenders attached need to be returned by 10/11/09!!'

5.803. Attached to the email are two CCSL BOQs, one of which was for Greville Court (being separate BOQs for door entry and for warden call).⁸⁵³ CCSL's bid was, for warden call, **£9,288.93** (not including VAT or any contingency sum)⁸⁵⁴ and, for door entry, **£9,603.06** (not including VAT or any contingency sum).⁸⁵⁵

iii. Jackson does not distance itself from the information it receives from CCSL

5.804. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.805. Contemporaneous CCSL tender documentation demonstrates that CCSL submitted a bid dated 15 October 2009 for the Greville Court contract on or around 15 October 2009. CCSL's bid was, for warden call,

⁸⁵⁰ Further the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the Greville Court contract.

⁸⁵¹ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁸⁵² P00006983.

⁸⁵³ The OFT considers that this was CCSL's bid based on the circumstances including the layout of the document and on the other evidence that CCSL would disclose its bid to Jackson on those occasions set out in this Decision. Further, the total and entries in the attachment are identical to those in CCSL's BOQ dealt with at paragraph 5.805.

⁸⁵⁴ This figure is the total in the attachment to the 16 October 2009 email, not including VAT or any contingency sum.

⁸⁵⁵ This figure is the total in the attachment to the 16 October 2009 email, not including VAT or any contingency sum.

£9,288.93 (not including VAT or any contingency sum)⁸⁵⁶ and, for door entry, **£9,603.06** (not including VAT or any contingency sum).⁸⁵⁷

v. *Jackson submits a higher bid than CCSL*

5.806. Jackson submitted a FOT, dated 27 October 2009, and a BOQ, dated 26 October 2009, for Greville Court on or around 27 October 2009.

5.807. The Jackson BOQ set out, for warden call, a bid of **£10,681.75** (not including VAT or any contingency sum)⁸⁵⁸ and, for door entry, a bid of **£11,043.22** (not including VAT or any contingency sum)⁸⁵⁹ and were therefore higher than the bids that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.808. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. *Contract award*

5.809. The OFT does not know whether CCSL was awarded this contract.⁸⁶⁰

East Haven Court contract (on or around 15 October 2009 to on or around 27 October 2009)

5.810. The next contract that the OFT examines is in respect of East Haven Court, a PMSL property in Essex. The contract was for the supply and installation of a warden call system and a door entry system.⁸⁶¹

i. *PMSL invites CCSL and Jackson to tender*

⁸⁵⁶ This figure is the subtotal given in the CCSL BOQ before any VAT or contingency sum is added.

⁸⁵⁷ This figure is the subtotal given in the CCSL BOQ before any VAT or contingency sum is added.

⁸⁵⁸ This figure is the subtotal given in the Jackson BOQ before any VAT or contingency sum is added.

⁸⁵⁹ This figure is the subtotal given in the Jackson BOQ before any VAT or contingency sum is added.

⁸⁶⁰ Exhibit 12 records '*no decision made yet*'.

⁸⁶¹ The OFT relies upon the description of the contract in Exhibit 12 ('*warden call system installation*') and in the specification document ('*Upgrade of Social Alarm & Access Control Equipment*') and on the FOT ('*Warden Call & Door Entry*').

5.811. Contemporaneous RTT letters and documentation addressed to CCSL and Jackson, with cover letters dated 13 October 2009,⁸⁶² demonstrate that PMSL invited CCSL and Jackson to bid. The deadline for tenders was 10 November 2009.⁸⁶³

ii. CCSL discloses its bid to Jackson

5.812. On 16 October 2009, [a CCSL Contracts Administrator] emailed CCSL's bid to Jackson:⁸⁶⁴

'...Hiya two tenders attached need to be returned by 10/11/09!!'

5.813. Attached to the email were two CCSL BOQs, one of which is for East Haven Court.⁸⁶⁵ CCSL's bid was **£23,187.21** (not including VAT or any contingency sum).

iii. Jackson does not distance itself from the information it receives from CCSL

5.814. There is no evidence to suggest that Jackson complained about or in any way rejected the information it received from CCSL.

iv. CCSL submits a bid

5.815. Contemporaneous CCSL tender documentation dated 15 October 2009 for East Haven Court demonstrate that that CCSL submitted a bid for this contract on or around 15 October 2009. CCSL's bid was **£23,187.21** (not including VAT or any contingency sum).⁸⁶⁶

v. Jackson submits a higher bid than CCSL

⁸⁶² Further, the conduct of PMSL, CCSL and Jackson supports a finding that PMSL did send out RTT documentation to CCSL and Jackson for the East Haven Court contract.

⁸⁶³ This deadline is set out in the letters to CCSL and Jackson and on the FOT.

⁸⁶⁴ P00006983.

⁸⁶⁵ P00006984; The OFT concludes that this was CCSL's bid based on the circumstances including the layout of the attachment and the pattern of evidence to the effect that CCSL would disclose its price to Jackson on those occasions set out in this Decision. Further, the total and entries in the attachment are identical to those in CCSL's BOQ dealt with at paragraph 5.815.

⁸⁶⁶ This figure is calculated by totalling the subtotals in CCSL's BOQ dated 15 October 2009, not including any VAT or contingency sum.

5.816. Jackson submitted a FOT, dated 27 October 2009, and a BOQ, dated 26 October 2009, for East Haven Court on or around 27 October 2009.

5.817. The Jackson BOQ set out a bid of **£26,663.84** (not including VAT or any contingency sum)⁸⁶⁷ and was therefore higher than the bid that CCSL disclosed to Jackson (not including VAT or any contingency sum).

5.818. Taking account of the wider context, the OFT finds that Jackson took account of the information it had received regarding CCSL's bid and submitted a higher bid.

vi. Contract award

5.819. The OFT does not know whether CCSL was awarded this contract.⁸⁶⁸

II. Conclusions

5.820. The OFT considers that the evidence assessed in paragraphs 5.373 to 5.819 above demonstrates that each of the following steps occurred in respect of each of the 37 Tenders that form Infringement 3:

- i. both CCSL and Jackson were invited to tender for contracts by PMSL as part of a selective tender process (that is, only a limited number of bidders were invited to bid);
- ii. CCSL disclosed its bid to Jackson prior to Jackson submitting its bid on at least one occasion;
- iii. Jackson did not reject or distance itself from CCSL's disclosed bid;
- iv. Jackson took the information it received regarding CCSL's bid into account and submitted a bid at a higher price than that disclosed by CCSL;
- v. CCSL submitted its bid; and
- vi. CCSL was awarded the contract on the majority of occasions.

⁸⁶⁷ This figure is calculated by totalling the subtotals in Jackson's BOQ, not including any VAT or contingency sum.

⁸⁶⁸ Exhibit 12 records '*on hold – insufficient funds*'.

