
Guidance and information

ACCC launches leniency policy to expose hard-core cartels in Australia

The Commission issued a leniency policy aimed at exposing and stopping secret corporate cartels operating in Australia. The policy came into force on 30 June 2003.

The policy encourages corporations and their executives to reveal the most serious and collusive contraventions of competition law such as price fixing, bid rigging and market sharing.

The policy does not apply to any person who has coerced any other person to participate in a cartel, and the person seeking leniency must not have been the clear leader in the cartel.

The policy makes corporate lawbreakers and their executives an offer they should not refuse—cease the illegal conduct and report it to the Commission in return for a clear, transparent and certain offer of leniency.

But there is an important catch. The policy only applies to the first cooperative company or executive to come forward. The others will be exposed, investigated and where the evidence permits, brought before the courts.

The corporate lawbreakers must now ask themselves—can I really trust my competitors?

The key principles of the policy are:

- when the Commission is unaware of a cartel, the first person (company or individual) to come forward will receive an offer of conditional immunity from Commission-instituted court proceedings
- when the Commission is aware of a cartel but has insufficient evidence to institute court proceedings, the first person (company or individual) to come forward will receive an offer of conditional immunity from pecuniary penalty.

The policy was prepared with reference to leniency policies that have been successfully used internationally to break cartels in the United Kingdom, the United States of America, Canada and the European Commission. The Commission has introduced the policy following an extensive period of public consultation on a draft version that was released in July last year. It will now operate in conjunction with the existing Commission cooperation policy in enforcement matters.

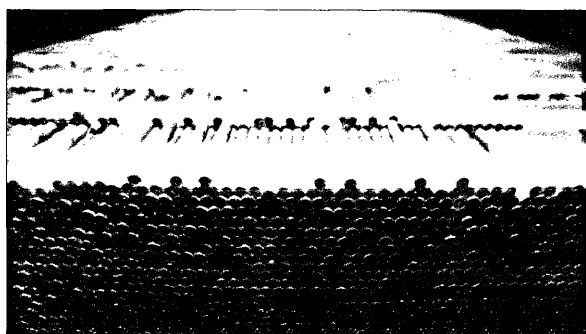
Hard-core cartels are the very worst violations of competition law. They always hurt consumers and businesses by artificially inflating the price of goods and services. They also act like a dead weight on the economy by preventing innovation, reducing the competitiveness of Australian industries, limiting employment opportunities and stunting economic growth.

For this reason, detecting, stopping and deterring the domestic and international hard-core cartels that operate covertly in Australia continues to be one of the very top priorities for the Commission. In recent years the Commission has successfully broken major cartels in industries such as vitamins, concrete, freight, fire protection, transformers and many others. In these cases the Commission has brought numerous executives and their companies before the courts, where they have faced multi-million dollar penalties.

Under the existing civil penalty regime corporations involved in cartels face pecuniary penalties of up to \$10 million per contravention, while their executives face penalties of up to \$500 000 per contravention. The recent review of the competition provisions of the Trade Practices Act (Dawson review) concluded that criminal sanctions, including the possibility of jail terms for executives and bigger fines, should be introduced to deter the most serious hard core cartels. It also concluded that an effective leniency policy would be a potent means of uncovering cartel behaviour.

The Commission supports these conclusions of the Dawson review. However, it is important to note that this leniency policy will only apply to the existing civil penalty regime. If the law is ultimately reformed to introduce criminal sanctions for hard-core cartels, the Commission will need to reconsider this policy in light of those changes. The Commission will liaise with the Director of Public Prosecutions and Commonwealth Attorney-General regarding a leniency policy for any criminal offences for hard-core cartels.

Framework convention on tobacco control



While Australia has relatively strict tobacco laws some countries still have a long way to go in providing consumer warnings on the legal sale of cigarettes. In June 2003 the European Union became one of the first to sign the historic World Health Organisation's Framework Convention on Tobacco Control treaty.

The treaty, the first ever public treaty drafted by the World Health Organisation, was finalised in March 2003 after 4 years of negotiations. It covers, among other things, tobacco taxation, full disclosure of ingredients, smoking prevention and treatment, illicit trade, the banning of advertising where possible, sponsorship and promotion and product regulation.

The World Health Assembly unanimously agreed to adopt the treaty at its May meetings.

Once 40 countries have signed the treaty it becomes law in those countries and for any countries that sign after that.

The Commission, through its involvement with the Commonwealth cross-government tobacco policy stakeholders chaired by the Commonwealth Department of Health and Ageing, took a keen interest in the development of the final wording of the treaty's text.

Of particular interest to the Commission are the articles relating to packaging and labelling, and advertising and promotion of tobacco products.

The text requires that at least 30 per cent, but ideally 50 per cent or more of the display area on tobacco product packaging, is taken up by clear health warnings in the form of text, pictures or a combination of the two. Packaging and labelling requirements also prohibit misleading language that gives the false impression that the product is less harmful than others. These include the use of terms such as 'light', 'mild' or 'low tar'.

While all countries agreed that a comprehensive ban on advertising, promotion and sponsorship of tobacco products would have a significant effect in reducing the consumption of tobacco products, some countries have constitutional provisions—for example, those covering free speech for commercial purposes—that will not allow them to implement a complete ban in all media. The final text requires parties to move towards a comprehensive ban within five years of the convention entering into force. It also contains provisions for countries that cannot implement a complete ban by requiring them to restrict tobacco advertising, promotion and sponsorship within the limits of their laws.

Product safety bans and standards

Tinted headlight covers for motor vehicles

These products have been the subject of a temporary ban over the past 18 months. In Consumer Protection Notice No 18 of 2003, gazetted on 29 April 2003, the Parliamentary Secretary to the Treasurer has now permanently banned headlight covers for motor vehicles which allow less than 85 per cent luminous transmittance.

Children's cots for household use

This standard was recently re-gazetted to ensure continuance of the mandatory product safety standard. Consumer Protection Notice No. 25 of 2003, gazetted on 17 June 2003 by the Parliamentary Secretary to the Treasurer, took effect on 1 July 2003.