
Index

Abuse of dominance

in Canada, 174

ACCC

CCA exemptions, 300–304
light-touch regulation of mobile
infrastructure, 33–39
recent successes, 198–212
response to mergers, 311

ACCC v Australian Competition Tribunal

failure to properly consider a party's case,
55–58

ACCC v Australian Egg Corp Ltd

whether a cartel was induced, 59–66

ACCC v Cement Australia Pty Ltd

judgement on liability and penalties,
121–126, 203–206

ACCC v Flight Centre Travel Group Ltd *see* Flight Centre case

ACCC v Yazaki Corp *see* Yazaki case

Access regimes *see also* National Access Regime

Queensland access regime, 285–286,
288–289

Accommodation sharing

apportioning liability in, 262–263
disclaimers in, 252–253
lack of guarantees in, 255–256
misleading or deceptive conduct in,
253–255
reform of, 259–264
regulation of, 247–264
unconscionable conduct in, 256–257
unfair contract terms and, 257–259

ACL *see* Australian Consumer Law

ACMA *see* Australian Communications and Media Authority

Administrative review

electricity supply industry, 161–173

Advertising

misleading or deceptive, 45–50, 306–308

AER *see* Australian Energy Regulator

Africa

market inquiries, 134–139

Air Cargo case

penalties, 199–200

Airbnb

disclaimers, 252–253
lack of guarantees, 255–256
misleading or deceptive conduct by,
253–255
reform of, 259–264
regulation in the sharing economy,
247–264
unconscionable conduct by, 256–257
unfair contract terms and, 257–259

American Express

antitrust case, 313–319

Anti-competition legislation *see* Competition law

Antisteering restrictions

US credit card laws, 313–319

Antitrust cases

credit cards in the US, 313–319
need for market definition in, 315–317

Antitrust investigations

in Colombia, 83–84
in Peru, 90–92

Argentina

competition law, 81–83

ASIC Act *see* Australian Securities and Investment Commission Act 2001 (Cth)

AusNet Transmission Group Pty Ltd

seeking review of the *AusNet Services*,
Transmission determination
2017–2022, 128

Australian Capital Territory

s 51(1) specific authorisations, 302

Australian Communications and Media Authority

countering spam, 15–18
regulating mobile infrastructure, 33–39

Australian Competition and Consumer Commission *see* **ACCC****Australian Competition Tribunal**

- 2017 activities, 127–128
- decisions regarding amended competition criterion, 285–290
- jurisdiction of and composition of, 127

Australian Consumer Law (Cth)

- consumer guarantees under, 253, 255–256, 305–306
- contract legislation under, 257–259, 276–284
- limitations on compensation orders, 67–68
- loss of reputation under, 245–246
- misleading or deceptive conduct under, 253–255
- regulation of the sharing economy, 247–264
- unconscionable conduct under, 3–4, 256–257

Australian Energy Market Commission

- gas supply industry regulation, 231–232

Australian Energy Regulator

- 2017 activities, 69–70

Australian Olympic Committee, Inc v Telstra Corp Ltd

- misleading associations in, 45–50

Australian Securities and Investment Commission Act 2001 (Cth)

- unfair contract term legislation, 276–284

Banking industry

- Banking Royal Commission, 131–133
- cartel conduct cases, 210–212
- South African inquiry into, 134–135

Baxt, Robert

- obituary, 129

Blockchain technology

- consortia, 269–273
- consumer protection regarding, 268–269
- economy-wide productivity gains from, 267
- investigation and enforcement relating to, 273–275
- issues in competition law, 265–275
- market power of digital platforms, 267–268
- response of incumbents to development of, 272–273

- risks and challenges of, 269–273
- role in cartels, 269–273
- role of trust in, 271–272
- smart contracts and, 270–271

Brazil

- competition law, 84–85

Building Consumer Sovereignty in Electronic Commerce: A Best Practice Model for Business

- avoiding scams using, 17

Building industry

- defective goods in, 292–294

Businesses

- impact of size on application of unfair contract term provisions, 276–284
- whether purpose of conduct is anti-competitive, 186–192

Canada

- abuse of dominance in, 174

Cartel conduct cases

- attempted inducement in, 59–66
- evolution of penalties, 198–212, 295–299
- in Mexico, 76–77
- in Peru, 90–92
- limits of cartel laws in, 65–66

