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## Two Acquittals in the CMA's First Criminal Cartel Trial

JULY 2, 2015

On 24 June 2015 at Southwark Crown Court, Clive Dean and Nicholas Stringer, defendants in the first contested trial brought by the Competition and Markets Authority ("**CMA**"), were both found not guilty of criminal cartel charges under section 188 of the Enterprise Act 2002.

Does this high-profile defeat represent a significant setback for the nascent CMA or is it simply indicative (in the first jury verdict in a contested criminal cartel trial) of the difficulty faced by a prosecution in proving dishonesty?

Mr Dean and Mr Stringer were alleged to have dishonestly fixed prices, divided up customers and rigged bids for the supply of galvanized steel tanks for water storage in the UK. Their trial followed the earlier guilty plea last year of a third defendant, Nigel Snee, to criminal cartel charges.

As the alleged price-fixing agreement in question was made before the criminal cartel offence was amended in April 2014, an essential element of the defendants' conduct that the prosecution had to convince the jury of was that they acted dishonestly. Historically, this has proved to be a difficult hurdle for the prosecution to clear. It is perhaps a particularly tall order in cartel cases where, unlike fraud and theft, there are very rarely any clear indicators of greed or personal gain. This was evidenced in this case by the jury who, returning a unanimous verdict, were not persuaded that Mr Stringer and Mr Dean acted dishonestly.

Following a change in the law, for conduct taking place on or after 1 April 2014, it is no longer necessary for the CMA to prove that individuals acted dishonestly to commit the cartel offence. Indeed, the outcome of this trial may well prompt the CMA to take a critical look at other cases on its books where the conduct pre-dates the change in the law.

The criminal charges brought in this case were the first since the calamitous price-fixing trial of four British Airways executives in May 2010. That trial collapsed after it emerged that material potentially helpful to the defence had not been disclosed.

Although the result in this trial will be an unwelcome bump in the road for the CMA, we should be slow to draw any parallels with the earlier British Airways trial. That trial collapsed following a farcical piece of evidence handling: this prosecution was unsuccessful because the CMA failed to clear a factual hurdle under an old law that, for conduct post-dating the reform, it is no longer

necessary to meet.

It is clear from its statement at the close of this trial that cartel enforcement work remains a strategic priority for the CMA's Cartels and Criminal Group: "*The CMA would, therefore, remind anyone involved in cartel conduct or who may be tempted to become involved in such behaviour that we remain committed to investigating and prosecuting individuals who take part in cartels.*"

The CMA's related civil investigation into whether the businesses involved have infringed the civil competition laws under the Competition Act 1998 remains ongoing.

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