

## First U.K. Criminal Charges Are Brought Against Cartel Participants Following DOJ Plea Agreements in the U.S.

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### **THE U.K.'S OFFICE OF FAIR TRADING FILES ITS FIRST CRIMINAL CHARGES AGAINST CARTEL PARTICIPANTS**

The U.K. antitrust authority, the Office of Fair Trading ("OFT") has charged three U.K. businessmen with cartel offenses. This is the first time charges have been brought against individuals in the U.K. since new legislation criminalizing cartel behavior came into effect in 2003. The charges follow the arrest of these same three executives, together with five other non-U.S. nationals, in Houston, Texas in May 2007 for suspected breaches of U.S. antitrust law.

The OFT has accused the executives of participating in an international cartel that allocated markets and customers, restricted supplies, fixed prices and rigged bids for the supply of marine hose and ancillary equipment. Marine hose is used by the oil and defense industries for transporting oil between tankers and storage facilities.

British police arrested the three on their arrival at London's Heathrow airport late on December 18, and OFT officials interviewed them before charging them. They have since been released on bail to appear before a U.K. court in the New Year.

The three British businessmen returned to the U.K. as part of their U.S. plea agreement. Under the terms of that agreement, the defendants pleaded guilty to violations of U.S. antitrust law which will involve them serving sentences of between 20 and 30 months each, and paying fines each of U.S.\$ 75-100,000.

Although the U.S. Department of Justice ("DOJ") announced on December 12 that it was permitting the defendants to return to the U.K. to face criminal charges here, the OFT announced that the U.S. plea agreement would not prejudice the U.K. proceedings:

"The U.S. plea agreement applies only to the proceedings in the U.S. and does not affect the rights of the defendants under U.K. law. In particular, they are entitled to the normal presumption of innocence until proven guilty and will be free to decide whether they wish to plead guilty to the U.K. offense or not."

It is highly unusual for the DOJ to grant permission to foreign executives to return home to face charges in another jurisdiction and serve their U.S. sentences there. In the event that the three executives are either acquitted or sentenced to shorter prison terms than those they agreed to under

the terms of their U.S. plea agreements, the U.S. authorities may be tempted to seek their extradition to the U.S.

Under section 188 of the Enterprise Act of 2002, it is an offense for individuals dishonestly to agree that businesses will engage in certain types of cartel activity, namely price-fixing, limiting supply or production, market-sharing and bid-rigging. The offense carries a potential penalty of five years imprisonment in the U.K., as well as a fine.

The OFT's announcement follows an eleven month investigation by the U.K. regulator, one of a number of investigations being carried out by antitrust authorities around the world, including the European Commission and the DOJ. The European Commission is targeting the companies concerned as part of a separate investigation under Article 81 of the EC Treaty, which prohibits anti-competitive agreements between undertakings.

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