

# Concrete companies: construction cartel

In 2019, 3 concrete companies were found to have entered into illegal arrangements under which they fixed or coordinated their prices, shared out the market by allocating customers, and exchanged competitively sensitive information.

The businesses manufactured pre-cast concrete drainage products which are essential for roads and railways and used in large infrastructure projects. The customers who typically need to buy these types of products include local and national government bodies, as well as utilities, engineering and construction firms.

The companies were fined £36 million and 2 directors have been disqualified for 6.5 and 7.5 years with additional disqualification cases pending in court.

## **What happened**

The cartel arrangement began in 2006 after a period of fierce competition and low prices in response to tough market conditions. The rivals met to end this situation and create what one of them described as a 'new era of trust'.

## **Secret meetings**

Regular, secret cartel meetings took place (4 of which were secretly recorded by the CMA), held away from business premises, in hotel meeting rooms. One member of the cartel kept track of the discussions in a 'Boys Spoils' file; others referred to the arrangement as the 'Pigeon Club' – clearly recognising that that this was not ordinary business practice.

One of the individuals at a cartel meeting said:

But guys, look at our, look at all our financial numbers, we've all had a good year. Everybody has had a good year financially and profit-wise. And that's come about by all sitting here and [being] patient.

(Secretly recorded evidence from cartel meeting, case decision para 4.55)

## **Agreeing price lists**

The businesses discussed and agreed their spot market price lists, where prices are agreed on a deal by deal basis. These were then used by sales teams as a basis for negotiating with customers – in effect, the agreed list prices acted as 'targets.'

## **Market sharing**

The businesses also agreed that they would not compete for each other's customers on certain fixed price contracts ('term deals') – a so-called 'no poaching' arrangement.

For example, one sales person said he was told:

something to the effect of "we don't touch each other's term deals". I took this to mean that [company X] didn't target the term deals of other manufacturers and vice versa. There was an unwritten rule.

## **Illegal information exchange**

The rivals also regularly shared competitively sensitive information so they could monitor each other's actions: this meant that they all knew where they stood with one another (including in terms of market share) and could plan their approach accordingly.

## **Falsely claiming compliance**

In this case, individuals within the businesses had signed compliance documents and/or declarations saying that they would not break competition law. But, by itself, the signing of such documents does not provide a safeguard. Such documents must be understood and followed.

## **How this broke the law**

Discussing and agreeing price lists with competitors, market sharing and the sharing of competitively sensitive information are all illegal anti-competitive practices.

The businesses did not operate independently of each other. Through regular contact, they cooperated in relation to price and the allocation of customers. Their aim was to increase prices, and maintain their market position without having to compete fairly.

## **Lessons from this case**

- the construction sector remains in the CMA's sights
- tough market conditions are no excuse for breaking the law
- never exchange competitively sensitive information
- never agree with rivals not to compete for customers or business

- the CMA has sophisticated means of capturing evidence and despite the businesses meeting in various different locations, we were watching
- it is not enough to claim you are complying with the law – you need to actively comply

## **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](#). In this case, one of the businesses did this and it benefited from a reduction in its fine.

Individuals may also be eligible for immunity from prosecution and director disqualification if they come forward independently and cooperate 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, visit our [‘Cheating or Competing?’ campaign page](#)

One of the companies is appealing the CMA’s decision. This appeal goes to both the findings in the decision and the amount of the penalty. The CMA is defending the case. The other companies involved admitted breaking the law and accepted the penalties that were imposed on them.