

Cartel's price fall was one out of the box

| [Alan Moran](#)

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Challenging the election campaign for newspaper space this week has been a different form of competition.

This concerned the rivalry between Visy and Amcor for the cardboard box market.

Like the election campaign, it involved desperation, deception and duplicity.

In April 2000, the two firms agreed to carve up the market and restrain price competition.

Such agreements are automatically illegal and Visy's owner, Richard Pratt, has admitted wrongdoing.

He will face a fine following court action by the Australian Competition and Consumer Commission.

The Amcor side is immune from such action because it was they who blew the whistle to the ACCC on the agreement.

Back in 1999 Amcor was desperate.

It had less modern factories than Visy and it was losing market share and facing sluggish earnings.

An agreement with its competitor to raise prices and avoid poaching customers seemed very attractive. And Visy seemed willing to play.

But what Visy said it would do and what it did were two different things.

Starting with the same market share as Amcor at the time of the agreement, by 2004 Visy had 53 per cent and Amcor was down to 38 per cent.

Visy had also used the agreement to offload some unprofitable customers to Amcor.

By the time Amcor recognised that it was the only partner working for the common cause, Visy's market dominance was secured.

The Amcor people were spitting chips. They had been conned.

While Dick Pratt was extending his right hand to shake on a deal with former Amcor CEO Russell Jones, in his other hand was a dagger aimed at the back of his hapless rival.

During the course of the price-fixing agreement, Visy's prices, on average and adjusted for inflation, were reduced by 14 per cent.

This real price fall was largely responsible for cardboard container price movements in Australia being more favourable to customers than in markets such as the US and Britain, where there are many more competitors.

If this was the outcome of a cartel perhaps maybe we need more of them!

Although Amcor escaped a penalty in the ACCC action, both firms are now confronting customers who have evidence that they were illegally overcharged in the past.

And class action specialist, Maurice Blackburn Cashman is seeking up to \$300 million on behalf of customers from the alleged overcharging.

Amcor is likely to face more difficulties than Visy in this next stage.

This is because it appears to have been sincere in keeping its side of the agreement.

In raising its prices, it is more vulnerable to its customers' claims for financial compensation.

The issue opens up many policy questions.

The law is the law and it says competitors are not allowed to agree to share markets.

The law does not differentiate between a firm making an agreement with the intent of gouging the consumer and an agreement that was intended to deceive a competitor.

In most other aspects of commerce - and indeed in politics - misleading your competitor is a legitimate and normal strategy approach.

Perhaps the trade practices law should be re-examined to ensure its consistency with other business behaviour.

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