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EDITORIAL

The Harper Review – A review 101

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ARTICLES

Are gas processing facilities "safe" from third party access? – *Leanne McClurg*

There exists a view among industry that gas processing facilities are "safe" from third party access. One basis for this view can be found in an exemption contained within Pt IIIA of the *Competition and Consumer Act 2010* (Cth). This article explores that exemption and considers relevant case law to conclude that a judge, so inclined in particular circumstances, could well determine the exemption does not preclude third party access to gas processing facilities. On this basis, gas processing facilities are by no means "safe" from third party access. 103

Unilateral conduct and the role of the purpose test in section 46 of the Competition and Consumer Act 2010 (Cth) – *Dr Shirley Quo*

On 24 November 2015, the Federal Government released its response to the Final Report of the Competition Policy Review (the Harper Report). In relation to the misuse of market power provision under s 46 of the *Competition and Consumer Act 2010* (Cth), the Harper Report recommended, inter alia, the removal of the "take advantage" requirement and the replacement of the current "purpose test" with a "purpose, effect or likely effect" test. The government's response to this recommendation was to seek further consultation on other options to ensure that s 46 offered a commercially and legally robust approach to preventing the misuse of market power. A discussion paper was released in December 2015 which canvassed six options, from adopting the Harper Report's recommendation in full (Option F) to maintaining the status quo (Option A). In March 2016, after due consideration to these options, the government announced it would adopt the Harper Report's recommendation in full, effectively implementing an effects test for s 46. The purpose of this article is to consider the underlying rationale for the purpose test and evaluate whether it assists in identifying or distinguishing between anti-competitive (unlawful) and pro-competitive (lawful) behaviour. 114

Everyone beware: A comparative study of consumer protection in Chinese and Australian mobile commerce – *Mary Ip*

This article examines the legal issues in a significant Chinese commercial case – *Qihoo v Tencent* – from a consumer and an Australian legal perspective, with particular reference to the *Competition and Consumer Act 2010* (Cth). Through a hypothetical application of that Act onto the facts of *Qihoo v Tencent*, this article identifies loopholes in the Chinese and Australian competition laws related to consumers' dealings with software products and services. By using a comparative approach to analyse the void in the Chinese competition statutes, knowledge of the Australian law becomes a valuable aid for addressing domestic legal issues in China when relevant. As China has commenced a revision of the *Anti-Unfair Competition Law 1993* and Australia has undergone a review of its competition law and policy, this article presents a current examination of the competition regime of the two countries for the advancement of consumer protection in digital transactions. 146

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