

# Globalisation lea



**Cooperation between the ACCC and its United Kingdom counterpart was crucial to Australia's part in an international response to the global 'marine hose' cartel.**

Increasing globalisation in business means cartel activity has gone global too. Taking action against international cartels is a high priority for the Australian Competition and Consumer Commission—and the work is challenging.

Cartels are difficult to detect and investigate in general. The key figures are often senior managers who know the conduct is illegal and use measures to avoid detection. Combating international cartels can be even more difficult. In particular, witnesses and documentary evidence are often located overseas and there can be legal and practical hurdles to presenting them in a local court.

In the face of such challenges, many of the world's competition regulators are sharing more information and aligning their approaches to businesses seeking leniency for

their involvement in cartels. Detecting and penalising cross-border cartels in as many jurisdictions as possible results in stronger protection for consumers.

Many cartels operate in areas of commerce consumers often don't think about—but we are affected all the same.

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Puffin, Wandoo and Bayu-Undan aren't exactly household names but the businesses that work in these places—Australian offshore oil and gas fields—are a little more familiar: the likes of international energy companies Mobil, Conoco Phillips and Woodside. Keeping the oil and gas moving from fields like these to the world's hungry energy

markets takes a lot of expensive equipment, including marine hose—piping used to transfer fuels at offshore moorings.

# ds to cooperation

Between 1999 and 2007, suppliers from Japan, Italy, France and the United Kingdom participated in a cartel to control marine hose prices and share the international marine hose market between them.

The cartel came to a screeching halt in 2007, when a number of executives were arrested as they left a meeting in Texas. The United States Department of Justice had known about the meeting in advance and secretly recorded it. The arrests were coordinated with raids in Europe by authorities there, including on the house in Britain of the director of a 'consulting' company engaged to manage the cartel.

At about the same time, a cartel member company approached the ACCC seeking immunity for its involvement in the cartel. The company provided information on the cartel as part of cooperation obligations placed on it by the ACCC. Such approaches and disclosures are now relatively common worldwide, as many jurisdictions, including Australia, have instituted whistleblower programs based on the successful US model.

The global cartel had adverse impacts on Australia but it had been organised offshore. The ACCC had some evidence of cartel activities relating to some bids for Australian work but it needed more information and wished to investigate whether other bids had been rigged. For information, the ACCC approached the UK Office of Fair Trading (OFT), itself working closely on the matter with the US Department of Justice and the European authorities.

Formal information sharing between authorities internationally is becoming more common. Requests are considered on a case-by-case basis, as competition authorities around the globe generally have to balance requests for disclosure from their fellow regulators with the need to protect the integrity of their investigations, whistleblower programs,

and any rights of and commitments given to parties under investigation.

Under UK law, the OFT can disclose information to a regulator like the ACCC to progress investigations or bring proceedings, subject to strict conditions on use and further disclosure. The OFT must consider whether the matter is serious and whether the receiving country's laws provide appropriate protection against self-incrimination in criminal proceedings and appropriate protection for personal data.

**... the cartel had caused a significant increase in prices ...**

In the marine hose investigation, the ACCC was able to satisfy the OFT's requirements and the UK regulator released vital information—the first time it had released such information to an overseas regulator under the information-sharing laws. The ACCC made a subsequent successful information request to the OFT and was also in contact with US authorities.

In April this year, as a result of the ACCC's investigations and its court action, the Federal Court of Australia ordered four businesses—Bridgestone, Dunlop Oil & Marine, Parker ITR and Trelleborg—to pay over \$8.2 million for engaging in cartel conduct in Australia that restricted marine hose supplies and controlled the price of marine hose sold to Australian customers or projects. In the words of the ACCC's Chairman, Graeme Samuel, international cooperation was key to this successful court outcome.

Justice Finkelstein found that the cartel had caused a significant increase in prices above what would be seen under fair and open competition and this increase had impacted on oil and gas industry customers' costs. Mr Samuel

later observed that the cost of the cartel ultimately fell on oil and gas end users: arrangements made between foreign companies thousands of kilometres from Australia can substantially harm competition in Australia—and all consumers can end up paying.

In recent years, the ACCC has taken legal proceedings against 15 airlines in relation to alleged international price agreements on air cargo surcharges. The Federal Court has ordered in excess of \$40 million in penalties to date, with nine proceedings still before the court.

This year the ACCC obtained penalties in the case of two other international cartels. The Federal Court ordered a Singapore company and a related Australian company to pay penalties totalling \$4 million for cartel arrangements made overseas that had an impact on paper supplies in Australia (allegations against others are still before the court). It also ordered, by consent, a US-based company to pay a \$1 million penalty for cartel behaviour in the international military training industry.

The Australian Parliament last year passed laws making it a criminal offence to engage in cartel activity, bringing our approach further into line with the US, UK and Canadian approaches to cartels. The events of the marine hose cartel took place before the commencement of Australia's criminal prohibitions, but in the northern hemisphere nine individuals were given prison sentences for their roles in the cartel. A number of international cartel cases remain before the courts.

The ACCC will continue to seek information from other regulators to pursue international cartels that impact adversely on Australian consumers and business.