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International criminal cartel investigation into marine hoses

Dispute Resolution briefing
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On 3 May 2007, an international cartel investigation was launched following the arrest of eight executives in the United States. The investigation involved co-ordinated dawn raids between a number of competition authorities, including the US Department of Justice (the DoJ), the European Commission (the Commission); and the UK Office of Fair Trading (the OFT). This is the first time in which the UK, EU and US competition authorities have launched parallel cartel investigations, and demonstrates the increasingly close co-operation in international competition law enforcement.

ALLEGED CARTEL IN THE MARKET FOR MARINE HOSES

In its press announcement, the OFT has stated that it is investigating alleged anti-competitive practices relating to a cartel in the marine hose industry which colluded to rig bids, fix prices and allocate markets. Marine hoses have a number of civilian and military uses, and are used to transport crude oil and petroleum products from tankers to storage facilities. The OFT has stated that the alleged cartel would have affected contracts worth hundreds of millions of pounds.

SITE RAIDS BY THE OFT

Simultaneous raids were initiated at various locations of these companies in a number of different countries. In the UK, this included a site raid by the OFT under its criminal powers under the Enterprise Act 2002, and in association with the European Commission under Article 81 of the EC Treaty. The OFT's criminal investigation included the search of the home premises of one of the individuals concerned. The OFT has stated that this is the first time that it has carried out a search at a home address as part of a cartel investigation.

8 EXECUTIVES ARRESTED IN THE US

The investigation was synchronised with the arrest of eight executives of marine hose production companies whilst they were visiting the US. The DoJ has stated that this represents 3 executives from the UK, 2 executives from France, 2 executives from Italy, and 1 executive from Japan. Reuters has reported that these executives were employees of British-based Dunlop Oil & Marine Ltd., Trelleborg Industrie SA of France, and Japan's Bridgestone Corp.

The DoJ had previously received a criminal Complaint against four of these individuals which had been kept under seal and secret. The arrests in the United States allow the DoJ to avoid being embroiled in complex extradition proceedings. The DoJ is currently involved in lengthy proceedings to extradite Ian Norris, the former chief executive of Morgan Crucible, on price fixing charges. The extradition proceedings have been ongoing since May 2005, and remain



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undecided. There have been similar extradition proceedings in a number of other countries, and demonstrate the DoJ's policy of trying to enforce anti-trust cartel rules extraterritorially.

FINES AND PENALTIES FOR ANTI-COMPETITIVE CONDUCT

Companies that have infringed Article 81 of the EC Treaty can face fines of up to 10% of annual turnover. In the UK, individuals who are guilty under the cartel offence can face unlimited fines and jail sentences of up to five years. In the US convictions against the individuals could result in jail terms of up to 10 years.

The case graphically illustrates the risks to corporates and their employees of breaches of the competition rules. Cartels - agreements between competitors to fix prices or share markets or customers - are regarded as "hard core" (i.e. automatic) infringements. The dawn raids in the marine hose industry demonstrate the seriousness with which these arrangements are viewed. Now, more than ever, companies need to look carefully at their internal compliance programmes and procedures to ensure that directors and other executives fully understand the ambit of the competition rules, and the penalties which they face for infringements.

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