
Index

Access regimes

- exemption orders in relation to, 178-183
- mobile terminating *see* **Mobile terminating access service**
- National Competition Council review, 108-109
- Trade Practices Act*, under
 - access to services, 222
 - amendments, 222-225
 - telecommunications access regime, 222

Accessory

- misleading or deceptive conduct, to
 - liability as, 172

Advertisements

- property investment strategies, for
 - misleading or deceptive representations, 163-174

Advertising agency

- misleading or deceptive conduct by
 - Cassidy v Saatchi*, 102-106

Anticompetitive conduct *see* Antitrust

Antitrust

- German position *see* **Germany**
- intellectual property and, relationship between, 131-148
 - cases, 133-135
 - Copyright Law Review Committee report, 144
 - Dawson Committee report (2003), 147
 - Ergas Committee report, 144-147
 - EU position, 136-138
 - Hilmer Committee report, 142
 - legislation, 131
 - National Competition Council recommendations, 143
 - reform, suggestions for, 142-147
 - Shane Simpson's report, 142-143
 - US position, 135-136
- US policy *see* **United States**

Argentina

- consumer protection in, 120

Asher, Allan

- TPC Deputy Commissioner, 217

Audiovisual Copyright Society Ltd (AVCS)

- collecting society role, 138

Australasian Performing Right Association Ltd (APRA)

- collecting society role, 138

Australian Competition and Consumer Commission (ACCC)

- Commissioners, 217-221

Index

- Bhojani, Sitesh, 217-218
- Cousins, David, 219
- Jones, Ross, 219-220
- King, Stephen, 220
- Lieberman, David, 218
- McNeill, Jennifer, 220
- Martin, John, 220
- Shogren, Rodney, 219
- Smith, David, 220
- Smith, Rhonda, 218
- Willett, Ed, 220
- Australian Competition Tribunal**
 - disqualification of member
 - reasonable apprehension of bias, for, 110-113
- Australian Mechanical Copyright Owners Society Ltd (AMCOS)**
 - collecting society role, 138
- Australian Screen Directors Authorship Collecting Society (ASDACS)**
 - collecting society role, 139
- Australian Writers Guild Authorship Collecting Society (AWGACS)**
 - collecting society role, 139
- Barristers**
 - misleading or deceptive conduct
 - "in trade or commerce", 10
- Bhojani, Sitesh**
 - ACCC Commissioner, 217-218
- Brazil**
 - consumer protection in, 121
- Broadcasting**
 - convergence, impact on, 24-33, 38-39
 - legislation, 24-25
 - Productivity Commission Report, 38-39
 - service *see* **Broadcasting services**
- Broadcasting services**
 - carriage services, 26, 30
 - content service, 27
 - datacasting, 32-33
 - delivery, concept of, 26
 - different, 33
 - electronic publishing, 28
 - internet streaming, 29-30
 - internet telephony, 30-31
 - near video on demand services, 31
 - on-demand services, 26-27
 - online services, 28-29
 - point-to-multipoint services, 26-27

point-to-point services, 26-27
program, definition, 27
radio programs, 27
regulation, degrees of, 33-34
teletext services, 28
television programs, 27
traditional, 33
video on demand services, 31

Bundling

ACCC v Baxter Healthcare, 226-231
Crown immunity, 230-231
exclusive dealing, 230
misuse of market power, 228-229

Christian Copyright Licensing Asia-Pacific Pty Limited

collecting society role, 139

Coad, William

TPC Deputy Commissioner, 217

Coercion

meaning, 64

Collective bargaining

notification provisions

Trade Practices Legislation Amendment Bill 2004, 43-45

Companies

disqualification from managing

Trade Practices Legislation Amendment Bill 2004, 47-48

indemnification of company officers, employees or agents

Trade Practices Legislation Amendment Bill 2004, 48

misleading or deceptive conduct

communications with shareholders, in, 11-14

Competition

anticompetitive conduct *see* **Antitrust**

Germany, in *see* **Germany**

quantitative analysis, use of in competition cases *see* **Quantitative analysis**

substantially lessening, meaning of, 63

Consultants

misleading or deceptive conduct

“in trade or commerce”, 9

Consumer contracts

unfair terms in *see* **Unfair terms in consumer contracts**

Consumer protection

Argentina, in, 120

Brazil, in, 121

MERCOSUR, in, 120-122

Paraguay, in, 122

Uruguay, in, 122

Convergence

- broadcasting sector, in, 24-33, 38-39
- corporate, 23
- datacasting, 32-33
- electronic publishing, 28
- EU reforms, 34-36
- forms of, 22-24
- impact of, 38-39
- internet
 - content, 28-29
 - streaming, 29-30
 - telephony, 30-31
- near video on demand services, 31
- network, 22
- online services, 28-29
- service, 23
- technology facilitating
 - digital technology, 21
 - internet, 22
 - transmission infrastructure, 22
- telecommunications sector, in, 25, 39
- teletext services, 28
- video on demand services, 31
- what is, 20

