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## ARTICLES

### **Enhancing the effectiveness of telecommunications access regulation: Moving from a “negotiate-arbitrate” to an “upfront decision” model – Niloufer Selvadurai**

An effective telecommunications access regime is critical to the quality of product and pricing provided to consumers of telecommunications services. Part XIC of the *Competition and Consumer Act 2010* (Cth) provides a framework for network access that requires carriers and carriage service providers of declared services to provide access to competitors on agreed terms and conditions. In recent years, there has been growing industry dissatisfaction with the operation of Pt XIC, especially for the role it is perceived to have played in hindering the deployment of high speed broadband services in Australia. The *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009* (Cth) substantially amends Pt XIC and replaces the present “negotiate-arbitrate” model of access determinations with a new “upfront decision” model. This article analyses the effectiveness of the present law and considers the merits of the proposed reform. .... 297

### **Regulation of anticompetitive “understandings” and price signalling in Australia – a European perspective – Sara Brooks**

There is ongoing debate about the adequacy of the concept of “understanding” in the *Competition and Consumer Act 2010* (Cth). In particular, it is claimed that competition law regimes in other jurisdictions such as Europe catch a considerably broader range of collusive conduct than the current Australian competition law regime, including anti-competitive price signalling. This is a key basis on which the government and the Coalition have both introduced Bills targeted at price signalling into Federal Parliament. However, the Bills have not been accompanied by convincing analysis of the scope of any gap between Australian and European competition law. This article examines European law on “concerted practices” in detail, drawing two main conclusions. First, the article infers that current Australian law on “understandings” is not as far out of alignment with European law as the government, the Coalition and the Australian Competition and Consumer Commission have contended. Secondly, the article finds that rather than merely bringing Australian law into line with European law, either the government’s or the Coalition’s reform proposal would go further and establish a more stringent prohibition on price signalling. Therefore, the article sums up that for Australian law to truly reflect overseas learning, neither Bill should be passed in its current form. .... 309

### **Getting what they paid for: Consumer guarantees and extended warranties – Stephen Corones**

The *Australian Consumer Law* (ACL) adopts a principles-based approach to drafting. Provisions are drafted at a high level of generality leaving much evaluative work for the regulators and ultimately, the courts. This article considers one such provision in the ACL, namely the guarantee of acceptable quality, and in particular, the quality of durability.

Durability is one of the qualities that goods must satisfy in order to meet the standard of acceptable quality: they must remain fit for purpose for their ordinary useful life. Suppliers of extended warranties must also comply with the consumer guarantees relating to services: they must be fit for purpose which means that they must provide enhanced protection over and above the statutory protection provided by guarantee of acceptable quality in relation to the underlying goods which are the subject of the extended warranty. Section 29(1)(n) of the ACL creates a new prohibition: making a false or misleading representation concerning a requirement to pay for a contractual right that is wholly or partly equivalent to a consumer guarantee. This poses a dilemma for suppliers of extended warranties. They must estimate the ordinary useful life of the underlying goods the subject of the warranty to avoid contravening s 29(1)(n). ..... 331

**Not-for-profits and risk accountability: Insuring the third sector – Julie-Anne Tarr**

Not-for-profit organisations face significant challenges in managing organisational risk. In this regard not-for-profits are not unique but they are distinguishable from their “for-profit” counterparts in that they are less likely to have the resources to fund sufficient risk management strategies and plans, are very vulnerable to cyclical changes in the insurance market and are not usually in a position to pass on the costs of increased premiums to third parties such as consumers of their services. This article explores the nature and extent of risks faced by the not-for-profit sector; the appropriateness and scope of risk management to reduce and manage the likelihood and incidence of risk; and the types of insurance and options to cover risks that materialise. It concludes with a recommendation for a potential course of action. .... 354

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