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EDITORIAL 321

ARTICLES

When should competitors give their rivals access to services provided by facilities or telecommunications services? An examination of Pt IIIA and Pt XIC of the Trade Practices Act 1974 (Cth) and the potential role of s 46 – Ian B Stewart

Part IIIA of the *Trade Practices Act 1974* (Cth) (the TPA) regulates access by competitors to services provided by means of facilities which cannot be economically duplicated and are of national significance. Part XIC of the TPA addresses the potential for anti-competitive conduct in telecommunications services industries arising because competitors in downstream markets depend on access to carriage services controlled by incumbent operators. These regimes attempt to address bottleneck problems – where competitors require access to a particular service provider’s service in order for there to be effective competition in other dependent markets – while maintaining incentives for investment in those facilities and networks. Section 46 of the TPA may provide an alternative solution in the instances discussed herein. In the United States, bottleneck problems have long been redressed by application of the refusal to deal doctrine under the Sherman Act. American courts have sought to balance the notion that in general a supplier is free to deal with whom it pleases with the recognition that exceptions to this principle must be made in order to preserve or enhance competition. From these conflicting matters evolved the essential facilities doctrine, a doctrine which has never been accepted in Australia and which the United States Supreme Court has recently refused to endorse. In this article, the rationale for access regulation is examined in the context of the competing considerations, to which regard must be had in determining when competitors must share their facilities or services with each other. 322

Globalisation, international competitiveness and industrial relations reform: The Australian experience – John HC Colvin and Ben Dudley

This article examines the impact that the forces of globalisation and international competition have had on Australian labour market regulation and deregulation over the course of the past 25 years. That impact has been heavily shaped by both traditional Australian political sensitivities and Australia’s unique industrial and economic history. The reform of the labour market has often been regarded as the final pillar of the economic reform process, begun in the late 1970s, which focused on the conscious removal of institutional inflexibilities, including in tariff structures, the exchange rate and the financial services sector. The recent series of reforms to federal industrial legislation (and perhaps most politically contentious) is the WorkChoices package, the third wave of industrial reform that can be seen as an evolutionary development of the economic reform program. The conclusion drawn is that globalisation and the need for Australian companies to respond to the forces of international competition have formed, and will continue to form, a significant part of the rationale for reforms to industrial and employment legislation in Australia. In light of the shift in importance of industrial sectors in Australia over the last

50 years, and the trend to globalisation for most sectors of the economy, this rationale for industrial reform is neither surprising nor particularly partisan. The interrelationship between globalisation and its effect on the Australian economy will continue to put pressure on labour law and its institutions in the foreseeable future. 366

New tricks for an old tort: Liability for sucks.com blog websites under the tort of injurious falsehood after Kaplan – Michelle Harper

In *Kaplan v Go Daddy Group Inc* [2005] NSWSC 636, the New South Wales Supreme Court has granted an injunction to restrain the maintenance of a sucks.com blog website based on the ancient tort of injurious falsehood. While the statement that a particular business “sucks” may be false, it is questionable whether it is disparaging and made with malice. In addition, the tort of defamation may not apply due to the public interest defence and s 52 of the *Trade Practices Act 1974* (Cth) may not apply to misleading or deceptive statements that are not made in trade or commerce, even though these causes of action usually have certain advantages over the tort of injurious falsehood. 385

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