

TRADE PRACTICES LAW JOURNAL

Volume 18, Number 1

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EDITORIAL

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ARTICLES

The arbitrariness of TPA claims: To stay or not to stay? – *Leanne Rich*

Whether an Australian court will stay domestic proceedings involving a claim under an Australian statute, such as the Trade Practices Act 1974 (Cth), in favour of a foreign arbitration or foreign exclusive jurisdiction clause has been the subject of conflicting authorities. These decisions reflect the difficulty in balancing the competing public interests in promoting freedom of contract and alternative dispute resolution against the enforcement of a public benefit statute. Recent case law has shed light on these matters. While the trend is to favour the grant of a stay, and to interpret such contractual clauses broadly, whether a stay will be granted in any particular case will depend on the nature of the statutory claim being brought.	7
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Section 52 and the regulation of non-commercial speech – *Bernard McCabe*

The requirement that misleading or deceptive conduct occur “in trade or commerce” before it is actionable is an important limit on the operation of s 52 of the Trade Practices Act 1974 (Cth) and its equivalent State legislation. The line between commercial and non-commercial speech is not always easy to draw, not least because speech with a non-commercial motivation might have commercial implications. If the limitation is interpreted too narrowly, consumers may be denied the protection intended by the statute. If the limitation is drawn too broadly, it might have the effect of chilling legitimate speech in relation to religious, ideological or cultural matters. This article explores the way in which the courts have struggled with this challenge, and suggests a common sense approach to future claims.	21
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Don’t bank on bank competition: The case for effective laws against anti-competitive mergers and creeping acquisitions – *Frank Zumbo*

With the fast growing dominance of the four major Australian banks, there are serious concerns regarding the rapidly diminishing level of competition in the Australian banking sector. From a competition law perspective, this raises important issues regarding the potential ineffectiveness of Australia’s anti-merger laws in dealing with the relentless merger and acquisition strategies of the four major banks. With the Australian Competition and Consumer Commission approving around 97% of the mergers and acquisitions it considers, there is a real and present danger that the current s 50(1) of the Trade Practices Act 1974 (Cth) is allowing far too many mergers and acquisition to proceed, especially in the banking sector. This is detrimental to competition and consumers because it allows the remaining large and powerful firms in those markets to exercise pricing power to push up prices at will. Another challenge is dealing effectively with creeping acquisitions, which are particularly dangerous because they involve the piecemeal destruction of competition through stealth. This article will consider the operation of Australia’s current anti-merger laws within the context of the Australian banking sector and discuss possible legislative

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