

Breaking competition law: construction cartel in rolled lead

In 2020, the Competition and Markets Authority (CMA) [fined 2 rolled lead companies a total of over £9 million](#) collectively for their part in anti-competitive collusion to manipulate the market to their advantage. Rolled lead is a widely used product in the UK construction industry, mainly in roofing and cladding. Three directors – Mr Jocelyn Campbell (BLM), Mr Graham Hudson and Mr Maurice Sherling (ALM) – were personally held to account for their wrongdoing and disqualified from acting as company directors. The businesses involved sold their products to building merchants who in turn sold them off to construction contractors. Their illegal practices included:

- colluding on prices
- sharing the rolled lead market by arranging not to target certain customers
- agreeing not to supply a new business due to the risk of disrupting the firms' existing customer relationships
- each of the practices also involved exchanges of commercially sensitive information

This is the latest in a number of recent cartel cases involving the construction sector.

Senior directors in both businesses were actively involved in the wrongdoing and because of this each business had their fine increased by 15%.

What happened

Anti-competitive arrangements took place between 2015 and 2017. Market conditions were tough, overall demand for rolled lead was declining due to the availability of alternative products. One of the directors described it as a 'sunset industry'.

A small number of businesses were operating in the market and a significant amount of contact took place between them, some of which were for legitimate commercial reasons, eg as a result of cross-supply relationships and trade association memberships. However, some of the contacts were for anti-competitive reasons – which may reflect the fact that market conditions appeared ripe for illegal collusion – where businesses under pressure to protect profit margins were in close contact.

Increased contact between rivals

From 2015, 2 of the directors began to make a high volume of calls, texts and email correspondence to one another. This increased contact correlated with the timing of anti-competitive pricing and market sharing arrangements. There was also evidence that some of those involved in the anti-competitive practices sought to conceal their contact – one director used a second,

concealed phone to do so.

Price fixing and market sharing

When businesses avoid competing with one another, a harmful consequence can be artificially higher prices.

Evidence of market sharing arrangements between the businesses included this text message sent to a competitor:

My apologies, we have a f.. Up but will retrieve the situation this morning and definitely not take orders from your guys.'

The 'f... Up' refers to one business's mistake in the prices it was offering to a particular customer. The reference to not taking orders from 'your guys' demonstrates market sharing.

Illegal information exchange

The rivals exchanged commercially sensitive pricing and supply information. They knew where they stood with one another and could alter plans if needed to avoid being in direct competition and protect margins.

This text message was evidence of an illegal information exchange between rival businesses:

Butcher is gloating with regards to how many of our accounts are calling them due to our 10 day delivery time said that's b**ks it's due to us holding the price if we lose tonnage you know the score! Next breath he wants to go another 100.

If we lose tonnage you know the score' is a threat, warning the competitor not to attract customers by lowering their prices. The 'next breath he wants to go another 100' refers to a commercially sensitive piece of information about a proposed price increase of £100 per tonne.

Cheating on the cartel

The following text message was sent from a director's second, concealed phone in order to influence pricing decisions of their rival in the cartel by providing false information. Even though it's false information, such information can be used to further an anti-competitive purpose if it is intended to mislead and thereby influence a competitor. This scenario therefore counts as an illegal information exchange.

Down 190 at the buying groups but no blanket adjustment for the

rest.

How this broke the law

Discussing and agreeing prices and future supply plans with competitors, market sharing and the sharing of competitively sensitive information, be it true or misleading, are all illegal anti-competitive practices. The businesses colluded on price and the allocation of certain customers.

Lessons learned from this case

- if you are involved in anti-competitive practices with your rivals, you run the risk of the CMA taking enforcement action against you
- it is critical that directors lead by example and ensure everyone within their organisation is clear on competition rules and abides by them
- if your business is in close contact with rivals you must be on high alert to anti-competitive risks – have regular training in place to identify and mitigate against competition law dangers. Consider implementing a compliance programme. If in doubt always seek independent legal advice to help you
- never agree with rivals to fix prices or not to compete for customers or business

Benefits of co-operating with an investigation

If a company is the first to report being part of a cartel and fully co-operates with an investigation, it can benefit from immunity from fines and its co-operating directors can avoid director disqualification.

Even after an investigation has started, it can still benefit from reduced fines through our [leniency programme](#).

Individuals may also be eligible for immunity from prosecution and director disqualification if they come forward independently and co-operate with the investigation.

If you think you may have broken the law, we always recommend that you seek independent legal advice. If you have information on other companies in your industry that may have been involved in an anti-competitive arrangement, report it to us; [you may qualify for a reward](#).

For more information, including how best to report, see our [‘Cheating or Competing?’ campaign page](#).