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Penalties Increase for Cartel Conduct

On 8 April 2021 new changes to the Commerce Act 1986 came into effect which provided that cartel conduct can now be punished with a term imprisonment of up to 7 years. This change brings New Zealand into line with other overseas jurisdictions and reinforces to businesses that they need to take compliance with this area of the law very seriously.

Types of Cartel Conduct

Cartel conduct basically refers to illegal co-operation between competitors. The conduct harms consumers because it lessens competition resulting in consumers having less choice or paying higher prices than if the competitors operated independently. The three forms of prohibited cartel conduct outlined in the Commerce Act are:

- Price fixing;
- Market allocating; and
- Restricting output.

Taking each of these types of prohibited conduct in turn:

- Price Fixing is where two or more businesses agree on the prices that they will each charge to customers to avoid having to compete with each other on price. One of the important points to understand with price fixing is that price fixing may extend beyond setting the specific price for the good or service and also includes competitors agreeing to fix a significant part of the price or to set a price according to an agreed formula.
- Market Sharing occurs when competitors collude to carve up markets so as not to compete for the same customers. This could be in relation to the sale of a specific product, a geographic area or a particular type of customer.
- Restricting Output is when two or more competitors agree to prevent, restrict or limit the goods or services they are buying or selling or the goods or services that would likely be bought and sold.

The financial penalties for cartel conduct were already significant. Individuals could be fined up to \$500,000 and companies up to \$10,000,000, three times the commercial gain or 10% of the company's turnover per year when the conduct was occurring (whichever is greater). Now, in addition, businesses and individuals can be liable for criminal conviction and individuals convicted of intentionally engaging in cartel conduct could face a term of imprisonment.

Practical Tips for Businesses

In light of the new law change, businesses need to pay particular regard to this area of compliance and think clearly about who they are in competition with. Business owners need to make sure that they and their staff understand the prohibited conduct under the Commerce Act and receive proper training which is relevant to their business and easily understood.

This article is of a general nature and is not intended to be relied upon as legal advice.

If you would like to know more or require assistance please contact [Andrew Skinner](#).

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