Copyright Agency Ltd (CAL)

- collecting society role, 138

Copyright collecting societies

- AMCOS, 138
- APRA, 138
- ASDACS, 139
- AVCS, 138
- AWGACS, 139
- CAL, 138
- Christian Copyright Licensing, 139
- Ergas Committee report, 145-146
- licensing, forms of, 139-142
 - blanket licences, 139
 - licence scheme, definition, 139
- Licensing, 139
- PPCA, 138
- Shane Simpson's report, 142-143
- statutory licensing, 139-142
- Vi\$copy, 139
- voluntary licensing, 139

- Word of Life, 139
- Copyright Law Review Committee**
 - Copyright Tribunal
 - report on procedure and jurisdiction, 144
- Copyright Tribunal**
 - Copyright Law Review Committee
 - report on procedure and jurisdiction, 144
- Cousins, David**
 - ACCC Commissioner, 219
- Crown immunity**
 - bundling and, 230-1
- Damages**
 - misleading or deceptive conduct, for
 - ascertaining date of assessment, 150-162
 - assessment of, 54-58
- Datacasting**, 32-33
- Dawson Committee**
 - intellectual property rights report (2003), 147
 - trade practices legislation reforms *see* **Trade Practices Legislation Amendment Bill 2004**
- Defective goods (s 75AD TPA)**
 - recent decisions, 50-53
- Digital technology**
 - convergence, facilitating, 21
 - digitalisation, 21
- Disqualification**
 - Australian Competition Tribunal member, of
 - reasonable apprehension of bias, for, 110-113
 - managing corporations, from
 - Trade Practices Legislation Amendment Bill 2004*, 47-48
- Electronic communications**
 - networks, 37
 - regulation of, 36-38
 - services, 37
- Electronic publishing**
 - broadcasting service, as a, 28
- Employers**
 - misleading or deceptive conduct
 - “in trade or commerce”, 10-11
- Energy sector**
 - National Competition Policy, in relation to, 107
- Ergas Committee**
 - intellectual property rights
 - report regarding, 144-147
- European Union**
 - antitrust and intellectual property

Index

- relationship between, 136-138
 - convergence reforms, 34-36
 - electronic communications, regulation of, 36-38
 - mergers in
 - prenotification referral procedures, 186-188
 - Treaty Establishing the European Community, 244-248
- Exclusionary provisions**
 - joint venture defence
 - Trade Practices Legislation Amendment Bill 2004*, 45-46
- Exclusive dealing (s 47 TPA)**
 - bundling and, 230
- False or misleading representations**
 - real estate agents, by
 - property price guides, in relation to, 175-178
- Germany**
 - competition law, amendments to, 244-248
 - anticompetitive agreements, 245-246
 - derivative proceedings, 247
 - enforcement, 246-247
 - market definition, 245
 - mergers and acquisitions, 246
 - restrictive practices, 246
- Goods**
 - software, classification as *see* **Software**
- Government entities**
 - misleading or deceptive conduct
 - “in trade or commerce”, 15
- Grant, John**
 - TPC Commissioner, 217
- Haddad, Morris**
 - TPC Commissioner, 215-215
- Harassment**
 - meaning, 64
- Hilmer Committee report**
 - intellectual property rights, 142
- Indemnity**
 - company officers, employees or agents, for
 - Trade Practices Legislation Amendment Bill 2004*, 48
- Intellectual property**
 - antitrust and, relationship between *see* **Antitrust**
- Internet**
 - advertising
 - misleading or deceptive representations, 163-173
 - content, definition, 28-29
 - convergence, facilitating, 21

- streaming, 29-30
- telephony, 30-31
- Internet advertising**
 - misleading or deceptive representations
 - property investment strategies, 163-173
- Jones, Ross**
 - ACCC Commissioner, 219-220
- King, Stephen**
 - ACCC Commissioner, 220
- Land acquisition**
 - misleading or deceptive conduct
 - ascertaining loss, 161
- Licensing**
 - collecting society role, 139
- Lieberman, David**
 - ACCC Commissioner, 218
- Limitation periods**
 - actions for damages
 - ascertaining time of loss, 150-162
- Loss**
 - misleading or deceptive conduct, for
 - ascertaining time of *see* **Misleading or deceptive conduct**
- McComas, William Robert (Bob)**
 - obituary, 184
- McConnell, Jim**
 - TPC Commissioner, 214-215
- McNeill, Jennifer**
 - ACCC Commissioner, 220
- Market**
 - definition, in Germany, 245
 - dominance, in Germany, 246
 - power, misuse of *see* **Misuse of market power**
- Market power**
 - misuse of *see* **Misuse of market power**
- Martin, John**
 - ACCC Commissioner, 220
- Medical practitioners**
 - misleading or deceptive conduct
 - “in trade or commerce”, 10
- Merchantable quality (s 74D TPA)**
 - recent decisions, 50-53
- Mergers**
 - authorisation process
 - Trade Practices Legislation Amendment Bill 2004*, 42-43
 - EU, in

