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EDITORIAL

Unconscionable Conduct – Quo Vadis? 239

ARTICLES

Unconscionable Conduct: An Unconscionably High Standard? An Assessment of whether an Unfair Trading Practices Prohibition Should Be Introduced to Capture Conduct Engaged in By Digital Platforms – Kate French

The Australian Competition and Consumer Commission (ACCC) has in recent years revived its call for amendments to the *Australian Consumer Law* to introduce a prohibition on “unfair trading practices”. The ACCC is particularly concerned that the high threshold for establishing unconscionable conduct has resulted in a number of business practices said to be engaged in by digital platforms which may cause harm to consumers remaining unregulated. However, an assessment of the conduct the ACCC has claimed does not fall under existing prohibitions indicates that there is unlikely to be a justification for amending or introducing a new prohibition for unfair practices, given the other consumer law prohibitions which can capture the conduct of concern. 241

Antitrust Economic Principles and Intellectual Property Licensing Fees – Christopher Pleatsikas

The principles for determining intellectual property licensing fees, particularly in a litigation context, have often been somewhat vague and, consequently, lack rigour. Antitrust economic principles have significant applicability to this issue. Furthermore, applying these principles can inject considerable structure into the process. In this article some basic economic principles from antitrust economics are utilised as well as broader economic efficiency considerations, to develop a set of economic principles that can help guide the search for intellectual property licensing fees that satisfy the willing buyer/willing seller standard that is often used as a benchmark. 258

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