

Landmark US Cartel Case: UK Nationals Agree Plea with Record Sentences

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In a landmark case for U.K.-U.S. law enforcement agency cooperation, three U.K. nationals have agreed to serve record-setting prison sentences in the U.K. for participating in a conspiracy to rig bids, fix prices, and allocate market shares of marine hose sold in the U.S.

The U.S. Department of Justice ("DOJ") has announced that an independent consultant and two executives of Dunlop Oil & Marine Ltd., a manufacturer of marine hose located in Grimsby, U.K., have pleaded guilty to participating in a conspiracy to rig bids, fix prices, and allocate market shares of marine hose sold in the U.S.

Marine hose is a flexible rubber hose used to transfer oil between tankers and storage facilities. Cartel victims included companies active in the off-shore extraction and/or transportation of petroleum products, as well as the U.S. Department of Defense. In total, eight foreign executives were arrested on May 2, 2007, in Houston and San Francisco, and charged for their roles in the marine hose cartel following their participation in a cartel meeting in Houston. Included among them were three U.K. citizens, Peter Whittle, sole proprietor of a consulting business named PW Consulting (Oil & Marine), Bryan Allison, managing director of Dunlop Oil & Marine Ltd, and David Brammar, Dunlop's sales and marketing director.

PLEA AGREEMENTS

Whittle, Allison and Brammar were each charged with one violation of the Sherman Act, which carries a maximum sentence of 10 years imprisonment and a fine of \$1 million for individuals. The maximum fine may be increased to twice the gain derived from the crime or twice the loss suffered by the victims of the crime, if either of those amounts is greater than the statutory maximum fine.

The plea agreements filed yesterday in the U.S. District Court in Houston, have led to the longest prison sentences that non-U.S. defendants charged with antitrust offenses have agreed to serve in the DOJ Antitrust Division's history. Under the terms of the plea agreements, Whittle has agreed to serve 30 months in jail, Allison has agreed to serve 24 months and Brammar has agreed to serve 20 months. Whittle and Allison also agreed to pay a US\$ 100,000 fine each, while Brammar will pay US\$ 75,000.

The three U.K. defendants will plead guilty to the charges in the U.S., before being escorted in custody back to the U.K. This will allow them to cooperate with the Office of Fair Trading's ("OFT") own investigation and plead guilty to offenses under the U.K.'s Enterprise Act of 2002. Under that legislation, offenders can face a penalty of up to five years imprisonment in addition to a fine, though no convictions had been made to date.

The OFT announced on May 3, 2007, after the U.S. arrests, that it was carrying out a number of on-site searches as part of a criminal investigation into the marine hose conspiracy. This included home searches, which was the first time that the OFT carried out a home search as part of a cartel investigation. The OFT has yet to make a further announcement in response to the recent guilty pleas in Houston.

INCREASED U.K./U.S. COOPERATION

The agreement to send the defendants back to the U.K. to serve time is an unusual measure and reflects the strong cooperative relationship between the DOJ and the U.K. Office of Fair Trading ("OFT"). Thomas O. Barnett, Assistant Attorney General in charge of the Department's Antitrust Division commented on the "unprecedented coordination" with the U.K., and described the U.K.'s Enterprise Act, which provides for criminal sanctions for individuals who engage in cartel offenses, as "an important new weapon in the fight against international cartels".

This reflects the continuing trend towards U.K.-U.S. cooperation in cartel enforcement which has led DOJ officers to describe the U.K. as "one of the strongest advocates in the international fight against cartels". Reflecting the shift in the U.K.'s approach, its citizens now face potential extradition to the U.S. for antitrust violations. This contrasts with the position less than a decade ago, when U.K. based executives could evade U.S. law enforcement, safe in the knowledge that no U.K. court would grant a U.S. extradition request for antitrust violations.