



Neutral citation [2025] CAT 36

Case Nos: 1735/13/12/25 (W)

1736/13/12/25 (W)

1737/13/12/25 (W)

1738/13/12/25 (W)

**IN THE COMPETITION APPEAL TRIBUNAL**

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

13 June 2025

Before:

THE HONOURABLE MRS JUSTICE BACON  
(President)  
PROFESSOR PINAR AKMAN  
EAMONN DORAN

Sitting as a Tribunal in England and Wales

BETWEEN:

**COMPETITION AND MARKETS AUTHORITY**

Applicant

- v -

**OTHERS**

Defendants

Heard at Salisbury Square House on 13 June 2025

---

**JUDGMENT**

---

## **APPEARANCES**

Thomas Sebastian (instructed by the Competition and Markets Authority) appeared on behalf of the Competition and Markets Authority.

1. These are four applications by the Competition and Markets Authority (“CMA”) for four warrants to enable the CMA to search business premises in connection with its investigation into suspected infringements of the Chapter I prohibition in s. 2(1) of the Competition Act 1998 (the “1998 Act”).
2. The applications are made under s. 28(1) of the 1998 Act. Under that provision the CMA may be granted a warrant to enter, search and take possession of documents at specified premises if certain conditions are met.
3. As is by now standard practice for a s. 28 warrant sought by the CMA in the Tribunal, the Tribunal has adopted the same procedure as set out in the *Practice Direction: Application for a Warrant under the CA 1998 or Part 1 of the DMCCA 2024* (the “Practice Direction”) that applies in the High Court: see *CMA v Another* [2024] CAT 71, §§2 to 3. Among other things, that Practice Direction provides that the application is to be made without notice and the claim form issued without naming the defendant, and the application must be supported by evidence sworn on oath. There are also specific provisions as to the content of the warrant and the procedural steps to be taken in executing the warrant. Consistent with that Practice Direction, the present application has been heard in private and without notice to the defendants.
4. I turn to the statutory conditions for the issue of a warrant. S. 28(1)(b) of the 1998 Act provides:

“(1) On an application made to it by the CMA, the court or the Tribunal may issue a warrant if it is satisfied that

...

(b) there are reasonable grounds for suspecting that

(i) there are on or accessible from any business premises documents which the CMA has power under section 26 to require to be produced; and

(ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed.”
5. S. 26 in turn empowers the CMA to require any person to produce a specified document which it considers relates to any matter relevant to an investigation which it is conducting under s. 25. S. 25 provides that the CMA may conduct

an investigation where, among other things, there are reasonable grounds for suspecting an infringement of the Chapter I prohibition.

6. For these purposes, “document” includes information recorded in any form: s. 59(1) of the 1998 Act. That therefore includes not only hard copy paper documents but also information recorded in electronic form on devices such as computers, mobile phones and tablets.
7. In a different context, the Tribunal held in *Airwave Solutions v CMA* [2022] CAT 4, §9, that when interpreting “reasonable grounds for suspecting”, “suspecting” means that there is a “possibility which is more than fanciful, that the relevant facts exist capable of generating the suspicion”. That is also an appropriate test to apply in this context.
8. The details of the CMA’s investigation and grounds for seeking a warrant in the present case are set out in an affidavit of Mr Sean McNabb, a Director of Cartel Enforcement in the Competition Enforcement Group at the CMA, as well as a supplementary witness statement of Mr McNabb which was signed and provided to the Tribunal yesterday. The focus of the submissions today has, however, been on the affidavit, which is a long and detailed document.
9. As set out in that affidavit, the CMA is carrying out an investigation under s. 25 of the 1998 Act in relation to suspected infringements of the Chapter I prohibition in the form of a market sharing agreement in the supply of waste management services in at least northwest England and north Wales. The CMA believes that the arrangements may have dated back to at least [3<].
10. There are three suspect undertakings: Gaskells (North West) Limited (“Gaskells”), Ash Waste Services Limited (“Ash”) and Bagnall & Morris Waste Services Limited (“B&M”). The information obtained by the CMA indicates that all three undertakings provide waste management services to customers in both the public and private sector. The warrants sought relate to the head offices of all three, plus a further office of Ash that is believed to be used by the sales team of that company.

11. The first statutory condition under s. 28(1)(b) of the 1998 Act, set out above, is that there are reasonable grounds for suspecting that there are on the relevant business premises documents which the CMA has power under s. 26 to require to be produced. We are satisfied that there are reasonable grounds for suspecting that there are on all four premises documents that are relevant to the CMA's investigation. Mr McNabb's affidavit sets out the information received by the CMA which prompted it to commence its investigation, and the CMA's assessment as to the reliability of that evidence. He also explains the basis on which the CMA believes there to be documents on all four premises.
12. As Mr Sebastian noted in his submissions, the arrangement being investigated by the CMA is an arrangement which by its very nature depends on communication both between the firms involved and within those firms. The CMA's information indicates that those communications may have been predominantly verbal, often by telephone calls, but also to at least some extent by email. Email communications are likely to have left some trace, and there may also be some documentary evidence of telephone calls such as notes of calls and call logs.
13. Each of the suspect undertakings also appears to have [§]. The CMA believes that these also may be probative of an infringement if, as suspected, [§].
14. Mr McNabb quite properly notes the risk that some relevant documents may have been deleted or otherwise destroyed or removed from the premises, particularly given the passage of time since the infringement is believed to have commenced. We also note that while the evidence suggests that there is [§].
15. Notwithstanding those points noted by Mr McNabb pursuant to his duty of full and frank disclosure, we are satisfied that there are reasonable grounds to suspect that at least some documents will be present on the premises for which the warrants are sought. The information obtained by the CMA indicates that unlawful conduct may have taken place over a number of years since at least [§], and documents may remain accessible even where key individuals are no longer employed by the suspect undertakings or where the companies and

