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.

[Joint Statement on UK Indonesia Joint Trade Review]

The Joint Trade Review (JTR) between the Republic of Indonesia and the United Kingdom was set up in recognition of the importance of deepening the trade and investment relations to facilitate economic growth. It has been concluded 18 months after its establishment in October 2019 during the Trade Expo Indonesia in Tangerang, Indonesia.

The objectives of the JTR are (i) to provide a view of the current trade and investment relationship and identify the basis on which the trade and investment relationship can be best enhanced in the future, and (ii) to develop potential recommendations for improving trade cooperation and engagement, including by reflecting views of business, and developing a roadmap to achieving success.

The findings of the review are as follows:

Overview of Bilateral Trade and Investment Relations

Indonesia and the UK have substantial two-way trade but there is room for improvement. According to Indonesia's data, bilateral trade reached $2.39 billion in 2019 and enjoyed 1.15% average annual growth rate from 2015-2019. In services, trade was growing on average annually 8.33% in 2015-2019 or increasing from US$ 1.02 billion in 2015 to US$ 1.98 billion in 2019. The UK's data shows that bilateral trade in goods and services between the UK and Indonesia was worth US$ 3.8 billion (constant 2019 dollars) in 2019, an increase of 2.6% or US$ 98 million since 2018 in USD terms. In 2019, Indonesia accounted for 0.47% of the total UK outward FDI stock, and ranked 29th as a destination for UK FDI, and 20th as a destination for UK FDI outside the EU.

Indonesia and the UK already have a wide-ranging bilateral relationship, encompassing political, defence and security, education, commerce, development, and socio-cultural links. Both countries work closely together in various fora, including the UN, WTO and G20. Cooperation will expand further in the future given the importance of international trade to both countries. The UK's ODA programmes have also helped support the development of the Indonesian economy, reduce poverty and strengthen social inclusion.

Priority Sectors

Indonesia and the UK have agreed on a number of priority sectors following bilateral discussions, which include business and stakeholder engagement, and data analysis. The agreed priority sectors are: Food, Beverages, and Agricultural Products; Education and Training; Renewables / Green Energy (inc. green project finance and energy transition); Infrastructure and Transportation; Wood and Wooden Products; Financial and Professional Services; Pharmaceuticals and Healthcare/Life Sciences; Technology; and

Creative Economy.

Challenges and Opportunities

Both sides recognise the challenges and opportunities in the identified priority sectors. In general terms, UK businesses expressed concerns on foreign ownership restrictions and local content requirements, restrictions on foreign professionals operating in Indonesia and complex bureaucratic processes to enter the market. Indonesia's businesses expressed their concern on the future of the UK's regulations post-Brexit, high standards for certain products, lack of recognition between qualifications for professionals, and future regulations related to the UK's environmental goals.

To address such concerns and challenges to the extent possible, the JTR underlines the importance of intensifying dialogue between all stakeholders, including government and business. Both sides also have identified specific cooperation areas in each priority sector to explore further, bearing in mind that domestic regulations are imposed in non-discriminatory basis to all trade and investment partners and certain changes require higher commitments such as a formal trade agreement.

Recommendations on the Mechanism to Enhance Economic Relations

The JTR underlines the importance of providing a forum for dialogue to find solutions to identified issues and barriers. It recommends the establishment of a new, annual Joint Economic and Trade Committee ("JETCO") at Ministerial level, with an underpinning Senior Officials Meeting. This forum will: (i) explore opportunities to identify and resolve barriers to trade and investment; (ii) promote, facilitate and develop trade, investment and economic cooperation; and (iii) facilitate private sector communication between both countries.

In the future, Indonesia and the UK may explore the possibility of pursuing a higher level of economic partnership, such as a formal trade agreement, in order to fully optimise the potential between our two economies.

UK and Indonesia announce new Joint Economic and Trade Committee

The UK and Indonesia have today (Monday 26) concluded the first round of exploratory trade talks and committed to further strengthening our £3 billion trade and investment links through a new joint trade dialogue.

The new Joint Economic and Trade Committee (JETCO) will help promote and develop trade, investment and economic cooperation ties and address market access barriers affecting UK businesses trading with Indonesia.

Today’s announcement follows a Joint Trade Review (JTR) which was carried out by the UK and Indonesian governments over the last 18 months to explore opportunities to increase trade and investment in each other’s countries and identify priority sectors to deepen our trading relationship.

