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How is ASIC Enforcing the New Financial Product Design and Distribution Obligations? – *Lloyd Freeburn and Ian Ramsay*

Financial product design and distribution obligations commenced in October 2021. These obligations require issuers to design financial products that meet the needs of an identified target market and to take reasonable steps to ensure that the product is distributed to that target market. Enforcement of the obligations is undertaken by the Australian Securities and Investments Commission (ASIC). ASIC has a wide range of enforcement powers in relation to the obligations, including issuing stop orders, accepting enforceable undertakings and commencing civil or criminal litigation. The authors examine all ASIC enforcement actions relating to the obligations from October 2021 to June 2024. The issues discussed by the authors include which enforcement actions are prioritised by ASIC and the types of financial products that are the subject of this enforcement action. The authors argue that this is an area of ASIC’s responsibilities in which it has demonstrated effective enforcement capabilities. 263

Contractor Entitlements to Superannuation: Time for Reform? – *Rami Haneghi*

Unlike common law employees, contractors typically do not have the right to have mandatory superannuation contributions made on their behalf. However, a legislative exception applies to contractors who receive payments through a contract that is “wholly or principally for the labour of the person”. The judicial interpretation of this statutory exception introduces considerable uncertainty and creates opportunities for manipulation. This article examines two additional statutory frameworks designed to distinguish contractor arrangements with workers who resemble employees: the personal services income provisions and the state payroll tax provisions. It concludes that there would be considerable merit in replacing the existing law with either of these frameworks as the method for determining contractor eligibility for mandatory superannuation contributions. 280

Ecosystem Theories of Harm: Assessing Australian Merger Review Amidst the Competition Issues of Digital Platforms – *Claudio Trovato*

The Australian Competition and Consumer Commission has acknowledged the challenge posed to current merger review by the continuous acquisitions pursued by large digital platforms, which have resulted in expanding “ecosystems” of varied assets and capabilities controlled by those platforms. The response to that challenge has struggled due to a reliance on traditional economic understandings and rudimentary analytical tools to address such modern market expansions with subtle yet significant effects on competition. This article argues that “ecosystem theories of harm” are a necessary addition to Australia’s competition regime. Australian merger law is precluded from facilitating the utility of such

theories by narrow legislative prescription and economic principles unfit to capture the unique competition effects of these conglomerate expansions. It critically examines the most recent reform proposals and then proposes alternatives that offer effective solutions based on the results of international developments in competition law. 301

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