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ACCC Takes Enforcement Action Against Manufacturers of Car Parts for Alleged Cartel Conduct

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The latest Australian Competition and Consumer Commission (ACCC) cartel enforcement action involves the institution of civil proceedings in the Federal Court in Adelaide against Japanese company Yazaki Corporation (Yazaki) as well as its Australian subsidiary, Australian Arrow Pty Ltd (Arrow). The ACCC alleges that these manufacturers of car parts, together with a competitor, engaged in cartel conduct by coordinating their quotes for the supply of wire harnesses to a global Japanese automotive manufacturer and its related entities in Australia.

The ACCC alleges that the companies participated in a range of activities in the period between 2003 and 2009 that is cartel conduct (in breach of s 45 and s 44ZZRK (in relation to conduct from 24 July 2009) of the *Competition and Consumer Act 2010* (Cth) (CCA)), including:

- exchanging and agreeing on prices before submitting quotes to the Japanese automotive manufacturer for the supply of wire harnesses to be used in the manufacture of its cars; and
- allocating sections of the market to which they (or their subsidiaries) would each supply wire harnesses to manufacturers.

The ACCC is seeking penalties, declarations, injunctions and costs against the suppliers. A directions hearing has been set down for Thursday, 10 January 2013 at 9.15am.

The ACCC's campaign against cartels – a 2012/2013 priority

These proceedings reinforce the ACCC's active prosecution of businesses suspected of engaging in cartel conduct that potentially impacts on Australian consumers. It follows the regulator's earlier campaign of issuing cautions and educating businesses, that cartel activity will not be tolerated.

Infringement of either the civil or criminal cartel provisions will result in significant pecuniary penalties. In criminal proceedings, individuals may also face imprisonment for up to 10 years and individual fines of AUD500,000.

In early 2012, the ACCC Chairman Rod Sims warned businesses that the regulator would be paying increased attention to cartel conduct, by focusing on educating businesses and taking enforcement action "to get the message across". A short film called "The Marker" which addressed the impacts and penalties resulting from cartel conduct was sent to CEOs of over 300 ASX listed companies. There was a further direct mail campaign warning 2,500 executives in the heavy construction and construction supply industries. In September 2012, the ACCC reiterated that cartel conduct would continue as a priority of the regulator in 2012/2013.

Although cartel conduct is notoriously difficult to detect, the ACCC has demonstrated a willingness to spare no expense in bringing such conduct to light. As at September 2012, Mr Sims reported that there were 10 cartel prosecutions before the Federal Court of Australia and a number of active cartel

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investigations under way. More interestingly, the majority of the cartels were detected via applications for immunity under the ACCC's immunity [policy for cartel conduct](#).

It is likely that these proceedings have been inspired by similar actions brought against Yazaki and other cartel participants by competition regulators in the United States and Japan. The ACCC's institution of proceedings in Australia against Yazaki and Arrow sends a clear warning to businesses that the regulator will take decisive enforcement action as part of its continued focus on preventing cartel conduct impacting on Australian consumers across a range of industries.

Recommendations

Businesses should ensure that all commercial and contract managers are aware of the cartel prohibitions under the Australian competition law. Particular attention should be placed on communications with competitors, whether occurring in a professional or social setting, and employees should be advised to take care to avoid discussion of any arrangements that could lead to potential cartel conduct.

Additionally, businesses should have systems in place for early detection of cartel conduct such that if there is a risk of exposure, they can respond in a timely manner and attempt to seek immunity under the ACCC's immunity policy.

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