

**CONCISE STATEMENT**

**FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: GENERAL**

**NO NSD XX OF 2024**

**AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION**

Applicant

**SPOTLESS FACILITY SERVICES PTY LTD (ACN 072 293  
880)**

and others named in the Schedule  
Respondents

**A. INTRODUCTION**

1. This proceeding concerns cartel conduct by Spotless Facility Services Pty Ltd (**Spotless**), Ventia Australia Pty Ltd (**Ventia**) and four senior executives in relation to the supply of estate maintenance and operation services (**EMOS**) to the Department of Defence (**Defence**). The four senior executives, and their roles at the time of the conduct are Jacob Bonisch (**Bonisch**), the Executive General Manager of Spotless Defence, Jeffrey Collins (**Collins**), the General Manager – Operations, Spotless Defence, Gavin Campbell (**Campbell**), the Executive General Manager, Defence Base Services at Ventia and Lena Parker (**Parker**), the General Manager of Energy Solutions at Ventia (together, the **Respondents**).
2. Between April 2019 and August 2022, the Respondents made, attempted to make, or attempted to induce another to make, or were otherwise involved in, arrangements or understandings containing provisions which had the purpose, effect or likely effect of fixing, controlling or maintaining the prices at which Spotless, Ventia and/or BGIS Pty Ltd (**BGIS**) would supply services to Defence under particular programs of work. Spotless gave effect to two of the arrangements or understandings, and Ventia gave effect to one of the arrangements or understandings. Collins was involved in giving effect to two of the arrangements or understandings and Bonisch and Campbell were involved in giving effect to one of the arrangements or understandings.

**B. IMPORTANT FACTS GIVING RISE TO THE CLAIMS**

**B.1 Supply of EMOS to Defence**

3. Spotless, Ventia and BGIS supply facilities management services and sustainable energy solutions throughout Australia and New Zealand.
4. Defence is a Commonwealth entity which owns real property assets around Australia (**Defence Estates**). Defence requires a range of EMOS at Defence Estates around

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Filed on behalf of the Applicant, ACCC

File ref: 22008368

Prepared by: Chris Steger

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1903

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Australia and from time to time it acquires EMOS from Spotless, Ventia and BGIS (**EMOS Providers**). During the relevant period, the EMOS Providers each supplied EMOS to Defence under separate contracts with the Commonwealth of Australia (collectively, **EMOS Contracts**).

5. At all material times, the EMOS Providers were or were likely to be in competition with each other in relation to the supply or likely supply of EMOS to Defence within the meaning of s 45AD(4)(c) of the *Competition and Consumer Act 2010* (Cth) (**CCA**). Further or alternatively, the EMOS Providers were in competition with each other in relation to the supply or likely supply of the specific services to Defence under the three relevant programs of work referred to below.

## **B.2 DEPU arrangement or understanding**

6. On or about 29 March 2019, Defence wrote to the EMOS Providers about a program involving the allocation of at least \$ [REDACTED] in funds to the EMOS Providers in relation to certain estate works which Defence requested be delivered and invoiced before the end of the 2018-2019 financial year (**DEPU Works**). Under their existing EMOS Contracts, Spotless and BGIS were each contractually entitled to charge [REDACTED] [REDACTED] mark-up on materials and sub-contract costs relating to the DEPU Works.
7. On 30 April 2019, an employee of Defence emailed the EMOS Providers raising concerns regarding the mark-up to be charged by the EMOS Providers for the DEPU Works. Later that day, Bradley Robbins (**Robbins**), at the time the Managing Director, Defence and Facilities Management Officer at BGIS, exchanged text messages with Collins about Defence's email and about what each would charge Defence. On 1 May 2019, Spotless and BGIS each emailed Defence to the effect that they had applied the maximum contractual mark-up of [REDACTED]. Spotless charged Defence a mark-up of [REDACTED] on the value of at least [REDACTED] projects under the DEPU Works.