- 5.821. The OFT further finds that the 37 Tenders that form Infringement 3 formed a single overall infringement between Jackson and CCSL which existed from on or around 26 February 2009 to on or around 27 October 2009 and had the object of preventing, restricting or distorting competition in respect of the supply and installation of the Affected Products, thereby infringing the Chapter I prohibition. The OFT finds that the pattern of evidence set out above satisfies the criteria for a single overall infringement.
- 5.822. Further and/or in the alternative, the OFT considers that Infringement 3 is itself composed of a number of agreements and/or concerted practices which on their own amount to 37 separate infringements of the Chapter I prohibition.
- 5.823. The documentary evidence as corroborated by other evidence including the witness and documentary evidence set out at Section 5.A above shows that both Jackson and CCSL had a common aim and a meeting of minds. CCSL would provide Jackson with its bid price so that Jackson could submit a higher bid supposedly enabling CCSL to win each Tender. The OFT finds that Jackson would take this arrangement with CCSL into account when determining its bid. The OFT also finds that CCSL could not have failed to take into account, when determining its own bid, the existence of this ongoing arrangement with its competitor to put in a higher bid than CCSL. Not only did Jackson repeatedly receive CCSL's bid without query or complaint, on occasion Jackson even had to request that CCSL's bid be sent to it again to enable Jackson to submit its bid (see, for example, the Pavilion Gardens contract analysed above). The OFT considers that this demonstrates that Jackson's main consideration when submitting its own bid was CCSL's price, and not PMSL's tender documentation.
- 5.824. It is also evident that both Jackson and CCSL took action to bring the aim about. CCSL disclosed its bid to Jackson for each Tender and Jackson submitted a higher bid.
- 5.825. The OFT also considers that Infringement 3 is itself composed of a number of agreements and/or concerted practices which on their own amount to separate infringements of the Chapter I prohibition.
- 5.826. In drawing this conclusion, the OFT considers that, for each separate Tender in respect of which the OFT finds that CCSL and Jackson

behaved in the aforementioned way, it provides strong evidence of a pre-existing agreement between CCSL and Jackson that Jackson would put in a higher bid than CCSL.⁸⁶⁹

5.827. Further, each instance of CCSL disclosing of its bid and Jackson's receipt of it and failure to distance itself whilst remaining active on the market is sufficient to establish the existence of a concerted practice. It has been demonstrated that CCSL disclosed its bid to Jackson at least once for each Tender that forms Infringement 3. Having received this information Jackson could not have failed to take it into account when determining its own bid price. Indeed, Jackson's subsequent conduct on the market (it submitted a higher bid in respect of every Tender) shows that it did take account of CCSL's bid.

⁸⁶⁹ In particular, as above, the OFT considers that an agreement would have been in place not later than the date of CCSL disclosing its bid to Jackson because CCSL would not have disclosed its bid to Jackson but for such an agreement.

6. LEGAL ASSESSMENT

A. Introduction

- 6.1. This section sets out the OFT's conclusions concerning the legal assessment of each of the Infringements by reference to the applicable constituent elements of the Chapter I prohibition.

B. Undertakings

- 6.2. The applicable aspects of the law are set out at paragraphs 3.7 to 3.10 above.
- 6.3. The OFT considers that each of Cirrus, Jackson, O'Rourke and Owens was engaged in an economic activity and, accordingly, finds that each was an undertaking for the purposes of the Chapter I prohibition.

C. Agreement or concerted practice

I. Agreement

- 6.4. The applicable aspects of the law are set out at paragraphs 3.14 to 3.21 above.
- 6.5. On the basis of the evidence set out and analysed in section 5 above, the OFT finds that the following agreements existed:
- i. In respect of Cirrus and O'Rourke, 19 separate agreements in respect of each of the Tenders that constitute Infringement 1;
 - ii. In respect of Cirrus and Owens, nine separate agreements in respect of each of the Tenders that constitute Infringement 2;
 - iii. In respect of Cirrus and Jackson, 37 separate agreements in respect of each of the Tenders that constitute Infringement 3.

II. Concerted practice

- 6.6. The applicable aspects of the law are set out at paragraphs 3.22 to 3.31 above.
- 6.7. In the alternative, on the basis of the evidence set out and analysed in section 5 above the OFT finds that each of the arrangements listed at paragraph 6.5 above constituted a concerted practice.

III. Single overall agreement and/or concerted practice

- 6.8. The applicable aspects of the law are set out at paragraphs 3.32 to 3.34 above.
- 6.9. On the basis of the evidence set out and analysed in section 5 above, the OFT finds that the following single overall agreements and/or concerted practices existed:
- i. In respect of Cirrus and O'Rourke, Infringement 1;
 - ii. In respect of Cirrus and Owens, Infringement 2;
 - iii. In respect of Cirrus and Jackson, Infringement 3.
- 6.10. Further and/or in the alternative, the OFT considers that Infringement 1, 2 and 3 are themselves composed of a number of agreements and/or concerted practices which on their own amount to separate infringements of the Chapter I prohibition.

D. Object or effect of preventing, restricting or distorting competition

I. Object

- 6.11. The applicable aspects of the law are set out at paragraphs 3.37 to 3.49 above.
- 6.12. The OFT considers that the evidence set out and analysed in section 5 above shows that, by their very nature, each of the Infringements were detrimental to competition⁸⁷⁰ and that their obvious consequence was to prevent, restrict or distort competition.⁸⁷¹ Rather than compete independently, the Parties colluded in respect of the bids that each of them would submit for each Tender. Such arrangements have at least the potential to have a negative impact on competition.⁸⁷²
- 6.13. By colluding in the manner described in section 5 above, the Parties reduced competition for each Tender by at the very least reducing the

⁸⁷⁰ Case C-209/07 *Competition Authority v Beef Industry Development Society Limited* [2008] ECR I-8637, at paragraph 17; and Case C-8/08 *T-Mobile Netherlands and Others v NMa*, [2009] ECR I-4529, at paragraphs 28 to 30.

⁸⁷¹ Case C-551/03 *General Motors v Commission* [2006] ECR I-3173, at paragraph 64.

⁸⁷² Case C-8/08 *T-Mobile Netherlands and Others v NMa*, [2009] ECR I-4529, at paragraph 31.

number of competitive bids submitted to PMSL. This process deprived the leaseholders of the relevant retirement properties of the opportunity of seeking a replacement bid. Further, where only the Parties had been invited to tender for a particular Tender, each of the Infringements meant that competition would have been entirely eliminated for that contract.

- 6.14. Accordingly, the OFT finds that each of the Infringements had the object of preventing, restricting or distorting competition.

Price fixing

- 6.15. Given that the OFT finds that each of the Infringements had the object of preventing, restricting or distorting competition, it is not necessary to further characterise each of the Infringements.
- 6.16. However, in this case, the OFT finds that each of the Infringements had the object of fixing prices because, at the very least, it sought to indirectly fix the price that the customer would pay.
- 6.17. In drawing this conclusion, the OFT notes that in each of the Infringements the nominated Contractor received Cirrus' bid from Cirrus before the Contractor submitted its own, higher, bid and that Cirrus disclosed its bid to the Contractor with the aim of, and knowledge that, the Contractor would submit a higher bid than the bid that Cirrus had disclosed.
- 6.18. Cirrus' knowledge that its competitors (the Contractors) would not compete with it for the Tenders and would instead submit a bid that was higher than Cirrus' bid meant that Cirrus was able to determine its bid with the aim that it would not face any real competition for the contract.⁸⁷³ By determining between them that Cirrus would submit the lowest (and anticipated winning⁸⁷⁴) bid, each of agreements had the object of at least indirectly fixing the minimum price that the customer would pay.

⁸⁷³ The competitive constraint that independent bids provide has been expressly recognised by the CAT: *'The likelihood is that, even with the knowledge that only one genuine opponent remains, a tenderer who wishes to win will still put forward its keenest bid'* (*Kier Group plc and Others v Office of Fair Trading* [2011] CAT 3, at [101]).

⁸⁷⁴ As above, there are occasions where it appears that Cirrus did not win a particular tender or it is not known whether Cirrus won. This is not considered to undermine the OFT's conclusions.