individuals have sought to delete materials. The CMA is intending to search across a wide range of materials, including not only emails but instant messages, telephone call records, [§]. We note that there is no minimum threshold for the extent of documents that are suspected to be on the various premises, and that even if only limited documentary evidence can be obtained during the search, that may be sufficient to demonstrate an infringement.

16. The second statutory condition under s. 28(1)(b) of the 1998 Act is that there are reasonable grounds for suspecting that if the documents were required to be produced they would not be produced but would be concealed, removed, tampered with or destroyed. As a general rule, where a warrant is sought in respect of business premises, if there are reasonable grounds to suspect a secret cartel, it may be inferred that if relevant documents were required to be produced they would not be produced but would be concealed, removed, tampered with or destroyed; see Roth J in *CMA v Another*, §9.
17. That is because a secret cartel is by its nature covert vis-à-vis the relevant trading parties of the undertakings who have concluded the agreement, and the general public. Businesses are, moreover, increasingly aware that anti-competitive activity is unlawful and can lead to very substantial financial penalties. That is particularly the case for cartels, which are generally considered to be among the most serious type of infringement. Individuals involved in cartel activity may, in addition, face potential imprisonment, and company directors may risk disqualification. Undertakings that are found to have infringed competition law are exposed to private law damages claims and may be excluded from future public procurement processes. The prospect of such serious potential consequences provides in itself a strong motive for the concealment of unlawful, anti-competitive conduct.
18. In the present case, on the evidence before the CMA, it seems that the agreed market sharing arrangements may have been relatively widely known within the suspect undertakings themselves, [§], not least in order to ensure that the arrangement was adhered to [§].

19. Nevertheless, the evidence before us indicates that the suspect undertakings did take steps to conceal the nature of their arrangements from their customers, for example [8<]. Indeed, the fact that the customers were, it appears, generally unaware of the arrangements is likely to have been central to their efficacy. There are therefore reasonable grounds for the CMA to suspect the existence of a secret cartel.
20. There is also evidence that at least some individuals within the suspect undertakings were aware that the conduct in question was illegal, or at the very least improper, but that the undertakings were nevertheless willing to take the risk of misleading their customers. That indicates that those undertakings might well likewise attempt to conceal or destroy relevant materials if asked to produce them. The evidence is therefore, in our judgment, sufficient for the purposes of the second statutory condition in the present case.
21. Finally, even if the two statutory conditions under s. 28 of the 1998 Act are satisfied, the issue of a warrant is a matter of discretion for the Tribunal. We are satisfied on the evidence before us that this is an appropriate case in which to exercise that discretion, given the potentially serious nature of the infringements under investigation and the fact that the customers potentially affected by the conduct of the suspect undertakings may, on the information before the CMA, have included and continued to include numerous public sector entities as well as private customers.
22. We have reviewed the terms of the warrants. They are to a large extent in the same form as the standard drafts annexed to the Practice Direction, with various amendments, some of which are simply clarificatory or are made to reflect the current statutory position.
23. The warrants do, however, also include extensive provisions inserted by the CMA, to reflect in particular the fact that it is seeking powers to inspect, take copies of and, if necessary, take possession of material stored electronically, including where necessary taking possession of the electronic devices on which relevant materials may be stored, where the documents themselves cannot be extracted and provided to the CMA without removal of the relevant electronic

device. The annex to Mr McNabb's affidavit contains a detailed description of the process which the CMA intends to implement to execute the warrants. We have also had an extensive discussion with Mr Sebastian during the course of the hearing today about how that will work in the case of electronic materials and electronic devices.

24. We are content, on the basis of that discussion and the material before us, to issue the warrants sought by the CMA. The CMA has, however, agreed that the discussion at the hearing today should be reflected in various revisions to the order and warrants.

## **POSTSCRIPT**

25. Following the discussion at the hearing, undertakings have been given by the named officers identified in the warrants concerning the manner in which the CMA intends to deal with any personal mobile phone devices which the CMA wishes to search and seize. Those include undertakings to (i) ensure that any imaging and copying of a personal mobile phone takes place on the premises in so far as reasonably practicable; (ii) return any SIM card on the phone within two hours; (iii) return the phone within 36 hours of seizure unless the CMA obtains consent to hold the device for a longer period; and (iv) take all reasonable steps to ensure that the person from whom any mobile phone is seized (whether a personal mobile phone or otherwise) is not left without access to a substitute mobile phone. Those undertakings are set out in the warrants, and referred to in the orders approved by the Tribunal.



The Hon. Mrs Justice Bacon    Professor Pinar Akman  
President

Eamonn Doran

Charles Dhanowa C.B.E., K.C. (*Hon*)  
Registrar

Date: 13 June 2025