## **B.3 STIM20 arrangement or understanding**

8. In or around March 2020, Defence asked the EMOS Providers to provide services in relation to the delivery of a large volume of works on Defence Estates. The works were to be undertaken by small and medium enterprises as part of an economic stimulus program during the COVID-19 pandemic. This was referred to as the Economic Stimulus Package or STIM20 (**STIM20 Works**). Under their existing EMOS Contracts Spotless, Ventia and BGIS were each contractually entitled to charge [REDACTED] [REDACTED] mark-up on materials and sub-contract costs relating to the STIM20 Works.
9. Between April 2020 and May 2020, executives from Spotless, Ventia and BGIS, including Collins, Campbell and Robbins, communicated with each other on several occasions about seeking additional compensation from Defence beyond [REDACTED] [REDACTED] mark-up for the STIM20 Works. Collins was acting with the consent or agreement of Bonisch, and on at least one occasion, acted under a direct instruction from Bonisch. During the course of these communications, Spotless, Ventia and BGIS:
  - 9.1. discussed that there would be additional project management services associated with managing and delivering the STIM20 Works over and above what was typically provided to Defence;
  - 9.2. discussed concerns about recovering the costs of those additional services; and

- 9.3. discussed that each of the EMOS Providers would approach Defence to ask it to pay additional compensation beyond the [REDACTED] mark-up for the STIM20 Works.
10. On several occasions between late April and early May 2020, Ventia and Spotless each wrote to Defence and asked Defence for additional compensation beyond the [REDACTED] mark-up.
11. On 8 May 2020, Defence wrote separately to each of the EMOS Providers and offered each of them a mark-up of [REDACTED] in respect of the services to be supplied to Defence in relation to the STIM20 Works. Spotless and Ventia accepted Defence's offer.
12. On and from 11 and 14 May 2020 respectively, Spotless and Ventia charged Defence a mark-up of [REDACTED] on the value of subcontracted works relating to STIM20 which they had commenced managing and delivering after 1 April 2020. Spotless charged Defence a mark-up of [REDACTED] on at least [REDACTED] individual STIM20 projects which had a total value of \$ [REDACTED], and Ventia charged Defence a mark-up of [REDACTED] on at least [REDACTED] individual STIM20 projects which had a total value of \$ [REDACTED].

#### **B.4 NEP attempt**

13. In around May 2022, Defence asked the EMOS Providers to commence discussions on delivering energy saving outcomes to Defence. On or around 26 May 2022, Defence hosted a [REDACTED] meeting which was attended by representatives of the EMOS Providers. After the [REDACTED] meeting until approximately early August 2022, the EMOS Providers collaborated on a proposal to Defence to deliver a national energy program aimed at reducing carbon dioxide emissions, energy costs and maintenance costs across the Defence Estates. The proposal was to implement certain energy saving initiatives such as [REDACTED] (NEP). By 9 August 2022, Ventia had prepared a presentation to Defence about the NEP which included information provided to Ventia by Spotless and BGIS about their estimated costs to deliver the program. The total estimated program costs in the proposal were \$ [REDACTED].
14. By 10 August 2022, Ventia's senior management was concerned to ensure that works delivered to Defence under the NEP were profitable to Ventia, including by recovering costs associated with project or program management. Parker was aware of these concerns. On 10 August 2022, the EMOS Providers met to discuss the NEP proposal. During the meeting, Parker said to the representatives of the EMOS Providers present, words to the effect that the EMOS Providers should jointly ask Defence to pay them a project management fee (**PM Fee**) in respect of the delivery of the NEP.
15. On 12 August 2022, the EMOS Providers presented the NEP proposal to Defence. During or shortly after the 12 August 2022 presentation, Defence instructed the EMOS Providers to progress delivery of the NEP. On 23 August 2022, the EMOS Providers met to discuss the NEP proposal and Parker again said words to the effect that the EMOS Providers should jointly ask Defence to pay them a PM Fee in respect of the delivery of the NEP.

