



# The Impact of Cartels on the Poor

## Lessons from cartel regulation in Australia

Never Stand Still

Faculty of Law

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# Competition law and policy in Australia

- Strong and well developed; highly regarded as being effective
- Competition and Consumer Act 2010 (CCA)  
(formerly Trade Practices Act 1974)
  - civil and criminal liability for cartel conduct
- Enforcement by Australian Competition and Consumer Commission (ACCC)  
(Commonwealth Department of Public Prosecutions if criminal proceedings)

This presentation will address  
Australian experience  
and shows that:

- International cartels are active in the jurisdiction despite its relative geographical isolation
- The cartel enforcement tools and mechanisms are well designed and forcefully implemented
- Impact on the disadvantaged is a factor in enforcement strategy
- Even in this environment cartels are still very difficult to detect and successfully prosecute

# Competition and Consumer Act 2010

## Objectives

“ To enhance the welfare of Australians through promotion of competition and fair trading and provision for consumer protection”

# Prohibitions on cartel conduct

Civil and criminal liability for :

- price fixing ,
- bid rigging,
- market sharing,
- output restrictions

Civil liability for anti-competitive arrangements

Newer provisions on “price signalling”

# Effective enforcement: What should a competition regulator be?

## Influences on effectiveness

- The competition law
- The political environment
- Powers of the regulator
- Resources of the regulator

# How does the ACCC score?

- Independent authority funded by Treasury
- CCA strong
- Broad investigation powers
- Positive political environment

# General enforcement priorities

- Conduct in blatant disregard of the law
- Previous history of breach
- Significant detriment to consumers or business
- Many complaints
- Disproportionate effect on disadvantaged groups
- Potential for educative or deterrent effect



# Priorities

It has a substantial stated focus on education and enforcement in relation to cartels

# Enforcement tools

- Wide powers of investigation, questioning and entry of premises
- Successful leniency policy implemented
- Pecuniary penalties for civil contraventions
  - \$10m or 3 x the benefit of the conduct or 10% of turnover for 12 months of offender and related bodies corporate
  - \$500,000 for individuals
- Also up to 10 years for criminal cartels for individuals
- Injunctions, orders, disqualifications for directors, divestiture
- Enforceable undertakings to settle proceedings
- Third party damages
- ACCC will take cases to clarify or settle the law whether or not it wins

# Overall assessment of Australian tools

- Strong law
- Independent regulator
- Strong commitment to cartel enforcement
- Good investigation tools

# Enforcement perspective

BUT

- Australian law technical and complex
- Australian courts are reluctant to convict on circumstantial evidence
- Still estimated that less than 10% of cartels are detected

# Cartel enforcement: Visy case

Visy case- price fixing by the only two suppliers of cardboard boxes

Settled and court endorsed fines of :

Visy- \$36 m (Pratt owned private company so he was not penalised)

Mr D-\$1.5m

Mr C-\$500,000

“Every day every man, woman and child in Australia would use or consume something that at some stage had been transported in a cardboard box...The cartel ...had the potential for the widest possible effect”

“The Visy Trade Practices Compliance Manual might have been written in Sanscrit for all the notice anybody took of it.” (ACCC v Visy 2007)

# Visy case

- Alert by lawyers for the second party, Amcor, who discovered the cartel in unrelated legal proceedings
- Leniency policy- Amcor given leniency but still exposed to subsequent third party proceedings for damages

# Marine Hose case (2010)

Price fixing, bid rigging and market sharing by four foreign companies supplying rubber hosing to transfer oil and gas to offshore tankers

Committee allocated jobs and co-ordinated bidding and quotas for jobs

Cartel international and key meetings overseas but cartel gave effect to the conduct in the Australian market

Global enforcement action in USA, UK , Europe and Japan

Penalties exceeding \$8million in Australia and orders restraining further conduct.

# Power Transformers Cartel

Principal manufacturers and suppliers of distribution transformers in Australia- some Australian, some European- 100% of the market involved

Price fixing, bid rigging market allocation

Alert by whistleblower

Survey show extracted \$70-80 m from customers in 5 years

Penalties of more than \$35 m , and individual executives fined \$1m in total



# International air cargo cartel

Raids in US and Europe re collusion in setting fuel and security surcharges- Lufthansa informed and was granted immunity

Australia ACCC pursued 15 local, European and Asian based airlines for price fixing in the Australian air cargo market

Total of \$95m penalties including:

- Qantas \$20m
- British Airways \$5m
- Korean Airlines \$5.5m
- Japan Airlines \$5.5m
- Malaysian Airlines \$6.5m ( to March 2013)

Penalties reduced for co-operation - Qantas 50% discount; also paid penalties overseas and one employee gaoled in US

Some proceedings continuing

# Conclusions

- Types of products involved in cartels often affect the poor disproportionately so education and enforcement are paramount
- Despite strong laws, investigation tools and determined enforcement international cartels are not deterred from the Australian jurisdiction
- Successful detection still appears to depend more on luck or a disaffected employee than on other strategies