IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

Royal Courts of Justice

Friday, 25 June 2021

BEFORE:

LORD JUSTICE EDIS

BETWEEN:

SERIOUS FRAUD OFFICE

Prosecution

and

AMEC FOSTER WHEELER ENERGY LIMITED

Defendant

---

MS S. WASS QC, MR C. BROWN QC and MR K. SONDHI appeared for the Prosecution.

MR D. PERRY QC, MS. M. HILL and MS K. HARDCASTLE appeared for the Defendant.

---

*Transcribed by* ***Opus 2 International Limited***
*Official Court Reporters and Audio Transcribers*

***Tel: 020 7831 5627 Fax: 020 7831 7737***

***civil@opus2.digital***

---

**JUDGMENT**

**(For the approval of the**

**Honourable Lord Justice Edis)**

**CLOSED HEARING**

LORD JUSTICE EDIS:

1. This is an application, following the commencement of negotiations between the Serious Fraud Office ("SFO") and Amec Foster Wheeler Energy Limited ("the company"), for a declaration under para.7(1) of Sch.17 to the Crime and Courts Act 2013 that entering into the proposed deferred prosecution agreement ("the DPA") with the company is likely to be in the

interests of justice and that the proposed terms of the DPA are fair, reasonable and proportionate.

2. The papers supporting the application and containing it are comprised in five lever arch files, being two volumes of core bundle and three volumes of supplementary bundle. The documentation has been carefully prepared and was supplied to me in time for me to read it. I have read it.

3. In a note to the parties on 23 June 2021, I raised some questions which had occurred to me following consideration of the material. The reasons, which I am required to give in private at the conclusion of this hearing, will be brief, but I propose to grant the declarations sought. If and when I grant the final approval under para.8 of the schedule, I will give fuller reasons, which will incorporate that note.

4. In a nutshell, I was concerned to understand more about the circumstances in which John Wood Group ("Wood"), the parent company, came to acquire the company in October 2017 in order to be clear that, for the purposes of both limbs of the declaration, it should be treated as what Mr David Perry QC, on behalf of Wood and the company, has described as a *bona fide* purchaser for value.

5. In dealing with applications of this kind, the court does not make findings of fact as such. The court does not consider all the evidence which has been accumulated by the parties. The court relies upon an agreed statement of facts and upon what it is told. Those documents are, of course, shared between the parties and there is, therefore, a degree of assurance that the court is acting reasonably in accepting their contents.

6. It seems to me that, on that basis, it is appropriate to deal with the case on the basis that the offending company (known in these proceedings as Amec Foster Wheeler Energy Limited, previously known during the offending period as Foster Wheeler Energy Limited) has been acquired by Wood, which is to be treated as a blameless entity not responsible for any of the offending and responsible instead for (to put it in the vernacular) clearing up the mess. That, it seems to me, is a critical factor in deciding whether to declare that entering into a DPA with the offending company, now owned, as I have said, by Wood, is likely to be in the interests of justice. I can spell out those interests more fully in the reasons I will give next week in the event that this preliminary declaration is made final.

7. Having arrived at that conclusion, it is necessary then to consider, for the purposes of the second limb of the declaration, whether the proposed terms of the DPA are fair, reasonable and proportionate. The proposed terms of the DPA are complex. I do not intend to set them all out even in the full version of these reasons, which may become public next week.

8. The DPA contains a number of provisions designed to ensure that the corporate governance of the offending company and Wood, its parent, continues to be as it should be during the currency of the DPA. Those complicated provisions have been discussed in detail between Wood and the SFO, the latter of which is satisfied that they are appropriate. It is certainly appropriate that such provisions should exist and it is, in my judgment, a matter for the SFO to ensure that the provisions which have been agreed accurately fulfil their intended purpose. Where the court can more authoritatively assess the terms of the proposed DPA is the financial penalty which is prescribed.

9. The parties have no doubt engaged in a complicated set of financial negotiations. I have seen their result in a spreadsheet which sets out the method by which the final payment has been calculated. That method resulted from work by accountants instructed on behalf of Wood and the offending company and also accountants instructed on behalf of the SFO. Essentially, the

accountants have attempted to apply the guideline for the assessment of fines in bribery cases published by the Sentencing Council. That, of course, is critically a judicial function rather than an accountancy function.

10. In essence, what the accountants have attempted to do is to arrive at a figure which would be the figure ordered were the court ever to move to a sentencing process in this case. A number of discounts have been applied to reflect various matters of mitigation in a way which might be more generous than a sentencing judge would be. That is not, in the circumstances of this kind of application, necessarily a bad thing. The guideline needs to be applied, but appropriate discounts may be made to reflect the important public interest questions involved in this kind of exercise.

11. I am satisfied that the approach to the guideline, having regard to the nature of this exercise and the difference between it and a sentencing exercise, is appropriate. It produces a result which is certainly fair to the paying company, which meets the public interest in the acknowledgment of what was undoubtedly very serious offending and is also proportionate, having regard to all the circumstances of the case. It is also relevant, in my judgment, that the company will pay the costs of the investigation and prosecution in their entirety and that the conclusion will release the resources of the SFO to other work. Many good consequences flow from the achievements of this kind of agreement and, in my judgment, among them is a satisfactory penalty for the offending revealed by the statement of facts.

12. That concludes, I think, everything I need to say by way of giving the private reasons of the private hearing. I now move on to the question of whether it is appropriate for the company to make an announcement of the result of this hearing, as is proposed.

13. The hearing itself is required to be in private. The Act does not say that its result cannot be published pending the outcome of the determination as to the final declaration under para.8 of the schedule. I have been referred to decisions by the former and present Presidents of the Queen's Bench Division and of Mr Justice William Davis and Mrs Justice May in other similar circumstances.

14. In this case, the position is that there is already very substantial information in the public domain about these negotiations and their likely result, which is contained in the financial statements of Wood for the year ending 31 December 2020, which I have had the opportunity to read in full. No one reading that document could be in much doubt as to what was likely to happen, at least so far as its auditors were concerned. What they anticipated would be likely has in fact taken a further step forward this morning. In those circumstances, it does not seem to me that there is likely to be any detriment to the public interest by an announcement of the kind of which I have seen a draft this morning. I have made an observation about the need to ensure that it is accurate.

15. The accurate position is that in law the para.7 declaration, which is what I have so far made, does not resolve these proceedings and investigations. It is the para.8 declaration, which I have yet to make, which will have that effect. As long as the position is accurately stated, in my judgment, it is appropriate for the court to permit an announcement to be made. That is important for the purposes of the dealings between Wood and the market.

16. The matter is placed beyond doubt by the fact that, as a result of proceedings later today in the United States of America, there will be a public announcement in that jurisdiction and also there may at any stage be an announcement of a similar kind in Brazil. It is important that the different jurisdictions, which have collaborated in respect of the Brazilian element of the offending, should act together in a coherent manner when it comes to announcing the effect of

what they have together achieved.  Therefore, for those reasons, I approve an announcement, providing that it is accurate in the sense that I have identified.