- 6.19. By determining that a Contractor would submit a bid that was higher than Cirrus' bid, each of the agreements also had the object of restricting the freedom of each Contractor to determine the price it would charge.
- 6.20. Absent knowledge that it would face no real competition, Cirrus would have been faced with the uncertainties inherent within competition. It would therefore have had to consider whether its bid was the keenest that it could reasonably submit. Each of the agreements meant that Cirrus did not have to concern itself with whether its bid was the keenest it could bear.
- 6.21. It is not necessary to take account of the concrete effects of an agreement or concerted practice where it is clear that the agreements had the object of preventing, restricting or distorting competition.⁸⁷⁵ Accordingly, it is not necessary for the OFT to determine whether each of the agreements resulted in prices actually being fixing for the Tenders.

Market sharing and/or customer allocation

- 6.22. As explained at paragraph 6.15 above, given that the OFT finds that each of the Infringements had the object of preventing, restricting or distorting competition, it is not necessary to further characterise the Infringements.
- 6.23. However, in this case, the OFT finds that each of the Infringements further had the object of sharing markets and/or allocating customers.
- 6.24. By Cirrus disclosing its bid to one of the Contractors for each Tender and the Contractors to whom Cirrus disclosed its bid subsequently submitting a bid that was higher than Cirrus's bid, each of agreements and/or concerted practices had the aim of allocating customers. Accordingly, each of the Infringements had the object of sharing the market, by aiming to allocate the customer for each Tender to Cirrus.
- 6.25. It is not necessary to take account of the concrete effects of an agreement or concerted practice where it is clear that the agreement or

⁸⁷⁵ Joined Cases 56/64 and 58/64 *Consten and Grundig v Commission* [1966] ECR 299, at page 342. See, more recently, Case C-8/08 *T-Mobile Netherlands and Others v NMa* [2009] ECR I-4529, at paragraph 29. This is equally the case for concerted practices; see Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at paragraphs 122 to 123.

concerted practice had the object of preventing, restricting or distorting competition.⁸⁷⁶ Accordingly, it is not necessary for the OFT to determine whether each of the agreements and/or concerted practices actually allocated the Tenders to Cirrus.

II. Effect

6.26. As the OFT finds that each of the Infringements had the object of preventing, restricting or distorting competition, it is not necessary for the OFT to find that each agreement and/or concerted practice also had the effect of preventing, restricting or distorting competition.⁸⁷⁷ Accordingly, the OFT has not considered and does not find that any of the Infringements had the effect of preventing, restricting or distorting competition.

E. Appreciability

6.27. The applicable aspects of the law are set out at paragraphs 3.51 to 3.54 above.

6.28. The OFT finds that each of the Infringements had the object of preventing, restricting or distorting competition and, accordingly, by their very nature had an appreciable restriction on competition.⁸⁷⁸ Further, as set out at paragraphs 6.15 to 6.25 above, the OFT finds that the Infringements both fixed prices and shared markets/allocated customers. Accordingly, the OFT finds that the Infringements were capable of appreciably preventing, restricting or distorting competition regardless of the aggregate market share of the Parties.⁸⁷⁹ Additionally, the OFT does

⁸⁷⁶ Joined Cases 56/64 and 58/64 *Consten and Grundig v Commission* [1966] ECR 299, at page 342. See, more recently, Case C-8/08 *T-Mobile Netherlands and Others v NMa* [2009] ECR I-4529, at paragraph 29. This is equally the case for concerted practices; see Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at paragraphs 122 to 123.

⁸⁷⁷ See paragraph 3.36 above.

⁸⁷⁸ Case C-226/11 *Expedia Inc v Autorité de la concurrence and Others*, judgment of 13 December 2012 (not yet reported), at paragraph 37.

⁸⁷⁹ OJ C 368, 22.12.2001, pages 13 to 15, *Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (de minimis)*, at paragraph 11.

not consider that the Infringements produced only an insignificant effect on the market.⁸⁸⁰

F. Effect on trade

I. Effect on trade within the UK

6.29. The applicable aspects of the law are set out at paragraphs 3.55 to 3.56 above.

6.30. The OFT considers that each of the Infringements were capable of affecting trade within the UK. Each of the Infringements was intended to be and, in fact was, implemented within a part of the UK. Accordingly, the OFT finds that each of the Infringements may have affected trade within the UK.

II. Effect on trade between Member States

6.31. The applicable aspects of the law are set out at paragraphs 3.57 to 3.62 above.

6.32. The OFT does not considers that any of the Infringements were capable, individually or in aggregate, of appreciably affecting trade between EU Member States. In drawing this conclusion, the OFT considers, in particular, that the Infringements were not cross-border by nature. Accordingly, the OFT considers that it is not obliged to apply Article 101(1) TFEU and does not find that the Infringements infringed Article 101(1) TFEU.

G. Duration

6.33. Duration is important insofar as it is a relevant factor for determining any financial penalty that the OFT decides to impose following a finding of infringement.

6.34. On the basis of the evidence set out and analysed in section 5 above, the OFT finds that:

- **Infringement 1** (involving **Cirrus** and **O'Rourke**) lasted from on or around **23 November 2005** to on or around **30 March 2007**.

⁸⁸⁰ Case 5/69 *Völk v Vervaecke* [1969] ECR 295; and OFT401 *Agreements and Concerted Practices* (December 2004), at paragraphs 2.16 and 2.17.

- **Infringement 2** (involving **Cirrus** and **Owens**) lasted from on or around **30 November 2007** to on or around **16 November 2009**.
- **Infringement 3** (involving **Cirrus** and **Jackson**) lasted from on or around **26 February 2009** to on or around **27 October 2009**.

H. Exclusion or exemption

I. Exclusion

6.35. The applicable aspects of the law are set out at paragraph 3.68 above.

6.36. The OFT considers that none of the exclusions from the Chapter I prohibition provided for by section 3 or under section 50 of the Act applies in respect of any of the Infringements. Accordingly, the OFT finds that none of the Infringements benefit from an exclusion from the Chapter I prohibition.

II. Exemption

6.37. The applicable aspects of the law are set out at paragraphs 3.69 to 3.72 above.

6.38. There is no block exemption order under section 6 of the Act or any order pursuant to section 11 of the Act pursuant to which any of the Infringements would have been exempt from the Chapter I prohibition. Nor is there any applicable EC Council or Commission Regulation by virtue of which any of the Infringements would have been exempt from Article 101(1) TFEU and would have benefited from a parallel exemption from the Chapter I prohibition under section 10 of the Act.

6.39. Additionally, the OFT does not consider that any of the Infringements would have met the requirements for an individual exemption under section 9 of the Act. In particular, the OFT considers that none of the Infringements could not have contributed to improving production or distribution of good or promoting technical or economic progress, and that there were no resulting benefits of which consumers received a fair share. To the contrary, each of the Infringements was aimed at subverting the competitive process rather than improving it.

6.40. Accordingly, the OFT finds that none of the Infringements were exempted from the Chapter I prohibition.

7. THE OFT'S ACTION

7.1. This section sets out the enforcement action the OFT is taking and its reasons for taking that action.

A. Decision

7.2. The OFT finds on the basis of the evidence and the reasons set out in sections 5 and 6 above that each of the Parties listed at paragraph 1.2 above has infringed the Chapter I prohibition by participating in one or more single overall agreements which each had as its object the prevention, restriction or distortion of competition within the UK.

7.3. Further and/or in the alternative, the OFT finds that the Parties' actions in respect of each Tender as set out in sections 5.B to 5.D above amounted to a separate agreement which each had as its object the prevention, restriction or distortion of competition within the UK, thereby infringing the Chapter I prohibition.