Cartels

- contracts, arrangements and understandings in relation to, 24–27
- impossibility doctrine in relation to attempting or inciting, 29–31
- inchoate conduct under the CCA, 21–32
- role of blockchain technology in, 269–273

Channel Seven

- association with the Olympics, 47–49

China

- competition law in, 236–237

Codes of practice *see* **Industry codes****Coliban Heights Pty Ltd v Citisolar Vic Pty Ltd**

- consumer guarantees in, 305–308

Collective bargaining applications

- Independent Cinemas case, 193–197

Colombia

- competition law, 83–84

Commonwealth

s 51(1) specific authorisations, 302

Companies *see* **Businesses****Compensation orders**

limitations on, 67–68

Competition and Consumer Act 2010 (Cth)

(CCA) *see also* **National Access**

Regime

blockchain technology and, 265–275

cartel conduct under, 21–32, 59–66,
295–299

Competition Policy Review Act, 66

defining terminology within, 153–154

regulating competition in the

telecommunications industry, 51–54

s 46 *see* **Misuse of market power**

s 51(1) exemptions, 300–304

Competition and Consumer Commission of Singapore (CCCS)

response to merger of Uber and Grab,
309–312

Competition law *see also* **Cartel conduct cases; Consumer protection**

defining abuse of market power, 174

in China, 236–237

in Latin America, 75–92

in the telecommunications industry, 51–54

Independent Cinemas case, 195–196

Indian developments in, 71–74

Pfizer case appeal dismissed, 213–222

Competition Policy Reform Acts

exemptions from CCA under, 300–304

Conduct, characterising

Google case, 241

Construction industry

defective goods in, 292–294

Consumer protection

consumer guarantees, 95–96, 305–308

consumer participation in energy pricing,
164–166

issues with gift cards for insolvent
businesses, 97–113

New Zealand clamping down on Mobile
Traders, 140–152

regarding blockchain technology, 268–269

regulation in the sharing economy,
247–264

Contracts

in formation of cartels, 24–27

in the sharing economy, 257–259

small business contract legislation,
276–284

smart, 270–271

termination of, 305–306

Corporations

impact of size on application of unfair

contract term provisions, 276–284

whether purpose of conduct is anti-
competitive, 186–192

Costa Rica

competition law, 85–87

OECD Economical Report on, 85–87

Course of conduct principle

in Cement Australia case, 123

Credit cards

US laws, 313–319

Crownbet

in *ACCC v Australian Competition
Tribunal*, 55–58

Deceptive conduct *see* **Misleading or deceptive conduct****Declaration matters**

amendments to declaration criteria under
National Access Regime, 40–44,
285–290

Defective goods

appeals in cases against, 291–294

cases against, 118–120

Dick Smith

gift cards not honoured by, 97–113

Disclaimers

for sharing economy applications, 252–253

‘Dominance’, concept of *see* **Abuse of dominance****Effects test**

changes to legislation regarding, 51–54,
114–117, 130

Energy industry

administrative review, 161–173

market failure in, 233–235

South African inquiry into LPG, 136

year in review, 69–70

European Union

“abuse of dominance” test, 114–117
merger control cases, 238–239

Exclusionary rules

in cartel conduct cases, 295–299

Exclusive dealing

Pfizer case, 219–221

Externalities

electricity supply industry, 234–235

“Facility”

defining, 241

False representation *see* Misleading or deceptive conduct**Film industry**

Independent Cinemas case, 193–197

Finance industry *see* Banking industry**Fitness for purpose**

in the sharing economy, 255–256

Flight Centre case

penalties, 200–203, 223–227

Foreign jurisdictions

liability to prosecution for cartel conduct
in, 295–299

Gas supply industry

regulation of, 231–232

Gift cards

issues with gift cards for insolvent
businesses, 97–113
statutory priority, insurance and trust funds
to build security of, 106–111

