

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Budget Estimates
2017 - 2018

Division/Agency: Australian Competition and Consumer Commission
Question No: 39
Topic: Anti-competitive penalties
Reference: Written
Senator: Ketter, Chris

Question:

1. In a speech on 6 May 2017, Rod Sims said that “penalties actually imposed here in Australia are stunningly lower than those in other comparable jurisdictions”. Do you think that penalties for anti-competitive conduct are sufficient to deter large companies from engaging in anti-competitive conduct?
2. In the same speech, Rod Sims said that “An important difference between our approach and that of other overseas jurisdictions is that our Courts do not start the exercise of determining penalties by calculating a base figure calculated by reference to turnover of the firm”. Do you agree that requiring the Court to calculate a base figure by reference to turnover of the firm would result in higher penalties?

Answer:

1. The penalties available under the *Competition and Consumer Act 2010* (CCA) for anti-competitive conduct provide sufficient deterrence for corporations. Under the CCA, the courts can impose:

For corporations:

- \$10 000 000;
- If Court can determine "reasonably attributable" benefit obtained, 3 times that value; or
- If Court cannot determine benefit, 10% of annual turnover in preceding 12 months.

For individuals:

- \$500 000.

The penalty provisions for the secondary boycott provisions are:

- For corporations \$750 000 and for individuals \$500 000.

The penalties available for the courts to impose for cartel conduct is:

For corporations, the maximum fine or pecuniary penalty for each criminal cartel offence or civil contravention (whichever applies) will be the greater of:

- \$10 000 000
- three times the total value of the benefits obtained by one or more persons and that are reasonably attributable to the offence or contravention where benefits cannot be fully determined, 10 per cent of the annual turnover of the company (including related corporate bodies) in the preceding 12 months.

Individuals found guilty of cartel conduct could face criminal or civil penalties, including:

- up to 10 years in jail and/or fines of up to \$360 000 per criminal cartel offence
- a pecuniary penalty of up to \$500 000 per civil contravention.

It is the ACCC's view that the penalties available under the CCA are appropriate, however, the calculation and imposition of penalties is not commensurate with the penalties available under the CCA.

2. The OECD has recently published research on sanctions in antitrust cases. Among other things that research shows that in most developed international jurisdictions, the imposition and calculation of fines for anti-competitive conduct is calculated having regard to a base fine which is a percentage of the turnover of the corporation being penalised. This approach is often implemented through guidelines rather than through legislation.

In Australia, the Court has the power to determine penalties that ought to be imposed on parties who have been found to have contravened the law. In running competition cases, the ACCC makes submissions to the Court which seek to ensure that penalties imposed provide sufficient deterrence against contraventions of the law.