

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 25/10/2021 8:30:53 AM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Concise Statement
File Number: NSD1118/2021
File Title: AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v
FIRST CLASS SLATE ROOFING PTY LIMITED & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



Sia Lagos

Dated: 25/10/2021 9:30:41 AM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Concise Statement

No. of 2021

Federal Court of Australia

District Registry: New South Wales

Division: Commercial and Corporations

Economic Regulator, Competition and Access Sub-area

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Applicant

FIRST CLASS SLATE ROOFING PTY LIMITED (ACN 162 450 437)

First Respondent

SCOTT BARTON

Second Respondent

RAD ROOFING SPECIALISTS PTY LIMITED t/a MR SHINGLES (ACN 050 877 462)

Third Respondent

DAMIAN HAND

Fourth Respondent

A. OVERVIEW

1. This proceeding concerns cartel conduct engaged in by **First Class** Slate Roofing Pty Limited, its sole director Scott **Barton**, **MLR Slate Roofing** Pty Limited, its managing director Matthew **Rimmer** and RAD Roofing Specialists Pty Limited trading as **Mr Shingles** and its sole director Damian **Hand**. The cartel conduct involved making arrangements or arriving at understandings containing cartel provisions to bid rig for slate roofing projects in Sydney in 2019 and the giving effect to those cartel provisions in 2019 and 2020.

Filed on behalf of (name & role of party)	Australian Competition and Consumer Commission, Applicant		
Prepared by (name of person/lawyer)	Aldo Nicotra		
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B. IMPORTANT FACTS THAT GIVE RISE TO THE CLAIM

2. From at least 2019, First Class, Mr Shingles and MLR Slate Roofing were companies based in Sydney who provided services for the installation and maintenance of commercial, residential and heritage slate roofing.

Wesley College Project

3. Wesley College is a student residential college located within the grounds of Sydney University. In 2018 and 2019, the Wesley College engaged in a multistage reroofing project managed by PMDL Architecture & Design Pty Ltd (**PMDL Architects**).
4. In 2018, First Class, Mr Shingles and MLR Slate Roofing were the only roofing companies approached for a request for tender for the re-roofing of the Sutherland Wing at the Wesley College (the **Sutherland Wing Project**).
5. First Class, Mr Shingles and MLR Slate Roofing each submitted tenders for the Sutherland Wing Project in 2018.
6. On or around 23 August 2019, each of First Class, Mr Shingles and MLR Slate Roofing was contacted by PMDL Architects and received an email with a request for tender for the re-roofing of the Main Roof at Wesley College (the **Wesley College Project**).
7. On or around 23 August 2019, First Class through Barton and MLR Slate Roofing through Rimmer agreed that:
 - (a) First Class and MLR Slate Roofing would each submit a tender for the Wesley College Project;
 - (b) First Class through Barton would provide to Rimmer the breakdown of prices for MLR Slate Roofing to use for MLR Slate Roofing's tender on the understanding that using those prices would make MLR Slate Roofing's tender higher than First Class's tender; and
 - (c) First Class or Barton would pay \$10,000 to MLR Slate Roofing or Rimmer on the basis that MLR Slate Roofing submitted a tender using the breakdown of prices provided by First Class through Barton.
8. Between 23 August and 16 September 2019, First Class through Barton and Mr Shingles through Hand agreed that:

- (a) Mr Shingles and First Class would each submit a tender for the Wesley College Project;
 - (b) First Class through Barton would provide to Hand the breakdown of prices for Mr Shingles to use for Mr Shingles' tender on the understanding that using those prices would make Mr Shingles' tender higher than First Class's tender; and
 - (c) First Class or Barton would pay \$10,000 to Mr Shingles or Hand on the basis that Mr Shingles submitted a tender using the breakdown of prices provided by First Class through Barton.
9. In the alternative to paragraphs 7 and 8 above, between 23 August and 16 September 2019, First Class through Barton, MLR Slate Roofing through Rimmer and Mr Shingles through Hand agreed that:
- (a) First Class, MLR Slate Roofing and Mr Shingles would each submit a tender for the Wesley College Project;
 - (b) First Class through Barton would provide to:
 - i. Rimmer the breakdown of prices for MLR Slate Roofing to use for MLR Slate Roofing's tender and
 - ii. Hand the breakdown of prices for Mr Shingles to use for Mr Shingles' tender on the understanding that using those prices would make each of MLR Slate Roofing's and Mr Shingles' tenders higher than First Class's tender; and
 - (c) First Class or Barton would pay \$10,000 to each of MLR Slate Roofing or Rimmer and Mr Shingles or Hand, on the basis that each of MLR Slate Roofing and Mr Shingles submitted a tender using the prices provided to each of them by First Class through Barton.
10. On 15 September 2019, Barton emailed Rimmer a tender price breakdown for Rimmer to submit in MLR Slate Roofing's tender for the Wesley College Project in the total amount of \$1,097,100 (excl. GST).
11. On 16 September 2019, Barton texted a photograph to Hand of a tender price breakdown for Hand to submit in Mr Shingles' tender for the Wesley College Project in the total amount of \$1,070,330 (excl. GST).
12. On or around 19 September 2019, First Class, MLR Slate Roofing and Mr Shingles each submitted a tender for the Wesley College Project. Mr Shingles and MLR Slate Roofing each submitted a tender containing the tender price breakdowns and total amounts that they had been provided with by First Class through Barton. The prices submitted by each of

MLR Slate Roofing and Mr Shingles were higher than the prices submitted by First Class, being the total amount of \$1,026,309.00 (excl. GST).

