Abuse of dominance EU law prohibits, 309 European law on margin squeezes, 287 Mexican law, 341

Access and Pricing Regulator recommendation to establish, 73

Access regimes – *see also* National Access Regime challenge monopoly pricing, 222-226 Russian competition law, 186

Advertising competitive, 3-5

Agency relationships Full Court findings, 69-70 Russian competition law, 187

Alternative dispute resolution (ADR) business-to-business disputes, 227-231

Anti-Cartel Enforcement in a Contemporary Age: Leniency Religion book review, 97

Anti-competition legislation – see Competition law

Antitrust investigations European e-commerce sector, 86-87 in the US, 266-271

Antitrust Modernization Commission (US) reviews competition law, 267-268

Argentina competition law, 348

ASEAN member countries competition law, 258-265

Attribution of conduct electricity supply industry, 329, 331

Australian Capital Territory place names as marketing tools, 31 supermarket chain competition, 332-335

Australian Communications Consumer Action Network advocates increased competition, 180-182

Australian Competition and Consumer Commission (ACCC) ACT supermarket chain cases and inquiries, 332-335 actions against Telstra, 293-298

approves taxi booking app, 164 extraterritorial injunctions, 214-221 Indigenous community partnerships with, 300-306 Information Paper on margin squeezes, 295-296 proposed block exemption power, 72 Protected Cartel Information scheme, 197-213 Yazaki case, 232-241 Australian Competition Tribunal 2015 activities, 71-76 Glencore Coal decision, 222-226 Australian Energy Regulator 2015 activities, 82-83 Automotive industry consumer protection, 254-257 Yazaki case, 232-241 "Bad Samaritan" liability in European law, 280, 290 Bandwidth connection speeds and, 180-182 **Behavioural economics** consumer protection and, 36-41, 47-48, 51 **Book review** Anti-Cartel Enforcement in a Contemporary Age: Leniency Religion, 97 **Bounded rationality** in consumer law, 35-36 Bovcotts implications of Chinese ruling, 153-154 Brazil competition law, 346-348 **Broadband access issues** connection speeds, 180-182 **Bundling arrangements** implications of Chinese ruling, 154 in Australian law, 320 in European law, 319-320 **Business names** 

Business-to-business disputes new paradigm for, 227-231

registration requirements, 17-18

(2016) 24 AJCCL 367

367

#### **Cartel conduct cases**

Anti-Cartel Enforcement in an Contemporary Age: Leniency Religion, 97 ASEAN member countries, 259-260 electricity supply industry, 326-331 Mexican law, 340-341 private enforcement and, 6-14 Protected Cartel Information scheme, 197-213 Russian competition law, 187 US antitrust investigations, 269-270 Yazaki case, 232-241

# Causation

indirect, concept of expanded, 195-196

Certification matters NCC activities, 78

**Certification trade marks** place names and, 19-20

Chile

competition law, 349

#### China

consumer protection in mobile commerce, 146-161

Class actions for cartel conduct cases, 8

Colombia competition law, 342-344

### Company names - see Business names

Comparative advertising – see Competitive advertising

Competition Commission of India orders published by, 336-338

Competition law - see also Cartel conduct cases; Consumer protection; Harper Review of competition law ASEAN member countries, 258-265 Australian Competition Tribunal activities, 71-76 competing regulatory regimes, 183-185 consumer protection in mobile commerce, 146-161 history in Australia, 242-253 in India, 336-338 in Latin America, 339-350 in Russia, reforms to, 186-191 in telecommunications industry, 59-61 margin squeezes in, 279-299 National Competition Council activities, 77-81 proposed change to "purpose test", 114-145

# "Competition notices"

issued against Telstra, 293-298

Competition on the merits - see Merits, competition based on **Competition Policy Review** Australian Competition Tribunal and, 71 National Competition Council and, 80-81 **Competitive advertising** ACL and, 3-5 injunctive relief in respect of, 84 **Compliance** issues in ASEAN member countries, 264 **Confidentiality issues** non-disclosure agreement required for car repair, 255 transcripts of ACCC interviews, 84-85 **Consumer Issues reports (NZ)** trends in, 95-96 **Consumer protection** automotive industry, 254-257 broadband access issues, 180-182 for Indigenous community, 300-306 from misleading advertising, 3-5 from over-regulation, 183-185 in mobile commerce, 146-161 reluctance of consumers to seek, 272-273 Russian competition law, 186 unfair contract term legislation, 33-52 Content delivery in telecommunications industry, 59-60 Contracts "contract as a whole" requirement, 43-44, 48 "giving effect to" a provision, 238-239 unfair contract term legislation, 33-52 **Cooling-off periods** broader role proposed for, 50-51 **Copyright issues** place names and, 18-19 **Criminal prosecution** NZ Commerce Commission cases, 88-91 **Damages Directive (EU)** applied to Australian anti-cartel litigation, 210-212 Deceptive conduct - see Misleading or deceptive conduct

