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Details of Filing

Document Lodged: Concise Statement
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 8/12/2022 10:22:33 AM AEDT
Date Accepted for Filing: 8/12/2022 3:05:06 PM AEDT
File Number: NSD1060/2022
File Title: AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v QTEQ
PTY LTD ACN 620 051 167 & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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The date of the filing of the document is determined pursuant to the Court's Rules.

CONCISE STATEMENT



No. NSD

of 2022

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NSW
DIVISION: GENERAL

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Applicant

QTEQ PTY LTD (ACN 620 051 167)

and another named in the Schedule

Respondents

A. INTRODUCTION

1. This proceeding concerns attempted cartel conduct by Qteq Pty Ltd (**Qteq**) and its then-Chief Executive Officer Simon Ashton (**Ashton**) in relation to the supply of goods and services to oil and gas producers in the upstream phase of production.
2. In the period between April 2017 and June 2019, Qteq made seven attempts either to enter into, or alternatively to induce a competitor to enter into, a contract, arrangement, or understanding containing one or more cartel provisions. In six of the seven cases, Ashton attempted to induce Qteq's competitors to enter into the relevant contract, arrangement or understanding.

B. IMPORTANT FACTS GIVING RISE TO THE CLAIM

B.1 Upstream oil and gas production

3. The upstream production of oil and gas involves discovering and extracting raw materials from reservoirs beneath the surface of the earth. It is distinct from downstream production, which involves processing and refining the raw materials into usable oil and gas products for distribution to end customers.
4. Upstream activities include: exploration; drilling wells; well testing (including through a procedure known as drill stem testing); **completions** of wells after drilling (which involves securing, stabilising and managing the wells); monitoring and measurement or "data acquisition", and "workover" or maintenance of wells.
5. Oil and gas producers acquire equipment and services from third party suppliers for the purposes of upstream activities. Relevantly, they acquire permanent downhole gauges and related services (together, **gauge works**) for data acquisition purposes. Permanent

Filed on behalf of the Applicant, the Australian Competition
and Consumer Commission

File ref: 22000806

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downhole gauges are instruments installed in wells to monitor and measure pressure, temperature, fluid flows and other information. They can be used to control the extraction of water in the production of coal seam gas (**CSG**).

6. CSG, also known as coal bed methane, is a form of natural gas extracted from coal seams underground. CSG is described as an unconventional gas because, unlike other natural gases, which flow through the production well to the surface under high pressure, CSG is trapped in the coal seams underground by water pressure. To release the CSG, water must first be pumped out of the coal seam in a controlled fashion using permanent downhole gauges or alternative technologies to monitor water levels and pump rates.

The respondents

7. Qteq was established by Ashton, in June 2017, to acquire the business and assets of a company called **Welldog** Pty Ltd, which went into administration in March 2017. At all relevant times, Qteq was a supplier of, predominantly, gauge works to operators of CSG wells. Qteq also had the capacity to supply drill stem testing.
8. Ashton was the Chief Executive Officer of Qteq from its establishment until January 2019. He is now its Executive Chairman. Ewan **Meldrum** was the Chief Operating Officer of Qteq from 1 September 2017 until January 2019, at which point he assumed his current role of Chief Executive Officer. Peter **Ramsay** was at all relevant times Qteq's technical sales manager.

Other relevant persons

9. **Pro-Test** Pty Ltd was founded in 2009 by Ewan **McDonald**. It is a supplier of products and services to companies operating in Australia's upstream oil and gas industry, including completions, well testing and gauge works. At all relevant times, McDonald and Timothy **Dabrowski** were directors of Pro-Test.
10. **Firetail** Australia Pty Ltd was established in 2017, by Mike **Wayne**, who had previously worked at Welldog. At all relevant times, Firetail's business was primarily focused on well testing, but it also held itself out as a supplier of permanent monitoring systems, which encompasses gauge works.
11. **Eastern Well** Service No 2 Pty Ltd was, at all relevant times, a procurement entity for the formerly-named Eastern Well business, including **Eastern Well Group Operations** Pty Ltd, which provided drilling and rig workover services to oil and gas operators. The various entities comprising the Eastern Well business were acquired by Ventia Services Group Pty Ltd in 2020 and the business is now known as Ventia Rig & Well Services.
12. **Welldata** Pty Ltd was established in 2005 and is co-owned by Kim **Gardiner** and Syd **Littleford**. It is the Australian operational arm of a UK-based technology development company called Welldata (Subsurface Surveillance Systems) Ltd (**W3S**). Welldata has a licence to use all of the intellectual property relating to the fluid monitoring technology developed by W3S. This technology has application for well bores in the oil and gas industry.
13. **QGC** Pty Ltd is a joint venture business operated by Shell Plc. QGC operates CSG wells in the Surat Basin in Queensland.

