

## **Petreski, Sonya**

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**From:** Popa, Caterina  
**Sent:** Monday, 3 September 2012 10:59 AM  
**To:** Petreski, Sonya  
**Subject:** FW: Cartel Information Network [DLM=For-Official-Use-Only]

**ACCC Classification:** SEC=UNCLASSIFIED  
**Security Classification:** UNCLASSIFIED For Official Use Only  
**TRIM Record Number:** D10/3612955

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**From:** Cartel Info Service  
**Sent:** Monday, 17 May 2010 10:58 AM  
**Subject:** Cartel Information Network [SEC=UNCLASSIFIED]

### **Cartels and Government Procurement**

Dear subscribers,

Welcome to the fourth edition of Cartels and Government Procurement.

This edition provides an overview of some recent Federal Court decisions in relation to cartel conduct.

#### **Record penalties in Western Australian air conditioning cartel matter**

Following action from the ACCC in 2004, the Federal Court handed down its final orders in the long running Western Australian air conditioning cartel case. The Federal Court imposed \$9.2 million in pecuniary penalties, which makes it the largest trade practices penalty ever imposed in Western Australia

The air conditioning cartel case involved businesses agreeing to rig bids for public and private tenders for the supply and installation of air conditioning and mechanical services on major construction projects in Western Australia. The tenders collectively amounted to over \$100 million. The businesses agreed to rig the bids in two major ways:

- Some members of the Air Conditioning and Mechanical Contractors' Association of WA, attended regular weekly meetings at the Association's premises. At these meetings the businesses discussed upcoming tenders and which business would be designated to submit the lowest price for each tender.
- Through the provision and acceptance of 'cover prices'. Cover pricing involves one company colluding with another during the tender process to obtain a price that is intended to be too high to win the contract for the project on price alone. The company then submits this price as a genuine tender.

The air conditioning cartel came to the ACCC's attention in about December 2001 after a trade practices compliance review of Tyco Australia Pty Ltd and its subsidiaries was conducted following Tyco's involvement in a Queensland fire protection price-fixing case. The review identified potential anti-competitive conduct by the companies in the WA commercial air conditioning industry.

In September 2005 the Federal Court declared, by consent, that Admiral Mechanical Services Pty Ltd, Direct Engineering Pty Ltd, Envar Engineers and Contractors Pty Ltd and Scott Mechanical Services Pty Ltd had engaged in price fixing which contravened section 45 of the *Trade Practices Act 1974*. The Federal Court reserved its judgment as to penalties until April 2010.

*Related ACCC media release:*

[Media release: WA air conditioning cartel prosecution finalised: \\$9 million penalties](#)

**\$8 million plus penalty ordered for marine hose cartel**

The Federal Court ordered four foreign based suppliers of marine hose to pay penalties exceeding \$8.24 million for engaging in cartel conduct. The Federal Court also made declarations and injunctions restraining the companies from engaging in similar conduct.

The ACCC instituted court proceedings in June 2009 alleging that Dunlop Oil & Marine, Bridgestone Corporation, Trelleborg Industrie SAS and Parker ITR gave effect to an international cartel arrangement which included the Australian market from 2001 to 2006 for the supply of marine hose.

Marine hose is rubber hose used at offshore moorings to transfer crude oil and gas products from production facilities to tankers or buoys.

The ACCC alleged the companies submitted 'rigged' bids to supply marine hose to customers in Australia such as Woodside Energy Ltd, BHP Billiton Petroleum Pty Ltd and ConocoPhillips (03-12) Pty Ltd.

International cooperation was important for the ACCC's successful court outcome in this matter as the cartel participants were foreign corporations which were supplying or offering to supply marine hose to Australian companies or projects.

ACCC investigators were greatly assisted by both the United States Department of Justice and the United Kingdom Office of Fair Trading in the provision of documents and information located overseas.

*Related ACCC media release:*

[\\$8 million plus penalty imposed on cartel members](#)

### **Paper suppliers to pay \$4 million for fixing prices**

In January 2010 the Federal Court has ordered APRIL Fine Paper Trading Pte Ltd, a Singapore company, and a related company, APRIL International Marketing Services Australia Pty Ltd, to pay penalties totalling \$4 million for breaching the price fixing provisions of the *Trade Practices Act 1974* and *Competition Codes*.

In joint submissions to the court APRIL Fine Paper Trading admitted that it had taken part in 18 meetings with competitors at what was referred to as the AAA Club, between December 2000 and January 2004. At the meetings, APRIL Fine Paper Trading made arrangements or understandings with competitors about the average price of paper sold.

This matter sends a strong message that the ACCC will pursue alleged cartel arrangements made overseas by foreign corporations that affect Australian prices and consumers, in this case for a basic commodity like copy paper.

*Related ACCC media release:*

[Paper suppliers to pay \\$4 million for fixing prices](#)

### **ACCC publications**

Below are links to publications which the ACCC has produced to assist businesses and procurement officers.

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

This publication explains common types of cartel conduct and includes tips for procurement officers to identify potential cartel conduct amongst businesses submitting tenders.

<http://www.accc.gov.au/cartelgovernmentguide>

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

This publication explains the different types of cartel conduct and the penalties which may apply if a business is found to have breached the anti-competitive provisions of the *Trade Practices Act 1974*. This publication also outlines what businesses should do to avoid cartel conduct.

<http://www.accc.gov.au/cartelbusinessguide>

### **Further information**

If you would like to know more, or wish to report suspicious behaviour, please contact the ACCC Infocentre on **1300 302 502**.

There is also a large collection of resources on the ACCC's website at [www.accc.gov.au](http://www.accc.gov.au)

*Please feel free to pass this information on to others who might find it useful.*

*Kind regards,*

Australian Competition & Consumer Commission



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