

# AUSTRALIAN JOURNAL OF COMPETITION AND CONSUMER LAW

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## EDITORIAL

**Consumer Guarantees and the Doctrine of the Half-Truth**..... 95

## ARTICLES

**The Collapse of Dick Smith and the Problem of Gift Cards: Issues and Alternatives for Consumer Protection** – *Mohammed Al Bhadily and Kyle Bowyer*

Gift cards are a multi-billion dollar industry in Australia. The convenience and flexibility they provide have made them highly successful. However, when a gift card seller becomes insolvent and is unable to or refuses to honour gift cards, consumers are left in an often hopeless position. The collapse of electronics giant Dick Smith in January 2016 highlighted the vulnerability of gift card holders when the receiver refused to honour gift cards worth around \$2.5 million. This article explores the gift card industry in Australia and the collapse of Dick Smith. It briefly explores current protective measures for creditors in the event of insolvency and laments the lack of particular protection for gift card holders. The authors argue that gift card holders are in many ways different to other unsecured creditors and that perhaps additional protective measures are necessary. The authors analyse protective measures in other jurisdictions and provide some suggestions for protection in Australia..... 97

**The New Section 46 Misuse of Market Power Test and the European Intel Experience** – *Elizabeth Hersey*

The Court of Justice of the European Union’s (CJEU) recent Intel Corp Inc v European Commission (Intel) decision has reinstated the need for a proper economic analysis of the “effects” of conduct alleged to be in breach of Europe’s “abuse of dominance” prohibition. The judgment, while arguably restoring reason to the European regime, prompts the question – is such an outcome available under Australia’s new s 46 “misuse of market power” test? The author explores below whether, notwithstanding the controversy surrounding the introduction of an “effects” limb to the s 46 test, it is actually the retention of the “purpose” limb without the counterbalance of the “taking advantage of limb” which should cause concern, inter alia by enabling the “per se” approach to misuse of market power that was rejected by the CJEU in Intel..... 114

**DEFECTIVE GOODS** – *Editor: Thomas Horatio John Cadd*

**US Medical Devices Cause Significant Health Issues, Caravan Defects Are No Holiday, and Reasonable Offers Put a Spoke in a Wheel**..... 118

CASE NOTE – <i>Editor: Christopher Hodgekiss SC</i>	
<b>The Flyash Saga: Chapter Three – <i>Rebecca McEwen</i></b> .....	121
TRIBUNAL TABLEAUX	
<b>The Australian Competition Tribunal in 2017 – <i>Tim Luxton</i></b> .....	127
OBITUARY	
<b>Robert Baxt AO – Chair, Trade Practices Commission, 7 April 1988 to 30 June 1991 – <i>Hank Spier</i></b> .....	129
COMMENTS FROM COMMERCE	
<b>Beyond the Effects Test – <i>Peter Strong</i></b> .....	130
CONSUMER CONCERNS	
<b>The Banking Royal Commission: Putting Business-First Capitalism on Trial – <i>Xavier O’Halloran</i></b> .....	131
REPORT FROM AFRICA	
<b>South Africa – Enhanced Focus on Market Inquiries – <i>Lesley Mophet</i></b> .....	134
REPORT FROM NEW ZEALAND	
<b>The Commerce Commission Clamps Down on Mobile Traders – <i>Debra Wilson</i></b> .....	140
BENCHMARKS .....	153
ODDS & ENDS .....	155