Grab

merger with Uber, 309–312

Guatemala

competition law, 87–89

Healthcare industry

South African inquiry into, 135–136

Impossibility doctrine

defining in relation to cartels, 29–31

Independent Cinemas case

collective bargaining applications,
193–197

India

developments in competition law, 71–74

Industry codes

in telecommunications, 51–54
regarding spam and scams, 17–18

Insolvency

issues with gift cards after, 97–113

Intel Corp Inc v European Commission

misuse of market power in, 114–117

Intention *see* Purpose test**Internet *see* Online. . .****Latin America**

competition law, 75–92

Law reform

electricity pricing regime, 166–167
misuse of market power tests, 51–54,
114–117, 130
National Access Regime, 40–44, 229–231,
285–290

Liability issues

in cartel conduct cases, 295–299
in the sharing economy, 262–263

Limited Merits Review regime

electricity supply industry, 161–173

Market failure

electricity supply industry, 233–235

Market harm or benefit

in Cement Australia case, 123–125

Market inquiries

in Africa, 134–139

Market power *see also* Misuse of market power

defining abuse of, 174
of digital platforms, 267–268
pharmaceutical industry, 215–217
role in fulfilment of declaration criteria,
287–290

Media Tag

associating products with unrelated
companies, 245–246

Medical devices

defective, 118–119

“Mega-breaches” of the law

penalties for, 159–160

Mehta, Vikram

prosecution of, 148–151

Mergers

ACCC's response to, 311
 CCCS' response to merger of Uber and Grab, 309–312
 European Union regulations, 238–239
 in Colombia, 84
 in Mexico, 79
 Interim Measures Directions, 309–312
Re Tabcorp Holdings Ltd, 55–58, 127–128

Mexico

competition law, 76–79

Misleading or deceptive conduct

false information provided to merger review agency, 239–240
 implied association with products and companies, 45–50, 245–246
 “mega-breaches” of the law, 159–160
 online scams and spam, 5–20
 regarding consumer guarantees, 95–96
 regulation of the sharing economy, 253–255
 role of science in, 306–308

Misuse of market power

in the telecommunications industry, 51–54
 tests of, 51–54, 114–117, 130

Mobile infrastructure

appropriateness of light-touch regulation, 33–39
 declarations of wholesale roaming services, 35–36
 Mobile Black Spots Program, 34–35
 regulators, 33
 spectrum regulation, 37–38
 TPG as a new entrant, 34

Mobile Traders (Truck Shops)

New Zealand clamping down on, 140–152

Monopolies

role in fulfilment of declaration criteria, 287–288

Multi-sided market

defining, 316–317

National Access Regime

reforms to, 40–44, 229–231, 285–290

National Competition Council

recommendations regarding amended competition criterion, 285–290
 work in 2017–2018, 228

National Electricity Market *see* **Energy industry****National Energy Guarantee**

market failure in, 233–235

NDRs (non-discrimination rules) *see* **Antisteering restrictions****New South Wales**

s 51(1) specific authorisations, 302

New Zealand

clamping down on Mobile Traders, 140–152

Nippon Yusen Kabushiki Kaisha case

penalties, 207–210

Non-discrimination rules (NDRs) *see* **Antisteering restrictions****Northern Territory**

s 51(1) specific authorisations, 303

Obituary

Robert Baxt, 129

OECD

Economical Report on Costa Rica, 85–87

Ohio v American Express

appeal, 313–319

Online information

scams and spam, 5–20

Online transactions *see also* **Blockchain technology**

regulation in the sharing economy, 248–264

Organisation for Economic Co-operation and Development *see* **OECD****Penalties**

evolution of, 198–212
 for cartel conduct, 295–299
 for “mega-breaches” of the law, 159–160
 for price-fixing, 223–227
 joint and several penalties in *ACCC v Cement Australia Pty Ltd*, 121–122

Peru

competition law, 90–92

Pfizer case

appeal dismissed, 213–222

Pharmaceutical industry

- misleading or deceptive conduct in, 306–308
- Pfizer case appeal dismissed, 213–222
- Pharmaceutical Benefits Scheme, 214–215

Port of Newcastle Operations Pty Ltd v Australian Competition Tribunal

- declaration criteria in, 43–44, 228–229

Price fixing

- increased penalties, 223–227

Purpose test

- Australia-Canada comparison, 186–192
- Pfizer case, 217–219, 220
- reforms to, 51–54, 114–117

