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From: Cartel Information Network
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To: Petreski, Sonya
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19 July 2010

ACCC Cartel Information Network

Dear CIN members,

Welcome to ACCC's *Cartel Information Network* (formerly *Cartels and Government Procurement*). This newsletter is designed to help you be aware of the way cartels operate so that you can identify and avoid cartel conduct.

Cartel conduct adversely affects consumers as cartels generally result in higher prices and reduced choice of products and services. Cartel conduct also affects the large majority of businesses who are committed to lawful competition and fair trading.

It is important for you to remain up-to-date with key information about cartels and the way they operate to minimise the risk of your organisation being the target of a cartel or inadvertently becoming involved in cartel or other anti-competitive conduct.

This edition of the *Cartel Information Network* provides an update of the ACCC's action in the international air cargo market as well as an international example of bid rigging which provides useful tips in recognising potential cartel conduct.

Finally, last week the ACCC launched a new publication, *Industry associations and the Trade Practices Act*. As the title suggests, this publication is designed for industry associations who play a key role in educating businesses about the prohibitions against cartel conduct and the *Trade Practices Act 1974* (the Act) more broadly. The publication also seeks to ensure that industry associations are aware of the risk that their members may use association meetings or events as a venue to make anti-competitive agreements and provides guidance on how industry associations can minimise the risk of this occurring. This publication also includes information for businesses about their obligations under the Act and how to ensure that they don't risk breaching the Act. A brief overview and link to this new publication is given below.

The ACCC's enforcement action against alleged international air cargo cartel

Since 2006, the ACCC has been investigating alleged cartel conduct by a number of different airlines in relation to fixing the fuel surcharge component of the price for air cargo services.

The ACCC alleges that a number of airlines entered into arrangements or understandings with each other that had the purpose or effect of fixing the price of a fuel surcharge and a security surcharge that were applied to air cargo carried by them between 2002 and 2006.

The conduct first became public following coordinated raids of premises located in Europe and the USA in February 2006. Overseas regulators have brought a number of actions concerning similar conduct. In particular, the Department of Justice in the United States of America has reached settlements with a number of airlines and a number of executives have been sentenced to terms of imprisonment.

In May 2010 the ACCC instituted proceedings against Japan Airlines International Co., Ltd and Air New Zealand Ltd, the fourteenth and fifteenth airlines alleged by the ACCC to have been involved in the air cargo cartel.

Proceedings against Singapore Airlines Cargo Pte Ltd, Cathay Pacific Airways Ltd, Emirates, PT Garuda Indonesia Ltd, Thai Airways International Public Company Limited, Korean Air Lines Co. Ltd, Malaysian Airline System Berhad and its wholly-owned cargo subsidiary Malaysia Airlines Cargo Sdn Bhd continue. Proceedings against other airlines have been finalised resulting in agreed penalties totalling \$41 million.

The ACCC is seeking declarations, injunctive relief, pecuniary penalties, and costs.

Related ACCC media releases:

[Japan Airlines International Co., Ltd](#)
[Air New Zealand Ltd](#)

Government procurement officials help foil bid rigging in Norway

The Norwegian Competition Authority (NCA) has imposed administrative fines on two construction firms of five million and two million Norwegian Krone for illegal bid-rigging. The NCA found that the two companies shared prices and other information before each submitted its own bid for public procurement. The two bids were the only ones received and the municipality identified that the quoted prices were abnormally high and suspended the procurement process and reported the conduct to the NCA.

Investigation by the NCA found that the two construction companies had a common understanding of who would submit the lowest bid and one company submitted its bid without any intention of winning the competitive procurement.

This case demonstrates that if you do procurement work for your organisation or company, you will almost certainly be in the best position to notice the first warning signs of collusion.

Some of the warning signs and practices that you should be aware of if they arise during the procurement process are:

- **Identical mistakes** – if competing tenders contain identical spelling or calculation errors, or appear to be edited versions of the same document, you should be highly suspicious.
- **Suppliers meeting** – if suppliers meet (without you present) prior to lodging tenders.
- **Missing tenders** – if a supplier you would normally expect to tender fails to do so and a pattern emerges.
- **Subcontracting** – if a supplier who lodges a higher tender then subcontracts to the winning tenderer.
- **New tenderer** – if a new supplier tenders well below the prices of existing suppliers and the existing suppliers subsequently drop their prices without knowledge of the new supplier's price, or the new supplier raises their price after being successful in a tender.

Industry associations and the Trade Practices Act

Due to the important role that industry associations play in educating businesses about their rights and obligations under many laws and regulations—including the Act—the ACCC has produced a guide for both associations and their members which outline the key provisions of the Act that they need to be aware of.

Importantly, industry associations need to be aware that by bringing together individual businesses within an industry there is a risk that the association and members may breach the Act if they come to anti-competitive agreements. Businesses need to be aware of their rights and obligations under the Act, in their dealings with suppliers, competitors and consumers. *Industry associations and the Trade Practices Act* also provides a

summary of the key provisions of the Act that businesses need to be aware of and provides guidance on how to ensure they abide by the provisions of the Act in all of their business dealings.

Printed copies of the publication can be ordered from the ACCC Infocentre or the ACCC website <http://www.accc.gov.au/industryassociations>.

Further information

In addition to this newsletter, the ACCC has a number of resources available to you which explain the way cartels operate and provide advice on how to identify and avoid cartel conduct, including specific guides for both government procurement officers and businesses. To obtain copies of either of these publications, to seek further information on cartel conduct or to report a suspected cartel, contact the ACCC Infocentre on **1300 302 502** or go to the ACCC website <http://www.accc.gov.au/cartels>.

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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