

ACCC CRACKS DOWN ON PRICE COLLUSION

APRIL 2010

A recent prosecution by the Australian Competition and Consumer Commission (**ACCC**) highlights how easily businesses can find themselves in breach of the laws against price collusion.

The ACCC commenced proceedings against Sci-Fleet Motors Pty Ltd and Vanderfield Pty Ltd in the Federal Court for price collusion. Sci-Fleet and Vanderfield are the latest companies to come under ACCC investigation, following a string of prosecutions against high profile companies for similar conduct.

In this case, the ACCC alleged that the two dealers had an arrangement that they would not sell Hino trucks to a potential customer in each other's marketing area. In the event a potential customer sought to buy a Hino truck which was within the other dealer's marketing area, the ACCC alleged that the two companies would consult with each other so that the price offered was not more attractive than the price offered by the dealer in the potential customer's marketing area.

In both cases, the matters were resolved on the basis that both companies gave certain enforceable undertakings and agreed to implement a particular Trade Practices Compliance Program.

The circumstances of this case highlight how businesses may think their actions are simply a way of minimising conflict with a nearby competitor or as a way of conducting business more effectively, when in fact the conduct falls foul of the rules against price collusion.

WHAT IS PRICE COLLUSION?

Price collusion, essentially, is an arrangement between competing businesses to set or maintain prices at a certain level. Price collusion is conduct prohibited by sections 45 and 52 of the *Trade Practices Act 1974 (TPA)*. The practice of price collusion reduces competition by fixing, maintaining or controlling prices in a particular industry.

PROSECUTION UNDER THE TPA

For prosecution under section 45 of the TPA there must be a contract, arrangement or understanding which is likely to affect competition. It is important to remember that there does not have to be a formal written contract between the parties. An informal verbal arrangement can suffice if it is clear that a "meeting of the minds" has taken place and both parties are shown to be acting in accordance with their obligations under the agreement.

An element for a successful prosecution under section 45 of the TPA is that the contract, arrangement or understanding must be likely to affect competition. From recent case examples, conduct that is likely to be considered to affect competition includes agreeing on specific prices; agreeing on the regular retail price; agreeing to lower or raise prices and providing cover prices for the submission of non-genuine tenders for government contracts.

HOW TO AVOID PROSECUTION

To avoid prosecution for price collusion, business owners and any employee responsible for setting prices should not discuss pricing with competitors under any circumstances and prices

should be set independently. With regard to the building and construction industry, tenders should not be discussed with any other tendering party and only genuine tenders should be submitted.

It is essential that business operators and their employees are familiar with the law and it is advisable to take part in a Trade Practice Compliance Workshop. Clifford Gouldson Lawyers offer such workshops that ensure compliance with current legislation.

Ben Gouldson
Clifford Gouldson Lawyers
P +7 4688 2100
E ben@cglaw.com.au

Adrian Hallewell
Clifford Gouldson Lawyers
P +7 4688 2110
E adrian@cglaw.com.au

Jimmy Gill
Clifford Gouldson Lawyers
P +7 4688 2103
E jimmy@cglaw.com.au

Rebecca Stoll
Clifford Gouldson Lawyers
P +7 4688 2112
E rebecca@cglaw.com.au

Adele Martin
Clifford Gouldson Lawyers
P +7 4688 2116
E adele@cglaw.com.au

Tamsyn Harris
Clifford Gouldson Lawyers
P +7 4688 2114
E tamsyn@cglaw.com.au

Ria Clifford
Clifford Gouldson Lawyers
P +7 4688 2113
E ria@cglaw.com.au

Disclaimer: This Bulletin is intended to provide a general summary only and should not be relied on as legal advice.

Privacy: We collect information to assist us in performing and promoting our legal services. We do not disclose information about you to any person, unless we are required to do so by law. If you no longer wish to receive our e-mails, please e-mail mail@cglaw.com.au and type "remove" in the subject line.

Copyright: This document and its contents remain the copyright of Clifford Gouldson Lawyers. © 2010