13. On 24 October 2019, First Class was awarded the Wesley College Project.

Bellevue Hill Project

14. In early September 2019, Mr Shingles and First Class (amongst others) were approached by the building company, Construction 8 Pty Ltd, and invited to submit a quote for the supply and/or installation of a Canadian slate roof at a residential property in Bellevue Hill, Sydney NSW (the **Bellevue Hill Project**).
15. On or around 17 September 2019, Mr Shingles through Hand and First Class through Barton agreed that:
 - (a) Mr Shingles and First Class would each submit a tender for the Bellevue Hill Project;
 - (b) Mr Shingles through Hand would provide Barton with the total price that Mr Shingles was submitting in its quotation for the Bellevue Hill Project on the understanding that First Class would submit a quote with prices that were substantially higher than Mr Shingles' total price;
 - (c) If Mr Shingles was successful in winning the tender First Class would receive \$2,000 from Mr Shingles;
 - (d) First Class or Barton would deduct the \$2,000 from the \$10,000 that First Class or Barton owed Mr Shingles or Hand for Mr Shingles' submission in accordance with what had been agreed in relation to the Wesley College Project as referred to in paragraph 8 (or alternatively 9) above.
16. On 17 September 2019, Hand texted Mr Shingles' current price at the time for the Bellevue Hill Project to Barton, being \$97,225.00 (excl. GST).
17. Between 17 and 25 September 2019, Mr Shingles submitted an initial quotation for the Bellevue Hill Project for a total price of \$109,774.50 (incl. GST), and subsequently a revised quotation for a total price of \$107,800.00 (incl. GST).
18. On 17 September 2019, First Class submitted a quotation for the Bellevue Hill Project for a total price of \$123,447.50 (incl. GST).

19. On 26 September 2019, Hand was notified by Construction 8 Pty Ltd that Mr Shingles' revised quotation had been accepted.

Invoices and payments

20. On 4 March 2020, MLR Slate Roofing submitted an invoice to First Class for \$11,000 (incl. GST), being \$10,000 (excl. GST), purportedly for installing a new slate roof. The invoice was in fact for payment in accordance with what had been agreed in relation to the Wesley College Project as referred to in paragraph 7 (or alternatively 9) above.
21. On 4 March 2020, MLR Slate Roofing received an \$11,000 payment from First Class.
22. On 6 April 2020, Mr Shingles submitted an invoice to First Class in the amount of \$8,800 (incl. GST), being \$8,000 (excl. GST), purportedly for the supply of slate. The invoice was in fact for payment in accordance with what had been agreed in relation to the Wesley College Project and the Bellevue Hill Project as referred to at paragraphs 8 (or alternatively 9) and 15 above.
23. On 27 April 2020, Mr Shingles received an \$8,800 payment from First Class.

C. RELIEF SOUGHT FROM THE COURT

24. The ACCC seeks the relief set out in the accompanying Originating Application.

D. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

Wesley College Project First Class and MLR Slate Roofing arrangement or understanding

25. As set out in paragraph 7 above, First Class through Barton made an arrangement or arrived at an understanding with MLR Slate Roofing through Rimmer that contained a cartel provision in contravention of s 45AJ of the CCA. The cartel provision was one that had the purpose of directly or indirectly ensuring that in the event of a request for bids in relation to the Wesley College Project both First Class and MLR Slate Roofing would submit a bid but:
- (a) would do so on the basis that First Class's bid was more likely to be successful within the meaning of s 45AD(3)(c)(ii) or (iv) of the CCA; or
 - (b) a material component of MLR Slate Roofing's bid was worked out in accordance with the arrangement or understanding, namely on the basis of First Class's breakdown of prices within the meaning of s 45AD(3)(c)(v) of the CCA.

In 2019, MLR Slate Roofing and First Class were or were likely to be, or but for the arrangement or understanding, would have been or would be likely to have been, in competition with each other for the Wesley College Project within the meaning of s 45AD(4)(a), (b) and (j) of the CCA.

26. As set out at paragraphs 10, 12, 20 and 21 above, First Class through Barton and MLR Slate Roofing through Rimmer gave effect to the cartel provision referred to in paragraph 7 above in contravention of s 45AK of the CCA.

