Index

ACCC see Australian Competition and	Anti-overlap provisions
Consumer Commission	in CCA, 214-215
Access regimes see also Infrastructure	Apple Inc
access	"smartphone wars" with Samsung, 77-78
benefits of, 244-269	APT Allgas
effect of Pilbara case, 270-275	application for Tribunal review, 62
High Court decisions, 117-122	"Attempts"
overview of access undertakings, 261-263	as defined in CCA, 306-307
telecommunications industry	Australia Pacific LNG Gladstone Pipeline
"contestability" options, 50	Pty Ltd
Accessorial liability	applies for determination, 71-72
for cartel conduct, 217	Australian Competition and Consumer
claims for, 130	Commission (ACCC)
Acquisitions see Mergers/acquisitions	case against vacuum cleaner salespeople,
Acronyms	241-243
overuse of, 3	facilities expansion powers, 292
Advertising	makeover of proposed, 109-116
comparative advertising in India, 147-148	penalties for companies acted against by,
liability for publication of third party	42-48
statements, 152-153	powers of Competition Tribunal and,
in New Zealand consumer law, 230-231	56-58
Advertising Standards Council of India	proceedings against Google, 154-155
actions brought by, 146-147	proceedings under unfair terms
Africa	provisions, 221-222
regional competition regime in, 141-144	Qantas and Emirates Co-ordination
Agricultural vaccines	Agreement, 206-210
litigation regarding, 281-284	response to reviews of, 132-137
Airline industry	Australian Competition Tribunal
acquisitions in, 127-128	under CCA Part IIIA, 256
Alinta Sales	Fortescue Metals appeals decision of,
application for Tribunal review, 62-63	5-19, 117-122
Alternative dispute resolution see Dispute	matters heard by, 60-67, 69-71
resolution	overview of, 55-67
Anticompetitive conduct regulations see	Australian Consumer Law
also Competition law	in telecommunications contracts, 221
cartel conduct prohibitions, 212-218	Australian Energy Regulator
Chinese legislation, 223-227	energy industry regulation, 285-288
European Union, 294-296	year in review, 73-74
price signalling legislation, 181-205	Australian Journal of Competition and
reverse payment settlement agreements,	Consumer Law
297-302	21st anniversary of, 3-4
in Russia, 303-305	Australian Small Business Ombudsman
•	proposed spin-off from ACCC, 114-116

Australian Utilities Commission

proposed spin-off from ACCC, 113-114

Authorisations and notifications

Qantas and Emirates Co-ordination Agreement, 206-210

Bain, Joe

on barriers to entry, 94-95

Barriers to entry and exit

in competition law, 89-108 strategic, 102-106

Barriers to expansion

in Australian law, 107

Best practice guidelines

price signalling legislation, 199-200

Better Regulation program

in energy industry regulation, 285-288

Brand appropriation

litigation regarding, 165-180

Business Council of Australia

submissions to Productivity Commission, 290-291

Business to business disputes

resolution of, 276-280

Capacity

excess capacity as barrier to entry, 105-106

Cartel conduct

first litigation under prohibitions on, 211-218

Garuda not immune from jurisdiction, 52-53

Causality

information disclosures and, 185-187

Certification matters

access regimes, 263-266

for National Competition Council, 71

China

merger review change in, 223-227

Codes of conduct

industry-based regulation, 276-280

Collusion

in CCA, 181-205

Common Market for Eastern and Southern Africa (COMESA)

establishment of, 141-144

Competition and Consumer Act 2010 (Cth)

alleged breaches of, 212

"attempts" as defined in, 306-307

"competition" as defined in, 306

definitions of terms in, 306-307

Div 1A, anticompetitive conduct regulations, 181-205

"knowingly concerned" as defined in, 307 need for review of, 132-137

Part IIIA, access to services, 56, 117-122, 244-269

Part IIIA, benefits generated by, 266-269 Part IIIA, Fortescue Metals application

under, 5-19

Part IIIA, "national significance" test in, 253

Part IIIA, "private profitability" test in, 250-253

Part IIIA, "promotion of competition" test in, 248-250

Part IIIA, "public interest" test in, 254-256

"quality" as defined in, 307

scope of "in trade or commerce" provision, 216-217

"supply" as defined in, 307

"trade or commerce" as defined in, 307 "uneconomical" concept in, 250-252, 270-275, 291-292

