



Competition Rules: addressing your own risk

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For a number of years now directors have been aware of the need to ensure their company's business practices do not contravene the competition rules. They also know that this is easier said than done when all it takes is one maverick salesman secretly to agree with his counterpart at a competitor the prices to be charged for the companies' products or services.

SANCTIONS

The Government increased the pressure on directors a few years ago when it introduced criminal sanctions, in addition to huge fines for the company, for the most egregious infractions. Since that time, directors and employees have faced the prospect of huge personal fines and prison terms of up to five years for dishonestly engaging in any of the so-called "hard-core" offences of price-fixing, limiting supply or production, market-sharing and bid-rigging. From the outset, the Office of Fair Trading and Serious Fraud Office made it clear that they would be looking to prosecute directors and not just the employees involved.

Last year, we saw the first incarcerations under these rules when directors of companies involved in the marine hose cartel were given prison sentences of between two and a half and three years. They were also disqualified from holding directorships of UK companies. Four of British Airways' senior managers at the time of the passenger fuel surcharge cartel are currently facing criminal charges. This trend is bound to continue as regulators around the world have cartels firmly in their sights and see the imposition of huge fines and criminal penalties as a powerful deterrent.

PROCEEDINGS AGAINST DIRECTORS

As if this were not enough, at the beginning of this year we saw a new front opened on directors when WM Morrison, the supermarket chain, started civil proceedings against several former Safeway directors and employees. Morrisons, which acquired Safeway in 2004, is seeking recovery of the OFT's fine of up to £16.4 million in respect of Safeway's admitted participation in a cartel to fix the price of dairy products. The case is the first of its kind and will no doubt be hard fought. Insurance companies will be keen to ensure they do not pick up the tab under D&O policies. Whatever the outcome, for the individuals involved this will be a stressful, time-consuming and costly exercise, which could drag on for years.

Clearly, no director wants to be exposed to any of these risks through the actions of employees. However, the law is clear. A director can be held liable even if he did not know what was happening but a court finds that he ought to have known what was going on. All this puts competition compliance

high on the agenda for all companies today.

COMPLIANCE

Compliance needs to be incorporated into employment contracts, induction training, employees' annual reviews and risk management strategies. Make sure you know what is going on in your company and that employees, especially those with contact with competitors, formally or informally, are fully aware of the rules and the criminal charges you and they could face. In our experience, only if the edict on compliance comes from the top will employees take heed

If you have not done anything about compliance training yet, don't delay. We would be happy to discuss the preparation of training seminars, tailored to your company's markets and structure.

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