

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

20-21 November 2013

Question: SBT 950-959

Topic: Cartel Conduct

Written: 28 November 2013

Senator WONG asked:

950. How many cartel cases have been prosecuted since the sanctions were introduced in 2009?
951. Can you detail recent work the ACCC has done to raise awareness about what constitutes cartel behaviour and what sanctions it can attract?
952. Are there currently any investigations underway into suspected cartel behaviour?
953. What have been the main strategies used in investigating cartel behaviour.
954. How many staff are involved in this area?
955. Can you provide details of any recent prosecutions for cartel behaviour?
956. Can you point to any indications yet that the sanctions are acting as a deterrent on cartel behaviour in our markets?
957. Can you comment on the receptiveness and co-operation of executives from large-scale businesses?
958. Is the ACCC aware of different levels of awareness of sanctions on cartel behaviour across small and medium sized businesses?
959. Does the ACCC have strategies to engage the small and medium business sectors in its work to deter cartel behaviour?

Answers

950. To date, the ACCC has not prosecuted matters under the new criminal cartel offences. It continues, however, to obtain outcomes under the civil cartel provisions including for conduct arising prior to the introduction of the cartel offence. Over the past four years, the ACCC has obtained the following outcomes across eight cartel matters:
- **Koyo Australia**—In October 2013 the Federal Court ordered by consent that Koyo pay a pecuniary penalty of \$2 million in relation to cartel conduct in the supply of ball bearings and related products in Australia.
 - **Prysmian & Ors**—In April 2013 the Federal Court imposed penalties of \$1.35 million in respect of bid rigging and price fixing conduct on Viscas. Proceedings continue against two foreign corporations, Prysmian Cavie Sistemi Energia S.R.L. and Nexans SA.
 - **Various Air Cargo proceedings**—proceedings were commenced against 15 international airlines between 2008 and 2010, 13 carriers have settled for a total of \$98.5 million to date. Most recently Emirates, Singapore Airlines, Cathay Pacific and Thai Airways International have settled with pecuniary penalties of \$10 million, \$11.75 million, \$11.25 million and \$7.5 million awarded, respectively.

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- **TF Woollam & Ors**—On 21 October 2012 the Federal Court imposed penalties totalling \$1.38 million against three Queensland-based construction companies for engaging in illegal price controlling conduct known in the construction industry as cover pricing. One company filed an appeal which was withdrawn on 24 May 2012.
- **Marine Hose**—On 13 April 2010 the Federal Court imposed penalties exceeding \$8.24 million for cartel conduct through rigged bids to supply marine hose to customers in Australia.
- **Admiral**—On 13 April 2010 the Federal Court imposed penalties of approximately \$9.27 million for involvement in price fixing and bid rigging affecting contracts for air conditioning in schools, hospitals and shopping centres in WA.
- **DRS**—On 5 February 2010 the Federal Court imposed penalties of \$1 million for cartel conduct whereby DRS agreed with Cubic Defence Applications Inc. that DRS would withdraw from a procurement process.
- **APRIL Fine Paper Trading**—In January 2010, the Federal Court imposed penalties totalling \$8.2 million for the breach of price fixing provisions in the supply of copy paper.

951. The ACCC is working with businesses and government agencies to raise awareness of cartel activity, the risks and consequences for individuals involved, and how cartels can be detected and stopped.

In 2011-12 the ACCC identified several industries where historical and international experience indicates a greater susceptibility to cartel conduct and wrote to almost 2500 executives in those industries, reminding them that cartel conduct is criminal and advising them of the ACCC's immunity policy.

The ACCC also undertook an initiative with public sector procurement managers at all levels of government to increase their ability to identify and report cartel conduct, and also the ability of people such as auditors and procurement officers and advisers who are working in and for the public sector to do this.

In August 2012, the ACCC released *The Marker*, a short film on the devastating effects involvement in a cartel can have on individuals and businesses. It shows how cartel activity can ruin relationships, careers, reputations and long-term financial security, and may ultimately land the guilty in jail.¹

As part of a broader education strategy the ACCC continues to raise awareness of what constitutes cartel behaviour and the sanctions it can attract through:

- the ACCC immunity and leniency policies
- information in ACCC publication and website regarding cartel laws and sanctions
- media releases and speeches.

¹

Published at <http://www.accc.gov.au/publications/cartel-the-marker-dvd>

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952. As at 30 September 2013 current in-depth investigations undertaken by the ACCC relating to cartel behaviour are recorded for 28 matters.
953. The ACCC has a range of powers and tools it can use in its investigations. These include, search and seizure powers, stored communications warrants, telephone interception warrants, section 155 Notices, and also informal and formal interviews. The ACCC's immunity policy for cartel matters continues to be a key tool in identification, investigation and carriage of litigation.
954. The ACCC has approximately 150 investigators responsible for investigating a broad range of concerns raised under the *Competition and Consumer Act 2010*. ACCC investigators have experience and expertise regarding cartel matters.
955. See answer to 950 above.
- 956-958. (see 957 below)

The Deterrent Impact of Cartel Criminalisation: Supplementary Report on a Survey of Australian Public Opinion Regarding Business People's Views on Anti-Cartel Laws and Enforcement January 2012 reports Australian business views on anti-cartel laws and enforcement.² The survey results present different levels of awareness of sanctions of cartel behaviour. Survey respondents included:

Size (number of employees)	Percentage
Micro (0-19)	52
Small and Medium (20-199)	27
Large (200+)	22

Key findings from the survey indicated respondents' view of the likelihood of detection and enforcement action were very strongly and positively correlated with the likelihood of jail. However, respondents viewed the prospect of jail as unlikely even if cartelists were caught:

- 42 per cent of respondents knew that price fixing is a criminal offence
- 37 per cent of respondents believed that price fixing was not against the law
- 45 per cent of respondents knew that a fine is available as penalty for cartel conduct
- 23 per cent knew that jail for individuals is available as a penalty for cartel conduct.

Anecdotally from engagement with business and legal representatives, there is an increasing consciousness in the minds of business people as to the prospect of criminal sanctions. This is evident in interest in obtaining protection from criminal prosecution in the context of the ACCC's immunity policy.

² Professor Christine Parker and Mr Chris Platania-Phung, Cartel Project, The University of Melbourne.

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957. In the ACCC's experience, receptiveness and the level of cooperation expected from executives from large businesses is no different to that expected in investigations involving any other party. In our experience, there is no distinguishable trend in the receptiveness and the level of cooperation.
959. The ACCC has a broad range of strategies to engage the small and medium business sectors in its work to deter cartel behaviour. These include:
- working with local governments to raise awareness of hard-core cartel conduct. Particularly bid rigging conduct in the construction industry for local and state government projects.
 - an online training program for small businesses, which includes a module on cartels, as well as a free online program for tertiary students taking business or commerce degrees, which also contains a unit on cartels.
 - a small business information portal on the ACCC website enabling access to cartel related information relevant for small to medium sized enterprises
 - regulator presentations to industry associations, business advisers and chambers of commerce providing information on cartels to small business operators.