

AUSTRALIAN JOURNAL OF COMPETITION AND CONSUMER LAW

Volume 24, Number 4

December 2016

EDITORIAL

Some Freely Ranging Thoughts 277

ARTICLES

Margin Squeezes as a Misuse of Market Power – *Paul McLachlan*

American and European competition law on single firm conduct has substantially diverged. The United States no longer recognises margin squeeze conduct as being illegal, whereas the European Union has imposed nine-figure fines for margin squeezes as an abuse of dominance. When the issue reached the New Zealand Supreme Court, New Zealand followed the European approach. There has never been a s 46 case in Australia based on a margin squeeze. But margin squeezes have formed a substantial part of Australian competition law enforcement through the regulatory settings in the telecommunications industry and “competition notices” issued against Telstra for margin squeezes. This article surveys these international developments and looks at the Australian enforcement actions to determine how an Australian court might approach a s 46 margin squeeze case. 279

“Your Rights Mob”: Making Indigenous Consumer Protection an Enduring Priority – *Rod Sims*

In 2016 the Australian Competition and Consumer Commission made its commitment to Indigenous consumer protection an enduring compliance and enforcement priority. The Commission, known by some Indigenous consumers as the “Your Rights Mob”, is working in partnership with Indigenous community leaders, legal aid, consumer groups, and other government agencies to raise awareness about consumer rights and consumer law. This article discusses some of these initiatives, including actions taken to protect Indigenous consumers from unlawful and unfair business conduct. 300

How Will the Enforcement of Section 46 of the CCA Change under the Full Harper? – *Sophie Matthiesson*

The Federal Government proposes to adopt the recommendations of the Harper Review to remove the “taking advantage of” requirement and to introduce an “effects test” into the prohibition on misuse of market power. The proposed reform is colloquially known as “the Full Harper”. This article examines the current law and the proposed changes in light of the experience in the European Union with an effects-based approach to the prohibition on the abuse of a dominant position. It argues that, while the Full Harper will potentially capture a far broader range of conduct than the current prohibition, Australian courts are likely to draw on existing principles when assessing whether there has been a contravention, as well as the principles established in other jurisdictions, such as the European Union. 307

DEFECTIVE GOODS

Rusty Cars, Warped Blinds and Dodgy Sofas Make for Uncomfortable Lives – *T H J Cadd* 322

CASE NOTE

ACCC v Prysmian Cavi e Sistemi SRL (No 12) – *Peta Stevenson* and *Aarathi Sridharan* 326

COMMISSION CAMEOS

The Entry and Premature Exit of a “Competitor”: **Should We Be Concerned** – *Hank Spier* 332

REPORT FROM INDIA

Orders Published by the Competition Commission of India in 2016 – *Swati Sharma* and *Abhilasha Nautiyal* 336

REPORT FROM LATIN AMERICA

An update on relevant issues and developments in Mexico, Colombia, Uruguay, Honduras, Brazil, Argentina, Chile, Guatemala and Paraguay – *Luis Omar Guerrero Rodríguez, Luis Eduardo Nieto, Juan Mercant, Emilia Cadenas, Claribel Medina, Martin F Michaus* and *Marianne Windirsch* 339

ODDS AND ENDS 351

VOLUME 24 – 2016

Table of Authors 355
Table of Cases 359
Index 367