Index

- prenotification referral procedures, 186-188
- Germany, in, 246
- US, in
 - asset swaps, 114-119
 - payments-in-kind, 116-117
 - per se standard, review of, 114-116
- voluntary formal merger clearance process
 - Trade Practices Legislation Amendment Bill 2004*, 41-42
- Misleading or deceptive conduct**
 - accessory, liability as, 172
 - advertisements
 - property investment strategies, for, 163-174
 - advertising agency, by
 - Cassidy v Saatchi*, 102-106
 - damages
 - ascertaining date of assessment, 150-162
 - assessment of, 54-58
 - “in trade or commerce”, meaning, 6-19, 173
 - barristers, conduct of, 10
 - companies and shareholders, communications between, 11-14
 - Concrete Constructions v Nelson*, 6-8, 173
 - consultants, conduct of, 9
 - employers, conduct of, 10-11
 - Full Federal Court decisions, 17-19
 - government entities, conduct of, 15
 - medical practitioners, conduct of, 9
 - politicians, conduct of, 14
 - professional advisers, conduct of, 8-10
 - public officials, 14-17
 - solicitors, conduct of, 8-10
 - universities, 15-16
 - internet advertising
 - property investment strategies, 163-173
 - land acquisitions, in
 - ascertaining loss, 161
 - land sales, in
 - real estate agents, by, 175-178
 - loss, ascertaining time of, 149-162
 - actual loss, 150-152
 - capital value, loss of, 155-156
 - consequential loss, 155-156
 - contingent loss, 152-154, 156-158
 - existing loss, 153
 - fraud or illegal conduct, loss concealed by, 159-160
 - limitation periods, 150-162

- prospective loss, 153, 157
- reasonably ascertainable, 154
- trading losses, 155-156
- newspaper advertising
 - property investment strategies, 163-173
- property investment strategies, advertisements for, 163-174
 - corrective advertising, 173-174
 - future matters, representations as to, 169
 - “in trade or commerce”, 173
 - non-future representations, 171
 - reasonable grounds, 169-170
 - remedies, 173
- radio advertising
 - property investment strategies, 163-173
- real estate agents, by
 - property price guides, 175-178
- sale of business, in
 - ascertaining loss, 154-156
- Misuse of market power (s 46 TPA)**
 - bundling and, 228-229
- Mobile terminating access service (MTAS)**
 - Fully Allocated Cost model, 101
 - marginal cost pricing, 98-99
 - models of, 99-101
 - Ramsey pricing, 99-100
 - Total Service Long Run Incremental Cost models, 100-101
 - waterbed effects, 100
 - what is, 98
- National Competition Council**
 - access matters, consideration of, 108-109
 - Gas Code matters, 109
 - intellectual property rights
 - recommendations regarding, 143
 - National Competition Policy assessment, 107-108
 - policy development, 108
- National Competition Policy**
 - energy sector, in relation to, 107
 - National Competition Council assessment, 107-108
 - water sector, in relation to, 107-108
- Newspaper advertising**
 - misleading or deceptive representations
 - property investment strategies, 163-173
- Offer**
 - meaning, 63-64

Paraguay

consumer protection in, 122

Penalties

judicial scrutiny of penalty agreements, 59-62

matters to consider, 64

Trade Practices Legislation Amendment Bill 2004

disqualification orders, 47-48

increase in, 47

Pengilley, Warren

TPC Commissioner, 214-216

Phonographic Performance Co of Australia Ltd (PPCA)

collecting society role, 138

Politicians

misleading or deceptive conduct

“in trade or commerce”, 14

Price fixing provisions

fixing, meaning, 63

joint venture defence

Trade Practices Legislation Amendment Bill 2004, 45-46

Professional advisers

misleading or deceptive conduct

“in trade or commerce”, 8-10

Property investment strategies

misleading or deceptive representations in advertisements, 163-174

Public officials

misleading or deceptive conduct

“in trade or commerce”, 14-17

Quantitative analysis

competition cases, in, 90-97

admissibility, 93-94

AGL v ACCC, 96-97

court’s assessment of, 94-95

difficulties of, 92

overseas experience with, 92-93

Radio advertising

misleading or deceptive representations

property investment strategies, 163-173

Real estate agents

price guides

false or misleading representations, 175-178

misleading or deceptive conduct, 175-178

Representations

false or misleading *see* **False or misleading representations**

future matters, as to, 169

misleading conduct *see* **Misleading or deceptive conduct**

Sale of business

- misleading or deceptive conduct
 - ascertaining loss, 154-156

Shareholders

- misleading or deceptive conduct
 - company communications, in, 11-14

Shogren, Rodney

- ACCC Commissioner, 219

Simpson, Shane

- collecting societies, report regarding, 142-143

Smith, David

- ACCC Commissioner, 220

Smith, Rhonda

- ACCC Commissioner, 218

Software

- goods, classification as, 232-234
 - Amlink* case, 233-234
 - UK position, 233
 - US position, 232