Wesley College Project First Class and Mr Shingles arrangement or understanding

27. As set out in paragraph 8 above, First Class through Barton made an arrangement or arrived at an understanding with Mr Shingles through Hand that contained a cartel provision in contravention of s 45AJ of the CCA. The cartel provision was one that had the purpose of directly or indirectly ensuring that in the event of a request for bids in relation to the Wesley College Project both First Class and Mr Shingles would submit a bid but:
- (a) would do so on the basis that First Class's bid was more likely to be successful within the meaning of s 45AD(3)(c)(ii) or (iv) of the CCA; or
 - (b) a material component of Mr Shingles' bid was worked out in accordance with the arrangement or understanding, namely on the basis of First Class's breakdown of prices within the meaning of s 45AD(3)(c)(v) of the CCA.

In 2019, Mr Shingles and First Class were or were likely to be, or but for the arrangement or understanding, would have been or would be likely to have been, in competition with each other for the Wesley College Project within the meaning of s 45AD(4)(a), (b) and (j) of the CCA.

28. As set out at paragraphs 11, 12, 22, and 23 above, First Class through Barton and Mr Shingles through Hand gave effect to the cartel provision referred to in paragraph 8 above in contravention of s 45AK of the CCA.

Wesley College Project First Class, MLR Slate Roofing and Mr Shingles arrangement or understanding

29. In the alternative to paragraphs 25 and 27 above, as set out in paragraph 9 above, First Class through Barton made an arrangement or arrived at an understanding with MLR Slate

Roofing through Rimmer and with Mr Shingles through Hand that contained a cartel provision in contravention of s 45AJ of the CCA. The cartel provision was one that had the purpose of directly or indirectly ensuring that in the event of a request for bids in relation to the Wesley College Project each of First Class, MLR Slate Roofing and Mr Shingles would submit a bid but:

- (a) would do so on the basis that First Class's bid was more likely to be successful within the meaning of s 45AD(3)(c)(ii) or (iv) of the CCA; or
- (b) a material component of both MLR Slate Roofing's and Mr Shingles' bids was worked out in accordance with the arrangement or understanding, namely on the basis of First Class's breakdown of prices within the meaning of s 45AD(3)(c)(v) of the CCA.

In 2019, First Class, MLR Slate Roofing and Mr Shingles were or were likely to be, or but for the arrangement or understanding, would have been or would be likely to have been, in competition with each other for the Wesley College Project within the meaning of s 45AD(4)(a), (b) and (j) of the CCA.

30. In the alternative to paragraphs 26 and 28 above, as set out at paragraphs 10 to 12 and 20 to 23 above, First Class through Barton, MLR Slate Roofing through Rimmer and Mr Shingles through Hand gave effect to the cartel provision referred to in paragraph 9 above in contravention of s 45AK of the CCA.

Bellevue Hill Project

31. As set out in paragraph 15 above, Mr Shingles through Hand made an arrangement or arrived at an understanding with First Class through Barton that contained a cartel provision in contravention of s 45AJ of the CCA. The cartel provision was one that had the purpose of directly or indirectly ensuring that in the event of a request for bids in relation to the Bellevue Hill Project, both Mr Shingles and First Class would submit a bid but:
- (a) would do so on the basis that Mr Shingles' bid was more likely to be successful within the meaning of s 45AD(3)(c)(ii) or (iv) of the CCA; or
 - (b) a material component of First Class's bid was worked out in accordance with the arrangement or understanding, namely on the basis of Mr Shingles' total price within the meaning of s 45AD(3)(c)(v) of the CCA.

In 2019, Mr Shingles and First Class were or were likely to be, or but for the arrangement or understanding, would have been or would be likely to have been, in competition with each

other for the Bellevue Hill Project within the meaning of s 45AD(4)(a), (b) and (j) of the CCA.

32. As set out at paragraphs 16 to 18 and 22 to 23 above, Mr Shingles through Hand and First Class through Barton gave effect to the cartel provision referred to in paragraph 15 above in contravention of s 45AK of the CCA.

Involvement of Barton and Hand

33. By reason of the matters set out in paragraphs 7 to 12, 15 to 18 and 20 to 23 above, Barton and Hand were directly knowingly concerned in, or party to, the contraventions of s 45AJ and s 45AK of the CCA set out in paragraphs 27 to 32 above.

E. ALLEGATION OF THE HARM SUFFERED

34. First Class through Barton and Mr Shingles through Hand deliberately entered into and gave effect to one or more arrangements or understandings containing a cartel provision, which had the purpose of and effect of determining or affecting the outcome of a competitive tender process for a significant and high value project at a well-known Australian educational institution.
35. During the same period, First Class through Barton and Mr Shingles through Hand also deliberately entered into and gave effect to an arrangement or understanding containing a cartel provision, which had the purpose and effect of determining or affecting the outcome of a competitive quoting process for a private residential construction.
36. Cartel conduct is one of the most egregious violations of competition law and has the potential to cause significant detriment to consumers and businesses. The customers in each case were denied the benefits of competition which can otherwise result in improvements in choice, innovation, quality and price.

Certificate of lawyer

I, Aldo Nicotra, certify to the Court that, in relation to the originating application filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 25 October 2021



Signed by Aldo Nicotra

Lawyer for the Applicant