7.4. In summary, the OFT finds that:

- For **Infringement 1**, **Cirrus** and **O'Rourke** participated in:
 - a single overall infringement of the Chapter I prohibition between on or around 23 November 2005 to on or around 30 March 2007; and/or
 - 19 separate infringements of the Chapter I prohibition between on or around 23 November 2005 to on or around 30 March 2007.
- For **Infringement 2**, **Cirrus** and **Owens** participated in:
 - a single overall infringement of the Chapter I prohibition between on or around 30 November 2007 to on or around 16 November 2009; and/or
 - nine separate infringements of the Chapter I prohibition between on or around 30 November 2007 to on or around 16 November 2009.
- For **Infringement 3**, **Cirrus** and **Jackson** participated in:

- a single overall infringement of the Chapter I prohibition between on or around 26 February 2009 to on or around 27 October 2009; and/or
- 37 separate infringements of the Chapter I prohibition between on or around 26 February 2009 to on or around 27 October 2009.

B. Directions

7.5. Section 32(1) of the Act provides that if the OFT has made a decision that an agreement⁸⁸¹ 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. The OFT has no evidence on its file to suggest that any of the Infringements are continuing. It is therefore not giving any directions in this case.

C. Financial penalties

I. General points

7.6. Section 36(1) of the Act provides that on making a decision that an agreement has infringed the Chapter I prohibition, the OFT may require the undertaking(s) concerned to pay it a penalty in respect of the infringement. In accordance with section 38(8) of the Act, the OFT must have regard to the guidance⁸⁸² on penalties that is in force at the time when setting the amount of the financial penalty. The guidance currently in force is the *OFT's Guidance as to the appropriate amount of a penalty* (the 'Penalty Guidance').⁸⁸³

7.7. In determining the appropriate amount of a penalty, the OFT will be guided by its policy objectives on financial penalties. The twin objectives of that policy are:⁸⁸⁴

- i. to impose penalties on infringing undertakings which reflect the seriousness of the infringement; and

⁸⁸¹ This applies also to concerted practices.

⁸⁸² Guidance published pursuant to section 38(1) of the Act.

⁸⁸³ OFT423 *OFT's Guidance as to the appropriate amount of a penalty* (September 2012).

⁸⁸⁴ Penalty Guidance, at paragraph 1.4.

- ii. to ensure that the threat of penalties will deter both the infringing undertakings and other undertakings that may be considering anti-competitive activities from engaging in them.
- 7.8. Pursuant to section 36(8) of the Act, no penalty which has been fixed by the OFT may exceed 10 per cent of the turnover of the undertaking, calculated in accordance with the provisions of the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2000 (SI 2000/309) (the '2000 Order'), as amended by the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004 (SI 2004/1259) (the '2004 Order').
- 7.9. In imposing financial penalties in respect of the Infringements under section 36(1) of the Act, the OFT has identified the legal person or persons whom it considers to have been a Party to each Infringement and therefore liable for the ensuing financial penalty. The addresses of this Decision are as set out in section 2.A above.

The OFT's margin of appreciation in determining the appropriate amount of a financial penalty

- 7.10. While the OFT must have regard to its Penalty Guidance, it has a margin of appreciation when determining the appropriate amount of a financial penalty under the Act,⁸⁸⁵ provided that the penalty imposed does not exceed the statutory cap.⁸⁸⁶
- 7.11. Each case is specific to its own facts and circumstances and it cannot be assumed that the level of a financial penalty appropriate for a particular party in one case (or the manner in which the OFT has applied the Penalty Guidance) will necessarily be the same in respect of another party in another case. In addition, the OFT is not bound by its decisions in relation to the calculation of financial penalties in previous cases.⁸⁸⁷

⁸⁸⁵ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24, at [168]. See also *Umbro Holdings and Others v Office of Fair Trading* [2005] CAT 22, at [102] and [105].

⁸⁸⁶ The statutory cap is 10 per cent of an undertaking's worldwide turnover for the business year preceding the date on which the decision of the OFT is taken (or, if figures are not available for that business year, the one immediately preceding it); see Section 36(8) of the Act and The Competition Act 1998 (Determination of Turnover for Penalties) Order 2000, SI 2000/309, as amended by The Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004, SI 2004/1259.

⁸⁸⁷ See, for example, *Eden Brown and Others v Office of Fair Trading* [2011] CAT 8, at [78].

Rather, as set out in the Penalty Guidance, the OFT makes its assessment on a case-by-case basis,⁸⁸⁸ having regard to all relevant circumstances and the objectives of its policy on financial penalties.⁸⁸⁹

7.12. The OFT considers that, subject to the above, it is free to adapt its policy as appropriate, having regard to all relevant circumstances and its overall policy objectives on financial penalties, as set out in its Penalty Guidance.⁸⁹⁰

Statutory cap on financial penalties

7.13. Under section 36(8) of the Act, no penalty which has been fixed by the OFT may exceed 10 per cent of the turnover of the undertaking calculated in accordance with the provisions of the 2000 Order, as amended by the 2004 Order.

Intention and negligence

7.14. The OFT 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 either intentionally or negligently.⁸⁹¹

Intention

7.15. The CAT has held that an infringement is committed intentionally:⁸⁹²

'... if the undertaking must have been aware that its conduct was of such a nature as to encourage a restriction or distortion of competition'.

7.16. Additionally, the OFT considers that serious infringements of the Chapter I prohibition which have as their object the prevention, restriction or distortion of competition, are likely to have been, by their very nature,

⁸⁸⁸ See, for example, *Kier Group and Others v Office of Fair Trading* [2011] CAT 3, at [116] and *Eden Brown and Others v Office of Fair Trading* [2011] CAT 8, at [97].

⁸⁸⁹ Penalty Guidance, at paragraph 2.6.

⁸⁹⁰ See, for example, Joined Cases 100/80 to 103/80 *Musique Diffusion française v Commission* [1983] ECR 1825, at paragraphs 101 to 110 and Joined Cases C-189/02 P etc *Dansk Rørindustri and Others v Commission* [2005] ECR I-5425, at paragraph 169.

⁸⁹¹ Section 36(3) of the Act.

⁸⁹² *Napp Pharmaceutical Holdings v Director General of Fair Trading*, [2002] CAT 1, at [452] to [458].

committed intentionally.⁸⁹³ Ignorance of the law is no bar to a finding of intentional infringement.

- 7.17. In respect of the Infringements, the OFT considers that each CCSL, Jackson, O'Rourke and Owens must have been aware that one of the primary purposes of conducting a tendering process is to ensure competition in the award of contracts. The OFT considers that the very nature of the Infringements, which involved CCSL disclosing its bid price to the relevant Contractor in question with the understanding that the relevant Contractor would then submit a higher bid price and not win the contract, means that each of CCSL, Jackson, O'Rourke and Owens could not have been unaware that the Infringements which they were involved in were, or were likely to be, restrictive of competition. Accordingly, the OFT finds that each of CCSL, Jackson, O'Rourke and Owens committed the Infringements in which they are found to have participated intentionally.

Negligence

- 7.18. The CAT has held that an infringement is committed negligently:⁸⁹⁴

'... if the undertaking ought to have known that its conduct would result in a restriction or distortion of competition'.

- 7.19. The OFT considers that each of CCSL, Jackson, O'Rourke and Owens, at the very least, ought to have known that its actions would result in a restriction of competition. Accordingly, the OFT finds that each of the Parties committed the Infringements in which they are found to have participated at least negligently.

Conclusion

- 7.20. Based on the above, the OFT finds that each of CCSL, Jackson, O'Rourke and Owens committed the Infringements either intentionally or at least negligently.

Small agreements

⁸⁹³ See OFT407 *Enforcement* (December 2004), at paragraphs 5.9 to 5.12.

⁸⁹⁴ *Napp Pharmaceutical Holdings v Director General of Fair Trading*, [2002] CAT 1, at [452] to [458].

