

## **Learn from my mistake – do not engage in cartel conduct**

*This message is published by Mr Tony Allen, formerly Managing Director of Ashton Raggatt McDougall Pty Ltd, by order of the Federal Court of Australia, in a proceeding brought by the Australian Competition and Consumer Commission (ACCC).*

- 1 I was previously the managing director of the architectural firm Ashton Raggatt McDougall (ARM), and was a practicing architect for over 40 years.
- 2 I have recently admitted that I attempted to induce eight other architectural firms to engage in bid-rigging, which is a form of cartel conduct, and have been ordered by the Federal Court to pay a penalty of \$75,000.
- 3 I have lost my position, my reputation, and my involvement in a profession that I love, and my conduct will be permanently on the public record.
- 4 This message is being published to all registrants of the Architects Registration Board of Victoria, so that you can learn from my mistake, and the very serious consequences which followed.

### **What I did**

- 5 In 2020, I was working for ARM on the first phase of Charles Darwin University's development of a \$250 million campus in Darwin's central business district. This first phase involved the preparation of the project master plan, a business case, concept design and schematic design.
- 6 I had known, since ARM first tendered for that work, that there would be a separate tender process for the second phase of that project, involving design development, construction documentation, construction and the defect liability phase.
- 7 The University released the request for tender for that second phase on 24 September 2020. That afternoon, I sent an email (**First Email**) to representatives of eight other architectural firms. Each of those firms was capable of supplying architecture services of the type required for the University's project.

- 8 In my First Email, I asked those firms not to submit a tender for the second phase of the University's project. I wrote:

Our request to you is simple. Please do not submit a tender as we are relying very heavily on continuing with this project to keep our practice alive throughout the remainder of this strange and difficult COVID time.

- 9 A few days later, on 29 September 2020, I sent an email to the representatives of those firms who had not replied to my first email (**Second Email**), and asked them to let me know whether they intended to bid.

- 10 Later that afternoon, I realised, after it was pointed out to me, that I was wrong to have sent the First and Second Emails. I sent a further email to everyone I had sent the First Email to, and wrote:

ARM retracts this email and wishes to restore the competitive tendering process for this project. We apologise for any inconvenience this may have caused.

- 11 I never set out to contravene the law, and it did not occur to me when I sent the First and Second Emails that I was doing anything wrong. Facing the many challenges of the Covid-19 pandemic, I was motivated to try retain work for my staff.
- 12 However, what I did was an attempt to induce the other firms to engage in bid-rigging with ARM. My motivation, retraction and apology, do not change that fact. Attempting to induce other firms to engage in bid-rigging contravenes Australian competition law, because it involves an attempt to induce others to engage in cartel conduct. There are very serious consequences for this sort of conduct.

### **What happened next**

- 13 The ACCC found out what had taken place and began an investigation.
- 14 The ACCC required me to attend an examination to give evidence on oath about my conduct.
- 15 In addition, I resigned from ARM. I have not worked as an architect since, and do not expect that I will ever do so again.
- 16 In September 2022 ACCC then issued civil proceedings in the Federal Court against both ARM and me personally.

### **Federal Court case**

- 17 I agreed at the earliest stage of the proceedings to admit that I had attempted to induce eight other firms to engage in bid-rigging conduct, and to pay a substantial penalty.

- 18 Although this penalty took into account my financial circumstances, it will take me up to 18 months to pay it. Being involved in the ACCC investigation and Federal Court proceedings, which have occurred over a total period of 19 months, has also taken a significant personal toll on me.
- 19 The ACCC's proceeding against me was a civil proceeding. However, attempts to induce others to engage in cartel conduct, including bid rigging, can also be prosecuted criminally, with penalties including potential imprisonment, as described below.

### **Lessons to learn from my mistake**

- 20 I made a very serious mistake by attempting to induce the other firms to engage in bid-rigging, and this has had serious consequences for me. I have lost my position, my reputation, and my involvement in a profession that I love.
- 21 Do not do what I did. Learn from my mistakes. Whatever pressure you may be under, and whatever motivation you may have, do not attempt to induce others to engage in cartel conduct.

### **ADDITIONAL INFORMATION FROM THE ACCC**

#### **The law on cartel conduct**

- 22 The ACCC's website provides information about cartel conduct. The following paragraphs summarise some of that information.
- 23 The laws about cartel conduct are in the [Competition and Consumer Act 2010](#), which applies to all corporations in Australia, as well as individuals involved in the conduct of corporations.
- 24 Cartel conduct is when 2 or more competitors agree to:
- (a) fix prices, which is when competitors agree on pricing instead of competing against each other;
  - (b) engage in market sharing, which is when competitors agree to divide a market between themselves so they don't have to compete;
  - (c) control output, which is when competitors agree to limit the amount of type of goods and services available; or
  - (d) rig bids, which includes conduct whereby competing tenderers discuss and agree among themselves who should bid for a tender, or other aspects of how they will tender.
- 25 Australian competition law also prohibits conduct where a corporation or individual attempts to induce a competitor to reach such an agreement – that is to engage in cartel conduct.

- 26 The penalties for cartel conduct have recently increased. Individuals found to have been involved in cartel conduct in cases brought by the ACCC can now face a penalty of up to \$2,500,000 for each breach of the law.
- 27 Cartel conduct can also be a criminal offence, and individuals prosecuted by the Commonwealth Director of Public Prosecutions can now face imprisonment for up to 10 years and/or fines of up to \$550,000 per offence.
- 28 For corporations, the maximum penalty or fine for each contravention or offence is now the greater of \$50 million, 3 times the benefit obtained, or (if the value of the benefit cannot be determined) 30% of the company's turnover, measured over a period of a year or more.

### **Further information**

- 29 For questions about this notice, to make an enquiry, or report an issue, you can contact the ACCC on 1300 302 021 or visit its website at <https://www.accc.gov.au/contact-us/contact-the-accc/make-an-enquiry>.
- 30 The ACCC urges anyone with information about cartel conduct to call the ACCC Cartel Hotline on (02) 9230 3894. You can provide a tip-off or report cartel conduct anonymously at <https://acc-cartels.whispli.com/cartels>.
- 31 You can also seek immunity from prosecution and ACCC proceedings in exchange for helping the ACCC with its investigations. If you don't report suspicious activity, others may choose to report your involvement to the ACCC.