## C. PRIMARY LEGAL GROUNDS FOR RELIEF SOUGHT

### C.1 DEPU arrangement or understanding

16. Between about 30 April 2019 and 1 May 2019, Spotless made an arrangement or arrived at an understanding with BGIS containing a provision to the effect that Spotless and BGIS would each apply, or assert to Defence that they would apply, a mark-up of [REDACTED] on the value of the DEPU Works (**DEPU Understanding**). The DEPU Understanding contained a cartel provision within the meaning of s 45AD(1) of the CCA, because the provision had the purpose, effect and/or likely effect of fixing, controlling or maintaining the price for services supplied or likely to be supplied by Spotless and BGIS pursuant to the DEPU Works program within the meaning of s 45AD(2)(c) of the CCA. Further, Spotless and BGIS were or were likely to be in competition with each other in relation to the supply within the meaning of s 45AD(4)(c) of the CCA. Spotless therefore contravened s 45AJ of the CCA. Spotless subsequently gave effect to the cartel provision in the DEPU Understanding, in contravention of s 45AK of the CCA by communicating to Defence that it would apply a [REDACTED] mark-up on the value of the DEPU Works and on each occasion that it charged Defence a [REDACTED] mark-up on the value of the DEPU Works.
17. By his conduct, Collins was directly or indirectly, knowingly concerned in, or party to, or aided, abetted, counselled or procured, Spotless' contravention of s 45AJ of the CCA by its making or arriving at the DEPU Understanding, being conduct referred to in s 76(1)(c) and (e) of the CCA. Collins was also directly or indirectly, knowingly concerned in, or party to, or aided, abetted, counselled or procured, Spotless' contraventions of s 45AK of the CCA.

### C.2 STIM20 arrangement or understanding

18. Through the communications referred to above, Spotless and Ventia made an arrangement or arrived at an understanding with each other and BGIS, or alternatively with each other, (**STIM20 Understanding**) containing a provision that they would each offer to Defence to supply the STIM20 works at a greater than [REDACTED] mark-up (**STIM20 Provision**). The STIM20 Understanding contained a cartel provision within the meaning of s 45AD(1) of the CCA because the provision had the purpose, effect or likely effect of fixing, controlling or maintaining the prices for services supplied or likely to be supplied by one or more of the EMOS Providers pursuant to the STIM20 program within the meaning of s 45AD(2)(c) of the CCA. Further the EMOS Providers were or were likely to be in competition with each other in relation to the supply within the meaning of s 45AD(4)(c) of the CCA. Spotless and Ventia each therefore contravened s 45AJ of the CCA. Spotless and Ventia gave effect to the STIM20 Provision in contravention of s 45AK of the CCA by one or more of: asking Defence for additional compensation beyond the [REDACTED] mark-up on the STIM20 Works, accepting Defence's offer of a mark-up of [REDACTED] on the STIM20 Works and charging the [REDACTED] mark-up to Defence on the STIM20 Works.
19. By his conduct, Bonisch was directly or indirectly, knowingly concerned in, or party to, or aided, abetted, counselled or procured, Spotless' contravention of s 45AJ of the CCA, being conduct referred to in s 76(1)(c) and (e) of the CCA. Bonisch was also directly or indirectly, knowingly concerned in, or party to, or aided, abetted, counselled or procured, Spotless' contraventions of s 45AK of the CCA.

20. By his conduct, Collins was directly or indirectly, knowingly concerned in, or party to, or aided, abetted, counselled or procured, Spotless' contravention of s 45AJ of the CCA, being conduct referred to in s 76(1)(c) and (e) of the CCA. Collins was also directly or indirectly, knowingly concerned in, or party to, or aided, abetted, counselled or procured, Spotless' contraventions of s 45AK of the CCA.
21. By his conduct, Campbell was directly or indirectly, knowingly concerned in, or party to, or aided, abetted, counselled or procured, Ventia's contravention of s 45AJ of the CCA, being conduct referred to in s 76(1)(c) and (e) of the CCA. Campbell was also directly or indirectly, knowingly concerned in, or party to, or aided, abetted, counselled or procured, Ventia's contraventions of s 45AK of the CCA.

