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Market manipulation and online messengers: a cautionary tale

A recent case serves as a cautionary reminder to anyone participating in transacting financial products in Australia to be wary of conduct that may constitute market manipulation.

The recent case of *R v Evans* [2023] WASCR 2 (**Evans**) serves as a timely reminder that all market participants in Australia are prohibited from engaging in 'market manipulation'.

What is market manipulation?

It is not one homogenous form of activity and can capture a range of conduct which fundamentally undermines market integrity and confidence. Although the term "market manipulation" is not itself used, conduct constituting it is legislatively prohibited in section 1041A of the *Corporations Act 2001* (Cth). It states that:

"a person must not take part in, or carry out (whether directly or indirectly and whether in this jurisdiction or elsewhere):

(a) a transaction that has or is likely to have; or

(b) 2 or more transactions that have or are likely to have;

the effect of:

(c) creating an artificial price for trading in financial products on a financial market operated in this jurisdiction; or

(d) maintaining at a level that is artificial (whether or not it was previously artificial) a price for trading in financial products on a financial market operated in this jurisdiction."

A key theme of the section is 'artificial price'. Although Courts have adopted different breadths of scope in determining what constitutes market manipulation, the underlying concept is that the price of a financial product is removed from the ordinary forces of supply and demand, creating a distortion. As there is no legislative definition of 'artificial' or 'artificial price', Courts look at the conduct and circumstances on a case-by-case basis.

Why is it important?

Regulating conduct constituting market manipulation:

- promotes investor confidence
- enables conditions for companies to grow
- is essential for general economic growth
- attracts foreign investment
- protects individual investors from financial harm

What happened in Evans?

The Supreme Court of Western Australia recently sentenced a Perth investor, together with two co-offenders, to 12 months imprisonment with recognisance for conspiring to engage in market manipulation. The Court found that the conspirators used an instant messaging group chat to coordinate trading with the purpose of increasing the 'attractiveness' of shares in

Quantum Resources Limited (**Quantum**), a mining exploration company, and thereby inducing ‘other persons to invest in the company’.

On 16 November 2015, one conspirator purchased 500,000 Quantum shares at an average price of $0.080 and sold 100,000 Quantum shares at an average price of $0.083. While those trades did not ‘directly cause a price increase’, the combined trading of the conspirators ”represented more than 23.9% of all trading in Quantum shares on that day and caused a number of price increases”.

Having considered the previous sentences of the co-conspirators and the accused’s plea of guilt, the Court sentenced the accused to 12 months’ imprisonment, with an order to be released immediately upon entering into a recognisance in the sum of $5,000 with a condition of good behaviour for two years. The accused was also disqualified from managing a corporation for a period of 5 years.

The Court noted the seriousness of the offence, stating that creating or maintaining an artificial price for shares has the effect of impairing the “efficacy and integrity of the financial market operated by the ASX” and diminishing “public trust in the market”.

What are some other examples of market manipulation?

Other instances of market manipulation may include:

- acquiring voluminous amounts of securities over a period with a view to increasing the value of the securities to then dispose of those securities at a profit (*R v M R Shearer*)
- acquiring shares to hit a KPI, triggering the payment of a performance bonus (*ASIC v Soust*)
- conduct known in the US as ‘cornering’ and ‘squeezing’ the market, whereby a majority of a financial product is acquired with a view to artificially inflating its price and off-loading that product at a premium which would otherwise be above the true market value (*DPP (Cth) v JM*)

Market manipulation has several complex elements and may take different forms of conduct, as seen in the case of *Evans*. Investors should ensure their trading is always genuine and not contrived. For more information, please contact the authors.