Competition and Infrastructure Reform Agreement

draft report on, 289-293

Competition law see also Anticompetitive conduct regulations

barriers to entry and, 89-108 in COMESA, 142-143

competition as defined in CCA, 306 legitimate aims of, 138-140

Compliance

with consumer protection legislation, 46

Consumer protection

application of pressure in transactions, 39-41

Better Regulation program, 285-288 from brand appropriation, 165-180

in COMESA, 143	Defective goods
Director of Consumer Affairs Victoria v	game fishing boat, 125-126
Parking Patrols Vic Pty Ltd, 87-88	rechargeable torch, 124-125
distant trading, in Russia, 305 financial penalties for consumer law	recreational vehicle air-conditioning unit, 123-124
breaches, 42-48	Delivery procedures for purchased goods
in India, 145	in Russia, 304-305
linked credit providers, 130-131	Disclosures see Information disclosures
New Zealand, law reform in, 228-236	Dispute resolution
from predatory lending, 20-34	business to business disputes, 276-280
"sharp practice," 128-130	Distant trading legislation
telco "Fine Print" Project, 219-222	in Russia, 303-305
vaccines and merchantable quality	Economic matters
regulations, 281-284	economic substitutes in "smartphone
Contestability	wars," 79
concept of perfectly contestable markets,	economies of scale as barriers to entry,
97-98	99-100
telecommunications industry	regulatory control of monopolies,
"contestability" options, 50	138-140
Contracts	"uneconomical" concept see
"binding" vs legally enforceable, 36-38	"Uneconomical"
bypassing consumer law via, 229-230,	Efficiency
234	regulatory imposition of, 139-140
for telecommunications customers,	Emirates
219-222	Co-ordination Agreement with Qantas,
unfair terms in, 232	206-210
Cooperation	Energy industry regulation
with ACCC investigations, 46-47	access to gas pipelines see Gas pipeline
Cooperative Bulk Handling	facilities
application to Competition Tribunal,	Australian Energy Regulator, 73, 285-288
66-67	in Europe, 75-76
Cost of capital	New Zealand consumer law, 234
regulatory control of, 138-139	powers of Competition Tribunal, 57-58
Cross-subsidisation	Enforcement and remedies
regulatory control of, 139	in China, for anticompetitive conduct,
Damages	224-226
for cartel conduct, 217-218	financial penalties for consumer law
DBNGP	breaches, 42-48
application for Tribunal review, 62-63	in New Zealand consumer law, 233-234
Debt collection	Entire agreement clauses
application of pressure in transactions,	in telecommunications contracts, 219-220
39-41	Envestra
Declaration matters	application for Tribunal review, 62
access to infrastructure, 246-260	European Union
jet fuel supply infrastructure at Sydney	on scope of dawn raids, 75-76
airport, 68	trade defence system, 294-296

Evidence

brand appropriation litigation, 165-180

Expert evidence

brand appropriation litigation, 170-177

Foreign States Immunities Act 1985 (Cth)

Garuda claims immunity from prosecution under, 52-53

Fortescue Metals application (Pilbara case)

effect of, 270-275 High Court decision, 5-19, 36-38 powers of Competition Tribunal and, 64-66, 68-71

FRAND concept

"smartphone wars" and, 81-83

Gas pipeline facilities see also Fortescue Metals application

access to, 270-275 application for Tribunal review, 62-63 National Gas Law, 71-72, 271-272 South Eastern Pipeline coverage application, 272-273

Goodwill

as barrier to entry, 100-101 evidence of in a product, 169

Google

liability for publication of third party statements, 152-155

Greiner, Nick

involved in litigation, 211

Harm, potential for

from price signalling, 194-198

Harmonised laws

in COMESA, 144

High Court decisions

on access regimes, 117-122 Australian Competition Tribunal and, 256-258

Fortescue Metals application, 5-19, 36-38, 64-66, 68-71, 270-275 Google advertising case, 156-159 PT Garuda Indonesia Ltd v ACCC, 52-53

Hilmer Committee

recommendations by, 244-246

Hub and spoke disclosures

price signalling and, 202-203

Illegal contracts see Contracts

Implied warranty as to merchantability

agricultural vaccines, 281-284

India

consumer protection laws in, 145

Industry-based regulation

under CCA Part IIIA, 267-269 codes of conduct, 276-280

Information disclosures

causation and, 185-187

Infrastructure access see also Access regimes

agenda for reform of, 293 when declared, 246-260

Intermediaries or conduits

liability for publication of statements by, 152-164

Internet commerce

in New Zealand consumer law, 233

Jet fuel supply infrastructure at Sydney airport

as declaration matter, 68

Jurisdiction

accessorial liability, 130

Kimberly Clark Australia Pty Ltd

applies for coverage recommendation, 72

"Knowingly concerned"

as defined in CCA, 307

Legislation

barriers to entry due to, 101-102 controlling predatory lending, 25-26

Liability

accessorial, 130, 217

for misleading and deceptive advertising, 152-164

for price signalling, 183-184, 198-199, 203

Limited merits review regime

review of, 59-60

Linked credit providers

prior consensus required, 130-131

Market power

barriers to entry and exit, 89-108 regulation in the telecommunications industry, 49-50

"smartphone wars" and, 78-79

Merchantable quality

determining, 281-284

Mergers/acquisitions

merger review change in China, 223-227 powers of Competition Tribunal, 57

Misleading and deceptive conduct

evidence of intention in, 168 litigation regarding, 35-36 by publication of statements by intermediaries or conduits, 152-164 by representations, 216 by silence, 215-216 "undue harassment" and, 39-41

