

Article Information

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Recent Federal Court Judgment Reflects ACCC Enforcement Priorities

Recent example of the ACCC taking action

The recent judgement in *Australian Competition and Consumer Commission v Qteq Pty Ltd* [2025] FCA 371 has reinforced the ACCC's commitment to investigating and prosecuting instances of alleged cartel conduct, consistent with one of its identified enduring enforcement priorities.

On 17 April 2025 the Federal Court found Qteq Pty Ltd ('Qteq'), a Queensland based mining company in the oil and gas industry, and its executive chairman, Mr Ashton, had engaged in cartel conduct by inducing suppliers to enter into contracts, arrangements or understandings which contained cartel provisions.

The ACCC had alleged that there were 6 occasions between 2017 and 2019 where Qteq had engaged in cartel conduct and the court found that 5 of those allegations were made out. Such cartel provisions included to not supply particular services to large oil and gas companies, to share markets and to rig a multi-million-dollar tender. Justice Bromwich summarised the allegations as follows:

'[t]he alleged attempts in general terms are characterised by the ACCC as being aimed to reduce or preclude competition by way of allocating customers (two attempts), structuring the tender bids (one attempt), sharing the market (one attempt) and non-compete agreements (two attempts).

Qteq had an agreement with QGC Pty Ltd ('QGC') to supply it gauge services and was facing a tender process for the replacement contract to be able to continue to be the incumbent supplier of those services to QGC. An adverse tender would have had significant impact on Qteq's revenue. The Court found that on 5 occasions Qteq and Mr Ashton engaged in cartel conduct in order to increase the chances of Qteq winning the tender. This conduct included:

1. Qtec's competitor, Pro-Test, would not compete for the supply of gauge works to QGC, and in return Qteq would not compete for the supply of goods or services to Santos Ltd ('Santos') being one of Pro-Test's customers.
2. Pro-Test would ensure that its bid for the QGC gauge works tender would not win the contract outright and instead only win approximately 15% of the work, and in return Qteq would not compete for the supply of goods or services to Santos.
3. Pro-Test would not supply gauge works and in return Qteq would not supply DST or completions work.
4. Another Qteq competitor, Eastern Well No 2, and its related companies would not supply gauge installation services to QGC or any other CSG operators except in concert with Qteq.
5. 'Eastern Well No 2 and its related companies would restrict or limit the supply of gauge installation services to QGC and would not supply gauge installation services to any other persons.

ACCC Commissioner Liza Carver made the following statement in response to the case, reinforcing cartel conduct as an enduring priority:

"This case is a timely reminder for businesses, no matter what size, to ensure that their directors, senior managers and employees are aware of their obligations under the Competition and Consumer Act not to engage in cartel and other anti-competitive conduct, or they may face serious consequences."

Penalties

The Court will announce a date for a hearing to determine the appropriate penalties. The maximum pecuniary penalty for a

corporation found to have made a contract, arrangement or understanding which contained cartel provisions is the greater of:

- \$50 million;
- three times the “reasonably attributable” benefit; or
- 30% of the corporations turnover during the breach turnover period.

The maximum pecuniary penalty for a breach by an individual is \$2.5 million.

Key takeaways

This case demonstrates that the ACCC is prepared to commit the resources required to enforce their priorities and protect consumers. The ACCC believed Qteq’s conduct ‘had the potential to impact competition between Qteq and other current or likely competitors for the supply of goods and services in the oil and gas industry’. Carver used this case as a timely reminder to emphasise that “[c]artels are the most fundamental attack on competition in our economy, and taking actions against them is a high priority for the ACCC”.