

THE DANGERS OF CARTELS

8 Jun 2017 Nicola Sharp, Syedur Rahman.

At first glance, the worlds of modelling and furniture making would appear to have little in common.

Yet they are linked by two recent decisions from the Competition and Markets Authority (CMA). Both decisions indicate the extent to which anyone in business has to be careful to avoid becoming involved in illegal cartel activity – and the costs that can be incurred if you do.

In the furniture case, the CMA issued two decisions; formally finding three companies guilty of illegal cartel conduct and imposing fines that totalled £2.8 million. The decision came after two of the companies, Thomas Armstrong (Timber) and Hoffman Thornwood, had admitted market sharing, coordinating prices, rigging bids and exchanging commercially sensitive information. The third company, BHK (UK), had admitted involvement in cartel activity soon after the CMA began its investigation. It was not fined because it was the first to come forward and so benefited from the CMA's leniency policy.

In the second case, five model agencies and their trade association were fined a total of more than £1.5 million. The CMA found that the agencies and the association, the Association of Model Agents (AMA), colluded instead of competing on prices for modelling services.

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The parties regularly shared information regarding particular customers, the prices they were likely to charge and negotiations that had been conducted. As a result, there were instances where the agencies

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had agreed on minimum prices or pricing scales.

As well as this, the AMA and the agencies regularly sent out emails to other agencies encouraging them to turn down prices suggested by customers because they were too low. These emails, which were known as “AMA Alerts”, were viewed by the CMA as an attempt to fix prices across the modelling industry.

This activity was happening while discussions were being carried out with a variety of customers; including well-known clothing companies, online fashion retailers and high-profile consumer goods companies.

Argument

There is an argument that companies facing such accusations could make about transparency in the market place. Many companies accused of cartel behaviour have countered with the opinion that they are simply making sure that they have got their pricing right.

They can only do this, they argue, by knowing what their competitors charge and by making sure they are not undercutting it or charging too much. If they undercut their competitors, they argue, they are driving prices down in the market, which harms everyone in it. And if they look to charge too much, their business will suffer as potential customers will do business with their rivals, whose prices are lower.

These arguments could be made in any industry: furniture making, modelling and every other business where customers are charged for goods or services that could be provided by more than one company.

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Enterprise Act 2002

But
these
arguments
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The
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Cartel
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fixing, bid rigging, market sharing arrangements and deliberate restrictions on production or supply of commodities.

It is not hard to see how the cases mentioned above fall foul of this law. The maximum penalty for the offence is five years in prison. People have been jailed for the offence.

Directors and employees involved in such activity can be held personally criminally liable for such an offence. This should serve as a stiff warning to those in business to seek legal advice at the earliest opportunity if they have any concerns that they may be breaching the Enterprise Act.

Immunity

In the case of the furniture makers, we touched on the leniency policy that led to BHK (UK) not being fined.

The Enterprise Act contains provision to grant criminal immunity to individuals “for the purposes of the investigation or prosecution of offences”. Putting it bluntly, if you report your cartel behaviour and offer to co-operate with the authorities, the CMA may agree not to prosecute you.

In such circumstances, you have to proceed carefully. Taking advice from solicitors well-versed in this law and experienced in dealing with the relevant authorities is the only way for someone to achieve the best possible outcome if they are embroiled in a cartel situation.

The prosecution of cartel behaviour is not something unique to the UK. It is viewed by the authorities as a global phenomenon and can often involve enforcement agencies from numerous countries investigating behaviour that spans continents.

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There
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also
the
possibility
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customers
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for
example
the
clients
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may
make
huge
civil
claims
for
damages
against
those
found
guilty

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of cartel behaviour.

There are, therefore, a number of reasons why a company should seek legal help if it believes it has committed cartel behaviour. What should also be emphasised, however, is the importance of preventing such behaviour in the first place.

Companies should be introducing compliance procedures to eliminate the potential for cartel behaviour. The risk of cartel activity can be “designed out” of the way a company works, ensuring it will not face the problems we outlined in the furniture and modelling industries.

Only by taking such a planned approach can a company be certain that it will not be the subject of accusations that it is part of a cartel.



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