### **C.3 NEP attempt**

22. By the communications referred to above, Ventia attempted to make an arrangement or arrive at an understanding with BGIS and/or Spotless containing a provision to the effect that the EMOS Providers would jointly ask Defence to pay a PM Fee in respect of the delivery of the NEP (**NEP Understanding**). Further, by the same communications, Ventia attempted to induce BGIS and/or Spotless to make or arrive at the NEP Understanding. The NEP Understanding, if made or arrived at, would have contained a cartel provision within the meaning of s 45AD(1) of the CCA because it would have had the purpose, or would have had the effect, or would have been likely to have the effect, of directly or indirectly fixing, controlling or maintaining the price of the works delivered under the NEP, or likely to be delivered under the NEP, to Defence by one or more of the EMOS Providers within the meaning of s 45AD(2)(c) of the CCA. Further the EMOS Providers were or were likely to be in competition with each other in relation to the supply within the meaning of s 45AD(4)(c).
23. By the communications referred to above, Parker attempted to induce Spotless and/or BGIS to make or arrive at the NEP Understanding, being conduct referred to in s 76(1)(d) of the CCA.

### **D. ALLEGED HARM**

24. The conduct in this case undermined competitive public procurement processes. It occurred without Defence's knowledge and was engaged in by EMOS Providers who were trusted suppliers of services to Defence. The Spotless EMOS Contract and the Ventia EMOS Contract are ongoing and the value of those contracts over their duration are approximately \$4 billion and \$5.8 billion respectively.
25. The DEPU conduct directly affected commerce totalling at least [REDACTED], being the total value of DEPU Works to which a [REDACTED] mark-up was applied. The DEPU conduct may have caused further market harm because Spotless and BGIS avoided the risk that the other may have supplied the DEPU Works at [REDACTED]. This in turn avoided the risks of loss of work from Defence, and setting a precedent that may have applied to future services acquired by Defence. Spotless and BGIS also benefited from increased confidence in applying the [REDACTED] mark-up for the DEPU Works and avoided reputational and commercial harm which might have arisen from seeking a particular mark-up without one or more of its competitors also seeking equivalent compensation from Defence. They also benefited from avoiding reduced customer satisfaction.

26. The STIM20 conduct directly affected commerce totalling at least \$ [REDACTED], being the total value of STIM20 Works to which a [REDACTED] mark-up was applied. The STIM20 conduct may have caused further market harm because Spotless and Ventia benefited from increased confidence in approaching Defence to seek additional compensation for the supply of services, and avoided reputational and commercial harm which might have arisen from seeking additional compensation without one or more of its competitors also seeking additional compensation from Defence. Spotless and Ventia have also benefited from avoiding reduced customer satisfaction.
27. In relation to the NEP conduct, if the attempt had been successful, it would have resulted in Spotless, Ventia and/or BGIS entering into a collusive agreement for the supply of services to Defence. Such an agreement would have likely caused Defence to pay higher prices and/or receive lower quality services, than it would have in a free and competitive marketplace.

**E. SUMMARY OF THE RELIEF SOUGHT FROM THE COURT**

28. The Applicant seeks the relief in the accompanying Originating Application.
29. 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 Chris Steger and Eloise Gluer of AGS and settled by Michael Hodge, Clare Exell, Shipra Chordia, and Michael Gvozdenovic of counsel.

## Schedule

No. NSD of 2024

Federal Court of Australia

District Registry: New South Wales

Division: General

### Respondents

Second Respondent	Ventia Australia Pty Ltd (ACN 093 114 553)
Third Respondent	Jeffrey Collins
Fourth Respondent	Jacob Bonisch
Fifth Respondent	Gavin Campbell
Sixth Respondent	Lena Parker

Date: 12 December 2024

**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: 12 December 2024



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