



MORE SMOKY ROOMS

Before the dust has even settled on the issue of cover pricing within the construction industry the Office of Fair Trading (the "OFT") has issued a decision finding competition law breaches in relation to recruitment services for the industry.

Anti-competitive activities within an industry forum

After an investigation dating back to May 2006 and covering the period from late 2004 to early 2006, six firms have been fined a total of £39.3 million for breaches of the Competition Act 1998. The OFT concluded that these firms, along with two others who were granted immunity from penalties, were involved in a cartel which engaged in price fixing and the collective boycott of an intermediary between construction companies and recruitment agencies called Parc UK Limited. Parc had only recently entered the market in 2003. The eight agencies, all specialists in recruiting staff for the construction industry, met several times as a group called the Construction Recruitment Forum, and agreed to boycott Parc's services. They also agreed to fix the fee rates they would charge to intermediaries, including Parc, and to certain construction companies. Together these actions were found to constitute a breach of Chapter I of the Competition Act.

As the agreements were between competitors and the breaches were clear and serious breaches of competition law it is not surprising that the fines imposed were relatively high.

Fines and leniency

The OFT has the power to impose fines of up to 10 per cent of the annual turnover of a business including the corporate group to

which it belongs. The parent companies of firms in breach were found to be jointly and severally liable with them for the offences. This affected two firms particularly badly: Hays Specialist Recruitment Limited and its parent company Hays plc were fined £30.3 million, while CDI AndersElite Limited (part of CDI Corp) were fined £7.6 million. Hays has already indicated publicly that it is considering the possibility of appeal.

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Beresford Blake Thomas Limited and Hill McGlynn & Associates Limited, both subsidiaries of the much larger Select Appointments (Holdings) Limited at the time the matter came to the OFT's attention, escaped fines because Select made the initial application for leniency to the OFT and co-operated fully with its investigation. Of the remaining six firms, five received fines ranging from £108,043 to £30,359,129, these figures being calculated following leniency discounts of between 20% and 35%. A Warwick Associates, which is in liquidation, received no discount and was fined £3,303.

The importance of compliance procedures

This case is a further reminder that the best protection for all firms is to ensure they have robust compliance procedures in place and to do all they can to ensure compliance with the regulatory regime. It is important to note that in relation to the more serious infringements of UK competition law (such as price fixing) criminal sanctions under the Enterprise Act 2002 may be imposed.

Martineau's competition law, public procurement and state aid team

Martineau provides a full range of competition law advice including cartel advice both to alleged participants and to those damaged by such activities. We have extensive experience of dealing with the competition authorities during the investigative procedures leading to a decision, ensuring that clients' rights of

defence are respected, advising on the possible mitigation of fines and leniency applications. We also advise on the associated legal issues raised by cartels such as compliance audits, compliance training and assisting individuals implicated in cartel behaviour.

Please note that this bulletin summarises complex legal issues and is intended only to provide a general overview. This note is not a substitute for taking appropriate specialist advice in relation to specific matters.

If you have any questions about this bulletin or a specific issue, please contact:

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