

Information Sharing Gateways and International Assistance in Information Sharing - the UK perspective

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Restriction on disclosure of information unless gateway applies

- General prohibition on disclosure of information provided to the CMA in the exercise of its functions which relates to individuals or businesses unless a gateway applies (s.237 Enterprise Act 2002)
- Various statutory gateways exist:
 - Consent (section 239)
 - CMA's statutory functions (section 241)
 - Disclosure to overseas authorities (section 243)
- Must conduct balancing exercise before disclosing information, weighing up need for disclosure against potential harm to individuals, businesses or public interest
- Prohibition on disclosure does not apply where separate power/duty to disclose information exists (e.g. Article 12 Regulation 1/2003)

Gateway allowing disclosure to overseas authorities

- Information can only be disclosed for specified purposes, e.g. civil and criminal investigations or proceedings
- Does not apply to information gathered in the context of merger or market investigations
- Need to take into account various considerations before disclosing information, including:
 - whether matter sufficiently serious to justify disclosure
 - whether law of country in which authority is based provides appropriate protection against self-incrimination in criminal proceedings
 - whether law of country in which authority is based provides appropriate protection of personal data
- Secretary of State can block disclosure if considers that more appropriate to investigate/bring proceedings in the UK

Experience of using gateway in practice

- Overseas authority gateway rarely used in practice (e.g. disclosure of evidence to ACCC in relation to marine hoses cartel)
- Typically rely on other mechanisms for sharing information:
 - Article 12 of Regulation 1/2003 for disclosure to other ECN members
 - waivers (e.g. from leniency applicant)
- Practical issues:
 - Need to notify Secretary of State
 - Must limit disclosure to what is 'necessary' for recipient authority to see
 - Recipient must agree not to use information for other purposes
 - May seek assurances in relation to wider disclosure