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Knock knock knocking on jail's door

1 August 2018 *3 min read*

The amendments to the Competition Act, 1998, which introduce criminal liability for cartel conduct, came into effect on 1 May 2016. The amendments introduced criminal liability for directors and individuals with 'management authority' who are responsible for – or knowingly acquiesce – in cartel conduct. Cartel conduct includes the fixing of prices and trading conditions, market division, and collusive tendering. Staff members at all levels in the management chain (not only directors) are potentially at risk of prosecution in terms of these provisions.

One wonders where we are moving to in South Africa insofar as the criminal provisions of the Competition Act, 1998 are concerned.

Across the continent however, on Thursday 19 July 2018, former traders, Philippe Moryous and Christian Bittar, were found guilty of plotting to rig a key interest rate benchmark and were sentenced by a London criminal court to more than 13 years in prison. The sentences followed a trial that lasted over 11 weeks. The trial involved five people accused of conspiring to manipulate the Euribor rate between 2005 and 2009 to benefit the positions of traders at their banks.

Philippe Moryous, a French citizen and former Barclays trader was tried in absentia at Southwark Crown Court, and was given a prison term of eight years by Judge Michael Gledhill QC for conspiracy to defraud. In addition, Christian Bittar, who worked at Deutsche Bank at the time of the conspiracy, pleaded guilty to the same charge and was sentenced to five years and four months in prison.

It is interesting to note that the Serious Fraud Office, which brought the prosecutions, said it would bring an application to retrial the other three defendants after a jury was unable to reach a verdict in relation to them.

The clearest indication that the South African Competition Commission is seriously considering pursuing criminal prosecutions going forward, lies in the statement by Commissioner Tembinkosi Bonakele on 29 June 2018:

> *Robben Island is an iconic site that represents the saddest and richest history of this country dating back centuries. The museum deserves to be treated with great pride and respect as it symbolises the peak of courage and triumph of human spirit. The actions of these vessel owners exhibited distain for this country's history and utter disrespect for the people. Those who show neither remorse nor shame must be considered for criminal prosecution.*

This statement follows confirmation by the Competition Tribunal of a consent agreement between the Competition Commission and three vessel owners who ferry passengers between Robben Island Museum and the V&A Waterfront in Cape Town, on charges of price fixing and collusive tendering.

Clearly, other countries are pursuing harsher sanctions for cartel conduct. This risk definitely should not be ignored in South Africa. Proactive compliance initiatives and empowering employees with the necessary know-how to prevent competition law contraventions are important and should definitely not be ignored.

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