Mode of sale neutrality

in New Zealand consumer law, 235

Monopolisation legislation see also

Anticompetitive conduct regulations

merger review change in China, 223-227 "smartphone wars" and, 81-83

National Access Regime

Council's work under, 68-71 draft report on, 289-293 review of, 18-19

National Competition Council

effect of Fortescue decision on, 117-122 matters before, 68

National Gas Law

controls access to pipelines, 271-272 Council's work under, 71-72

"National significance" test

in CCA Part IIIA, 253

"Natural monopoly" test

proposed by Business Council, 291-292

New Zealand

consumer law reform, 228-236

"Next generation networks"

policy choices for, 49-51

No-coverage applications

for gas pipeline access, 274-275

Non-merger reviews

powers of Competition Tribunal, 56-57

North America

"smartphone wars" in, 77-83

Notifications see Authorisations and notifications

Passing off

requires proof of reputation, 167-168

Patent markets

"smartphone wars" and, 79-81

"Pay for delay" see Reverse payment settlement agreements

Payday lending see Predatory lending Penalties see Enforcement and remedies

Per se prohibition

international best practice and, 199-200

Pharmaceutical industry

reverse payment settlement agreements, 297-302

Pilbara case *see* Fortescue Metals application

Pirate brands see Brand appropriation

Predatory lending history of, 20-34

Price signalling

in Australian law, 181-205

Pricing

below-cost pricing as barrier to entry, 104-105

"Private profitability" test

as access criterion, 118-119 in CCA Part IIIA, 250-253, 291-292 impact on Competition Tribunal, 16-17

Product disparagement

in India, 147-148

Productivity Commission

draft report on National Access Regime, 289-293

review of CCA Part IIIA, 121-122

"Promotion of competition" test

in CCA Part IIIA, 248-250

Proof see Standard of proof

Public interest issues

Fortescue Metals application to High Court, 14-15

"public interest" test in CCA Part IIIA, 254-256

Publication of statements

liability for misleading and deceptive advertising in, 152-164

Purpose statements

New Zealand consumer law, 228-229

Qantas Airways

Co-ordination Agreement with Emirates, 206-210

"Ouality"

as defined in CCA, 307

Rate of return

access regime regulation and, 119-121

Regulatory agencies

proposed time limits on term of senior appointments, 116

Remedies see Enforcement and remedies Reverse payment settlement agreements

US controversy over, 297-302

Russia

distant trading legislation, 303-305

Salary lending see Predatory lending Sales people

ACCC case against vacuum cleaner salespeople, 241-243

Samsung Inc

"smartphone wars" with Apple, 77-83

Single customer infrastructure

assessing sufficiency of returns, 119-120

"Smartphone wars"

in North America, 77-83

South Australia

mandatory industry codes of conduct, 277-280

SPI Electricity

application for Tribunal review, 63-64

Standard of proof

in price signalling legislation, 193-194

State and Territory governments

access regimes, 253-254

Stigler, George

on barriers to entry, 95

Sunk costs

barriers to entry and, 97-98

"Supply"

as defined in CCA, 307

Supreme Court (US)

on reverse payment settlement agreements, 300-301

Swanson Committee

reviews TPA, 133

Takeovers see Mergers/acquisitions

Technical substitutes

"smartphone wars" and, 79

Telecommunications industry

"Fine Print" Project, 219-222 regulatory consensus in, 49-51

Termination clauses

in telecommunications contracts, 220-221

Third party access regimes see Access regimes

Trade defence system

European Union, 294-296

Trade mark infringement

brand appropriation litigation, 165-180

"Trade or commerce"

as defined in CCA, 307

Trade Practices Act 1974 (Cth) see also Competition and Consumer Act 2010 (Cth)

s 87B undertakings, 47

Trade Practices Amendment

(Infrastructure Access) Act 2010 (Cth)

Fortescue Metals application and, 7

Trade Practices Commission

response to reviews of, 132-137

Trade Practices Consultative Committee reviews by, 133-134

Transactions, application of pressure in

law of misleading conduct and, 35-36 **Tribunals** see Names of specific tribunals

Unconscionable conduct

allegations of, 241-243

in New Zealand consumer law, 233

"Undue harassment" provisions

ASIC Act 2001 (Cth), 39-41

"Uneconomical"

competing constructions of, 250-252 criterion in Pilbara decision, 270-275 move to natural monopoly test, 291-292

Unilateral disclosures

price signalling and, 192-193, 201-202

Unilateral variation clauses

in telecommunications contracts, 220

United Energy

application for Tribunal review, 60-62

United Kingdom

predatory lending in, 28-30, 31-32

price signalling legislation, 189-191

United States

"pay for delay" controversy, 297-302 predatory lending in, 20, 27-28, 30-31 price signalling legislation, 192-193

Unsolicited goods and services

in New Zealand consumer law, 231-232

Unsubstantiated representations

NZ consumer law prohibits, 230

Vaccines

litigation regarding, 281-284

Vacuum cleaner "maintenance checks"

"sharp practice," 128-130

Vertically integrated projects

assessing sufficiency of returns, 119-120

Wagga Wagga Gas Distribution Network

revocation of coverage application, 273

Western Australia Gas Networks (WAGN)

application for Tribunal review, 62-63