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Cartel lawyer urges cooperation with authorities

Michael O'Kane, who acted for one of the jailed marine hose executives, knows just how fearsome competition regulators can be

Chris Crowe

As competition regulators around the world sharpen their assault on cartels, companies are facing the dilemma of whether to cooperate and come clean or to stay under the radar. Michael O'Kane, of Peters & Peters, a London law firm, is one of the lawyers that executives are turning to for help.

On [June 11](#), one of O'Kane's clients, Bryan Allison, the former managing director of Dunlop Oil & Marine, was sentenced to three years in prison for operating a cartel that fixed the prices of marine hoses, which are used to transfer oil from tankers to storage facilities. The British businessman was one of several executives arrested in the US a year ago after they were bugged at a cartel meeting by the FBI.

In December, Allison was transferred back to the UK after striking a plea-bargain with the US Department of Justice (DOJ). It is largely thanks to his lawyer that he is now serving his sentence close to friends and family rather than experiencing the harsh American correctional system.

O'Kane, a Derry-born Northern Irishman, has plenty of experience dealing with the DOJ and knew it was not an agency to be trifled with. Three days before he was first summoned to its offices to represent Allison, he had pleaded for immunity on behalf of a British Airways middle-manager caught up in an investigation into fuel surcharges imposed by air freight operators. DOJ lawyers sat across from him flanked by FBI agents carrying firearms.

From health and safety rules to the new Companies Act, directors face a tangle of regulations that could have severe consequences

In order to secure Allison's return, O'Kane persuaded the DOJ to share its cartel-busting efforts with the UK's Office of Fair Trading, offering his client to the British competition watchdog as a "slam dunk" prosecution. Both regulators agreed. O'Kane explains: "The [DOJ] is an incredibly successful prosecuting agency and wanted to give other agencies a foot-up. The OFT had had the power to prosecute for four or five years but hadn't prosecuted anybody yet."

O'Kane, whose Northern Irish accent has been softened by years in London, was formerly a senior prosecutor at the Crown Prosecution Service. Called to the Bar at Middle Temple in 1992, he spent ten years at the CPS handling high-profile cases involving Paul Burrell, the butler to Diana, Princess of Wales, and an attempted hijacking at Stansted airport.

In 2002, he left to join Peters & Peters, a firm with a strong fraud and white-collar criminal practice, where he has since become an expert at defending businessmen accused of cartel offences. His clients include several BA executives, whom he has defended against investigations brought by the DOJ, the OFT and the European Commission. Last year he travelled to the US 16 times on behalf of clients.

Cartels have been in existence for hundreds of years, long recognised and tacitly condoned by governments looking to protect domestic industry, but with the advent of more severe competition laws companies and executives are discovering that what were regarded as normal business procedures are now criminal offences.

At the same time, new leniency arrangements offered by these competition agencies have encouraged companies to come forward with information on cartels in return for immunity or reduced sentences. Last year, for example, Virgin Atlantic avoided prosecution after it blew the whistle on its rival BA, admitting the two airlines had colluded on fixing fuel surcharges. BA was fined £270 million, the biggest fine imposed on a British company for competition offences.

The marine hose cartel was also exposed with the help of a whistle-blower.

O'Kane believes much can be gained from cooperation with competition regulators. "When dealing with corporate fraud or corporate crime, it is sometimes very difficult to persuade a client to come out of the shadows," he says. "It is often impossible to judge how prosecutors or regulators are going to act . . . but for the first time in these cartel cases, you are absolutely guaranteed that if you are the first person in, you will get immunity."

On the other hand, he admits, he does not advise all his clients to come forward. "In some circumstances we have decided to keep quiet and that has also worked."

O'Kane is philosophical about his clients' alleged crimes. Referring to the BA fuel surcharges case, he says: "I don't think people care about [the price-fixing cartel] and are more interested in planes being delayed. They know their heating bills are going up and it's costing them a fortune to fill up their cars, so they probably understand that airlines are just trying to recover some of their additional costs."

Asked if he has ever considered buying a marine hose, O'Kane laughs, but adds that at least these cases allow him to become schooled in "esoteric markets". With competition regulators intent on cracking down on cartels, he is set to become an authority on many more obscure sectors.