

ADR MODEL FOR SETTling FOLLOW-ON CLAIMS IN COMPETITION CASES

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Reasons for an ADR model

The CBI supports the objective of providing effective redress to the victims of cartels and believes every effort should be made to facilitate this through ADR. The objective is to ensure fair and early disposal of legitimate claims with minimal costs and without recourse to the courts.

This model of providing direct redress is designed to offer advantages to all the principal participants in a cartel case.

Advantages for the competition authority

- The authority would enhance its role in advancing consumer welfare.
- There would be no cost to the authority or direct involvement in delivering the redress.
- The authority would still make the required decision on the existence of the cartel, its duration and the market affected.

Advantages for claimants

- Compensation would be obtained sooner without the risks and costs of litigation.
- Compensation can be provided to consumers, who individually have low value claims, at lower cost than through a court based system.
- The compensation can be in a form having more appeal to the claimants, such as new products or trade credits or vouchers.



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Advantages for companies

- The exposure to follow-on claims can be quantified at an earlier stage and with more certainty than through protracted litigation. This would enable companies to draw a line under their involvement in a cartel at an earlier point
- There would be substantial savings in litigation costs and in internal resources. Companies would be free to focus on future opportunities rather than past problems.
- Companies can repair their damaged image more rapidly and effectively through the earlier resolution of claims. This could help in rebuilding customer relationships.

A flexible ADR model

- The ADR model would provide flexibility and could be adapted to each individual case. It would provide an optional model for settlement that companies could offer for discussion with the authority.
- Flexibility is needed, as redress following a cartel affecting thousands of consumers would require a different approach than one involving a small number of industrial purchasers.

How would the model work?

- Defending companies would agree to fund the process leading to awards of compensation.
- Awards would be made by a panel to specified claimants, or classes of claimants.
- The panel would be made up of a legally qualified chair, together with assessors having industry and financial/accounting expertise.
- The panel would determine the procedure to be followed in a specific case.
- The panel would hear limited evidence on the amount of overcharge and the level of pass-through at each level of the supply chain. The panel would make an assessment of the overcharge and relevant pass-through percentages, which would then form the basis of compensation.
- The award would be binding on the defending companies who agreed to participate but only binding on the claimants when accepted.
- The processing of individual claims with the companies concerned and the payment of the compensation would be carried out through a third-party administrator.

- The process would be under the supervision of a recognised ADR provider, such as CEDR, IDRS or ADR Group.

Is there a role for the consumer and other representative groups?

- Under the process set up for the panel, it could invite submissions from representative groups able to provide views on the level of overcharge and pass-through issues.

What happens if the claimant does not accept an award?

- The claimant will be free to pursue its own claim through the courts.
- But when making an award of litigation costs the court may consider the amount of compensation that was available through the ADR panel. The claimant may well therefore be subject to a potential costs penalty by pursuing litigation. This could include paying the defending companies' costs as well as its own.

What happens if all the defending companies do not sign up to the process?

- The process would still operate for the remaining companies and provide them with the advantages described above.
- The panel could make awards based on the overcharge paid by the customers of the individual companies.
- A company that did not participate would be at the risk of further litigation from its own customers and others under joint and several liability. There would be additional pressure through publicity of the ADR scheme.

Can the authority justify a reduction in the fine?

- A reduction in the fine would be an important incentive for the defendants to agree to provide direct redress.
- If one element of the fine constitutes the confiscation of illegal profits, then this could justifiably be returned to the victims rather than the state.
- The reduction in the fine could be made conditional on the panel's report of the defendants' payment of compensation to the claimants.