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EDITORIAL

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ARTICLES

“Inconvenient Guests”? The Consumer Experience of Administrative Review for Electricity Pricing – Julia Mansour and Brooke Greenwood

Reforms to the national energy market have recently taken centre-stage in Australian politics. Debates have raged about how best to ensure environmental sustainability, security of supply, and affordability of energy costs, especially for vulnerable groups. Against this backdrop, this article reflects upon the consumer experience of legal advocacy to challenge electricity pricing decisions in the Australian Competition Tribunal under the Limited Merits Review (LMR) regime between 2015 and 2017. The article argues that, although consumer advocacy groups were unable to use the LMR system to effect electricity price reductions in this period, they nonetheless made an essential contribution to the legal reviews undertaken of the Australian Energy Regulator’s decisions. In light of the recent legislative abolition of LMR, the article also presents the case for reforms to the *Administrative Decisions (Judicial Review) Act 1977* (Cth) to ensure that consumer groups can continue to participate in legal reviews of electricity pricing decisions in the future. 161

Misuse of Market Power in Australia and Abuse of Dominance in Canada: Two Legislated Effects Tests for Unilateral Conduct – Katharine Kemp

The new Australian law against misuse of market power (as amended in 2017) shares a number of similarities with the Canadian law against abuse of dominance. This article makes a comparative analysis of these laws against unilateral anti-competitive conduct, highlighting their similarities, including their focus on whether the impugned conduct has the effect or likely effect of substantially lessening competition. It also identifies important differences, including the Australian requirement to prove “purpose or effect” in contrast to the Canadian requirement to prove “purpose and effect” and the respective methods of addressing “legitimate business purpose” claims. It illustrates some of these differences with reference to a recent digital economy case in which the Canadian Commissioner of Competition succeeded in proving that a firm abused its dominance by imposing restrictions on access to data it controlled, notwithstanding the firm’s attempted justifications on privacy grounds. 174

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