AUSTRALIAN JOURNAL OF COMPETITION AND CONSUMER LAW

Volume 22, Number 3

September 2014

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One more new feature 183

ARTICLES

Australian Competition and Consumer Commission priorities – *Rod Sims*

This article describes the Australian Competition and Consumer Commission's strategic approach to identifying priorities. With competition enforcement, the focus is on key parts of the Competition and Consumer Act 2010 (Cth) and conduct that causes significant detriment, and often has wider implications. Consumer enforcement priorities are more focused on particular sectors and types of behaviour. The article predicts that a number of mergers and acquisitions will raise challenging issues for the Commission. It also outlines regulatory priorities and the Commission's continuing work in various infrastructure sectors. 184

Does it matter what the hypothetical consumer knows? An analysis of ACCC v TPG – *Haylene Treisman*

This article investigates the principles relating to the hypothetical reasonable consumer, with particular attention paid to the knowledge attributed to such a consumer. It is submitted that the differing judgments in the TPG v ACCC decision, at first instance and the appeals, have cast doubt on how to determine whether particular knowledge has been proven, and the relevance to, and effect of, such a determination on a finding that advertising is misleading or deceptive or likely to mislead or deceive under the provisions of s 52 of the Trade Practices Act 1974 (Cth) and its successor provision, s 18 of the Australian Consumer Law. 192

A snuggle for survival – the paradox of section 44ZZRD(3)(c): Restricting co-operation may mean restricting competition – *Marianna Parry* and *Richard Hobson*

In December 2013, the Abbott Government announced that it would undertake a comprehensive root and branch review of competition laws and policy, which promises to examine the current laws, as well as the broader competition framework. It will also look at increasing productivity and efficiency in markets, easing the cost of living pressures, and raising living standards. Since competition law reforms are on the agenda, the authors argue that the balance between competition and co-operation is not established correctly in the current competition framework, as restricting certain forms of co-operation paradoxically restricts competition. This is particularly so in the case of the operation of s 44ZZRD(3)(c) of the Competition and Consumer Act 2010 (Cth), which makes joint bidding and teaming agreements potentially illegal in Australia. In view of the wide interpretation of "likely competitors" in the recent case Norcast SárL v Bradken Ltd (No 2) (2013) 219 FCR 14, the ambit of s 44ZZRD(3)(c) has widened even further. This

article argues that it is time for a reform of the operation of s 44ZZRD(3)(c). Considering how teaming agreements and joint bidding are protected and encouraged in United States legislation, it is submitted that Australian businesses will become more competitive locally and globally if this form of co-operation is explicitly protected by the law. 201

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