UK water tank manufacturers admit cartel

Three businesses have admitted participating in an illegal cartel in relation to the supply of cylindrical galvanised steel tanks in the UK and agreed to pay fines of £2.6 million

What does this mean for you?

The settlement with the Competition and Markets Authority (CMA)

On 21 March 2016, in a settlement with the CMA, three UK companies admitted participating in an illegal cartel in relation to the supply of cylindrical galvanised steel tanks in the UK and agreed to pay fines totalling more than £2.6 million. The fourth member of the cartel escaped the fine because it applied for leniency, which is in effect an admission of participation in the cartel.

The four companies, Franklin Hodge Industries Ltd, Galglass Ltd, Kondea Water Supplies Ltd and CST Industries (UK) Ltd, agreed to share the market between them, fix prices and rig bids between 2005 and 2012. The parties agreed the prices behind the scenes and gave an impression to their customers that competing bids were submitted. Whereas in fact, the bid prices were agreed in advance, with companies quoting 'winning' price for the customer group allocated to them. According to the information provided by the CMA, these arrangements were agreed and reinforced at regular meetings between the participating companies over a 7-year period, as well as through contacts concerning particular bids.

Galvanised steel tanks are used for water storage in larger buildings, such as schools, hospitals and other commercial and public buildings, as well as for the supply in the fire sprinkler systems.

How does this apply to you?

Companies who purchased a range of steel tanks from these four companies, either directly or via a contractor during the period 2005 and 2012, may be entitled to claim damages in the UK courts for the 'overcharges' resulting from the cartel. In simple terms, the damages may be calculated as a difference between the price paid and the price that would have prevailed in a non-cartelised market. The fines imposed serve as an indication of the size of the infringement, however, the amount of damages available to the parties harmed by the cartel may in fact be higher. The settlement and leniency application by the companies concerned serves as a basis to pursue follow-on damage claims, serving as a proof of an infringement.

New rules for actions for damages

On 1 October 2015, the Consumer Rights Act 2015 entered into force. The Act aims to facilitate actions for damages following competition law infringements and introduces changes in three key areas. First, the Competition Appeal Tribunal (CAT) now has broader jurisdiction and improved procedures. The Act also makes class-actions seemingly easier, as the 'opt-in' regime is replaced by collective actions on an 'opt-out' basis. Lastly, the CMA has been given authority to approve voluntary redress schemes.

Funding a claim

The costs to pursue a complex litigation will be a key factor for businesses and individuals when considering the merits of pursuing a damages action. However, there are many ways to fund competition damages actions which can significantly reduce claimants' exposure to costs. Options range from the traditional private client retainer to third party funding as well as getting a group of potential claimants together in a joint or parallel action or an action via a trade body. In some instances, the way in which you fund your litigation can offload risk onto the law firm or a third party in return for a share of the potential damages. To help illustrate this, we have set out below a brief overview of the types of funding that are most common when bringing a competition damages claim.

Third Party Funding

Third party funding typically involves a commercial funder agreeing to pay some or all of a claimant's legal fees (and disbursements) in return for a fee. This fee is usually a proportion of the proceeds recovered as part of the litigation process whether by judgment or settlement. If the claim is unsuccessful then the funder loses its investment and is not entitled to receive any payment from the claimant.

After the Event Insurance

The usual rule in English and Scottish disputes is that the loser pays the costs (or a proportion of those costs) of the winner. This means that in complex cases the incidence of costs can be a big issue and, indeed, can determine whether a case should be pursued.

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After the Event Insurance ('ATE') is a form of legal expenses insurance which is taken out after a legal dispute has arisen. An ATE insurance policy insures the claimant against potential liability in the event you lose the case. An ATE policy typically covers claimant's own disbursements, including Counsels' fees, and the other side's costs (subject to a maximum limit). ATE, if disclosed, can also be used as a tactical weapon to encourage settlement as the other side will know that an insurer has conducted an independent analysis of the merits of the case and decided it was strong enough to cover.

Shepherd and Wedderburn

Shepherd and Wedderburn competition law experts and litigators have experience of follow-on and stand-alone competition damages claims and can assist with any queries.

How can we help?

Our team of competition law experts and litigatiors have experience of follow-on damages claims, third party funding and ATE. In fact we action for Albion Water Limited in its successful claim for follow-on damages against Welsh Water using third party funding and ATE - the first and only case (so far) to be funded in this way before the Competition Appeal Tribunal. We are able to provide advice to any parties who may be considering claim compensation. If you would like to know more, please contact John Schmidt, Guy Harvey, Gordon Downie or Fiona Parker.

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