# AUSTRALIAN BUSINESS LAW REVIEW

Volume 34, Number 1

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ARTICLES

**Chasing the golden goose: A legal approach to sports accessing gambling revenue – *Ben Sellenger***

The sports betting market in Australia is undergoing a period of unprecedented growth. However, Australian sports, whose "product" forms the basis of such wagers, do not at present benefit financially from this boom. Many international sporting bodies have negotiated commercial outcomes with gambling operators to access the sports betting revenue stream. Other countries, like New Zealand, have legislated for returns from sports betting to the respective sports. Whilst Australia has not been completely idle in investigating its options in accessing these revenues, to date major inroads have not been made. Notwithstanding the fact that it remains open for Australian sports bodies to commercially negotiate sports betting returns with independent gambling operators, or alternatively lobby government to access these returns, this article seeks to ascertain whether, outside these options, there is a sustainable legal basis upon which a sports body may lay claim to sports betting revenue from wagering on their sport, or through which the sports body may otherwise prevent such wagers taking place. ..... 7

**Reconsidering the public benefit test in merger analysis: The role of "pass through" – *Joshua S Gans***

In recent times, courts in Australia and New Zealand have endorsed a total welfare standard for evaluating the competitive effects of mergers and weighing these against possible public benefits (including returns to shareholders). Here I argue that to achieve a goal of maximising total welfare, a consumer welfare standard (and weighing the pass through of benefits to consumers) may be more appropriate for regulators and the courts as it provides better incentives for industry participants to propose mergers and undertakings that maximise total welfare. ..... 28

**The public benefit standard for merger authorisations – *Stephen P King***

As a result of the Qantas/Air New Zealand Australian Competition Tribunal determination, a variety of different approaches in evaluating the public benefits and anticompetitive detriments arising from a merger are currently being debated. Antitrust economists are increasingly questioning the practical implications of the traditional total welfare standard for merger analysis, spurring approaches such as the Consumer Welfare Standard. But while the economic justification for such an approach provides a useful insight into merger evaluation, it has limited practical appeal in its pure form. This

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commentary (delivered in response to a paper by Joshua Gans published in this issue of the Review) presents an alternative approach – referred to as the Public Benefits Standard – that has uniquely developed in Australia under the authorisation procedures embodied in the Trade Practices Act. ..... 38

**Comments on Professor Joshua Gans's presentation "Reconsidering the Public Benefit Test" – *Paul Hughes***

For some years, there has been a debate as to whether consumer welfare or total welfare is the appropriate standard for assessing claims that proposed transactions would produce public benefits. Professor Gans, in his article published in this issue of ABLR, offers a fresh and useful approach to the subject inspired by the welfare economics literature. This article seeks to show, however, that his proposed test defies practical application and does not square with our statutory tests. It is suggested that the Australian Competition Tribunal's reasons in Qantas confirm a sensible approach to authorisation assessments and the analysis of competitive dynamics. ..... 49

**Deterring promoters of tax exploitation schemes: Lessons from continuous disclosure – *Rachel Tooma***

Draft legislation designed to deter promoters of tax exploitation schemes proposes similar civil penalties to those currently used to deter breaches of the continuous disclosure regime. Under both civil penalty regimes, the government may seek court ordered fines and injunctions, and may accept voluntary undertakings. However, the Australian Taxation Office, unlike the Australian Securities and Investments Commission (ASIC), is not granted the power to issue infringement notices. ASIC first issued an infringement notice in August 2005, a little over a year after the introduction of infringement notices. A comparative analysis of the civil penalties for breaches of the continuous disclosure requirements with the proposed civil penalty regime for the deterrence of promoters of tax exploitation schemes is therefore timely. ..... 58

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