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EDITORIAL 257

ARTICLES

The CAMAC report on charitable trusts and trustee companies – listed financial services providers or benevolent institutions? – *Eve Brown*

The Companies and Markets Advisory Committee (CAMAC) has handed down its final report on the administration of charitable trusts by licensed trustee companies. The report recommends a number of novel approaches to the interpretation of charitable trusts and to the regulation of trustee companies in respect of their administration of charitable trusts. At face value, the recommendations appear not to solve an identifiable problem, but rather, to bolster and improve the current regulatory regime, in the public interest. However, upon a closer examination, CAMAC's suggestions for reform may be unnecessary and unworkable, and further, may not be justified in light of the review findings. Though putting this to one side, the key issue with the final report is that CAMAC referred to little supportive material, be it legal authority or academic works, that would backup or reinforce its substantive policy positions which underpinned its various recommendations. 260

Infringement notices and federal regulation: Wolves in sheep's clothing? – *Anne Rees*

This article reviews the growth in the use of infringement notices in federal regulation from being "fines" for low level offences to sometimes being significant penalties in their own right, lacking transparency and oversight. It argues that the practices of some regulators in relation to infringement notices raise additional concerns of fairness. The article suggests that a Regulatory Contraventions Statute of general application supplemented by regulatory practice guidelines may assist to ensure that infringement notice schemes avoid a growth by stealth of executive power into areas that are clearly judicial. 276

Identifying and evaluating mavericks in Australian and US merger analysis – *Ben Morawetz*

The presence of a maverick firm in a market is acknowledged as a key consideration when determining whether a proposed merger in that market would have the effect or likely effect of substantially lessening competition. Despite this, there remains debate amongst US and Australian courts, commentators and regulators as to what constitutes a "maverick" firm, and the competitive effects that may flow from such a finding. This article seeks to resolve some of the debates surrounding these issues. The first part of the article advances a definition for the maverick firm, while the second part of the article examines the circumstances in which the presence of a maverick may affect the substantial lessening of competition test. 292

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