



25 May 2015. The Australian Competition and Consumer Commission has commenced proceedings in the Federal Court of Australia against eleven respondents for alleged bid rigging conduct involving mining exploration licences in the Bylong Valley, NSW. The respondents are:

- Cascade Coal Pty Ltd (**Cascade**) and an associated company, Coal & Minerals Group (**CMG**), and the following individuals:

- John McGuigan, director of Cascade;
- Richard Poole, a former director of Cascade;
- James McGuigan, a representative of Cascade;

- Moses and Paul Obeid;
- Companies associated with Moses and Paul Obeid, namely:
 - Loyal Coal Pty Ltd (**Loyal**);
 - Locaway Pty Ltd (**Locaway**);
 - Mincorp Investments Pty Ltd, formerly Voope Pty Ltd (**Voope**); and
 - Southeast Investment Group Pty Ltd (**Southeast Investments**).

The alleged conduct relates to the 2009 tender process conducted by the NSW Department of Trade and Investment (then the Department of Primary Industries) for exploration licences over the Mount Penny and Glendon Brook coal tenements in the Bylong Valley. It is alleged that at the relevant time both Cascade and Loyal were rival bidders in the tender process.

The ACCC alleges that in early June 2009 Cascade entered into a contract, arrangement or understanding with Loyal and its affiliated companies Voope, Locaway, Buffalo Resources Pty Ltd (**Buffalo**), and United Pastoral Group Pty Ltd (**UPG**) which provided that:

- Loyal would withdraw from the tender process and refrain from pursuing a competing bid in respect of Mount Penny or Glendon Brook;

- in return, Cascade would:
- grant Buffalo a 25 per cent interest in its mining venture in respect of the Mount Penny coal release area; and
- enter into agreements with certain owners of land in the coal release area, represented by Paul and Moses Obeid, to buy their properties at four times the land value, and take over the landowners' mortgage obligations.

Loyal subsequently withdrew its bid, and Cascade won the tender for the Mount Penny and Glendon Brook coal release areas.

The ACCC also alleges that in 2010, Buffalo transferred ownership of the 25 per cent interest to Southeast Investments. Southeast Investments later sold the interest back to CMG, an entity controlled by Richard Poole. As a result of the sale, Southeast Investments accepted benefits valued by the parties at \$60 million, including approximately \$30 million in cash payments, which was distributed to beneficiaries of the Obeid Family Trust No. 2, including Paul and Moses Obeid and their immediate families.

"This case involves serious allegations of cartel conduct. Stopping cartel conduct is an ACCC enforcement priority as it causes harm to both consumers and to the competitive process," ACCC Chairman Rod Sims said.

"There is also a real public interest in ensuring that competitive public tender processes are not undermined by bid rigging or other cartel conduct," Mr Sims said.

"Ultimately it is taxpayers who are affected by any undermining of public tender processes."

The ACCC is seeking declarations, penalties and costs, as well as orders disqualifying the individual respondents from managing corporations.

Background

The ACCC's investigation followed the report by the NSW Independent Commission Against Corruption (**ICAC**) on its Operation Jasper investigation, concerning the same tender process.

After a detailed evaluation of the circumstances and evidence, and consultation with the Commonwealth Director of Public Prosecutions, the ACCC determined that civil proceedings rather than criminal enforcement action were appropriate in this case. In arriving at this decision, the ACCC had particular regard to the fact that a significant portion of the conduct is alleged to have taken place before 24 July 2009, when the criminal cartel provisions came into force.