

## Article Information

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# Penalties, prosecutions and prison time: The ACCC's crackdown on cartel conduct

**The Australian Competition and Consumer Commission (ACCC) has taken an aggressive stance against cartel conduct, leveraging its enforcement powers to secure significant penalties and criminal convictions against both businesses and individuals found to be engaging in anti-competitive practices.**

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Cartel conduct has been one of the ACCC's enduring priorities for a long time. In 2004 the then ACCC Chair Graeme Samuel AO stated:

*"Cartels are a cancer on the economy, a silent extortion and that is why, as far as the Australian Competition and Consumer Commission is concerned, protecting the Australian public from the harmful effects of domestic and international cartels is amongst our highest priorities".*

Late last year, the ACCC secured Australia's first-ever criminal cartel convictions, with further cartel conduct enforcement action also taking place throughout 2022 and this year. [In March 2023, the ACCC announced that cartel conduct would remain an enduring priority for 2023-24.](#)

Cartel conduct typically involves price fixing, sharing markets, rigging bids and controlling outputs.

### **ACCC v Ashton Raggatt McDougall Pty Ltd [2023] FCA 351**

Last month the ACCC secured a win in relation to cartel conduct proceedings against Ashton Raggatt McDougall Pty Ltd (**ARM Architecture**) and former managing director Anthony Allen. The Federal Court found that ARM Architecture and Mr Allen had attempted to rig bids in relation to a \$250 million building project at Darwin's Charles Darwin University.

ARM Architecture, an architectural firm with offices in Melbourne, Sydney and Adelaide, was involved in a tender process for the Charles Darwin University Project. In the second phase of the project, ARM Architecture and Mr Allen attempted to rig bids by sending emails to eight other architecture firms, requesting that they not bid for the project. This attempt to engage in cartel conduct came to the attention of the ACCC, resulting in the regulator commencing proceedings against both ARM Architecture and Mr Allen in September 2022.

The Federal Court found that ARM Architecture and Mr Allen had engaged in bid-rigging and ordered that they pay penalties of \$900,000 and \$75,000 respectively. ARM Architecture was ordered to conduct an education, training, and compliance program and was also ordered to pay part of the ACCC's costs. Mr. Allen was ordered to contribute to the ACCC's costs and to have an educative notice published under his name on the Architects Registration Board of Victoria's website as a warning to other professionals.

As the conduct of ARM Architecture took place in September 2020, the old civil penalty regime was applicable. If this conduct was to have occurred after 10 November 2022, ARM Architecture could have been subjected to penalties under the new regime, being the greater of:

- \$50 million;
- three times the value of the benefit obtained; or
- 30 per cent of the body corporate's turnover during the period that it engaged in the conduct the subject of the

breach.

In some instances, civil penalties of up to \$2.5 million can also extend to directors and employees.

In cases of “serious” cartel conduct, not only may significant civil penalties apply, but also jail terms of up to 10 years or fines of up to \$550,000 per criminal cartel offence in instances where the ACCC recommends criminal proceedings to the Commonwealth Director of Public Prosecutions (**CDPP**). The ACCC is more likely to consider conduct to be “[serious cartel conduct](#)” if one or more of the following factors apply:

1. the conduct was covert;
2. the conduct caused, or could have caused, large scale or serious economic harm;
3. the conduct was longstanding or had, or could have had, a significant impact on the market in which the conduct occurred;
4. the conduct caused, or could have caused, significant detriment to the public, or a class of the public, or caused, or could have caused, significant loss or damage to one or more customers of the alleged participants;
5. one or more of the alleged participants has previously been found by a court to have participated in, or has admitted to participating in, cartel conduct either criminal or civil;
6. senior representatives within the relevant corporation(s) were involved in authorising or participating in the conduct;
7. the Government and thus, taxpayers, were victims of the conduct - even where the value of affected commerce is relatively low; and
8. the conduct involved the obstruction of justice or other collateral crimes committed in connection with the cartel activity.

The ACCC’s recent enforcement action against ARM Architecture and Mr Allen is a reminder that bid rigging and other forms of cartel conduct will be investigated thoroughly and prosecuted by the ACCC. To combat this behaviour, the ACCC has begun using a new screening tool which analyses procurement data from public procurement agencies to identify potential collusion. It has also asked public procurement officials to be vigilant as to signs of cartel conduct in tenders and to report any concerns to the ACCC.

### **Other cartel conduct enforcement action**

Although cartel conduct has been a criminal offence under the *Competition and Consumer Act 2010* (Cth) since 2009, criminal cartel convictions were secured for the first time just last year.

In September 2022, four individuals were sentenced to suspended prison terms after they were convicted of price fixing. A court found that the four individuals manipulated the exchange rate and transaction fees between the Australian Dollar and Vietnamese Dong which were charged to customers who were sending money from Australia to Vietnam between January 2012 and August 2016. Vina Money, the money remittance company involved in the misconduct, was also fined \$1 million.

In November 2022, Christopher Joyce, former export manager of Alkaloids of Australia, pleaded guilty to attempting to make and give effect to several cartel arrangements with overseas pharmaceutical ingredient suppliers that involved price fixing, bid rigging, output restriction and market allocation. Mr Joyce was sentenced to two years and eight months’ imprisonment (to be served as an intensive corrections order), in addition to receiving 400 hours of community service, a five-year disqualification from managing corporations and a \$50,000 fine. Alkaloids of Australia was also convicted and fined just under to \$2 million.

In November 2022, the ACCC secured civil penalties in relation to cartel conduct by Crane company NQ Cranes Pty Ltd (**NQ Cranes**). NQ Cranes admitted that it had entered into a cartel agreement with a competitor and was ordered to pay a \$1 million penalty for engaging in an illegal market-sharing agreement with a competitor.

Currently before the courts is Bingo Industries (**Bingo**) and competitor Aussie Skips Recycling and Aussie Skips Bin Services (**Aussie Skips**). The CDPP alleged that Bingo and Aussie Skips engaged in price fixing in relation to the supply of skip bins throughout Sydney. It was also alleged that the managing director and CEO of Bingo and the CEO of Aussie Skips were complicit in committing criminal cartel offences. Both businesses and individuals pleaded guilty to the charges and are yet to be sentenced.