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29 August 2025

Angela Moody  
Productivity Commissioner and Chair  
Queensland Productivity Commission

Dear Ms Moody

### **Submission to Queensland Productivity Commission inquiry into construction productivity**

Thank you for the opportunity to provide a submission in response to the Interim Report of the Queensland Productivity Commission's inquiry into construction productivity (**Interim Report**).

The Australian Competition and Consumer Commission (**ACCC**) is an independent Commonwealth statutory agency, responsible for promoting competition, fair trading, consumer protection and product safety for the benefit of all Australians. As the Commonwealth's competition regulator, the basis of the ACCC's mandate is improving economic efficiency and productivity.

### **Competition drives productivity**

Effective competition and productivity growth are inherently linked in a market-based economy. Competition does more than just deliver buyers the best possible price. It encourages businesses to innovate, strive for efficiency and meet the needs of consumers.

Australian governments recently renewed their commitment to national competition policy through the *Intergovernmental Agreement on National Competition Policy* and corresponding Federation Funding Agreement. These agreements introduce updated National Competition Principles and outline the first steps of a 10-year reform program.

The first tranche of pro-competitive reforms includes initiatives to lower regulatory barriers to modern methods of construction, which can save time and cost relative to traditional methods, boosting construction productivity. Preliminary Recommendation 15 of the Interim Report deals with the revitalised National Competition Policy and modern methods of construction.

### **Anti-competitive conduct in the construction sector**

The ACCC is responsible for enforcing the *Competition and Consumer Act 2010 (CCA)*, including prohibitions on restrictive trade practices and cartel conduct under Part IV of the CCA. The ACCC's [Compliance and Enforcement Policy](#) sets out the principles that the ACCC

adopts in achieving compliance with the CCA. The ACCC exercises discretion to direct resources to matters that provide the greatest overall benefit.

Between 2017 and 2021, competition issues in the commercial construction industry were a compliance and enforcement priority for the ACCC.

We continue to consider and, where necessary, investigate alleged anti-competitive agreements and cartel conduct, including price fixing, market sharing and bid rigging, in the construction sector.

To assist the inquiry, we have included case studies of ACCC enforcement outcomes in the construction sector in Queensland at **Attachment A** to this submission.

### **Cartel detection in public procurement**

Public procurement plays a significant role in the construction industry. According to the Australian Bureau of Statistics' March 2025 report on *Engineering Construction Activity, Australia*, just under half of all engineering construction work by value is undertaken for the public sector.

The procurement process relies heavily on vigorous competition to provide taxpayers with the best value for money and to incentivise businesses to innovate.

However, aspects of government procurement make it vulnerable to collusion and cartel conduct. For instance, the transparency associated with public procurement processes, including the ability for market participants to more readily access information that would not usually be available in private sector procurement, can heighten the risk of collusive behaviour.

Several of the Preliminary Recommendations and Reform Directions set out in the Interim Report deal with the review and simplification of Queensland Government procurement policies with the aim of increasing competition, amongst other objectives. As part of this review process, the ACCC encourages the Queensland Government to consider strengthening procurement procedures, policies and guidelines to reduce the likelihood of bid rigging and other cartel conduct.

Importantly, the Queensland Government should consider retaining comprehensive data from procurement processes, including on unsuccessful bids, and sharing this data with the ACCC so that it can be screened for potential indicators of cartel conduct. Screening of high quality procurement data can significantly increase the likelihood of public procurement cartels being detected and deter their formation and continuation.

The ACCC is committed to engaging with public procurement professionals to equip them with the information necessary to assist with the detection and reporting of suspected cartel conduct if it arises. The ACCC's [Cartels deterrence and detection: A guide for government procurement professionals](#) gives practical advice on simple risk management strategies that make public procurement activities less prone to being targeted by a cartel.

The ACCC recently published [Guidance on bid rigging for business](#) to continue to educate Australian businesses about cartel conduct and bid rigging and ensure businesses are aware of their competition law obligations under the CCA.

## **Procurement for major events**

International experience suggests that procurement for major events, such as the Brisbane 2032 Olympic and Paralympic Games, is highly susceptible to potential cartel conduct.

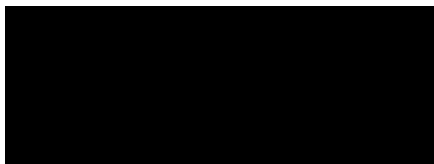
For example, in 2023, an investigation by the Japan Fair Trade Commission resulted in criminal charges being filed against 6 companies and 7 individuals, for allegedly rigging dozens of bids to advertise and plan test events for the Tokyo 2020 Olympic and Paralympic Games. The alleged bid rigging concerned contracts with a total value of nearly JP¥540 million. The companies and individuals involved included advertising agencies, event producers and an official on the Tokyo Olympic organising committee. Several criminal convictions were secured, including a 22-month suspended prison sentence for a former government executive, and fines imposed by the Japan Fair Trade Commission totalling JP¥3.3 billion.

Effective detection and prevention of public procurement cartels will aid construction productivity during this important period for Queensland.

The ACCC plans to engage directly with businesses which may participate in public procurement processes for the Brisbane 2032 Olympic and Paralympic Games, to help support the integrity of these procurement processes and the productivity of these large construction projects.

If you have any questions regarding this submission, please contact Sharon Clancy, Executive Director, Competition Enforcement & Advocacy on [REDACTED].

Yours sincerely



Melinda McDonald  
Executive General Manager  
Competition Division

# Attachment A

## **Case study 1: Cover pricing in Queensland construction tenders**

Between 2004 and 2007, three Queensland-based construction companies engaged in cover pricing in connection with tenders for three state and one local government construction projects. Cover pricing is where competing firms choose a winner while the others deliberately bid over an agreed amount (the 'cover price'), which ensures the selected bidder has the lowest tender and helps establish the illusion that the lowest bid is indeed competitive. The companies also made misleading representations by signing statements that they had not colluded with their competitors during the bidding process.

The three companies were penalised a total of \$1.3 million and two key individuals received penalties totalling \$80,000.

## **Case study 2: Closing off competition in the South East Queensland concrete market**

Between 2002 and 2006, five Cement Australia entities entered into contracts with the operators of the Millmerran, Tarong, Tarong North and Swanbank coal power stations to acquire flyash. Flyash is a by-product of burning black coal and can be used as a cheap partial substitute for cement in ready-mix concrete.

The Federal Court found that Cement Australia's conduct had the purpose and effect of preventing a competitor from entering the market by obtaining direct access to a source of flyash in South East Queensland.

The Federal Court imposed penalties totalling \$17.1 million on the Cement Australia entities.

## **Case study 3: A South East Queensland concrete cartel**

Between 1989 and 1994, Pioneer, Boral and CSR engaged in bid rigging, price fixing and market sharing in the pre-mixed concrete market in South East Queensland. The cartel participants had more than 50 regular meetings and phone conversations. In addition to fixing prices, they agreed on market shares and not to compete on specified major projects. The participants even engaged an accountant to monitor market shares so they could enforce compliance with the agreement.

The arrangement led to considerable overcharging on major construction projects, including federal, state, and local government projects. The projects included roads, hospitals, courts, government offices, universities and shopping centres in Brisbane, Gold Coast and Toowoomba. The cartel's profit has been estimated at \$88 million over the 5-year period.

Penalties of \$6.6 million were imposed on each company. Penalties were also imposed on six executives, the maximum being \$100,000.