

# AUSTRALIAN BUSINESS LAW REVIEW

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## ARTICLES

### **Emerging characteristics of Australia’s supermarket industry – a case study for the ACCC’s first ex-post assessment – *Bronwyn Gallacher***

Ex-post assessments of competition agencies decisions may assist an agency to refine its current investigatory processes and procedures to minimise the chance of making “type 1” or “type 2” decision-making errors in relation to future decisions. To date, the Australian Competition and Consumer Commission (ACCC) has not released for public consideration any ex-post assessment of its merger decisions, adjudication determinations and/or enforcement investigations. This article recommends that the ACCC follow the lead of its overseas counterparts, and conduct ex-post assessments of its decisions in key industry sectors, such as Australia’s supermarket industry. Ongoing concerns regarding the competitiveness of Australia’s supermarket industry may make it an ideal candidate for the ACCC’s first ex-post assessment. Further, an ex-post assessment may assist the ACCC to clarify its “ambiguous” assessment of emerging economic characteristics in Australia’s supermarket industry. .... 147

### **Coordinated effects – the emergence of a new paradigm – *Emily McConnell***

The potential for coordinated effects has become a central focus in the Australian Competition and Consumer Commission’s recent consideration of mergers. This article explores how the theoretical approach to coordinated effects analysis has changed over time. The traditional approach involved three aspects – the structural presumption, the checklist of market factors and evidence of past conduct. New approaches to coordinated effects analysis centre on how the merger changes the market, the mechanisms of collusion and the role of the maverick. Recent decisions indicate that the Australian Competition and Consumer Commission (ACCC) tends to focus its analysis on the role of the maverick. However, a critical analysis of these decisions shows that a more nuanced approach to coordinated effects analysis can lead to different conclusions regarding the likelihood of coordinated conduct. .... 159

### **Cartel compensation – a consumer perspective – *I S Wylie***

Cartel conduct has been described as a “cancer on our economy” and the Australian Competition and Consumer Commission (ACCC) has had success pursuing penal relief, but generally consumers have not been compensated for its effects. This article examines some of the challenges facing claimants and proposes solutions to them in terms of what the law does or should support from a consumer perspective ..... 177

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