



Cartel conduct—how it affects you and your business

A cartel exists when businesses agree to act together instead of competing against one another. This agreement is designed to drive up the profits of cartel members while maintaining the illusion of competition. By controlling markets and restricting goods and services, cartels can put honest and well-run companies out of business while stifling innovation and protecting their own inefficient members.

Cartels steal billions of dollars in Australia and abroad from businesses, taxpayers and ultimately from consumers.

For the survival of your business, it is vital that you protect it from the operation of cartels among its suppliers. If cartels successfully target your purchasing budgets, they will raise the prices of your inputs and may even compromise your competitive position in the marketplace. Protecting yourself is a prudent risk management strategy.

Businesses involved in cartels are usually aware that they are breaking the law and go to great lengths to hide their deals. The ACCC relies on those with information to come forward and share what they know.

Individuals and corporations face civil and criminal liability for their involvement in cartel conduct.

If you become aware of suspicious activity you should contact the ACCC.

Types of cartel conduct

Common forms of illegal cartel conduct include:

- **price fixing** occurs when competitors agree on a pricing structure rather than compete against each other
- **bid rigging** occurs when suppliers communicate before lodging their bids and agree among themselves who will win the tender and at what price
- **output restrictions** occur when the participants in an industry agree to reduce or restrict supply with the aim of creating scarcity
- **market sharing** occurs when competitors agree to divide a market so participants are sheltered from competition.

Exceptions

In some circumstances exceptions to the cartel regime may apply—such exceptions are very specific, and businesses should seek independent advice before relying on them. Broadly, they relate to:

- conduct subject to a collective bargaining notice
- conduct subject to authorisation
- joint ventures
- agreements between related bodies corporate
- collective acquisition of goods or services
- ‘anti-overlap’ provisions.

Immunity for cartel participants

The ACCC has established an immunity policy for both corporations and individuals who have been involved in a cartel and are **first** to then report their involvement to the ACCC. The policy provides immunity from litigation and penalty for those who assist with cartel investigations.

Immunity is strictly subject to a number of conditions.

Under the ACCC’s immunity policy, a person or corporation may request a ‘marker’ for a limited period of time. This will, in effect, preserve first place in the queue while the applicant collects information or seeks legal advice.

Corporate immunity is offered only if the admissions are a truly corporate act, as opposed to isolated confessions of individual representatives. The immunity may cover past and current directors, officers and employees who admit their conduct and cooperate with the investigation.

Whistleblowers can report to the ACCC on a confidential basis. Investigators will, as far as possible, keep the identity of whistleblowers confidential.

For information on how to apply for immunity see the ACCC’s Immunity policy for cartel conduct and Immunity policy interpretation guidelines, on the ACCC website at www.accc.gov.au/cartels

Sanctions for cartel conduct

Significant penalties apply where corporations and individuals have been found to have engaged in cartel conduct.

Penalties for individuals

- Imprisonment of up to 10 years and/or fines of up to \$220 000 per criminal cartel offence.
- A pecuniary penalty of up to \$500 000 per civil contravention.

It is illegal for a corporation to indemnify its officers against legal costs and any financial penalty.

Penalties for corporations

The maximum fine or pecuniary penalty for each criminal cartel offence or civil contravention (whichever applies) will be the greater of:

- \$10 000 000
- three times the total value of the benefits obtained by one or more persons and that are reasonably attributable to the offence or contravention
- where benefits cannot be fully determined, 10 per cent of the annual turnover of the company (including related corporate bodies) in the preceding 12 months.

Other corporate penalties for cartel civil contraventions or criminal offences include:

- injunctions
- orders disqualifying a person from managing corporations
- community service orders.

Reporting and inquiries

If you would like to know more about deterrence and detection of cartels, or you wish to report suspicious behaviour, please contact the ACCC:

Australian Competition and Consumer Commission
GPO Box 3131, Canberra ACT 2601

Infocentre 1300 302 502

Website www.accc.gov.au

Prevent your business becoming a victim of a cartel

Vigorous competition is the natural enemy of cartels. Your actions can make it harder for businesses to collude.

Measures to prevent cartel conduct include:

- ✓ remain alert to arrangements between competitors in your industry
- ✓ try to use a wide range of suppliers and do not discuss your supply arrangements in detail with others
- ✓ seek quotes from a number of different suppliers
- ✓ take note of sudden significant and unexplained price changes
- ✓ consider including anti-collusion clauses in tender documentation and requiring suppliers to warrant that they have not colluded with any of their competitors
- ✓ monitor tender outcomes and consider whether any strange patterns are cause for concern.

For further information on cartel conduct see the following publications on the ACCC website:

ACCC approach to cartel investigations

ACCC immunity policy for cartel conduct

ACCC immunity policy interpretation guidelines

Cartels, deterrence and detection, a guide for government procurement officers

Cartels, what you need to know: a guide for business

News for business, what is price fixing

Avoid your business being drawn into a cartel

Take the following steps to avoid being drawn into a cartel:

- ✓ make decisions about prices independently
- ✓ do not discuss tenders with competitors before they are submitted
- ✓ make decisions about your market and product independent of other companies
- ✓ do not agree to stay out of certain areas or stay away from another company's customers.

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Important notice

The information in this publication is for general guidance only. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law in any jurisdiction. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice if you have any specific concern.

The ACCC has made every reasonable effort to provide current and accurate information, but it does not make any guarantees regarding the accuracy, currency or completeness of that information.

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