7.21. Section 39(3) of the Act provides that a party to a *'small agreement'*⁸⁹⁵ is immune from the effect of section 36(1); that parties to a *'small agreement'* are immune from financial penalties.⁸⁹⁶ This immunity does not, however, apply where the agreement is a *'price fixing agreement'*.⁸⁹⁷

7.22. For the purposes of section 39 of the Act, a *'price fixing agreement'* is defined as:⁸⁹⁸

'... an agreement which has as its object or effect, or one of its objects or effects, restricting the freedom of a party to the agreement to determine the price to be charged (otherwise than as between that party and another party to the agreement) for the product, service or other matter to which the agreement relates'

[Emphasis added]

7.23. In order for an agreement or concerted practice to amount to a price fixing agreement for the purposes of section 39 of the Act, it is therefore sufficient that the agreement has as one of its objects restricting the freedom of one of the parties to determine the price it will charge.

7.24. The Infringements concerned both the price that Cirrus would bid for each Tender and the price that the relevant Contractor would bid for each Tender. As a minimum, by agreeing that each Contractor would bid at a price higher than Cirrus' bid, each Infringement therefore clearly had the object of restricting the freedom of the relevant Contractor to determine the price it would charge. Accordingly, the OFT considers that each of the Infringements was a price fixing agreement for the purposes of section 39 of the Act and none of the Parties benefit from immunity from penalties under section 39(3) of the Act.

⁸⁹⁵ Which, pursuant to section 2(5) of the Act, includes concerted practices.

⁸⁹⁶ The Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000, SI 2000/262, defines a small agreement as an agreement between undertakings, the combined applicable turnover of which for the business year ending in the calendar year preceding the one during which the infringement occurred, does not exceed £20 million.

⁸⁹⁷ Section 39(1)(b) of the Act.

⁸⁹⁸ Section 39(9) of the Act.

Turnover of the undertakings

7.25. For the purposes of the penalty calculation, the OFT considers that the relevant turnover or total turnover, as applicable, is the turnover of the undertaking that comprises the relevant single economic entity, as described in more detail in section 2.A above.

II. Calculation of financial penalties

7.26. In accordance with section 38(8) of the Act, the OFT must have regard to the Penalty Guidance issued under section 38(1) of the Act, for the time being in force, when setting the amount of the financial penalty. The guidance in force at the time of this Decision is the Penalty Guidance.⁸⁹⁹ The Penalty Guidance sets out six steps for determining a financial penalty.

Step 1 – Starting point

7.27. The starting point for determining the level of penalty for each Infringement is calculated having regard to the seriousness of the infringement and the relevant turnover of the undertaking.⁹⁰⁰

7.28. The OFT will apply a rate of up to 30 per cent to an undertaking's relevant turnover in order to meet the OFT's policy objectives on financial penalties.⁹⁰¹

Seriousness of the Infringements

7.29. The starting point percentage which the OFT applies to an undertaking's relevant turnover at step 1 of the penalty calculation depends, in particular, upon the nature of the infringement; the more serious and widespread the infringement, the higher the starting point is likely to be.⁹⁰² When making this assessment, the OFT will consider a number of factors, including:

- i. the nature of the product;

⁸⁹⁹ OFT423 *OFT's Guidance as to the appropriate amount of a penalty* (September 2012)

⁹⁰⁰ Penalty Guidance, at paragraph 2.1.

⁹⁰¹ *Ibid*, at paragraph 2.5. The OFT's policy objectives on financial penalties are set out at paragraph 7.7 above.

⁹⁰² Penalty Guidance, at paragraph 2.4.

- ii. the structure of the market;
- iii. the market shares of the undertakings involved in the infringements;
- iv. entry conditions;
- v. the effect on competitors and third parties;
- vi. the need to deter other undertakings from engaging in such infringements in future; and
- vii. the damage caused to consumers, whether directly or indirectly.⁹⁰³

7.30. The OFT considers that the following key factors are relevant to determining the appropriate starting point for financial penalties in this case:

- i. Collusive tendering is an object restriction and is recognised as a serious infringement of competition law⁹⁰⁴.
- ii. Each of the Infringements was aimed at misleading a potentially vulnerable consumer group as to the nature of the tendering process, in that the purpose of each of the arrangements was to eliminate competition in the tendering process. The aim was that CCSL would not face genuine competition from the relevant Contractor when it determined its tender price and submitted its bids because it knew that the relevant Contractor would be submitting an uncompetitive bid, rather than a competitive tender.
- iii. The evidence indicates that the Contractors had gained or anticipated gaining as a result of the collusive tendering arrangement, in that the Contractors expected to be compensated through the provision of work on a contract, in the form of subcontracting work from Cirrus in the future.

⁹⁰³ *Ibid*, at paragraph 2.6.

⁹⁰⁴ *Ibid*, paragraphs 2.3. See also paragraph 3.37 above.

7.31. Taking into account the factors set out above, the OFT has decided that a starting point of **20 per cent** of relevant turnover is appropriate in this case.

Starting point for each Infringement

7.32. The OFT considers that the starting point for each of the Infringements should be the same given their similar nature and seriousness. Accordingly, the OFT has decided to apply a starting point of 20 per cent when determining financial penalties in respect of Infringements 1, 2 and 3.

Turnover in the relevant product and geographic markets affected by the Infringements

7.33. The relevant turnover is the turnover of the undertaking in the relevant product market and relevant geographic market affected by the infringements in its last business year.⁹⁰⁵ The relevant product and geographic markets in this case are those set out in section 4 above, namely **the supply and/or installation of (i) warden call door entry (whether combined or standalone),⁹⁰⁶ and (ii) fire detection and protection systems, to retirement properties in the UK.**

Last business year

7.34. An undertaking's last business year is the financial year preceding the date when the infringement ended.⁹⁰⁷ For the purposes of determining financial penalties in this case, the following applies:⁹⁰⁸

- **Infringement 1:** The OFT finds that this Infringement continued until on or around 30 March 2007. Accordingly, for the purpose of step 1, **O'Rourke's** last business year is **2006**.
- **Infringement 2:** The OFT finds that this Infringement continued until on or around 16 November 2009. Accordingly, for the purpose of step 1, **Owens'** last business year is **2008**.

⁹⁰⁵ Penalty Guidance, at paragraph 2.7.

⁹⁰⁶ These occasionally included a CCTV element integral to the relevant system.

⁹⁰⁷ Penalty Guidance, at paragraph 2.7.

⁹⁰⁸ The OFT's findings on duration for each of the Infringements are set out at paragraph 6.34 above.

- **Infringement 3:** The OFT finds that this Infringement continued until 27 October 2009. Accordingly, for the purpose of step 1, **Jackson's** last business year is **2008**.⁹⁰⁹

7.35. The relevant turnover used to determine each Party's financial penalty is set out at section 7.C.III below.

Step 2 – Duration

- 7.36. The penalty at the end of step 1 may be increased or, in particular circumstances, decreased to take into account the duration of the infringement.⁹¹⁰
- 7.37. Penalties for infringements that last more than one year may be multiplied by not more than the number of years of the infringement.⁹¹¹
- 7.38. Part years may be treated as full years for the purpose of calculating the number of years of the infringement. Where the total duration of an infringement is more than one year, the OFT will round up part years to the nearest quarter, although the OFT may in exceptional circumstances decide to round up the part year to a full year.⁹¹²
- 7.39. Where the total duration of an infringement is less than one year, the OFT will treat that duration as a full year for the purpose of calculating the number of years of the infringement, although in exceptional circumstances the starting point may be decreased where the duration of the infringement is less than one year.⁹¹³
- 7.40. For the purposes of this Decision, the OFT finds that the duration of each Infringement is from, at the latest, the date of the first Tender which forms part of the relevant Infringement, to the date of the last Tender which forms part of that Infringement. As set out above, the OFT finds the following in respect of duration:

⁹⁰⁹ As explained at paragraph 7.57 below, as Cirrus will not be required to pay a financial penalty the OFT has not calculated the financial penalty that would otherwise be imposed on Cirrus. Accordingly, it is unnecessary for the OFT to determine Cirrus' last business year for the purpose of step 1.

