

## **Flying in formation**

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### *It takes two to fix prices*

FOR years British Airways (BA) described itself as “the world's favourite airline”. It no longer looks so popular in London and Washington. On August 1st the firm was hit with a transatlantic double whammy after it was found guilty of colluding with a rival, Virgin Atlantic, to fix prices on long-haul passenger routes. Britain's Office of Fair Trading (OFT) handed down a record fine of £121.5m (\$246m). A few hours later, America's Department of Justice (DoJ) imposed a \$300m penalty of its own. The severity of the American fine also reflected BA's role in a different international conspiracy involving Korean Air and Lufthansa.

A clearer example of illegal price-fixing than that between BA and Virgin would be hard to imagine. The two firms discussed “fuel surcharges” at least six times between August 2004 and January 2006, during which time they rose from £5 to £60 on a return ticket. Willie Walsh, BA's chief executive, had admitted guilt as early as October 2006, condemning the anti-competitive behaviour. Two executives, Martin George and Iain Burns (the commercial director and communications chief, respectively) left the firm that same month. More may follow. Although the fines closed the civil case against BA, a criminal investigation is taking place as well, and the OFT refuses to say whether charges will be brought against individuals.

The cartel-busters were exultant. Philip Collins, the OFT's boss, boasted that the large fine would “send an important message...about our intention to enforce the law”. The DoJ was blunter, describing the arrangement as a “conspiracy”.

A transatlantic bust was particularly fitting for the OFT. During Labour's period in office, it has introduced American-style, cartel-busting sanctions on companies that prefer cosy deals with rivals to the bracing winds of competition. But despite many protracted investigations into sectors such as banking and supermarkets that attract consumers' ire, the OFT has struggled to find the kind of smoking-gun evidence of collusion it needed to look as terrifying as it and the government wished. Until this week, the biggest fine it had imposed was the £17m (subsequently reduced on appeal to £15m) levied on Argos, a retailer, for fixing the price of toys with a rival, Littlewoods.

That is partly the nature of the beast. Collusion is difficult to prove: as Mr Collins observes, the tricky thing about colluders is that they do their business in secret. Indeed, the airlines' price-fixing came to light only after Virgin's legal department alerted the authorities.

This was no selfless dedication to consumers' welfare. Virgin hoped to benefit from the “leniency policy”, which was introduced in the 1998 Competition Act and copied from similar laws in America, granting immunity to firms that blow the whistle. Virgin was just as complicit as BA in the price-fixing and has, presumably, benefited from it financially. Not only was the airline saving itself from the risk of prosecution, but it was also grassing up a rival with whom it has had a bruising relationship in the past.

Whether Virgin gets off entirely scot-free is another matter. Along with BA, it will probably have to defend itself in class-action suits by American passengers who claim they were overcharged. And while most of the opprobrium is currently being heaped on BA, Virgin's reputation also looks likely to suffer as the dust settles.

It grates to see one firm get away with something while another is punished, but leniency policies are, probably, a good thing. The ability to claim immunity gives a powerful incentive for businesses to police their own industries, which ought to improve things for consumers. After all, half a victory is better than none.

610 words

Summary: max. 205 words