

12 March 2019

Briefing Note

CECA Member Briefing:

Anti-Competitive Practices In The Construction Sector

Introduction

In March 2019 five south east fit-out contractors were fined a total of £7 million after admitting breaches of competition law.¹

Each firm admitted to participating in 'cover bidding' in competitive tenders, agreeing with each other to place bids deliberately intended to lose the contract, thereby reducing the intensity of competition.

In subsequent discussions with CECA, the Department for Business, Energy and Industrial Strategy (BEIS) has emphasised its belief that:

- Anti-competitive practices are widespread within the construction industry, and are found in several tiers of the supply chain and occur across the UK;
- Participants often include regional contractors, and the Competition and Markets Authority (CMA) regularly receive complaints about these practices and are conducting a number of investigations into these practices;
- The CMA has also emphasised the apparent naïveté of the many of the firms and individual involved, who do not seem to be aware of the law and their obligations in relation to anti-competitive practices, or of the severity of the penalties that can be imposed for breaches of the rules, on both firms and individuals.

The CMA are planning a campaign due to launch later this year to raise awareness within the industry about competition law and what constitutes unacceptable practice.

CECA believes such practices are unlikely to involve CECA members, but has produced this briefing to ensure members' knowledge regarding anti-competitive behaviour is up-to-date with the law as it currently stands. CECA strongly advises members that if they should encounter anti-competitive behaviour to report it to the CMA.

Competition Law

The UK's construction industry is subject to UK and EU competition law, the purpose of which is to preserve free, fair, and efficient competition for the benefit of all companies operating within the sector and their clients. This means that companies must:

- Not restrain competition between companies or through agreements, arrangements or understanding that restrict competition;
- Bid for contracts and tenders independently from and without any prior agreement or arrangement with their competitors;
- Not exchange competitively-sensitive information or engage in any discussions (formal or informal) that may lead to the co-ordination of competitive behaviour. In particular, this means companies must not share information about current or future pricing intentions for tenders, or any information that might influence prices or pricing practices, including the exchange of cover prices.

In addition, CECA members are strongly advised to promote understanding of and compliance with competition law through all levels of the supply chain, including with any sub-contractors or other relevant parties.

1. <http://www.constructionenquirer.com/2019/03/01/five-fit-out-firms-fined-7m-for-cover-pricing/>

Breaches of Competition Law

If found to be in contravention of competition law, companies and individuals can expect the following penalties:

- Substantial fines imposed on companies, of up to 10 per cent of their annual worldwide turnover;
- Unenforceability of agreements entered into;
- Damages payable by companies to persons who have suffered losses as a result of the offending agreement/conduct;
- Damage to corporate reputation and wasted management time dealing with investigations and legal proceedings;
- Fines and/or imprisonment for up to 5 years for directors or employees found guilty of engaging in 'hard core' cartel activity;
- Disqualification of directors who have participated in, or have negligently failed to take action against, anti-competitive agreements or conduct.

Cartels

Cartels occur where businesses get together and agree not to compete against each other for mutual benefit such as by fixing prices, dividing up markets or rigging bids for contracts. Activity such as this reduces the competitive pressure on those involved to lower their prices or strive to offer a better quality service for their customers.

The Competition and Markets Authority are currently engaged in a campaign to raise awareness of and to prosecute cartels in the construction industry. The CMA's own research with UK business has found that:

- 77 per cent of survey respondents did not understand competition law well;
- Just 6 per cent of UK businesses are running any training on it;
- 79 per cent of businesses meet rivals in social situations, when the risk of crossing the legal line is high;
- 41 per cent of respondents didn't know that attending a meeting where rivals agree prices is illegal;
- 59 per cent of respondents didn't know that agreeing to split up and share customers with competitors is illegal;
- 48 per cent didn't know that bid-rigging - where competing bidders secretly agree who will win a contract and submit over-priced bids - is illegal.

If you think you may have been involved in a cartel CECA strongly advises members to report it to the Competition and Markets Authority without delay. You may benefit from immunity from fines and prosecution if you report before others do. If you think you've witnessed others breaking the law you may report it to the CMA in confidence. You may also benefit from a financial reward.

Visit www.gov.uk/stopcartels where you'll find:

- Short videos that explain what cartels are and how to report them;
- Case studies of other businesses who broke the law;
- An online quiz: test how much you know about competition law and cartels;
- A cartel checker so you can understand whether the information you have does relate to a cartel and should be reported;
- Contact information on how to report potentially illegal behaviour or practices.

CECA strongly supports the CMA's anti-cartel campaign and other activities combatting anti-competitive practices across all aspects of our industry.

If you would like CECA to arrange training on competition law or on how to avoid potentially anti-competitive practices, or would like further information, contact CECA chief executive Alasdair Reisner on 020 7340 0450 or e-mail alasdairreisner@ceca.co.uk.

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