

AUSTRALIAN JOURNAL OF COMPETITION AND CONSUMER LAW

Volume 30, Number 4

2022

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Competition Litigation – The Role of the Federal Court – *Michael O’Byrne*

Since the enactment of Australia’s current competition laws in the *Trade Practices Act 1974* (Cth), competition laws in Australia have been judicially enforced. This distinctive system, shared with New Zealand and the United States, can be contrasted to the model of administrative enforcement of competition laws seen in other parts of the world. Judicial enforcement of competition laws has certain implications – in particular, for the development of legal principle, the process of fact finding and the application of economic theory in decision-making. This article considers each of those matters in turn, as part of the exploration of a larger question – whether the legal process, involving the enforcement of competition laws by the Federal Court, is capable of extended analysis of market power and competitive effects. 273

An Analysis of Publicity Orders under the Australian Securities and Investments Commission Act 2001 – *Lloyd Freeburn and Ian Ramsay*

Publicity orders (POs) typically require the public disclosure of information about a person’s or company’s wrongdoing and about penalties imposed by the court. POs are extensively used by some regulators, including the Australian Competition and Consumer Commission but not, until recently, by the Australian Securities and Investments Commission (ASIC). ASIC’s reluctance to use POs changed in 2021, with a series of cases in which courts imposed “non-punitive” POs on defendants under s 12GLB of the *Australian Securities and Investments Commission Act 2001* (Cth). “Punitive” POs are also available under s 12GLA. The authors examine the use of POs under the ASIC Act, including the distinction between punitive and non-punitive POs. The authors also consider the types of punishment imposed by punitive POs – financial harm and reputational damage – as well as how the form and content of information required to be disclosed by a PO relates to this punitive purpose. 287

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