



Memorandum of Understanding
between
the Office of the Director of Public Prosecutions (Cth)
and
the Australian Competition and Consumer Commission
regarding
Serious Cartel Conduct

1: Introduction

- 1.1 The *Competition and Consumer Act 2010* (Cth) (the CCA) contains both criminal sanctions for serious cartel conduct and civil sanctions for cartel conduct. This enables a proportionate response to cartel conduct. Criminal investigations and prosecutions will be targeted at serious cartel conduct.
- 1.2 This Memorandum of Understanding between the Office of the Director of Public Prosecutions (Cth) (**CDPP**) and the Australian Competition and Consumer Commission (**ACCC**) is in addition to the Guidelines for dealings between Investigators and the CDPP dated January 2022.

2: ACCC referral to the CDPP

- 2.1 The ACCC is responsible for investigating matters that may constitute a breach of the CCA, including cartel conduct. For breaches of the cartel laws under the CCA, the ACCC may commence civil proceedings or refer a brief of evidence to the CDPP for consideration for prosecution.
- 2.2 The ACCC will only refer matters involving serious cartel conduct to the CDPP. The ACCC will, at its discretion, determine which matters to refer.
- 2.3 The ACCC is more likely to consider conduct it is investigating to be serious cartel conduct if one or more of the following factors apply:
- the conduct was covert;
 - the conduct caused, or could have caused, large scale or serious economic harm;
 - the conduct was longstanding or had, or could have had, a significant impact on the market in which the conduct occurred;

- 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;
- 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;
- senior representatives within the relevant corporation(s) were involved in authorising or participating in the conduct;
- the Government and thus, taxpayers, were victims of the conduct - even where the value of affected commerce is relatively low; or
- the conduct involved the obstruction of justice or other collateral crimes committed in connection with the cartel activity.

3: CDPP decision to prosecute

- 3.1 The CDPP is responsible for prosecuting offences against Commonwealth law, including serious cartel offences under the CCA.
- 3.2 In considering whether a prosecution should be commenced the CDPP will have regard to the *Prosecution Policy of the Commonwealth*.

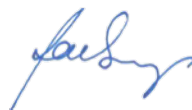
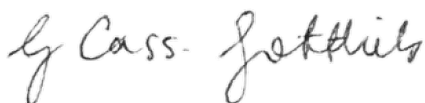
4: Immunity from proceedings for a party who meets the criteria for conditional immunity under the ACCC immunity and cooperation policy for cartel conduct (Immunity and Cooperation Policy)

- 4.1 The ACCC will publish from time to time the Immunity and Cooperation Policy in relation to cartel conduct so that the availability and conditions of civil immunity from proceedings by the ACCC for cartel conduct may be clearly ascertained.
- The ACCC will receive and manage requests for immunity from both criminal and civil proceedings, and make recommendations to the CDPP based on the ACCC's assessment as to whether the applicant for immunity meets the criteria set out in the Immunity and Cooperation Policy in relation to cartel conduct. The ACCC will decide whether to grant immunity from civil proceedings in accordance with its published policy.
- 4.2 The ACCC will consult with the CDPP in relation to the ACCC's decision as to whether or not to grant immunity and the management of requests for immunity from ACCC civil proceedings where the matter also concerns criminal investigation or potential prosecution.
- 4.3 Where an application is made for immunity from civil and criminal proceedings, and the ACCC considers the conduct sufficiently satisfies the factors in paragraph 2.3, the ACCC will make a recommendation to the CDPP based on the ACCC's assessment as to whether the applicant for immunity meets the criteria set out in the Immunity and Cooperation Policy.

4.4 Where the ACCC makes a recommendation that the applicant meets the criteria for conditional immunity under the Immunity and Cooperation Policy the CDPP will decide whether to grant immunity from criminal proceedings in accordance with Annexure B of the *Prosecution Policy of the Commonwealth*.

5: Immunity from prosecution for a party who does not meet the criteria for conditional immunity under the Immunity and Cooperation Policy

5.1 A party that does not meet the criteria for conditional immunity under the Immunity and Cooperation Policy (for example, a party cooperating under Section H of the Immunity and Cooperation Policy) may apply for immunity from prosecution to be determined by the Director in accordance with the *Prosecution Policy of the Commonwealth*. Such an application will be considered following consultation with the ACCC.



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Gina Cass-Gottlieb

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Raelene Sharp KC

Chair
Australian Competition and
Consumer Commission

Director of Public
Prosecutions (Cth)

12 December 2024

13 December 2024