Declaration matters NCC activities, 77-78 **Defamation suit** between Chinese mobile commerce companies, 148-149

**Defective goods** litigation involving, 322-325

Department of Justice (US) antitrust investigations, 266-267

Deterrence requires appropriate penalties, 169-171

Discovery transcripts of ACCC interviews, 84-85

**Documentation issues** in private litigation against cartels, 207-208

Domain names registration requirements, 18

"Dominance", concept of - see Abuse of dominance

Eastern Australian Domestic Gas Market Study on access to gas producing facilities, 104

**E-commerce sector** 

EU inquiry into, 86-87

**Economic approach** achieving efficiency, 117-120 to consumer law, 34-35

Effects test in competition law arguments for and against, 138-143 in NZ legislation, 143-144 purpose test vs, 246-248 replaces "taking advantage test", 114-115, 307-321

Efficiency economic, achieving, 117-120

Egg marketing "free range" eggs, 168-172, 277-278

Electricity supply industry cartel conduct cases, 326-331

"Endowment" of value by consumers in consumer law, 36-37

**Energy industry regulation** access to gas processing facilities, 103-113

# Enforcement

in New Zealand, 88-91 options for cartel conduct cases, 6-14 under Harper Review, 307-321

**European Union** e-commerce sector inquiry, 86-87 law on margin squeezes, 279, 287-292 predatory pricing in, 313 private litigation against cartels, 203-205, 210-212 prohibits "abuse of dominance", 309 **Evidence** issues in private litigation against cartels, 207-208 of purpose, subjective or objective, 131-136 Russian competition law, 190 **Exclusive dealing** Chinese mobile commerce litigation, 150-152 implications of Chinese ruling, 153 in Australian law, 317 in European law, 316-317 Expert witnesses economic evidence from, 64-65 **Extraterritorial injunctions** by ACCC, 214-221 by ASEAN member countries, 261 Yazaki case, 239-240 Fair trading as objective of legislation, 120-122 False advertising claims "free range" eggs, 168-172, 277-278 False representation - see also Misleading or deceptive conduct implications of Chinese ruling, 155-156 Federal Trade Commission (US) antitrust investigations, 266-267 Franchising, 227-231 "Free range" eggs false advertising claims, 168-172, 277-278 "Full Harper" - see Harper Review of competition law Gas processing facilities third party access to, 103-113 Geographic names and indicators use of in marketing, 15-32

"Giving effect to" a provision Yazaki case, 238-239

Good faith removal of test from ACL, 42-43

(2016) 24 AJCCL 367

Guatemala competition law, 349

### Harper Review of competition law

enforcement under, 307-321 on cartel prohibition enforcement, 6-14 on National Access Regime, 53-56 proposed change to "purpose test", 114-145 recommendations by, 101, 242-253

### **High Court**

BHP Billiton access case, 111 on purpose of competition law, 116-117, 119-120, 126 on submissions as to penalties, 175-179

### HIH company collapse

liability issues, 195-196

# Honduras

competition law, 345-346

# Ihail booking app

authorisation sought by, 162-167

#### India

orders published by the Competition Commission of India, 336-338

# Indigenous community

partnerships with ACCC, 300-306

Indigenous Consumer Protection Network collaboration with ACCC, 301-302

# Indirect causation

concept of expanded, 195-196

Infringement notices NZ law changes, 92-93

Injunctions, extraterritorial – see Extraterritorial injunctions

# Intellectual property

US antitrust investigations, 270-271 use of geographic names in marketing, 15-32

# Intention - see Purpose test

Interlocutory orders extraterritorial injunctions, 214-215 in respect of competitive advertising, 84

### International trade

cartel penalty enforcement, 12-14 consumer protection in mobile commerce, 146-161 extraterritorial injunctions, 214-221

# Internet

connection speeds, 180-182 extraterritorial injunctions and, 214-221 US antitrust investigations, 271

Latin America competition law, 339-350

# Legitimate business purpose in competition law, 136-138

"Lemon" cars consumer protection from, 254-257

Liability issues Russian competition law, 189

Loyalty rebates in Australian law, 317 in European law, 316-317

# Margin squeezes

in Australian law, 315-316 in competition law, 279-299 in European law, 314-315

# Market

for taxi use, defining, 163

#### Market power

existing prohibitions on misuse, 308 margin squeezes as misuse of, 279-299 Russian competition law, 187 struggle with misuse of, 242-253

# Marketing

use of geographic names in, 15-32

#### Mergers

Competition Policy Review on, 72 Mexican law, 342 Russian competition law, 188 US antitrust cases, 268-269

Merits, competition based on in European law, 310

# Mexico

competition law, 340

# Misleading or deceptive conduct extraterritorial injunctions, 214-221 implications of Chinese ruling, 155-157

photography industry, 304 pleas involving, 272 telecommunications industry, 303-304 VET FEE-HELP funded courses, 302-303 Mobile commerce access speeds and, 180-182 consumer protection, 146-161 taxi booking application, 162-167

