

## One of England's largest cartel damages claim

### National Grid

Teamwork, tenacity and a refusal to accept 'how things are done' helped us to pursue one of England's largest cartel damages claims for National Grid. We won several turning-point rulings that changed the way courts handle this kind of case and influenced new European Union disclosure laws.

National Grid is a multinational electricity and gas business headquartered in London, with assets of £38bn. In January 2007 the European Commission ruled that the companies that supplied it with a major component of its power substations had been operating a cartel. The illegal behaviour had been going on for 16 years and, apart from North America, was worldwide in scope. The Commission fined those involved a total of €750m.

National Grid Electricity Transmission plc asked us to claim follow-on damages in the English courts to recover losses plus interest from those involved in the cartel. The case began in November 2008 with a claim for £275m, making it the biggest action of its kind in England.

#### The challenge our client faced

The fact that the European Commission had found a case against the cartelists did not make the outcome of our client's claim any easier to predict.

The Commission ruled that a cartel existed, but decided nothing about its impact on National Grid. We needed to show that the illegal behaviour caused losses for our client, and also that it hadn't simply passed these on to its customers through higher prices.

What's more, claims for follow-on cartel damages can drag on. We knew that the cartel companies would probably try to use every available procedural hurdle, as well as European Court appeals against the Commission's rulings to delay our client's case.

It was clear from the beginning that we would have to test these many procedural issues in court, and show tenacity and initiative to get the right outcome for our client. However, we also needed to be mindful of our client's on-going business interests, as many of the defendants remained important suppliers. This would be a large, complex multi-party case in a new and rapidly developing area of law.

#### How we responded

We assembled a core team to drive the claim forward, including BLP lawyers with specialist knowledge and experience of European, regulatory and competition law. Our in-house litigation IT specialists helped with e-disclosure and sophisticated document reviews.

They were supported by independent economists from Oxera, a consultancy, who helped to determine the financial impact of the cartel on our client. We also instructed leading competition law barristers, Jon Turner QC and Daniel Beard QC.

Throughout the six years on this matter, we had to overcome countless procedural hurdles and rebut numerous attempts to derail our client's case. With 22 defendants involved in the cartel, represented by four different law firms, our lawyers had to battle multiple legal opponents on many fronts.

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Along the way, our team established several ground-breaking rulings in the courts. Three were particularly important to our client's cause and have set important precedents for similar cases:

Firstly, the cartel companies applied to have our claim struck out or stayed. This is par for the course. At the time, the courts seemed likely to automatically stay follow-on damages claims while cartelists exhausted all their appeal options.

But we challenged this assumption and the High Court ruled in our client's favour; deciding that its action should continue with the exchange of statements of case and disclosure. This principle has since become the model for other cases.

Secondly, the cartel companies tried to stop the disclosure of their leniency pleas. Again, this is what we expected. When companies face a competition law fine from the Commission, they can apply for leniency. Traditionally, the information they confess in these submissions has been deemed confidential.

We challenged this assumption too. To make our case, we invoked a European Court of Justice ruling in an unrelated case in Germany that was only handed down the day before we were due in court.

Our team worked under great pressure to quickly analyse the potential impact of the ruling, understand how it might help our client's cause, and decide whether it was worth the risk of changing our strategy just hours before our court hearing.

We determined that this new way forward was a better option for our client, changed our argument, explained the issue to the judge – who was unaware of the German case – and won a ruling that went on to establish another important point of principle.

Finally, some of the cartel companies argued they did not have to give disclosure in English courts. The French defendants relied for years on an interpretation of the so-called French Blocking Statute that, in their view, meant they did not have to release information.

Frustrated by their delays, we questioned this assumption. In October 2013 we won an important ruling in our client's favour from the Court of Appeal. The cartel companies initially said they would appeal this decision to the Supreme Court, but eventually changed their minds and made the disclosure we had demanded.

Our client's claim was settled in 2014, just before the trial was due to start. The terms of settlement in this case are confidential.

### **Lasting impact**

Beyond the court rulings and the outcome we obtained for our client, this case has sparked a very open debate on significant points of legal process. In particular, the ruling on the disclosure of leniency material has had an important influence on the forthcoming EU Damages Directive.

During the six years of this case, we flexed the size of the BLP team depending on the resources required. At its peak, it included over 20 people, liaising closely with four barristers from Monckton Chambers and some ten economists at Oxera.

This demanded close project management to ensure our combined efforts were integrated and focused on the needs of our client. This challenge was made all the harder by the fact that we were up against numerous advisors from multiple defendants.

But our focus on teamwork helped us to be tenacious and resilient on behalf of our client. Jon Turner QC said it was "as near perfect a litigation unit as I've experienced". Indeed, our work on this case led to us winning Competition and Regulatory Team of the Year in the 2014 British Legal Awards.

### **For further information, please contact**



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## Getting in touch

If you would like to talk through your project or discuss solutions to your legal needs, please get in touch.

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## About BLP

Berwin Leighton Paisner is an award-winning, international law firm. Our clients include over 50 Global Fortune 500 or FTSE 100 companies. Our global footprint of 11 offices has delivered more than 650 major cross-border projects in recent years, involving up to 48 separate jurisdictions in a single case.

The Firm has won seven Law Firm of the Year titles, is independently ranked by Chambers and the Legal 500 in over 65 legal disciplines and the FT currently ranks us in the top 5 law firm innovators in Europe.

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