

TRADE PRACTICES LAW JOURNAL

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EDITORIAL

A reality check	243
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ARTICLES

The ACCC enforcement perspective on serious cartel conduct – Graeme Samuel

Criminal sanctions for hardcore cartel conduct are now law and the Australian Competition and Consumer Commission (ACCC) takes the view that whenever possible serious cartel conduct should be prosecuted criminally. The parallel criminal and civil regime for cartel conduct will ensure that serious cartel conduct can be prosecuted criminally while less serious breaches can be pursued under the civil prohibition. For serious cartel conduct, the ACCC would only be willing to commence negotiations for a resolution of an investigation through a civil penalty proceeding after the possibility of a criminal prosecution has been ruled out.	244
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The failing firm: Its place under Australian merger control – Dave Poddar

This article discusses the origin and nature of the failing firm defence in merger cases. It examines the development of the failing firm defence in the United States, and contrasts the position in Australia. The Australian Competition and Consumer Commission's (ACCC) approach to mergers involving failing firms is examined in detail by reference to recent cases, including recent bank mergers. The article outlines current ACCC guidance and suggests that failing firm mergers are likely to be assessed in line with that guidance in future. The article compares the ACCC's approach to failing firm mergers with that of United Kingdom and United States regulators. It focuses particularly on the treatment of bank mergers involving "failing" and "flailing" firms, and assesses the impact of the global financial crisis on aspects of merger control. The article concludes that, although failing firm arguments may become more prevalent, the ACCC will continue to limit the application of the failing firm argument, including its application in the financial sector.	252
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AUTHORISATIONS AND NOTIFICATIONS – Charles Coorey

The ACCC's latest no fly zone – Air New Zealand and Air Canada's co-operation agreement and the ACCC's consideration of Virgin Blue and Delta's joint venture	261
---	------------

ENFORCEMENTS AND REMEDIES – Peter Doherty

Criminal cartels – practical issues	266
--	------------

RESTRICTIVE TRADE PRACTICES – John Duns

The international freight cartel cases and Australian markets	272
--	------------

UNCONSCIONABLE CONDUCT AND CODES OF CONDUCT – Frank Zumbo

The case for enhancing the federal unfair contract terms framework	276
---	------------

CASE NOTE – <i>Julie Soars</i>	
Avoiding unintentional admissions which can be used in criminal proceedings	283
COMMISSION CAMEOS – <i>Hank Spier</i>	
A “mature” Trade Practices Act needs some fine tuning in some core areas	287
REPORT FROM NORTH AMERICA – <i>Christopher J Pleatsikas</i>	
Changes in antitrust policy concerning unilateral conduct	294
<hr/>	
VOLUME 17 – 2009	
Table of Authors	303
Table of Cases	307
Index	315

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 - ² Hayton, n 1, p 286.
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