

# > Allens

## CARTEL ENFORCEMENT IN AUSTRALIA

### > Substantive rules

- > Australian cartel rules prohibit actual or potential competitors from engaging in price fixing, bid rigging, output restrictions and market sharing.
- > Attempting or assisting cartel conduct is also prohibited.
- > The 'concerted practices' provision (introduced in 2017) prohibits 'concerted practices' that have the purpose or effect of substantially lessening competition. It captures some forms of conduct that fall short of cartel conduct.
- > A breach of the cartel rules can attract both civil and criminal penalties.

### > Jurisdiction

- > Australian cartel rules can apply to foreign companies.
- > The jurisdictional reach of Australian cartel rules is broad. Conduct which takes place in Australia or between Australia and places outside of Australia can be caught.

### > Enforcers

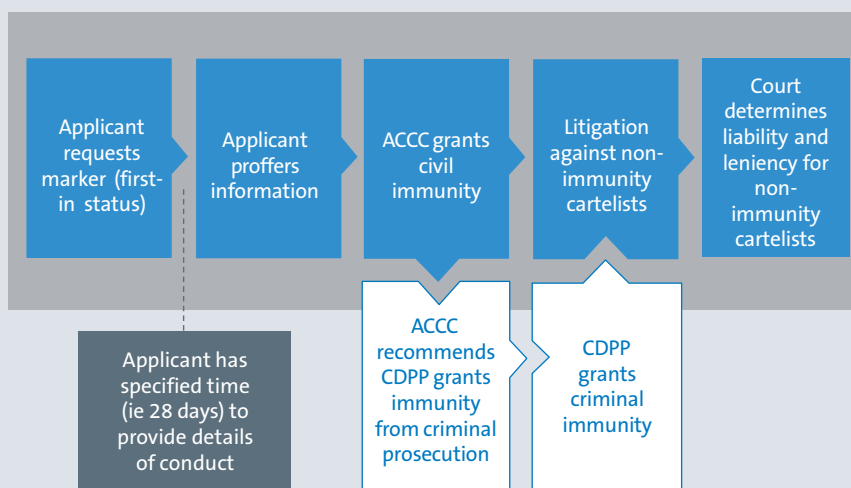
- > Australian Competition and Consumer Commission (*ACCC*) for investigating alleged breaches of competition laws and civil enforcement.
- > Commonwealth Director of Public Prosecutions (*CDPP*) for criminal prosecution.

### > International cooperation

- > The ACCC has cooperation agreements and regularly liaises with international competition agencies.
- > Key global cartels prosecuted in Australia include: international shipping, air cargo, automotive wire harnesses, automotive bearings, submarine cables, marine hoses, power transformers and animal vitamins.

### > Immunity/Leniency

- > Cartel participants, both companies and individuals, can seek civil and criminal immunity.
- > The applicant must: be the first to apply for immunity; not have coerced others to participate in the cartel; provide full, frank and truthful disclosure.
- > The applicant must continue to cooperate with ensuing court proceedings.
- > A court, when setting penalties, can also take into account cooperation by non-immunity parties.
- > Immunity does not apply to 'concerted practices'.

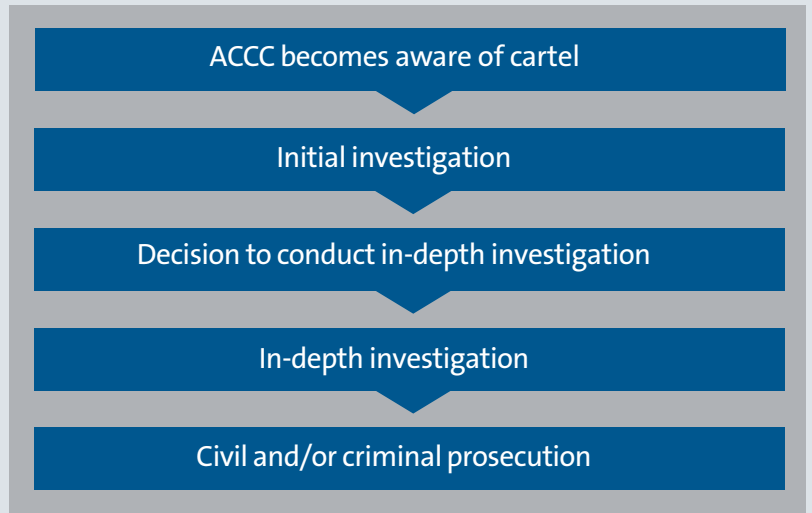


### > Recent developments

- > To date, there have been three successful and one unsuccessful criminal prosecutions of cartels in Australia:
  - In June 2021, a jury acquitted The Country Care Group, its CEO and a former employee for alleged price-fixing in relation to assistive technology products.
  - Three international shipping companies have been convicted and fined a total of \$83.5 million in relation to market allocation and price fixing.
- > Current cartel prosecutions on foot also include:
  - Criminal charges against a number of banks (ANZ, Citigroup and Deutsche Bank) and six executives relating to their involvement in a A\$2.5 billion jointly underwritten capital raising.
  - Criminal charges against Alkaloids of Australia Pty Ltd and its former manager in relation to the supply of the active pharmaceutical ingredient SNBB.
  - Criminal charges against a money transfer business and five individuals for allegedly fixing the Australia dollar/Vietnamese dong exchange rate and fees charged.

## > Enforcement procedure

- > The ACCC has broad powers of investigation and can:
  - require production of documents and provision of information;
  - compel attendance by individuals for interview on oath; and
  - conduct dawn raids.
- > Failure to comply with an ACCC notice is a criminal offence.
- > Legally privileged documents can be withheld from production. However, there is no privilege against self-incrimination.
- > Only a court can impose penalties.



## > Potential consequences

### Penalties: Companies

#### Civil and criminal penalties up to the greater of:

- > A\$10m;
- > 3 times value of the illegal gain; or
- > 10% Australian group turnover in the preceding 12 months

Penalties imposed and judicial commentary indicate that Australian courts are applying higher penalties.

### Penalties: Individuals

#### Civil penalties:

- > Up to A\$500,000
- > Disqualification orders

#### Criminal penalties up to:

- > 10 years' imprisonment
- > A\$420,000

### Damages actions

- > Third parties can bring standalone actions alleging cartel conduct or follow-on damages claims.
- > Private litigants can use admissions of fact (from the ACCC-initiated proceedings) in addition to formal findings of fact from the court.
- > There are rules governing claimants' access to information held by the ACCC.
- > Class actions supported by litigation funders are common in Australia.
- > Notable follow-on claims in relation to cartels include: air cargo, animal vitamins, marine hoses and corrugated fibre packaging.

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