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Causation in Misuse of Market Power Claims under the Competition and Consumer Act 2010 (Cth) – *Katharine Kemp*

Following the amendment of s 46 of the *Competition and Consumer Act 2010* (Cth) in 2017, a finding of misuse of market power no longer depends on proof of a causal link between a firm's substantial market power and the impugned conduct, but focuses on the causal link between the firm's conduct and the alleged actual or likely substantial lessening of competition. This article provides some foundations for addressing the challenge of analysing cause and effects under the amended s 46. It explains major theories of causation in philosophy and in law, and approaches to causation in unilateral conduct cases and guidelines in several jurisdictions. It proposes appropriate approaches to causation in some particularly challenging cases, namely those involving multiple causes; monopoly leveraging claims; and the special dynamics of multi-sided platforms. 208

Insurance Claims Handling and Settling as a Financial Service after the Banking Royal Commission – *Paul Latimer*

Reforms to insurance law were enacted in the *Corporations Act 2001* (Cth) and related legislation in 2021 to implement recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry in light of the evidence presented of conduct in the insurance industry that fell below community standards and expectations. This article examines the implementation of Recommendation 4.8 to make insurance claims handling and settling services a financial service regulated by the Australian Securities and Investments Commission following the long-overdue removal of its former carve out from the definition of a "financial service". It also introduces other improvements to claims handling and settlement services with the introduction of enforceable code provisions in the voluntary codes of conduct (Recommendations 1.15, 4.9) and the new remedy for unfair contract terms and unconscionability in insurance (Recommendation 4.7). 230

The Role of Agency in Competition Law: The Australian Flight Centre Case – *Rhonda L Smith and Arlen Duke*

Australian Competition and Consumer Commission v Flight Centre Travel Group Ltd (Flight Centre) was decided by the High Court in December 2016. The Australian Competition and Consumer Commission alleged that Flight Centre had engaged or attempted to engage in price fixing with the airlines by seeking agreement to a Most Favoured Nation provision. A central issue in the case was whether or not Flight Centre was acting as agent for the airlines. This article discusses how changes in business models involving agency arrangements have caused confusion about the relationship between the

parties when assessing alleged anti-competitive conduct. It explains the approach adopted in the United States and in the European Union to determine whether a party is an agent. Following from this, the basis for the various court rulings in Flight Centre are discussed – the finding that Flight Centre attempted to fix prices, despite being found to be an agent for the airlines. The findings in Flight Centre are then compared to the cases involving online booking portals in Europe and whether these cases may have informed the approach in Flight Centre is considered. Some conclusions are then drawn concerning the treatment of agency arrangements in the final section. 246

World First: An Australian Court Opens the Door to Inventor Recognition for Artificial Intelligence Systems – *AJ George and JA Tarr*

Rapid development and use of artificial intelligence (AI) is creating significant regulatory challenges in many domains. In the intellectual property sphere, Stephen Thaler's Artificial Inventor Project (AIP) is challenging traditional concepts of who – and what – can be an "inventor" for patent registration. With the filing of patent applications across multiple jurisdictions, managing inventor status of AI systems while ensuring innovation incentivisation is preserved is the question before patent offices, courts and legislatures globally. The AIP's aim is to clarify, if not advance, AI "inventor" eligibility. Thaler, the AI engineer behind the Project, has sought inventor status for his "sentient" machine the Device for the Autonomous Bootstrapping of Unified Sentience, in order to patent inventions "autonomously" made by it. Australia's 2021 Federal Court decision affirming machine inventors constitutes a world first – with other jurisdictions that have substantively considered the matter denying status. This article analyses the respective judgments and arguments raised, concluding the Australian decision to be out of step internationally, and with High Court authority and classic statutory interpretation. It nevertheless argues the need for focused dialogue around the intersection of AI and intellectual property, directions forward, and, as with other regulatory fields, the need for this intersection to remain the purview of legislative bodies rather than courts. 259

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