⁹¹⁰ Penalty Guidance, at paragraph 2.12.

⁹¹¹ *Ibid.*

⁹¹² *Ibid.*

⁹¹³ *Ibid.*

- **Infringement 1:** From on or around 23 November 2005 until on or around 30 March 2007, that is, **one year and four months**. Taking into account the factors set out in paragraphs 7.36 to 7.39 above, for Infringement 1, the OFT has decided to apply a multiplier of **1.5** at step 2. Accordingly, **O'Rourke's** penalty at step 2 will be increased by a factor of 1.5.
- **Infringement 2:** From on or around 30 November 2007 until on or around 16 November 2009, that is, effectively **two years**. Taking into account the factors set out in paragraphs 7.36 to 7.39 above, for Infringement 2, the OFT has decided to apply a multiplier of **2** at step 2. Accordingly, **Owens'** penalty at step 2 will be increased by a factor of 2.
- **Infringement 3:** From on or around 26 February 2009 until on or around 27 October 2009, that is, **eight months**. Taking into account the factors set out in paragraphs 7.36 to 7.39 above, for Infringement 3, the OFT has decided not to increase the penalty at step 2. While the duration of Infringement 3 is less than one year, the OFT does not consider that there are any exceptional circumstances that justify decreasing the penalty at step 2. Accordingly, **Jackson's** penalty will not be increased or decreased at step 2.

Step 3 – Aggravating or mitigating factors

7.41. The basic amount of the financial penalty, adjusted as appropriate at step 2, may be increased where there are aggravating factors, or decreased where there are mitigating factors.⁹¹⁴ In the circumstances of this case, the OFT has decided not to adjust any financial penalty for any aggravating or mitigating factors.

Step 4 – Adjustments for specific deterrence and proportionality

7.42. The penalty may be adjusted, after Step 3, for specific deterrence or proportionality, having regard to appropriate indicators of the size and financial position of the undertaking or undertakings in question⁹¹⁵

⁹¹⁴ *Ibid*, at paragraph 2.13.

⁹¹⁵ *Ibid*, at paragraph 2.16.

7.43. In considering specific deterrence and proportionality under step 4, the OFT will have regard to appropriate indicators of the size and financial position of the undertaking at the time that the penalty is being imposed, that is, at the time of the OFT's infringement decision. Where available, these factors may include:

- total turnover;
- profits;
- cash flow;
- industry margins; and
- any other relevant circumstances of the case.⁹¹⁶

7.44. The OFT's assessment under step 4 for each Party is set out in section 7.C.III below.

Specific deterrence

7.45. The financial penalty may be increased to ensure that the penalty to be imposed on the undertaking will deter it from breaching competition law in the future.⁹¹⁷

Proportionality

7.46. The financial penalty may be decreased to ensure that the level of penalty is not disproportionate or excessive.⁹¹⁸ As well as the size and financial position of the undertaking, the OFT will also have regard to:

- the nature of the infringement;
- the role of the undertaking in the infringement; and
- the impact of the undertaking's infringing activity on competition.⁹¹⁹

⁹¹⁶ *Ibid*, at paragraph 2.16.

⁹¹⁷ *Ibid*, at paragraph 2.17.

⁹¹⁸ *Ibid*, at paragraph 2.20.

⁹¹⁹ *Ibid*.

Step 5 – Statutory cap and double jeopardy

Statutory cap

- 7.47. The final amount of the penalty imposed on an undertaking may not exceed 10 per cent of its worldwide turnover in its last business year.⁹²⁰ For the purpose of step 5, the business year is the one preceding the date on which the OFT takes its decision or, if figures are not available for that business year, the one immediately preceding it.⁹²¹ For the purpose of step 5 for this Decision, the statutory cap is 10 per cent of each undertaking's worldwide turnover in its business year for 2012.
- 7.48. Turnover for these purposes is calculated in accordance with the provisions in the 2000 Order, as amended by the 2004 Order.⁹²² The penalty will be adjusted if necessary to ensure that it does not exceed the statutory maximum.
- 7.49. The OFT's assessment under step 5 for each Party is set out in section 7.C.III below.

Double jeopardy

- 7.50. The OFT must also, when setting the amount of a financial penalty for a particular agreement or concerted practice, take into account any penalty or fine that has been imposed by the Commission or by a court or other body in another Member State in respect of an agreement or concerted practice.⁹²³ As there is no such applicable penalty or fine in respect of the Infringements, no adjustments are necessary in this case.

Step 6 – Adjustments for leniency and/or settlement

Leniency

- 7.51. The OFT will reduce an undertaking's financial penalty at step 6 where the undertaking has a leniency agreement with the OFT and provided that the undertaking meets the conditions of the leniency agreement.⁹²⁴

⁹²⁰ Section 36(8) of the Act and Penalty Guidance, at paragraph 2.21.

⁹²¹ Penalty Guidance, at paragraph 2.21.

⁹²² Section 36(8) of the Act and the 2000 Order, as amended by the 2004 Order.

⁹²³ Section 38(9) of the Act and Penalty Guidance, at paragraph 2.24.

⁹²⁴ Penalty Guidance, at paragraph 2.25.

7.52. Cirrus' financial penalty has been reduced as a result of the OFT's leniency policy. The details of this decrease are set out in section 7.C.III below.

Settlement

7.53. The OFT will further reduce an undertaking's financial penalty at step 6 where the undertaking has agreed to settle with the OFT; which will involve, among other things, the undertaking admitting its participation in the infringement.⁹²⁵

7.54. Owens' financial penalty has been reduced as a result of the OFT's settlement policy. The details of this decrease are set out in section 7.C.III below.

III. Individual financial penalties

7.55. In this section, the OFT sets out the various steps and calculations applicable in determining each Party's financial penalty.

Financial penalty for Cirrus

7.56. The OFT has found that Cirrus was a party to all three Infringements: **Infringements 1, 2 and 3**. However, Cirrus applied to the OFT for leniency under the OFT's leniency policy and was the first to do so in circumstances where there was no prior OFT investigation. As the relevant conditions set out in the Leniency Agreement have been met, Cirrus benefits from immunity from financial penalties.

7.57. The OFT does not consider that it needs to determine Cirrus' financial penalty since it will not, as a successful immunity applicant, be required to pay a financial penalty to the OFT under section 36 of the Act. Accordingly, the OFT has not calculated the financial penalty that would otherwise be imposed on Cirrus had it not benefitted from such immunity.

Financial penalty for Jackson

⁹²⁵ Penalty Guidance, at paragraph 2.26.

7.58. The OFT has found that Jackson was a party to one infringement; **Infringement 3**. Therefore, the OFT has determined one financial penalty for Jackson.

Step 1 - Starting point

7.59. As explained at paragraph 7.31 above, the OFT has decided to apply a 20 per cent starting point in respect of each of the Infringements. Accordingly, the starting point percentage for Jackson's financial penalty is **20 per cent**.