Queensland

- access regime, 285–286, 288–289
- s 51(1) specific authorisations, 303

R v Hourmouzis

- role of spam in, 19–20

The Real Thing Food Supplements CC v Media Tag Pty Ltd

- associating products with unrelated companies, 245–246

Reckitt Benckiser (Australia) Pty Ltd v GlaxoSmithKline Australia Pty Ltd

- misleading or deceptive conduct in, 306–308

Regulation *see also* Access regimes

- appropriateness of light-touch for mobile infrastructure, 33–39

Remedies

- limitations on compensation orders, 67–68

Renewable energy supplies

- market disrupted by, 234

Reputation

- implied association with products and companies, 45–50, 245–246

Restraint of trade clauses

- in Guatemala, 88–89

Retail industry

- South African inquiry into, 137–138

“Return and Earn” scheme

- anti-competitive aspects of, 301
- exemption from CCA, 304

Ride sharing

- apportioning liability in, 262–263
- disclaimers in, 252–253
- lack of guarantees in, 255–256
- misleading or deceptive conduct in, 253–255
- reform of, 259–264
- regulation of, 247–264
- unconscionable conduct in, 256–257
- unfair contract terms and, 257–259

Scams

- legal measures to stem, 5–20

Sharing economy

- apportioning liability in, 262–263
- disclaimers in, 252–253
- lack of guarantees in, 255–256
- misleading or deceptive conduct in, 253–255
- reform of, 259–264
- regulation of, 247–264

Singapore

- response to merger of Uber and Grab, 309–312

Small business contract legislation

- applying to large businesses, 276–284

Smart contracts

- addition to blockchains, 270–271

South Africa

- market inquiries, 134–139

South Australia

- s 51(1) specific authorisations, 303

Spam

- legal measures to stem, 5–20

Spam Act 2003 (Cth)

- provisions of, 15–16

State Administration for Market Regulation (China)

- formation of, 236–237

Substantial lessening of competition test *see* Effects test**“Substantiality”**

- in anti-competitive conduct, 182–184

Supermarket chains *see* Retail industry

- Sydney Airport Corp Ltd v Australian Competition Tribunal***
 declaration criteria in, 41–42
- Tabcorp case***
 authorisation of mergers in, 127–128
- Re Tabcorp Holdings Ltd***
 failure to properly consider a party's case, 55–58
- 'Taking advantage' test**
 changes to legislation regarding, 51–54, 114–117
- Tasmania**
 s 51(1) specific authorisations, 303
- Telecommunications industry** *see also*
Mobile infrastructure
 association with the Olympics, 45–50
 regulating competition, 51–54
 South African inquiry into, 136–137
- Telstra** *see* **Telecommunications industry**
- Threshold market power requirement**
 in defining abuse, 180–182
- Transport industry** *see also* **Ride sharing**
 South African inquiry into, 138
- Truck Shops** *see* **Mobile Traders**
- Two-sided market**
 defining, 316–317
- Uber**
 disclaimers, 252–253
 lack of guarantees, 255–256
 merger with Grab, 309–312
 misleading or deceptive conduct by, 253–255
 reform of, 259–264
 regulation in the sharing economy, 247–264
 unconscionable conduct by, 256–257
 unfair contract terms and, 257–259
- Unconscionable conduct**
 defining, 3–4
 in the sharing economy, 256–257
- Unfair contract term legislation**
 application to large businesses, 276–284
 in the sharing economy, 257–259
- United Kingdom**
 protection for gift card consumers in, 103–104
- United Nations Guidelines for Consumer Protections***
 regulation of the sharing economy, 248–264
- United States**
 laws regarding credit cards, 313–319
 protection for gift card consumers in, 103
- Uruguay**
 competition law, 79–81
- Vertical arrangements**
 US credit card laws, 313–319
- Victoria**
 s 51(1) specific authorisations, 303
- Vodafone India Ltd v Competition Commission of India***
 clarification of Indian competition law by, 71, 73–74
- Warranties**
 interpretation of, 293–294
 legality of differing from consumer guarantees, 95–96
- Waste Avoidance and Resources Recovery Act Amendment (Container Deposit Schemes) Act 2016 (NSW)***
 exemption from CCA, 301, 304
- Websites** *see* **Online...**
- Western Australia**
 s 51(1) specific authorisations, 304
- Woolworths**
 associating products with unrelated companies, 245–246
- Yazaki case**
 penalties, 206–207, 295–299

