



**Asia-Pacific
Economic Cooperation**

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Agenda Item: 7

Increasing International Cooperation – An Australian Perspective

Purpose: Information
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Increasing international cooperation – an Australian perspective

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Introduction

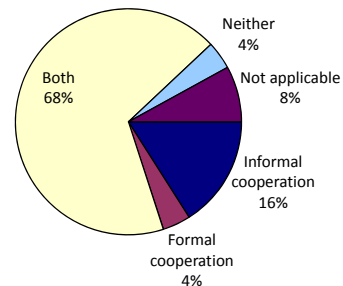
- In a globalised world, international co-operation is key to efficient competition enforcement
 - Identify conduct
 - Exchange views on case theory and witnesses
 - Acquire and exchange evidence required to prevent and punish anticompetitive conduct impacting your domestic market

‘Informal’ cooperation

- Types of International Cooperation – Informal Cooperation
 - “Informal” cooperation means different things to different people
 - At the ACCC, we include sharing best practice and other information which is either non-confidential or is shared with the permission of the info provider as ‘informal’ cooperation
 - A 2012 ICN Cartel Working Group survey of its members found that during the last 3 years, 81 per cent of jurisdictions informally shared information on a cartel case.
- Limitations of informal cooperation
 - What happens when there is no incentive for third parties to cooperate and provide confidentiality waivers (e.g. cartel investigations)
 - What happens when documents are held in another jurisdiction?

‘Formal’ cooperation

- For the ACCC, formal cooperation means clearly designed mechanisms which allow the sharing of confidential information without a 3rd party’s consent.
- An ICN Cartel Working Group survey found that its members identified a combination of formal and informal cooperation as the most useful mechanism for sharing information in relation to cartel investigations.



Section 155AAA

- The *Competition and Consumer Act (CCA) 2010* applies to all businesses engaged in trade and commerce in Australia. Section 155AAA of the CCA is a general provision governing the use and disclosure of protected information by ACCC staff.
- Examples of protected information for the purposes of s155AAA include information provided by:
 - An immunity applicant or information in relation to a cartel;
 - Information provided in writing or verbally, in confidence, in relation to a merger;
 - Information provided pursuant to the exercise of the ACCC's coercive powers; and
 - Information obtained from a foreign government body in confidence.

Section 155AAA

- Section 155AAA is firstly intended to protect information given to the ACCC in confidence and prohibits the disclosure of protected information except:
 - in the performance of their duties or functions; or
 - as required or permitted by law.
- Failing to protect the confidentiality of third party information and act in accordance with the section can attract criminal charges for the ACCC officers involved.
- Under certain circumstances, Section 155AAA allows the ACCC to provide information, including confidential information and documents to other law enforcement bodies, including foreign competition regulators.
- Information may be disclosed as a result of:
 - **a request** received by the ACCC for protected information to be disclosed; or
 - **the ACCC's own motion** to disclose protected information

Section 155AAA

- Section 155AAA is a discretionary power and does not compel the ACCC to comply with a request for the disclosure of protected information.
 - For example the ACCC will not, without consent of an immunity applicant, share an immunity applicant's information or evidence under s155AAA with third party regulators.
- Section 155AAA allows for conditions to be imposed on the disclosure of protected information. The conditions that are imposed on the protected information will depend on:
 - what the other agency proposes to do with the information;
 - any conditions attaching to the ACCC's use of the information; and
 - the specific risks relating to the facts and circumstances of the matter.
- The ACCC follows the principals of natural justice and its obligations under law by:
 - notifying the information source and/or relevant third parties of the disclosure to a counterpart agency;
 - protecting legal professional privileged documents; and
 - publishing online the ACCC's Information Policy.

Conclusion

- In addition to the Survey on Information Exchange on Competition in APEC Region, Australia is contributing to the development of the OECD and ICN projects on international cooperation.
- This work is not limited to issues relating to formal cooperation – for example, the ACCC is working with other regulators on approaches to leniency which could facilitate improved cooperation in cartel matters
- Internationally there are a number of mechanisms for International Cooperation in enforcement, though few jurisdictions have formal *unilateral* mechanisms for sharing confidential information and documents (other examples include New Zealand and Canada).
- If more competition regulators possessed such powers, would it limit the need for bi-lateral or multi-lateral treaty level agreements to facilitate the exchange of confidential information between enforcement agencies?