7.60. The OFT has found that Infringement 3 lasted until on or around 27 October 2009. Jackson's relevant turnover for the purpose of step 1 is its turnover in the Relevant Market for its financial year preceding the date when the infringement ended. Accordingly, for step 1, Jackson's relevant turnover is its turnover for the supply and/or installation of (i) warden call door entry (whether combined or standalone),⁹²⁶ and (ii) fire detection and protection systems, to retirement properties in the UK in **2008**.

7.61. Accordingly, Jackson's financial penalty after step 1 is [C].

Step 2 - Duration

7.62. As explained at paragraph 7.40 above, where the total duration of an infringement is less than one year, the OFT will treat that duration as a full year for the purpose of calculating the number of years in the infringement, although in exceptional circumstances the starting point may be decreased where the duration of the infringement is less than one year.⁹²⁷

7.63. Given that the total duration of Infringement 3 is less than one year, the OFT treats that duration as a full year. The OFT does not consider that there are any exceptional circumstances that justify decreasing the starting point. Accordingly the OFT makes no adjustment at this step.

7.64. Therefore, Jackson's financial penalty after step 2 is [C].

Step 3 - Aggravating or mitigating factors

⁹²⁶ These occasionally included a CCTV element integral to the relevant system.

⁹²⁷OFT423, para 2.12

7.65. As explained at paragraph 7.41 above, in the circumstances of this case, the OFT has decided not to adjust any financial penalty for any aggravating or mitigating factors.

7.66. Accordingly, Jackson's financial penalty after step 3 is [C].

Step 4 - Adjustments for specific deterrence and proportionality

7.67. The penalty may be adjusted, after Step 3, for specific deterrence or proportionality, having regard to appropriate indicators of the size and financial position of the undertaking or undertakings in question.

Specific deterrence

7.68. The OFT considers it necessary to ensure that any penalty represents an effective deterrent to Jackson having regard to its specific circumstances including relevant indicators of its size and financial position.

7.69. Considering these indicators of size and financial position in the round and having regard to the OFT's twin penalty objectives of reflecting seriousness and achieving deterrence, the OFT considers that it is unnecessary to increase the Step 3 figure as this figure already represents an effective deterrent to Jackson.

Proportionality

7.70. The OFT has also considered whether the Step 3 figure is disproportionate or excessive.

7.71. The OFT notes that, based on the latest year for which accounts have been provided, the figure reached at the end of Step 3 is approximately:

- a. [C] per cent of Jackson's total turnover;
- b. [C] per cent of Jackson's profit after tax;
- c. [C] per cent of Jackson's average profit after tax over the latest two years for which accounts have been provided; and
- d. [C] per cent of Jackson's adjusted net assets.

- 7.72. In light of the above, the OFT considers that the Step 3 penalty amounts to significant proportions of the relevant indicators of Jackson's size and financial position.
- 7.73. Considering these indicators of size and financial position in the round, having regard to the nature of the infringements and the OFT's twin penalty objectives of reflecting seriousness and achieving deterrence, the OFT considers that it is appropriate to reduce the penalty by [C]. Based on the latest year for which accounts have been provided, the figure resulting from this reduction is approximately:
- a. [C] per cent of Jackson's total turnover;
 - b. [C] per cent of Jackson's profit after tax;
 - c. [C] per cent of Jackson's average profit after tax in the last two years for which accounts have been provided; and
 - d. [C] per cent of Jackson's adjusted net assets.
- 7.74. Accordingly, Jackson's financial penalty after step 4 is [C].

Step 5 - Statutory cap and double jeopardy

- 7.75. The final amount of the penalty may not exceed 10 per cent of the worldwide turnover of the undertaking in its last business year.⁹²⁸ The business year on the basis of which worldwide turnover is determined will be the one preceding the date on which the decision of the OFT is taken, or if figures are not available for that business year, the one immediately preceding it.⁹²⁹ As above, the latest financial accounts which the OFT has for Jackson are for the financial year end [C]. Jackson's worldwide turnover in this year was [C]; 10 per cent of which has been calculated as [C].
- 7.76. Therefore, the Step 4 figure is below the statutory maximum figure the OFT may impose on Jackson.
- 7.77. The OFT is not aware that any adjustment needs to be made to the level of the penalty to avoid double jeopardy.

⁹²⁸ OFT423, para 2.21

⁹²⁹ OFT423, para 2.21

7.78. The OFT therefore makes no adjustment at this step.

7.79. Accordingly, Jackson's financial penalty after step 5 is [C].

Step 6 - Adjustments for leniency and/or settlement

7.80. Jackson did not apply for leniency, nor did it agree to settle with the OFT. The OFT has, therefore, not reduced Jackson's financial penalty at step 6.

7.81. Accordingly, the total financial penalty that the OFT is imposing on Jackson is **£35,700**.

Financial penalty for O'Rourke

7.82. The OFT has found that O'Rourke was a party to one infringement: **Infringement 1**. Therefore, the OFT has determined one financial penalty for O'Rourke.

Step 1 - Starting point

7.83. As explained at paragraph 7.31 above, the OFT has decided to apply a 20 per cent starting point in respect of each of the Infringements. Accordingly, the starting point percentage for O'Rourke's financial penalty is **20 per cent**.

7.84. The OFT has found that Infringement 1 lasted until on or around 30 March 2007. O'Rourke's relevant turnover for the purpose of step 1 is its turnover in the Relevant Market for its financial year preceding the date when the infringement ended. Accordingly, for step 1, O'Rourke's relevant turnover is its turnover for the supply and/or installation of (i) warden call door entry (whether combined or standalone),⁹³⁰ and (ii) fire detection and protection systems, to retirement properties in the UK in **2006**.

7.85. Accordingly, O'Rourke's financial penalty after step 1 is [C].

Step 2 - Duration

7.86. As explained at paragraph 7.40 above, where the total duration of an infringement is more than one year, the OFT will round up part years to

⁹³⁰ These occasionally included a CCTV element integral to the relevant system.

the nearest quarter year, although the OFT may in exceptional circumstances decide to round up the part year to a full year.⁹³¹

7.87. As the OFT has found that Infringement 1 lasted one year and four months, the OFT has decided to apply a multiplier of **1.5** at step 2. The OFT has therefore decided to increase O'Rourke's penalty at step 2 by 1.5.

7.88. Accordingly, O'Rourke's financial penalty after step 2 is [C].

Step 3 - Aggravating or mitigating factors

7.89. As explained at paragraph 7.41 above, in the circumstances of this case, the OFT has decided not to adjust any financial penalty for any aggravating or mitigating factors.

7.90. Accordingly, O'Rourke's financial penalty after step 3 is [C].

Step 4 - Adjustments for specific deterrence and proportionality

7.91. The penalty may be adjusted, after Step 3, for specific deterrence or proportionality, having regard to appropriate indicators of the size and financial position of the undertaking or undertakings in question.

Specific deterrence

7.92. The OFT considers it necessary to ensure that any penalty represents an effective deterrent to O'Rourke having regard to its specific circumstances including relevant indicators of its size and financial position. Considering these indicators of size and financial position in the round and having regard to the OFT's twin penalty objectives of reflecting seriousness and achieving deterrence, the OFT considers that it is unnecessary to increase the Step 3 figure as this figure already represents an effective deterrent to O'Rourke.

