

Last month courts in both New Zealand and Australia imposed significant penalties on companies and individuals for breaching cartel laws. In imposing the sentences both courts referred to the need to deter possible offenders from engaging in cartel conduct. The large penalties – including jail in the Australia case - are a timely reminder for NZ businesses. This update discusses the cases and a brief recap on New Zealand cartel laws and their penalties.

RECENT CARTEL CASES

Australian case

An Australian court has imposed the first jail sentences in Australia for breaches of Australia's criminal cartel laws. The sentences ranged in length from nine months to two years and six months.

The case involved a number of money transfer businesses fixing Australian Dollar/Vietnamese Dong exchange rates and fees they charged customers over a period of five years. In addition to the prison sentences for the individuals concerned, one of the businesses was fined A\$1 million.

The court said that penalties imposed for cartel conduct need to be of sufficient significance to deter possible offenders, and it was critical of the individuals' explanations of their conduct, which included that they were ignorant of the law.

New Zealand case

The High Court of New Zealand imposed penalties totalling more than \$9.7 million on freight forwarding companies (and individuals associated with the companies), for engaging in cartel conduct. Proceedings brought by the Commerce Commission alleged that the defendants breached cartel laws by agreeing with their competitors not to compete for customers. The behaviour included a defendant:

- not approaching customers of a competitor;
- declining to quote and withdrawing quotes it had given those customers;
- not competing for those customers, either generally or in respect of particular types of freight; and
- designating competitors "Hands Off" in an internal list.

The Court said that the "paramount objective in sentencing ... is to impose a penalty that provides both general and specific deterrence. Pecuniary penalties should not be seen as a licence fee for contraventions of the Act; the deterrence objective is only served if anti-competitive behaviour is profitless."

The four individuals associated with the companies received penalties ranging from \$65,000 to \$100,000.

PENALTIES FOR CARTEL CONDUCT

Cartel conduct was criminalised in New Zealand in April 2021. For more information, please see the update we published at the time [here](#). The offence carries penalties of:

- **Individuals:** Up to 7 years imprisonment for individuals or a fine of up to \$500,000, or both.
- **Corporates:** A fine of up to \$10 million or a higher penalty based on commercial gain from the cartel arrangement or the person's turnover.

WHAT ARE CARTEL LAWS AND WHAT DO YOU NEED TO DO TO COMPLY?

Under the Commerce Act it is unlawful for a business agreement or arrangement between competitors to include a "cartel" clause unless one of the Commerce Act exemptions apply. A "cartel" in the general sense refers to an association of competing businesses designed to limit competition or control prices. This is broadly what the cartel rules seek to prohibit. In a nutshell, arrangements between competitors are illegal where competitors are fixing prices, allocating markets, or restricting output.

It is important that businesses and their staff are aware of the laws and what they can and cannot do in all their interactions with competitors.

For more information on the laws and the steps businesses should take to ensure they comply, please see our article [here](#).

FOR FURTHER HELP

For further information or to discuss how cartel laws may impact on your business, please call or email one of the Jackson Russell business lawyers listed.

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