

# TRADE PRACTICES LAW JOURNAL

Volume 18, Number 3

September 2010

## EDITORIAL

**As a bonus, bear the onus** ..... 151

## ARTICLES

**Australia's new cartel laws: Time for a hard, fresh look at compliance** – *Siobhan Caitlin Sweeney*

In July 2009, a new legal regime governing cartel conduct was introduced in Australia. At the heart of the new regime are cartel offences attracting substantial criminal penalties, increasing the likelihood that cartel conduct will be detected and prosecuted. At the same time, the prospect of declining profits in the current economic environment makes cartel conduct more tempting for managers striving to achieve financial targets. For these reasons, it is critical that companies review their compliance systems and procedures to ensure their effectiveness is maximised and to reduce the risk that cartel conduct occurs or goes undetected by the company. This article outlines the recent amendments made to the Trade Practices Act 1974 (Cth) by the Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009 (Cth). It argues that, in light of these amendments, it is timely that companies take a fresh look at their approach to compliance. Specific recommendations are made in relation to the design and implementation of compliance programs so as to maximise the prospects of preventing, detecting and responding to cartel conduct. .... 153

**The Baxter saga: The role of competition law in government procurement** – *Erica Brooke Taylor*

This article considers the epic battle between the Australian Competition and Consumer Commission and Baxter Healthcare Pty Ltd and its impact on the entitlement of the Crown to immunity from the application of the Trade Practices Act 1974 (Cth). The ramifications of the Baxter litigation on the practices of private enterprises when contracting with the Crown and its emanations in the government procurement market is also examined. .... 188

**The grant of exemptions to Telstra: Lessons to be learned** – *Thomas Jones and Malcolm Leong*

This article examines the decisions in 2009 by the Australian Competition Tribunal to grant ordinary individual exemptions to Telstra Corporation Ltd. The decisions exempt Telstra from the standard access obligations in respect of certain declared services under the telecommunications access regime. The authors first provide a brief outline of the exemption decisions made by the Tribunal under s 152AW of the Trade Practices Act 1974 (Cth), before analysing some issues arising out of the Tribunal's decisions. .... 200

ACCESS TO SERVICES

<b>At what cost expedition? Reactions to the Trade Practices Amendment (Infrastructure Access) Bill 2009 – Will Turtle .....</b>	<b>212</b>
--	------------

CASE NOTE

<b>Sweat the small stuff: Non-notified third line forcing will be prosecuted – Calum Henderson and Christopher Marsh .....</b>	<b>217</b>
--	------------

ECONOMIC(S) MATTERS

<b>The economics of “creeping acquisitions” – Alex Sundakov .....</b>	<b>220</b>
---	------------

COUNCIL CONSIDERATIONS

<b>The Council’s work under the National Gas Law in 2009/2010 – Natalie Naylor .....</b>	<b>224</b>
--	------------

# Submission requirements

All contributions to the journal are welcome and should be emailed to the Production Editor, *Trade Practices Law Journal*, at [LTA.tplj@thomsonreuters.com](mailto:LTA.tplj@thomsonreuters.com) for forwarding to the Editor.

## Licences

- It is a condition of publication in the journal that contributors complete a licence agreement. Licence agreements can be downloaded at [http://www.thomsonreuters.com.au/support/as\\_contributors.asp](http://www.thomsonreuters.com.au/support/as_contributors.asp) and emailed with the submission or mailed separately to the Production Editor, *Trade Practices Law Journal*, Thomson Reuters (Professional) Australia Limited, PO Box 3502, Rozelle, NSW 2039.

## Letters to the Editor

- By submitting a letter to the Editor of this journal for publication, you agree that Thomson Reuters, trading as Lawbook Co, may edit and has the right to, and may license third parties to, reproduce in electronic form and communicate the letter.

## Manuscript

- Manuscript must be original, unpublished work that has not been submitted or accepted for publication elsewhere, including for online publication.
- Personal details (name, qualifications, position) for publication and a delivery address, email address and phone number must be included with the manuscript on a separate page.
- Manuscript must be submitted electronically via email in Microsoft Word format.
- Manuscript should not exceed 7,000 words for articles or 3,000 words for section commentary or book reviews.
- An abstract of 100-150 words must be included at the head of articles.
- Authors are responsible for the accuracy of case names, citations and other references. Proof pages will be emailed to contributors but excessive changes cannot be accommodated.
- **Graphics** (diagrams and graphs) to be grayscale; in .jpeg format; no more than 12 cm in width; within a box; of high resolution (at least 300 dpi); font is to be Times New Roman, no more than 10pt. The heading for a graphic should be placed outside the box.

## Peer review

- This journal complies with the Higher Education Research Data Collection (HERDC) Specifications for peer review. Each article is, prior to acceptance, reviewed in its entirety by a suitably qualified expert who is independent of the author.

## Style

1. **Levels of headings** must be clearly indicated (no more than four levels).
2. **Unpointed style** is to be used – there are no full stops after any abbreviation or contraction.
3. **Cases:**
  - Where a case is cited in the text, the citation follows immediately after the case name, not as a footnote.
  - Authorised reports must be cited where published, and one other reference can be used in addition.
  - For “at” references use media-neutral paragraph numbers within square brackets whenever available.
  - For international cases best references only should be used.
4. **Legislation** is cited as follows:
  - *Trade Practices Act 1974* (Cth), s 51AC (including in full within footnotes).
5. **Books** are cited as follows:
  - Ross D, *Ross on Crime* (3rd ed, Lawbook Co, Sydney, 2006) pp 100-101.
  - In footnotes do not use *ibid* or *op cit*. Repeat author surname and add footnote reference to first mention.
    - <sup>1</sup> Hayton D, “Unique Rules for the Unique Institution, The Trust” in Degeling S and Edelman J (eds), *Equity in Commercial Law* (Lawbook Co, Sydney, 2005) p 284.
    - <sup>2</sup> Hayton, n 1, p 286.
6. **Journals** are cited as follows:
  - Kirby M, “The Urgent Need for Forensic Excellence” (2008) 32 Crim LJ 205.
  - In footnotes do not use *ibid* or *op cit*. Repeat author surname and add footnote reference to first mention.
    - <sup>3</sup> Trindade R and Smith R, “Modernising Australian Merger Analysis” (2007) 35 ABLR 358.
    - <sup>4</sup> Trindade and Smith, n 3 at 358-359.
  - Wherever possible use official journal title abbreviations.
7. **Internet references** are cited as follows:
  - Ricketson S, *The Law of Intellectual Property: Copyright, Designs and Confidential Information* (Lawbook Co, subscription service) at [16.340], <http://www.thomsonreuters.com.au/default.asp> viewed 25 June 2007. Underline the URL and include the date the document was viewed.

## SUBSCRIPTION INFORMATION

The *Trade Practices Law Journal* comprises four parts a year.

Customer service and sales inquiries:  
**Tel: 1300 304 195 Fax: 1300 304 196**  
**Web: [www.thomsonreuters.com.au](http://www.thomsonreuters.com.au)**  
**Email: [LTA.Service@thomsonreuters.com](mailto:LTA.Service@thomsonreuters.com)**

Editorial inquiries:  
**Tel: (02) 8587 7000**

**HEAD OFFICE**  
100 Harris Street PYRMONT NSW 2009  
Tel: (02) 8587 7000 Fax: (02) 8587 7100



**THOMSON REUTERS**

© 2010 Thomson Reuters (Professional) Australia Limited ABN 64 058 914 668

Lawbook Co.

Published in Sydney

ISSN 1039-3277

Typeset by Thomson Reuters (Professional) Australia Limited, Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW