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## ARTICLES

### **Holes in Hilmer re-visited: Government exemption from Australian competition and consumer law – Nick Seddon**

At almost all levels of government in Australia, there is immunity from competition law and from the prohibition of misleading conduct when government bodies are engaged in procurement for governmental purposes. This is because the government bodies are bound only insofar as they carry on a business. Case law has established that procurement by government does not constitute carrying on a business. Consequently the government side of the procurement relationship is exempt from the law that applies to the supplier. It is very difficult to find a principled justification for this situation. There is, however, high authority for the proposition that the word “business”, in the context of government commercial activity, means “government business” which in turn embraces procurement. This provides an appeal court with the basis for remedying the present exemption. .... 239

### **Is there a need to change the Australian informal merger clearance process following the Metcash decision? – Dave Poddar**

This article examines whether in light of the decision of the Full Federal Court to reject the appeal of the Australian Competition and Consumer Commission (ACCC) in Metcash, there should be changes to the ACCC’s informal merger clearance process. While there has been a lengthening of the ACCC’s timelines in reviewing mergers in concentrated industry sectors such as grocery, this is an understandable reaction to the Federal Court’s criticisms of the ACCC’s lack of compelling evidence in the Metcash case. This article recognises that the Australian informal merger clearance process is a “creature” of the ACCC and is not a statutory process. It concludes that, provided this lengthening is a temporary situation as the ACCC reviews its merger analysis and in particular its “counterfactual” analysis before again refocusing its merger review processes so that it is commercially timely, then there is no need for wholesale changes. .... 249

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