#### Monopolies

access regulation and, 222-226 attempts to address, 242-245 Chinese mobile commerce litigation, 150-152 US law on margin squeezes, 284-286

Multicollinearity submissions involving, 272

National Access Regime

access regulation under, 222-226 access to gas processing facilities, 103-113 NCC activities under, 77 Productivity Commission reviews, 71-72 response to reviews of, 53-58

National Competition Council 2015 activities, 77-81

National Gas Law applications NCC activities, 78-80

National Indigenous Consumer Strategy membership of, 302

Network effects taxi booking app, 164

# New South Wales

place names as marketing tools, 26-27 taxi service regulation in, 184

## New Zealand

competition cases, 88-96 effects test in competition law, 143-144 law on margin squeezes, 292

### Newcastle Shipping Channel access regime, 223-224

Northern Territory place names as marketing tools, 30-31

**Objective purpose** subjective purpose vs, 129, 248

Overconfidence bias in consumer law, 36-37

**Overseas conduct** – *see also* **International trade** cartel cases relating to, 326-331

# Paraguay

competition law, 349

#### Pecuniary penalties - see Penalties

#### Penalties

appropriate for deterrence, 169-171, 277-278 submissions as to amount, 173-179

Photography industry misleading and deceptive conduct cases, 304

Place names – *see* Geographic names and indicators

Politicians

ways of expressing ignorance, 101-102

Predatory pricing in Australian law, 313 in European law, 313 margin squeeze as, 281

Prescription medication consumer protection, 273

Price-fixing ANZ case, 62-65 Flight Centre case, 66-70

# Prices

contract terms setting, 46 Private litigation against cartel conduct, 197

**Procedural fairness** in telecommunications industry, 60-61

Production process defining for access regulation purposes, 105-111

Productivity Commission on National Access Regime, 53-56 proposed contract law reform, 39-40

Proscribed purpose in competition law, 136-138

Protected Cartel Information scheme appropriateness of, 197-213

Public enforcement for cartel conduct cases, 6-14

Public interest issues in cartel conduct litigation, 206-207 in National Access Regime, 56-57 submissions as to penalties, 175-179 taxi booking app, 163 taxi service regulation, 185

Purpose test effects test vs, 246-248 unilateral conduct and, 114-145

**Quantum of penalty** submissions as to, 171, 173-179

Queensland place names as marketing tools, 25-26

Rational choice theory in consumer law, 34-35

Rebates Full Court defines, 62-63

Reciprocal rights "contract as a whole" requirement, 48

Refusal to supply in Australian law, 318-319 in European law, 318 margin squeeze as, 281

Regulation costs of to consumers, 183-185

Regulatory Accounting Framework in telecommunications industry, 296

Retail industry in the ACT, 332-335

Russia competition law reform, 186-191

Selective discounting in Australian law, 313-314

111

Service defining for access regulation purposes, 105, 108-

"Significant imbalance" requirement in consumer law, 41-42

Small and medium enterprises (SMEs) in ASEAN member countries, 258-265 legislation to protect, 122-129

# Social media

ACCC partnerships with Indigenous communities, 301

# South Australia

place names as marketing tools, 28-29

Standard setting US antitrust investigations, 270-271 Subjective purpose objective purpose vs, 129, 248

**Substitutability of services** Full Court findings, 69

Supermarket chains - see Retail industry

"Taking advantage" test replaced by "effects test", 114-115, 306-308

**Tasmania** place names as marketing tools, 28

**Taxi booking services** authorisation sought for app, 162-167 regulatory regimes for, 183-185

**Telecommunications industry** competition notice guidelines, 59-61 misleading and deceptive conduct cases, 303-304 regulating margin squeezes in, 293-298

Third party access issues to gas processing facilities, 103-113

Trade associations in ASEAN member countries, 263-264

Trade marks place names and, 19-20

Transparency requirement excluded contract terms, 49

Tying of products or services – see Bundling arrangements

# Uber

regulatory regime for, 183-184

Unconscionable conduct implications of Chinese ruling, 157-159 marketing to Indigenous consumers, 304-305 use of language and, 273

Unfair conduct suit between Chinese mobile commerce companies, 149-150

**Unfair contract term legislation** proposed reform, 33-52

Unfair practices Russian competition law, 188-189

Unilateral conduct purpose test and, 114-145

# **United States**

antitrust enforcement in, 266-271 approach to margin squeezes, 284-286 private litigation against cartels, 204-205

Unsubstantiated representations NZ law prohibits, 93-95

**Upfront price payable** contract terms setting, 46

Uruguay competition law, 344-345

Vertical arrangements

Russian competition law, 187

# VET FEE-HELP funded courses

misleading and deceptive conduct cases, 302-303

# Victoria

place names as marketing tools, 27-28

Video services provision US antitrust investigations, 271

# Western Australia

place names as marketing tools, 29-30

# Wujal Wujal community

consumer protection for, 301-302

# "Your Rights Mob"

ACCC as, 300-306