

KQ NEWSLETTERS

February 2010

Anti-Competitive Arrangements Under The Trade Practices Act

A decision was recently handed down in the Federal Court whereby two truck retailers, Pty Ltd ('Vanderfield') and Sci-Fleet Motors Pty Ltd ('Sci-Fleet'), and three individuals were ordered to pay more than \$1million in penalties in proceedings brought by the Australian Competition and Consumer Commission ('ACCC') for price fixing and market sharing.

FACTS OF CASE

Vanderfield and Sci-Fleet were competitors in the South East Queensland market for the retail supply of light and medium trucks.

In 2006 the ACCC received information that Sci-Fleet and Vanderfield had formed and given effect to an arrangement or understanding in relation to competition for customers or potential customers of Hino trucks.

Following an investigation, the ACCC reached the view that Vanderfield and Sci-Fleet had made and given effect to a number of arrangements or understanding containing provisions that:

- Vanderfield and Sci-Fleet would not seek to supply Hino trucks to a potential customer located in each others prime marketing areas.
- If a potential customer sought to purchase a Hino truck from either Sci-Fleet or Vanderfield when the customer was located in the others prime marketing area, Sci-Fleet or Vanderfield would contact and consult each other and ensure that that customer was not offered a price that was more attractive than the price offered by the dealer in whose prime marketing area the customer was located.

PENALTIES FOR PRINCIPALS

For serious cartel conduct individuals risk gaol sentences of up to 10 years and fines of up to \$220,000.00 per offence, while companies could pay up to \$10million, or three times the total value of the benefits obtained or 10 per cent of the corporate group's annual turnover in a 12 month period when the contravention occurred.

PENALTIES FOR SALES MANAGERS

In addition to the fines imposed on the companies the Sales Managers for both Vanderfield and Sci-Fleet were also fined \$30,000.00 each for their involvement in the arrangements and Vanderfield and Sci-Fleet were ordered to pay the Court costs of the ACCC in the sum of \$50,000.00.

SUMMARY

Cartel agreements between competing businesses to fix prices or market share are illegal under the Trade Practices Act 1974 (Cth) ('TPA').

Price fixing agreements do not have to be in writing. They can be verbal, or simply hand shake understandings. The main factor is not how the agreement was made or how effective it is, but that competitors are working out their prices collectively and not individually.

Cartel agreements can have serious implications for both the owners and management of a business.

It is strongly recommended that, before entering into any negotiation, understanding, offer or agreement with a business competitor that legal advice be obtained in relation to possible breaches of anti-competitive legislation before any agreement is formalised between such parties.

If you have any questions in relation to existing or proposed commercial agreements in light of the Trade Practices Act do not hesitate to contact Paul Quinn of this office on 4862 2020.

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