B.2 QGC's gauge and rig tenders

14. On 24 October 2017, QGC released four tenders for "artificial lift" equipment and services for its CSG wells. Artificial lift equipment are devices used to increase the flow rate of liquids (water or crude oil) in a production well. One of the four tenders was for the provision of gauge works (the **QGC gauge tender**). Qteq was the incumbent gauge works contractor to QGC, having successfully novated the previous contract held by Welldog. The other three tenders were for diverter valves, rods and progressing cavity pumps.

15. The QGC gauge tender contemplated two phases for the supply of gauge works. In the first phase, the successful contractor would supply gauge works as a bundle (i.e. the equipment plus installation and servicing). In the second phase, approximately 12 months later, the gauge works contractor would then supply only the equipment, with the installation and other related services to be performed by the rig contractor. It was envisaged that the gauge works contractor would provide training and support to the rig contractor during the transition period.
16. On or about 23 October 2017, QGC also released a tender for rig workover services (the **QGC rig tender**). This provided for the transition of gauge installation and servicing to the rig contractor to mirror the arrangement set out in the QGC gauge tender. This was a new approach in the industry, as typically gauge installation and related services were provided by the gauge supplier rather than the rig contractor. Eastern Well Group Operations bid for the QGC rig tender.

B.3 Qteq and Ashton's strategy to neutralise competitive threats in the gauge works market

17. At all material times, Qteq was a leading supplier of gauge works to the CSG sector and this accounted for the majority of its revenue. Qteq and Ashton were concerned to protect Qteq's market position and, in particular, to secure ongoing supply of gauge works to QGC, which was its largest customer. Key personnel within Qteq, including Ashton, considered it essential that Qteq be successful in the QGC gauge tender process and retain that contract. Ashton described the QGC gauge contract as a "*foundation asset that we must guard jealously and protect rigorously*" and stated that it would be "*either a company maker or destroyer*" for Qteq. At all relevant times, Qteq and Ashton adopted a strategy to neutralise competitive threats, by securing exclusive supply of QGC's preferred GeoPSI gauge and attempting to collude with current, or potential future, competitors for the supply of gauge works to QGC and other customers.
18. Prior to the QGC gauge tender being issued, Qteq and Ashton attempted to persuade Firetail, a newly established supplier of goods and services in the upstream oil and gas industry, not to enter the gauge works market.
19. Qteq and Ashton's strategy was most focussed in respect of Pro-Test, which was Qteq's closest competitor for the QGC contract and gauge works more broadly. Between April and October 2017, Qteq and Ashton sought to persuade Pro-Test not to compete for the supply of gauge works to QGC. After the QGC gauge tender was issued and considered, Qteq and Ashton sought to persuade Pro-Test to structure its bid to QGC so as to win a limited amount of the work, and thereby avoid Qteq losing its QGC gauge work or being exposed to downward pressure on its pricing. In 2019, Qteq and Ashton attempted to persuade Pro-Test to exit the market for gauge works altogether.
20. In light of QGC's stated intention to have the rig contractor, rather than the gauge supplier, perform gauge installation and other related services, Qteq and Ashton also sought to neutralise what they perceived to be a new source of competition for the service component of the gauge works from the rig contractors. Ashton described the rig contractors as "*our biggest threat in the [QGC] tender*". Together with Meldrum, he sought to commit Eastern Well, through the proffer of non-compete agreements, not to provide such services to QGC, other than "*in concert*" with Qteq, and to refrain from providing such services to any other customers.
21. Looking to the longer-term future for fluid monitoring products, which Qteq considered was in wireless technology rather than wired gauges, Qteq sought to enter a non-compete agreement with Welldata as the supplier of wireless fluid monitoring technology being developed by W3S.

B.4 The attempts

22. The attempts involved Qteq proposing:

- 22.1. during the course of discussions between Ashton and Wayne, on or around 20 September 2017, an arrangement or understanding with Firetail, including a provision whereby Firetail would not supply gauge works in competition with Qteq (**Firetail Understanding**);
 - 22.2. during the course of discussions between Ashton and Dabrowski between April and October 2017, including at a dinner on 26 October 2017, an arrangement or understanding with Pro-Test, including a provision whereby Pro-Test would not compete for the supply of gauge works to QGC and Qteq would not compete for the supply of goods or services to **Santos Ltd (Pro-Test 2017 Customer Allocation Understanding)**;
 - 22.3. during the course of discussions between Ashton and Dabrowski, and then Meldrum and Dabrowski, between around 27 October 2017 and 6 November 2017, and by the issuing of a quote from Ramsay to Dabrowski on 10 November 2017, an arrangement or understanding with Pro-Test, including a provision whereby Pro-Test would structure its bid for the QGC gauge works tender so as to win only around 15 percent of the work and Qteq would not compete with Pro-Test for the supply of goods or services to Santos (**Pro-Test 2017 QGC Tender Understanding**);
 - 22.4. on or around 24 June 2019, during the course of discussions between Ashton and McDonald, an arrangement or understanding with Pro-Test, including a provision whereby Pro-Test would not supply gauge works and Qteq would not supply drill stem testing or completions work (**Pro-Test 2019 Market Sharing Understanding**);
 - 22.5. between around 6 to 16 November 2017, a contract with Eastern Well, including a provision whereby Eastern Well and its related bodies corporate would not, other than “*in concert*” with Qteq, supply gauge installation services to QGC or to any other persons (**Eastern Well 2017 Non-Compete Agreement**);
 - 22.6. between around 7 December 2018 and 24 January 2019, a contract with Eastern Well, including a provision whereby Eastern Well and its related bodies corporate would restrict or limit the supply of gauge installation services to QGC and would not supply gauge installation services to any other persons (**Eastern Well 2018-19 Non-Compete Agreement**);
 - 22.7. in November 2017, a contract with Welldata, including a provision whereby Welldata would not supply goods or services to any person in competition with Qteq and Qteq would not be involved in any way in the supply of technology the same as W3S technology (**Welldata 2017 Non-Compete Agreement**).
23. Ashton, in his personal capacity, attempted to induce each of the above contracts, arrangements or understandings referred to in paragraphs 22.1 to 22.6 above.

