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EDITORIAL 173

ARTICLES

A quick fix? Credit repair in Australia – *Paul Ali*, *Lucinda O'Brien* and *Ian Ramsay*

A poor credit history can preclude an individual from obtaining loans, credit cards and even access to basic utilities. Credit repair companies claim to assist people in this situation, by deleting adverse information from their credit histories. As financial hardship becomes more widespread, increasing numbers of Australians are turning to credit repair. Yet critics maintain that these companies charge high fees for services that are available for free through ombudsman schemes. In this way, they often increase their clients' financial hardship, while subverting the objectives of the ombudsman schemes. This article examines the Australian credit repair industry, including the regulatory context and the industry's attempts at self-regulation. It discusses several case studies from a Melbourne community legal centre, and describes the regulation of credit repair in the United States and the United Kingdom. It considers various law reform options that would address the problems posed by credit repair in Australia. 179

Giving competition a sporting chance? The role for antitrust laws in promoting competition from new sporting leagues in Australia and the United States – *Danielle Wood*

Professional team sports in both Australia and the United States all have a single league at the apex of each sport. While rival leagues have emerged from time to time, they have either failed or merged with the incumbent league. Exclusionary strategies by the incumbent leagues and/or the acquisitions of their fledgling challengers do not always appear to have been viewed as critically by courts and competition authorities as similar conduct would in other industries. This appears to reflect the explicit or implicit judgement that sports are a "special case". This article explores the arguments commonly advanced for maintaining the monopoly position of premier sporting leagues. It argues that none are ultimately compelling and, indeed, that competing leagues are likely to bring considerable benefits for both fans and players. It suggests that, at a minimum, competition laws should be vigorously enforced to protect competition provided by new leagues in the future. 206

The case against "French J's arsonist" – *Katharine Kemp*

It is a distinctive requirement of the Australian prohibition of misuse of market power that a firm must "take advantage" of its substantial market power before it can be found to infringe s 46(1) of the *Competition and Consumer Act 2010* (Cth). This element has been explained in the case law as requiring a causal link between the firm's market power and its conduct. A commonly-cited illustration is that provided by French J (as he then was) in the Natwest case, where he commented that a dominant firm would not misuse its market

power if it hired an arsonist to burn down its rival's factory. This article argues that "French J's arsonist" would in fact contravene s 46(1). It is submitted that the dominant firm's act of arson is an example of "plain exclusion", a key concern of competition law, which should fall squarely within the scope of this prohibition. 228

Implied terms in contracts: Australian law – *J W Carter* and *Wayne Courtney*

Under Australian law the implication of terms into contracts has traditionally proceeded by reference to recognised bases for implication. Examples include terms implied "in fact" and terms implied "in law". Most bases have dedicated legal criteria to establish implication; indeed, different tests may apply within a single basis. Implication is, therefore, generally a matter of contract doctrine. In the case of terms implied in fact, the doctrinal criteria are applied by construction. The authors reappraise this approach in light of *Attorney General of Belize v Belize Telecom Ltd*, a decision of the Privy Council, and a comment on the case in *Commonwealth Bank of Australia v Barker*, a decision of the High Court of Australia. The former has been the subject of controversy around the Commonwealth. Lord Hoffmann recharacterised the implication of terms as merely part of the process of reading the document in light of context (including commercial purpose). While some reform of the Australian law on implied terms may be desirable, the perspective propounded in *Belize Telecom* is flawed. It does not represent Australian law, nor should it be adopted. 246