Proportionality

7.93. The OFT has also considered whether the Step 3 figure is disproportionate or excessive.

⁹³¹OFT423, para 2.12

- 7.94. The OFT notes that, based on the latest year for which accounts have been provided, the figure reached at the end of Step 3 is approximately:
- a. [C] per cent of O'Rourke's total turnover;
 - b. [C] per cent of O'Rourke's profit after tax;
 - c. [C] per cent of O'Rourke's average profit after tax for the two latest years for which accounts have been provided; and
 - d. [C] per cent of O'Rourke's adjusted net assets.
- 7.95. In light of the above, the OFT considers that the Step 3 figure amounts to significant proportions of the relevant indicators of O'Rourke's size and financial position.
- 7.96. Considering these indicators of size and financial position in the round, having regard to the nature of the infringements and the OFT's twin penalty objectives of reflecting seriousness and achieving deterrence, the OFT considers that it is appropriate to reduce the penalty by [C]. Based on the latest year for which accounts have been provided, the figure resulting from this reduction is approximately:
- a. [C] per cent of O'Rourke's total turnover;
 - b. [C] per cent of O'Rourke's profit after tax; and
 - c. [C] per cent of O'Rourke's adjusted net assets.
- 7.97. Accordingly, O'Rourke's financial penalty after step 4 is [C].

Step 5 - Statutory cap and double jeopardy

- 7.98. The final amount of the penalty may not exceed 10 per cent of the worldwide turnover of the undertaking in its last business year.⁹³² The business year on the basis of which worldwide turnover is determined will be the one preceding the date on which the decision of the OFT is taken, or if figures are not available for that business year, the one immediately preceding it.⁹³³ As above, the latest financial accounts which the OFT has for O'Rourke are for the financial year end [C].

⁹³² OFT423, para 2.21

⁹³³ OFT423, para 2.21

O'Rourke's worldwide turnover in this year was [C]; 10 per cent of which has been calculated as [C].

7.99. Therefore, the Step 4 figure is below the statutory maximum figure the OFT may impose on O'Rourke.

7.100. The OFT is not aware that any adjustment needs to be made to the level of the penalty to avoid double jeopardy.

7.101. The OFT therefore makes no adjustment at this step.

7.102. Accordingly, O'Rourke's financial penalty after step 5 is [C].

Step 6 - Adjustments for leniency and/or settlement

7.103. O'Rourke did not apply for leniency, nor did it agree to settle with the OFT. The OFT has, therefore, not reduced O'Rourke's financial penalty at step 6.

7.104. Accordingly, the total financial penalty that the OFT is imposing on O'Rourke is **£15,933**.

Financial penalty for Owens

7.105. The OFT has found that Owens was a party to one infringement: **Infringement 2**. Therefore, the OFT has determined one financial penalty for Owens.

Step 1 - Starting point

7.106. As explained at paragraph 7.31 above, the OFT has decided to apply a 20 per cent starting point in respect of each of the Infringements. Accordingly, the starting point percentage for Owens' financial penalty is 20 per cent.

7.107. The OFT has found that Infringement 2 lasted until on or around 16 November 2009. Owens' relevant turnover for the purpose of step 1 is its turnover in the Relevant Market for its financial year preceding the date when the infringement ended. Accordingly, for step 1, Owens' relevant turnover is its turnover for the supply and/or installation of (i) warden call door entry (whether combined or standalone),⁹³⁴ and (ii) fire

⁹³⁴ These occasionally included a CCTV element integral to the relevant system.

detection and protection systems, to retirement properties in the UK in **2008**.

7.108. Accordingly, Owens' financial penalty after step 1 is [C].

Step 2 - Duration

7.109. As explained at paragraph 7.40 above, as the OFT has found that Infringement 2 lasted two years, the OFT has decided to apply a multiplier of 2 at step 2. The OFT has therefore decided to increase Owens' penalty at step 2 by a factor of 2.

7.110. Accordingly, Owens' financial penalty after step 2 is [C].

Step 3 - Aggravating or mitigating factors

7.111. As explained at paragraph 7.41 above, in the circumstances of this case, the OFT has decided not to adjust any financial penalty for any aggravating or mitigating factors.

7.112. Accordingly, Owens' financial penalty after step 3 is [C].

Step 4 - Adjustments for specific deterrence and proportionality

7.113. The penalty may be adjusted, after Step 3, for specific deterrence or proportionality, having regard to appropriate indicators of the size and financial position of the undertaking or undertakings in question.

Specific deterrence

7.114. The OFT considers it necessary to ensure that any penalty represents an effective deterrent to Owens having regard to its specific circumstances including relevant indicators of its size and financial position.

7.115. Considering these indicators of size and financial position in the round and having regard to the OFT's twin penalty objectives of reflecting seriousness and achieving deterrence, the OFT considers that it is unnecessary to increase the Step 3 figure as this figure already represents an effective deterrent to Owens.

Proportionality

7.116. The OFT has also considered whether the Step 3 figure is disproportionate or excessive.

7.117. The OFT notes that, based on the latest year for which accounts have been provided, the figure reached at the end of Step 3 is approximately:

- a. [C] per cent of Owens' total turnover;
- b. [C] per cent of Owens' profit after tax;
- c. [C] per cent of Owens' average profit after tax over the latest two years for which accounts have been provided.

7.118. In light of the above, the OFT considers that the Step 3 figure amounts to significant proportions of the relevant indicators of Owens' size and financial position.

7.119. Considering these indicators of size and financial position in the round, having regard to the nature of the infringements and the OFT's twin penalty objectives of reflecting seriousness and achieving deterrence, the OFT considers that it is appropriate to reduce the penalty by [C]. Based on the latest year for which accounts have been provided, the figure resulting from this reduction is approximately:

- a. [C] per cent of Owens' total turnover;
- b. [C] per cent of Owens' profit after tax;
- c. [C] per cent of Owens' average profit after tax over the latest two years for which accounts have been provided.

7.120. Accordingly, Owens' financial penalty after step 4 is [C].

Step 5 - Statutory cap and double jeopardy

7.121. The final amount of the penalty may not exceed 10 per cent of the worldwide turnover of the undertaking in its last business year.⁹³⁵ The business year on the basis of which worldwide turnover is determined will be the one preceding the date on which the decision of the OFT is taken, or if figures are not available for that business year, the one immediately preceding it.⁹³⁶ As above, the latest financial accounts which the OFT has for Owens are for the financial year end [C]. Owens'

⁹³⁵ OFT423, para 2.21

⁹³⁶ OFT423, para 2.21

worldwide turnover in this year was [C]; 10 per cent of which has been calculated as [C].

7.122. Therefore, the Step 4 figure is below the statutory maximum figure the OFT may impose on Owens.

7.123. The OFT is not aware that any adjustment needs to be made to the level of the penalty to avoid double jeopardy.

7.124. The OFT therefore makes no adjustment at this step.

7.125. Accordingly, Owens' financial penalty after step 5 is [C].

Step 6 - Adjustments for leniency and/or settlement

7.126. The OFT is satisfied that Owens has fully complied with the terms of its settlement agreement and has therefore decreased its penalty by 20 per cent.

7.127. Accordingly, the total financial penalty that the OFT is imposing on Owens is **£1,777**.

D. Payment of the financial penalty

7.128. The OFT requires each of the Parties to pay the financial penalty applicable to it as set out at section 7.C.III above. The financial penalty calculation methodology explained in the preceding paragraphs of this section applies in respect of each Party that the OFT has decided to impose a financial penalty on. Both the individual figures and the final penalty figures are rounded to the nearest pound.

7.129. The financial penalties must be paid to the OFT by the close of banking business on 7 February 2014.⁹³⁷ If the financial penalty is not paid, and either an appeal against the imposition or amount of that financial penalty has not been made or such an appeal has been made and determined in the OFT's favour, the OFT may commence proceedings to recover the amount as a civil debt.⁹³⁸

⁹³⁷ Details of how to pay are notified in the letter accompanying this Decision.

⁹³⁸ See section 37 of the Act.



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All of whom are the members of, and who together constitute, the **Case Decision Group**

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