C. PRIMARY LEGAL GROUNDS FOR RELIEF SOUGHT

24. Each proposed contract, arrangement or understanding referred to in paragraph 22, contained one or more provision(s) having a cartel purpose or purposes, as follows:
 - 24.1. in the case of the FireTail Understanding, a cartel purpose within the meaning of s 44ZZRD(3)(a)(iii) of the *Competition and Consumer Act 2010* (Cth) (**CCA**);
 - 24.2. in the case of the Pro-Test 2017 Customer Allocation Understanding, cartel purposes within the meaning of s 44ZZRD(3)(a)(iii) and s 44ZZRD(3)(b)(i);
 - 24.3. in the case of the Pro-Test 2017 QGC Tender Understanding, cartel purposes within the meaning of s 44ZZRD(3)(c)(ii) / 45AD(3)(c)(ii); s 44ZZRD(3)(c)(v) / s 45AD(3)(c)(v); s 44ZZRD(3)(a)(iii) / s 45AD(3)(a)(iii); and s 44ZZRD(3)(b)(i) / s 45AD(3)(b)(i);

- 24.4. in the case of the Pro-Test 2019 Market Sharing Understanding, cartel purposes within the meaning of s45AD(3)(a)(iii);
- 24.5. in the case of the Eastern Well 2017 Non-Compete Agreement, cartel purposes within the meaning of s 45AD(3)(a)(iii);
- 24.6. in the case of the Eastern Well 2018-19 Non-Compete Agreement, cartel purposes within the meaning of s 45AD(3)(a)(iii);
- 24.7. in the case of the Welldata 2017 Non-Compete Agreement, cartel purposes within the meaning of s 45AD(3)(a)(ii) and s 45AD(3)(a)(iii).
25. Qteq was, or was likely to be, in competition with the relevant counterparty to each proposed contract, arrangement or understanding referred to in paragraph 22, in respect of the goods and/or services the subject of each of the alleged cartel provisions.
26. By its conduct referred to in paragraph 22, Qteq attempted to contravene, or to induce a contravention of, s 44ZZRJ / s 45AJ (as in force at the relevant time) of the CCA, this being conduct of the kind referred to in ss 76(1)(b) and (d) of the CCA.
27. By his conduct referred to in paragraph 23, Ashton attempted to induce a contravention of s 44ZZRJ / s 45AJ (as in force at the relevant time), this being conduct of the kind referred to in s 76(1)(d) of the CCA.

D. ALLEGED HARM

28. Cartel conduct is one of the most egregious violations of competition law and attempts to engage in cartel conduct have the potential to cause significant harm to the Australian economy.
29. If one or more of the attempts had been successful, they would have resulted in Qteq entering into collusive agreements with up to four current or likely competitors for the supply of goods and services used in the upstream production of oil and gas. Such agreements would have caused QGC, Santos and other oil and gas producers to pay higher prices, and/or to receive lower quality services, than they otherwise would have in a free and competitive marketplace. The increased costs of production would likely ultimately have been borne by end-customers, including businesses and households, who use natural gas for heating and energy purposes.

E. SUMMARY OF RELIEF SOUGHT FROM THE COURT

30. The Applicant seeks the relief in the accompanying Originating Application.
31. The Applicant has not identified any issues that may be suitable for report by a referee under s 54A of the *Federal Court of Australia Act 1976* (Cth).



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Chris Steger
AGS lawyer
for and on behalf of the Australian Government Solicitor
Solicitor for the Applicant

This Concise Statement was prepared by Jonathan Clark and Sarah Andrews of counsel and settled by Ruth Higgins SC.

Schedule

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NSW
DIVISION: GENERAL

No NSD of 2022

Respondents

Second Respondent

Simon John Ashton

Date: 08/12/2022

CERTIFICATE OF LAWYER

I, Chris Steger, certify to the Court that, in relation to the Concise Statement 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: 08/12/2022



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Chris Steger
AGS lawyer
for and on behalf of the Australian Government Solicitor
Solicitor for the Applicant