The JTR identified nine key sectors for enhanced cooperation, including education and training, financial and professional services, healthcare and life science, food and drink, agriculture, renewables and green energy.

The International Trade Secretary, Liz Truss and Indonesia’s Minster of Trade, Muhammad Lutfi, have today also signed a Memorandum of Understanding. As well as establishing the JETCO, it highlights the findings of the Joint Trade Review and commits to further collaboration in a number of areas, including, the establishment of a dialogue to resolve market access barriers in areas such as renewable energy and food and drink.

Indonesia is a key partner for the UK, as a fellow member of the G20 and the largest economy in South East Asia, with total trade between the two sides worth over £3 billion in 2019.

The International Trade Secretary, Liz Truss said:

> By 2050 Indonesia is predicted to be one of the top five economies globally. Today’s agreement sets out our ambitions to strengthen our trade and investment ties, deepen our collaboration across a range of sectors, from financial services and technology to renewables and open new markets for UK businesses.

> We want to strengthen trade links with like-minded countries like Indonesia who share our belief in democracy and the international rules-based system and help strengthen Global Britain’s dynamic partnerships with ASEAN and Southeast Asia.

Her Majesty’s Trade Commissioner for Asia Pacific, Sam Myers said:

> This MoU is an important step for deepening the UK’s trading relationship with Indonesia, ASEAN’s largest economy. It will create a formal mechanism to address business opportunities and challenges at senior levels of government, and kick-start sector-specific discussions in nine priority areas.

> We are already having productive engagement with businesses on renewable energy and green growth, and food and beverage products – creating new prospects for joint partnership and prosperity.

Greater protection for sweet chestnut trees in England

Scientists are stepping up the fight against an invasive tree pest of sweet chestnut trees – Oriental Chestnut Gall Wasp – the UK’s Chief Plant Health Officer announced today.

Approval has been given for the release of a parasitoid wasp called Torymus sinensis, a natural biological control agent, to help reduce the spread of Oriental Chestnut Gall Wasp in England to protect the health of sweet chestnut trees.

This method of natural pest control works by using Torymus sinensis to kill the Oriental Chestnut Gall Wasp, thereby controlling the pest in England.

Oriental Chestnut Gall Wasp was first found in England in 2015. The wasp causes galls on the buds and leaves of sweet chestnut which damage the tree. In high numbers, the gall wasp can weaken sweet chestnut trees and make them more vulnerable to other pests and diseases, including Sweet Chestnut Blight.

Torymus sinensis is already present naturally in England but in very low numbers. Further releases of the parasitoid will enable the population to build up to a level to effectively control Oriental Chestnut Gall Wasp. This method of biological control is used successfully in many countries across Europe.

Chief Plant Health Officer Nicola Spence said:

> Threats to sweet chestnut trees have increased as a result of tree pests and diseases such as Oriental Chestnut Gall Wasp and Sweet Chestnut Blight. The release of this biological control agent represents a huge step towards protecting the health of sweet chestnut trees and will further enhance the resilience of our treescape.

Today’s announcement follows extensive research commissioned by the Department for the Environment Food and Rural Affairs in partnership with Fera Science Ltd, a thorough risk assessment and careful testing to ensure the safe, controlled release of the parasitoid in the UK.

The release of any biological control agent is carefully regulated, and the release gained governmental approval after robust scientific review, including by the Advisory Committee on Releases to the Environment and a public consultation. Fera Science Ltd will sensitively control the release, with a programme of monitoring for the next 10 years.

Senior Scientist at Fera Science Ltd Neil Audsley said:

> Following an extensive programme of research and thorough risk assessment, we are now able to release a biological control agent to reduce the population of Oriental Chestnut Gall Wasp. Biological control is the safest and most effective means to manage pests such as Oriental Chestnut Gall Wasp. This strategy has been successfully used in countries across Europe and will directly contribute to improving the health of sweet chestnut trees in England.

The release of Torymus sinensis is part of the government's long-term strategic response to managing threats from tree pest and diseases to achieve the goals of the [Tree Health Resilience Strategy (2018)]. Working in partnership with world leading scientists and colleagues from the Forestry Commission and the Animal and Plant Health Agency, Defra will continue to protect England's sweet chestnut trees from existing and emerging threats.

Scientists at Forest Research are currently conducting further research on pest and diseases of sweet chestnut trees, including research on Oriental Chestnut Gall Wasp and Sweet Chestnut Blight.

