

Insights

DEMOLISHED BY THE CMA – COLLUSION IN THE DEMOLITION INDUSTRY

Mar 28, 2023

SUMMARY

On 23 March 2023 the UK Competition and Markets Authority ('CMA') issued an announcement that it has issued fines totalling nearly £60m to 10 construction firms for illegally colluding to rig bids for demolition and asbestos removal projects in both the public and private sectors. The largest fine of £17.5m was issued to Erith.

The CMA also exercised its power to disqualify company directors, a power which it first exercised in 2016 (despite having the power to do so since 2003), and disqualified 3 directors of firms involved in the unlawful conduct.

The fines handed down by the CMA are significant, particularly given that 8 of the 10 firms entered into settlements with the CMA, and the disqualification of 3 directors sends a strong message to businesses that the CMA is keen to show its teeth and is clamping down hard on cartel activity.

It will be interesting to see how many appeals are made against the CMA's decision and yet more interesting to see whether any actions are brought by affected customers seeking compensation for amounts they were overcharged.

BACKGROUND

In March 2019 the CMA announced that it was opening an investigation into suspected anti-competitive arrangements in the construction sector. Following the investigation, the CMA provisionally found in 2022 that 10 construction firms had illegally colluded to rig bids for demolition and asbestos removal contracts. The 10 firms were Brown and Mason, Cantillon, Clifford Devlin, DSM, Erith, JF Hunt, Keltbray, McGee, Scudder and Squibb. 8 of the 10 firms were handed reduced fines as settling parties that had admitted their involvement in the cartel.

The CMA found that bids for the projects were rigged by one or more construction firms agreeing to submit bids which were deliberately priced to lose the tender (known as 'cover bidding') and that 5

of the firms were involved in arrangements by which the designated 'losers' of the contracts were compensated by the winners. The CMA indicated that the value of this compensation varied but was higher than £500,000 in one instance and that some firms produced false invoices to conceal this part of the conduct.

The CMA found that the instances of unlawful conduct took place over a 5 year period between 2013 and 2018 and concerned 19 projects in London, the Southeast and the Midlands worth over £150m.

Commenting on the announcement, the CMA's Executive Director Michael Grenfell stated:

"Today's significant fines show that the CMA continues to crack down on illegal cartel behaviour. It should serve as a clear warning: the CMA will not tolerate unlawful conduct which weakens competition and keeps prices up the expense of businesses and taxpayers."

In addition to handing out significant fines, the CMA exercised its power to disqualify 3 directors of companies involved in the conduct, including a former director of Erith and a former and current director of Cantillon. This is the latest in a series of director disqualifications by the CMA which have followed in quick succession in recent years and serves as a reminder, if one was needed anymore, that the CMA won't hesitate to hold individuals personally responsible for unlawful conduct.

WHAT LIES AHEAD?

Keltbray has announced that it intends to appeal the size of its fine, arguing that its £16m fine was based on group turnover, rather than the turnover of its demolition subsidiary. It has also been reported that Squibb (which was not one of the settling firms) is discussing the prospect of an appeal with its lawyers. Erith, who also did not settle, has so far declined to comment.

As well as the prospect of appeals of the CMA's decision and the level of penalties handed down, it will be interesting to see whether any claims are filed by customers who may consider they have been overcharged as a result of the cartel activity.

Such claims could take the form of follow-on damages actions brought by individual customers or groups of customers, or could take the form of either an opt-in or opt-out class action on behalf of affected customers. This will certainly be an area of concern for the firms involved.

RELATED CAPABILITIES

- Antitrust
- Commercial Construction & Engineering

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