

Nigeria feels piracy heat

by RAMADAS RAO, ASIA EDITOR

PIRACY is flourishing even though attacks have declined in the commercially vital Malacca Strait, with West Africa posing a heightened risk.

"Patrols have been effective," Noel Choong, head of Malaysia's Piracy Reporting Centre, told *Fairplay*, referring to increased Indonesian surveillance. He added: "The piracy gangs have not been wiped out. There have been no arrests. They are lying low."

In West Africa, attacks in oil-rich Nigeria have rung piracy alarm bells worldwide. Of the 35 vessels boarded in Nigeria, 25 attacks were in Lagos.

Unlike the 'pure mercenaries' of Sumatra, the raiders in Nigeria are banded under political movements, which complicates government efforts to stem the attacks.

Choong pointed out that moving western warships into Somali territorial waters seems to have "frightened off" pirates, so he called for beefing up patrols nearer Nigeria.

An 11 January explosion aboard the tanker *Golden Lucy*, alongside Nigeria's Port Harcourt, was claimed by local militant group MEND as sabotage, but authorities labelled it an accident.

In the same port last month, the tanker *Keno* was attacked by militants who killed one of the 19 crew members.

On 14 January, Maersk reportedly pulled its port calls at Onne, south of Port Harcourt, because of the continuing insecurity.

Captain Pottengal Mukundan, director of the International Maritime Bureau, parent of the Reporting Centre, said its annual piracy report shows that most attacks still reported from Indonesia are "low level" crimes aimed at theft. "The majority of attacks in Nigeria would appear to be much more concentrated in a few hotspots," he observed. **F**



Rickards of Peters & Peters (left): competition authorities are closing ranks to deny clever loopholes for cartels to slink through

Munro of Maclay, Murray & Spens: 'The new approach presents a considerable risk for companies'

Curtain call for cartels

by HELENE MISEUR, STAFF REPORTER

THE NOOSE is tightening around maritime cartels seeking safe haven abroad, as unprecedented international co-operation has resulted in groundbreaking charges under a British law.

Record jail sentences recently given in the US to three Britons in a maritime hose cartel indicate a tough new approach by global antitrust busters, including the European Commission, the US Department of Justice and Britain's Office of Fair Trading.

The businessmen were convicted of conspiracy to rig bids, fix prices and allocate market shares of hoses sold in the US and flown to the UK under terms of a plea-bargain to co-operate with the OFT's investigation and allow them to plead guilty to violating the Enterprise Act 2002. It was the first prosecution under the act, which came into force in 2003.

The law firm Allen & Overy said it was widely understood that the OFT had been waiting for "the right case" to secure a high-profile conviction.

Over at the Peters & Peters law firm, which is representing two of the accused, Jo Rickards, joint head of fraud and regulatory issues, told *Fairplay* that prosecutors "are becoming emboldened and encouraged to go for longer sentences.

"The beauty of the marine hose case is the willingness to share the prosecution – the US doesn't want to be seen to be the only one going after this type of case. I don't think there's any clever loophole, whether you're registered in Panama or no."

The act provides a maximum five years in jail and/or an unlimited fine. Catriona Munro, a competition expert at law firm Maclay, Murray & Spens, said fines have increased dramatically in the past year, but "their effect is not nearly as big as the threat of jail sentences".

The law stipulates that criminal activity must have affected the UK market before the act can be invoked, so the accused does not need to be a British citizen to be charged. "The new approach presents a considerable risk for

companies because now, if there are concerns in one jurisdiction, then there's no escape for them in another – they will be pursued," Munro told *Fairplay*.

Authorities co-operating to extradite suspected cartel members from different countries must ensure that each country has laws criminalising cartels. Munro said more countries are actively considering such laws.

According to her, businesses can unwittingly contravene the law. The most common misconception is that if there is no formal agreement about pricing, parties won't fall foul of the law. But receiving information about pricing from a competitor is considered anti-competitive and a civil wrong, she explained.

Under the act, any such behaviour also needs to be proven as dishonest. A reciprocal exchange of pricing information is more likely to trigger prosecution as it escalates an accidental one-way disclosure into something approaching price-fixing. **F**

And that's not all

In a separate case due before Britain's House of Lords next month, the Law Lords will decide whether to uphold the ruling of a divisional court that an individual or company can be charged with a cartel offence under the common law charge of 'conspiracy to defraud'.

If the ruling is upheld, that would encourage prosecutors "to pursue individuals, and possibly companies, for cartel behaviour in countries where there is no substantive cartel offence but there is a conspiracy to defraud offence", Jo Rickards of Peters & Peters told *Fairplay*. "It will make individuals vulnerable to extradition" to the US when the suspects "are in a country that has a conspiracy to defraud offence on its books."