

Suspended sentence imposed on remaining executive in UK criminal cartel

Director that pleaded guilty to the cartel offence in the galvanised steel water tank cartel has received a six month suspended sentence after his co-accuseds were acquitted.

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In brief

On 14 September 2015, the UK Competition and Markets Authority (CMA) announced that an individual had been sentenced after pleading guilty to committing the criminal cartel offence under the Enterprise Act 2002.

Two other executives prosecuted under the offence were [acquitted](#) in June, after the prosecution failed to persuade a jury that the directors had acted dishonestly when fixing prices and rigging bids.

The light sentence explicitly reflects Mr Snee's voluntary cooperation and pleas in mitigation. A harsher sentence could have been perceived as excessive in light of the acquittals.

Background

In 2012, the Office of Fair Trading (OFT) began investigating suspected cartel conduct in the market for the supply of galvanised steel tanks for water storage in the UK. The alleged cartel related to a number of companies, including Franklin Hodge Industries Limited, Kondea Water Supplies Limited, Galglass Limited and CST Industries (UK) Limited.

Under the original section 188 of the Enterprise Act 2002 (the EA 2002) a criminal offence is committed where individuals dishonestly agree to make or implement, or to cause to be made or implemented, arrangements which constitute certain types of cartel activity. The types of cartel activity that are covered by the offence are price fixing, limiting or preventing supply or production, market sharing and bid rigging. The Enterprise and Regulatory Reform Act 2013 (ERRA) amended Section 188 of the EA 2002 with effect from 01 April 2014. ERRA had the effect of removing the "dishonesty" requirement from the section 188 offence, introducing new exclusions from the offence and providing for three new defences. Individuals convicted of the cartel offence may be sentenced up to a maximum of five years imprisonment and/or an unlimited fine.

In January 2014, the OFT announced that Mr Peter Nigel Snee had been charged under section 188 of EA 2002. Mr Snee was the former Managing Director of Franklin Hodge Industries. He was accused of dishonestly agreeing with a

competitor to fix prices, share customers and rig bids between 2005 and 2012 in relation to the supply in the UK of galvanised steel tanks for water storage. Mr Snee pleaded guilty to these charges in June 2014.

In July 2014, similar charges were brought by the CMA (which had taken over the OFT's functions from 01 April 2014) against Mr Clive Geoffrey Dean, a director of Kondea Water Supplies, and Nicholas Simon Stringer, a director of Galglass Limited for their involvement in the same activity. These two individuals were acquitted of these charges on 24 June 2015, in the first jury verdict in a UK criminal cartel trial. The jury was not convinced of the dishonesty of the individuals, accepting the defence arguments that, for example, Mr Stringer was concerned about maintaining safety standards, Mr Dean was trying to sell products at a sustainable price, and neither considered their behaviour to be dishonest.

Sentencing

On 14 September 2015, Mr Snee was sentenced on the basis of his guilty plea to six months imprisonment (suspended for 12 months) and ordered to do 120 hours community service within 12 months. The CMA notes that at the sentencing hearing at Southwark County Court, His Honour Judge Goymer remarked that "the economic damage done by cartels is such that those involved must expect prison sentences".

The Judge considered that a sentence of two years was appropriate as a starting point. However, Mr Snee's sentence was reduced by the "higher end" discount of 75% on the basis of his early guilty plea, a number of mitigating circumstances, such as the fact that he was not motivated by personal gain, and the extent of his voluntary cooperation as a witness. As is usual in such cases, the CMA reported to the trial judge the extent of Mr Snee's cooperation in order that it could be taken into account in the sentencing decision. The Judge ordered that it was appropriate in the circumstances of this case for the resulting six month sentence to be suspended. He also declined to disqualify Mr Snee from acting as a director, on the grounds that it would adversely affect the employment of others, as well as his employment.

Comment

Mr Snee is the fourth individual to have been sentenced for the UK criminal cartel offence. The other convictions were reached after three men pleaded guilty to dishonestly engaging in cartel activity in relation to the supply of marine hose and ancillary equipment in the UK.

There is yet to be a prosecution for the cartel offence following the removal of the dishonesty element by ERRA, as the amended offence applies only to conduct that takes place after 01 April 2014. It is entirely possible that there will be an increase in the number of criminal charges brought by the CMA under the amended offence.

However, as the outcome of the prosecutions of Mr Snee's co-accused demonstrated, the offence criminalises conduct that some - both perpetrators and juries - may not recognise as criminal, in particular where the offence targets a wrong predominantly directed towards the benefit of a company (as opposed to for the direct benefit of an individual). Challenges in establishing the offence may therefore lie ahead, even under the revised offence.

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