Record size and scope of Carrier Strike Group deployment announced

The UK Carrier Strike Group's globe-spanning maiden deployment will feature visits to India, Japan, Republic of Korea and Singapore, Defence Secretary Ben Wallace will announce.

Mr Wallace will set out to Parliament the formidable size of the UK Carrier Strike Group, which will be led by new aircraft carrier HMS Queen Elizabeth.

On a 28-week deployment spanning 26,000 nautical miles, the Carrier Strike Group will conduct engagements with Singapore, the Republic of Korea, Japan and India as part of the UK's tilt towards the Indo-Pacific region. Units from the Carrier Strike Group are expected to visit more than 40 countries and undertake over 70 engagements.

Defence Secretary Ben Wallace said:

> When our Carrier Strike Group sets sail next month, it will be flying the flag for Global Britain – projecting our influence, signalling our power, engaging with our friends and reaffirming our commitment to addressing the security challenges of today and tomorrow.

> The entire nation can be proud of the dedicated men and women who for more than six months will demonstrate to the world that the UK is not stepping back but sailing forth to play an active role in shaping the international system of the 21st Century.

HMS Queen Elizabeth, the most powerful surface vessel in the Royal Navy's history, will next month set sail as the flagship of a Carrier Strike Group. Joining her will be a surface fleet of Type 45 destroyers, HMS Defender and HMS Diamond, Type 23 anti-submarine frigates HMS Kent and HMS Richmond, and the Royal Fleet Auxiliary's RFA Fort Victoria and RFA Tidespring.

Deep below the surface, a Royal Navy Astute-class submarine will be deployed in support, armed with Tomahawk cruise missiles.

Providing a cutting edge on the carrier's flight deck will be eight state-of-the-art RAF F-35B Lightning II fast jets. Alongside will be four Wildcat maritime attack helicopters, seven Merlin Mk2 anti-submarine helicopters and three Merlin Mk4 commando helicopters – the greatest quantity of helicopters assigned to a single UK Task Group in a decade.

And supporting below deck will be a company of Royal Marines Commandos.

A US Navy destroyer, a frigate from the Netherlands and a squadron of US Marine Corps F-35B jets are also fully integrated.

Indo-Pacific tilt

CSG21 will be a truly global deployment, from the North Atlantic to the Indo-Pacific. In Parliament, the Defence Secretary will explain how it will help achieve the UK's goal for deeper engagement in the Indo-Pacific region in support of shared prosperity and regional stability – a stated aim of the Government's recently published Integrated Review into foreign, defence, security and development policy.

The forthcoming deployment will bolster already deep defence partnerships in the region, where the UK is committed to a more enduring regional defence and security presence. Ships from the Carrier Strike Group will participate in Exercise Bersama Lima to mark the 50th anniversary of the Five Powers Defence Agreement between Malaysia, Singapore, Australia, New Zealand and the United Kingdom.

Engagements in Singapore, the Republic of Korea, Japan and India will provide the opportunity for strengthening our security relationships, tightening political ties and supporting our UK exports and International Trade agenda.

Sailing alongside Allies and partners

The Carrier deployment will take integration with NATO allies and other global Allies to a new level.

At the forefront will be the US and the Netherlands. Sailing as part of the

Group and providing it with air defence and anti-submarine capabilities will be the Arleigh Burke-class destroyer USS THE SULLIVANS. Flying alongside their UK counterparts will be a squadron of 10 US Marine Corps F-35B Lightning II aircraft. Providing further air defence will be the Royal Netherlands Navy's frigate HNLMS Evertsen.

On the Mediterranean leg of the deployment, another close NATO Ally will provide a period of dual carrier operations when French Aircraft Carrier Charles De Gaulle sails alongside HMS Queen Elizabeth.

Elsewhere air and maritime forces from Australia, Canada, Denmark, Greece, Israel, India, Italy, Japan, New Zealand, Oman, the Republic of Korea, Turkey and the UAE will operate alongside the Carrier Strike Group.

Units from the group visit more than 40 countries and undertake in excess of 70 engagements, visits, air exercises and operations.

Leading in NATO

The UK Carrier Strike Group will be NATO's first 5th generation Carrier Strike Group, underlining the UK's leading role in the Alliance.

CSG21 will participate in NATO exercises such as Exercise Steadfast Defender, and provide support to NATO Operation Sea Guardian and maritime security operations in the Black Sea.