Solicitors

- misleading or deceptive conduct
 - “in trade or commerce”, 8-10

Substantially lessening competition

- meaning, 63

Telecommunications

- access to services
 - exemption orders in relation to, 178-183
 - legislation, 222
 - MTAS *see* **Mobile terminating access service**
- carriage service
 - definition, 26
 - provider, definition, 30
- carrier, definition, 30
- communications definition, 25
- content service
 - definition, 27
 - providers, 31
- convergence, impact of, 25, 39
- internet telephony, 30-31
- legislation, 25
- MTAS *see* **Mobile terminating access service**
- video on demand services, 31

Third line forcing

- competition test, introduction of
 - Trade Practices Legislation Amendment Bill 2004*, 46

Index

related companies, treatment of
Trade Practices Legislation Amendment Bill 2004, 46

Trade Practices Commission (TPC)

Commissioners, 214-215, 220-221

Grant, John, 217

Haddad, Morris, 215

McConnell, Jim, 214-215

Pengilley, Warren, 214-216

Venturini, George, 214-217

Deputy Chairmen

Asher, Allan, 217

Coad, William, 217

Trade Practices Legislation Amendment Bill 2004

collective bargaining notification, 43-45

exclusionary provisions

joint venture defence, 45-46

indemnification of officers, employees or agents, 48

merger authorisation process, 42-43

penalties

disqualification orders, 47-48

increase in, 47

price fixing provisions

joint venture defence, 45-46

summary of, 40-41

third line forcing

competition test, 46

related companies, treatment of, 46

voluntary formal merger clearance process, 41-42

Unconscionable conduct

Contracts Review Act 1980 (NSW), under, 78-82

Trade Practices Act (s 51AB), under, 82-84

unfair terms in consumer contracts, 70-72, 76-85

inequality of bargaining power, 77-78

special disadvantage, 71, 77

Unfair terms in consumer contracts

Contracts Review Act 1980 (NSW), 78-82

unjust, definition, 78

present position, 70

reform

need for, 72-76

objective standard, 73

suggestions for, 208-212

standard form contracts, 74-76

UK position *see* **United Kingdom**

unconscionable conduct, 70-72, 76-85

-
- Trade Practices Act* (s 51AB), under, 82-84
 - Victorian position, 85-89, 195, 203-208
 - advisory opinion by Tribunal, 206
 - assessment of unfair terms, 204-205
 - consumer, definition, 203
 - consumer contract, definition, 203
 - consumer documents, clarity of, 208
 - declaration by Tribunal, 206
 - documents and information, power to obtain, 206-207
 - effect of unfair term, 203, 207
 - enforcement, 206-207
 - exclusions, 205
 - good faith, 204
 - injunctions, 206
 - offences, 205
 - prescribed unfair term, definition, 204
 - standard form contract, definition, 204
 - unfair term, what constitutes, 204
 - United Kingdom**
 - software
 - classification as “goods”, 233
 - unfair terms in consumer contracts, 85-89, 195-203
 - application, 195
 - assessment, 86, 199
 - choice of law, 195
 - complaints, 199-200
 - consumer, definition, 195
 - definition, 195
 - documents and information, power to obtain, 200-201
 - effect of, 88, 198
 - enforcement, 199
 - good faith, 196
 - injunctions, 201
 - seller or supplier, definition, 195
 - undertakings, 202
 - what constitutes, 86-88, 196-198
 - written contracts, 199
 - United States**
 - antitrust and intellectual property
 - relationship between, 135-136
 - antitrust policy, 238-243
 - coordinated effects theory, 241-243
 - unilateral effects theory, 239-241
 - mergers in, in
 - asset swaps, 114-119

Index

- payments-in-kind, 116-117
- per se standard, review of, 114-116
- software
 - classification as “goods”, 232
- Universities**
 - misleading or deceptive conduct
 - “in trade or commerce”, 15-16
- Uruguay**
 - consumer protection in, 122
- Venturini, George**
 - TPC Commissioner, 214-217
- Video services**
 - broadcasting service, whether
 - near video on demand, 31
 - video on demand, 31
- Vi\$copy Ltd**
 - collecting society role, 139
- Water sector**
 - National Competition Policy, in relation to, 107-108
- Willett, Ed**
 - ACCC Commissioner, 220
- Word of Life Pty Ltd**
 - collecting society role, 139