
Legal Notes

Let the punishment fit the crime

The following commentary on the outcome of the Commission's action against Baldwin's Tractor and 4WD Dismantlers was written by Jeremy Tustin of the Commission's Adelaide office.

The consequences for a rural small business of an attempted illegal agreement

The Commission has long considered anti-competitive agreements between competitors and primary boycotts to be among the most serious of the forms of conduct prohibited by the Trade Practices Act. For this reason, when the Commission's Adelaide office received a complaint of such conduct from Tia Tuckia Association Inc., an Aboriginal homeland community located near Ceduna in the far west of South Australia, action was taken immediately.

Baldwin's Tractor and 4WD Dismantlers, located in nearby Smoky Bay, had quoted to repair farm machinery owned by Tia Tuckia. The complainant alleged that Baldwin's had also approached a competitor and attempted to arrive at an agreement whereby the competitor would not repair the machinery.

Tia Tuckia became aware of this conduct and was able to provide the Commission with evidence that it had occurred.

The dilemma facing the Commission was that, while the conduct appeared to be serious and blatantly illegal, the perpetrator of that conduct was a very small business in an isolated rural community. It was necessary for the Commission to adapt its standard enforcement practices to suit the situation, to try to 'fit the punishment to the crime'.

In consultation with Tia Tuckia and Baldwin's, the Commission sought to obtain an appropriate resolution. It determined that the most appropriate resolution was one that would send a message to all small and rural businesses that, although in many cases the Trade Practices Act assists them by providing for fair competition, those businesses must also ensure that they compete fairly and comply with the Act.

In the course of the investigation, Baldwin's admitted it had attempted to enter into an illegal agreement with its competitor, and that its conduct was in breach of s 45 of the Act. As a consequence, Baldwin's gave the Commission an enforceable undertaking that it would:

- never engage in conduct of this nature again;
- perform 65 hours of labour free of charge for Tia Tuckia;
- pay the Commission's investigation costs of \$3700;
- apologise in writing to Tia Tuckia for attempting to induce Baldwin's competitor into an agreement not to repair the machinery;
- apologise in writing to ATSIC for the conduct; and
- publish an apology in *The Koori Mail*, a publication circulated nationally among the Aboriginal and Torres Strait Islander Communities.

As part of the resolution, Baldwin's sent the following letter to Tia Tuckia.

[Date] 22.7.99

Mr Heath Champion
Chairman
Tia Tuckia Association Inc.
PO Box 221
CEDUNA SA 5690

Dear Mr Champion

Trade Practices Act breach by Baldwin's Tractor and Truck Wreckers Pty Ltd

I am writing to apologise formally for my conduct and that of Baldwin's Tractor and Truck Wreckers Pty Ltd in respect of a quotation I prepared to repair your Backhoe.

In August 1998 you approached me and asked me to quote on the repairs that were necessary to a backhoe owned by Tia Tuckia Association Inc ("Tia Tuckia"). You also informed me that you would be seeking a second quote from my competitor. I took the backhoe to my yard and assessed the extent of the repairs necessary. I then prepared a written quote and sent it to you as requested.

I also sent a fax to my competitor which contained the quote I had provided to you and a letter.

In the letter I asked my competitor to ensure that its quote to Tia Tuckia was at a price higher than my own. By doing this I attempted to reach an agreement with my competitor whereby it would not repair your backhoe. Further, I offered to reciprocate the proposed favour for my competitor in the future.

You subsequently became aware that I had asked my competitor to agree not to repair the backhoe and complained to the Australian Competition and Consumer Commission ("ACCC").

The ACCC has investigated the matter and is of the opinion that my conduct in attempting to enter into a market sharing agreement with my competitor was in breach of s.45 of the *Trade Practices Act 1974 (Cth)*. I agree with the ACCC that my conduct was an attempt to breach s.45 of the Act.

I hereby admit that the conduct described above was in breach of the Trade Practices Act and apologise to Tia Tuckia for that conduct on behalf of me and my company, Baldwin's Tractor and Truck Wreckers Pty Ltd.

As a result of that conduct I have undertaken to the ACCC that I will:

- (a) not engage in this type of conduct again;
- (b) perform sixty-five (65) hours of labour at no charge to Tia Tuckia;
- (c) pay \$3700 toward the ACCC's costs of investigating this matter;
- (d) apologise to ATSIC;
- (e) publish an apology in *The Koori Mail*; and
- (f) write this apology to Tia Tuckia.

Further, I acknowledge your right to publish and/or publicly refer to this apology as you see fit.

Yours sincerely



George Baldwin
Director

This matter and the way in which it was resolved illustrate the need for both small and rural businesses to develop an understanding of the Trade Practices Act and the type of conduct it prohibits. The matter also demonstrates the

way that Part IV of the Act, and the Commission's enforcement of it deliver the benefit of fair competition to all participants in a market, consumers and suppliers.