

Trade Practices - Building Materials - Misuse of Market Power

Trade Practices Commission v CSRLimited, Federal Court of Australia, 20 December 1990, ATPR ¶41-076

CSR Limited is one of Australia's largest companies whose principal business includes the production and sale of building and construction materials. These materials include the Gyprock brand plasterboard used in the construction of walls and ceilings in residential and commercial premises. In March 1988, CSR supplied about 55% of plasterboard in the Australian States, other than Western Australia. Since 1970, CSR had been the only company manufacturing plasterboard and related products in Western Australia. The closest plasterboard factory not owned by CSR was located at Adelaide in South Australia.

Boral Australian Gypsum Ltd (Boral) supplied the 45% of plasterboard and related products outside Western Australia which was not supplied by CSR.

A company North Perth Plasterworks Pty Ltd ("North Perth"), was a major user of CSR's plasterboard products. In January 1987, North Perth began to acquire plasterboard panels from Boral. CSR expressed its concerns to North Perth about this situation and negotiated for some time about a basis for continued exclusive supply. North Perth decided to purchase the bulk of its requirements from Boral, but intended to continue purchasing some of its requirements from CSR.

CSR wrote to North Perth and stated that it had considered withdrawing supplies of product entirely but had obtained legal advice concerning its position in relation to the Trade Practices Act. This letter indicated that the advice was that supply of CSR's Gyprock line of products should not be withdrawn until such time as supplies of Boral's products were available at commercial quantities, which CSR understood would occur in May 1988. CSR gave notice that, from that date, CSR would withdraw all supplies of its product which were required to supplement Boral's product line or to top-up shortfalls of supply by Boral. As from about May 1988 until September 1990, CSR refused to supply North Perth with plasterboard or related products.

In December 1988 the Trade Practices Commission brought proceedings against CSR in the Federal Court for penalties and injunctive relief alleging that CSR had taken advantage of its market power in contravention of Section 46 of the Trade Practices Act ("the Act") and had refused to supply North Perth in contravention of Section 47 of the Act. Consent injunctions were made in September 1990, after which CSR admitted the contraventions.

The Court found that:

1. The withdrawal of supply by CSR rendered North Perth vulnerable to discontinuities in supply by Boral, which was just entering the Western Australian market.
2. The limited terms of the refusal to supply in

CSR's letter was a device to avoid the possibility of complaint that CSR was breaching the Act.

3. It was reasonable to suppose that some profit was foregone by North Perth as a result of CSR's conduct and the range of choices available to members of the public in deciding with whom they would deal was narrowed.

The Court ordered a penalty for CSR's contravention of \$220,000.

- John Tyrtil.