

Article Information

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Bingo, Aussie Skips Hit with \$33.5M in penalties; CEOs face imprisonment for criminal cartel conduct

The Federal Court has recently convicted and sentenced Bingo Industries Pty Ltd (Bingo), Aussie Skips Bin Services Pty Ltd and Aussie Skips Recycling Pty Ltd (together, Aussie Skips) along with their respective CEOs Daniel Tartak (Mr Tartak) and Emmanuel Roussakis (Mr Roussakis) for criminal cartel offences.

Key takeaways

- The Federal Court has recently convicted and sentenced Bingo Industries Pty Ltd and Aussie Skips Bin Services and Aussie Skips Recycling with \$33.5M in penalties for criminal cartel conduct.
- CEOs and senior management of companies can be found guilty of the offence of aiding, abetting, counselling or procuring a contravention of a cartel offence provision and sentenced to imprisonment for criminal cartel conduct.
- Cartel conduct involves anti-competitive conduct of a very serious nature and even short periods of three months are considered to be not insubstantial.
- From 10 November 2022 significantly larger penalties have been able to be imposed. For corporations, the maximum penalty is now the greater of \$50 million (up from \$10 million), three times the benefit from the conduct or 30 percent of turnover (up from 10%). For individuals, the maximum penalties are \$2.5 million (up from \$500,000) and up to 10 years imprisonment.

Summary

The Federal Court has recently convicted and sentenced Bingo Industries Pty Ltd (**Bingo**), Aussie Skips Bin Services Pty Ltd and Aussie Skips Recycling Pty Ltd (together, **Aussie Skips**) along with their respective CEOs Daniel Tartak (**Mr Tartak**) and Emmanuel Roussakis (**Mr Roussakis**) for criminal cartel offences.

Bingo, Aussie Skips, Rousakis and Tartak had previously pleaded guilty to the criminal cartel offences for making and giving effect to a price fixing arrangement relating to the provision of demolition waste services in Sydney.

The Federal Court imposed the following sentences:

- fines totalling \$30,000,000 against Bingo;
- two terms of imprisonment of 18 months each for Mr Tartak, to be served concurrently over two years as an intensive correction order, 400 hours of community service, fines totalling \$100,000 and disqualification from managing corporations for five years;
- fine totalling \$3,500,000 against Aussie Skips; and
- imprisonment of 18 months for Mr Roussakis, 300 hours of community service, a fine of \$75,000 and disqualification from managing corporations for five years.

This case offers useful guidance on how courts will approach sentencing as part of criminal cartel offences.

Background

Bingo and Aussie Skips both provide skip bin and waste processing services. Bingo and Aussie Skips are the two largest collection services for mixed building and demolition waste in Sydney.

Prior to 1 July 2019, many building and demolition waste processors in New South Wales, including Bingo and Aussie Skips, transported and disposed of residual waste in Queensland landfills as Queensland landfills did not impose a waste levy. In November 2018, the Queensland Government announced the reintroduction of a waste levy commencing on 1 July 2019.

On 20 May 2019, Bingo sent a letter to its customers advising of an increase to its collection and processing services from 1 July 2019. Those price increases were greater than the amount required to directly offset the anticipated additional cost arising from the reintroduction of the waste levy in Queensland.

Earlier that day, Mr Tartak and Mr Roussakis had met and discussed increased prices that Bingo and Aussie Skips would charge for their services. Over the following five day period, Mr Tartak and Mr Roussakis engaged in a series of communications through WhatsApp whereby they agreed that Bingo would maintain a price increase of 25% (which it had previously advised customers) and Aussie Skips would increase its prices by at least 20%. While the letter Bingo had sent to customers was after the initial meeting, the content had been determined prior to that meeting.

Bingo and Aussie Skips gave effect to those arrangements, aided by Mr Tartak and Mr Roussakis, over the following three months. The arrangements were effectively abandoned by around 1 September 2019, largely as a result of market pressures which forced Aussie Skips to reduce their prices below those agreed to with Bingo.

Factors relevant to assessing seriousness of the offences

The Federal Court set out the following objective factors as being relevant to determining the seriousness of the criminal cartel offences:

- the nature and circumstances of the offence;
- the duration and scale of the offences;
- the extent to which the offences were deliberate, systematic and covert;
- the nature and extent of any benefits obtained as a result of the offence;
- any loss or damage caused by the offence; and
- whether the offences formed part of a course of conduct.

The Federal Court held that:

- Cartel conduct generally involves anti-competitive conduct of a very serious nature that should be emphatically condemned and deterred by the imposition of appropriately stern penalties.
- The arrangements did not come to an end due to the participants recognising the arrangement to be wrong or for any altruistic reasons, but rather due to market pressure and commercial self-interest.
- The duration of the offences, being a little over three months, was a not insubstantial period.
- The waste management services in Sydney was substantial and lucrative, as noted by the substantial revenues of Bingo (\$134 million) and Aussie Skips (\$26 million).
- While the cartel arrangements may not have been highly planned or systematic they were deliberate and covert, including through an encrypted message application.
- While the benefit was not able to be quantified, the parties nevertheless derived benefits, and would not have continued to give effect to the arrangements over the three month period if they were not deriving, or did not believe they were deriving, any benefit from them.
- The cartel arrangements had a impact on price competition on a not insubstantial market for collection services in Sydney.

Further reading

Copies of the full judgments can be accessed at the following links:

<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2024/2024fca0122>

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