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EDITORIAL

The Rise and Fall of a Legal Principle 253

ARTICLES

Batter Up: ACCC Proposes Compulsory “Final Offer Arbitration” for Disputes between Media Businesses and Digital Platforms in Australia – *Sam Luttrell and Dave Poddar*

This article analyses the Mandatory Bargaining Code that the Australian Competition and Consumer Commission (ACCC) has proposed to give Australian media businesses the ability to bargain with Google and Facebook to secure fair payment for news content. Under the ACCC’s Code, if an Australian news business fails to reach an agreement with Google or Facebook through negotiation or mediation, the news business will have the right to commence a 45-day compulsory “Final Offer Arbitration” process to determine the remuneration that Google or Facebook must pay for the use of its news content. The article focuses on the practical and legal issues that may arise from the use of Final Offer Arbitration to resolve disputes, including whether the arbitration process prescribed by the Code falls within the scope of Australia’s arbitration legislation and the extent to which determinations made by arbitrators under the Code will be subject to any form of appeal. 255

Asset Valuation Confusion under Australia’s National Gas Rules – *Euan Morton and Matt Rodgers*

The introduction of the Information Disclosure and Arbitration Framework provisions under Pt 23 of the Australian National Gas Rules in August 2017 has resulted in an unsuitable asset valuation methodology – the so-called “recovered capital method” (RCM) – becoming the default valuation methodology to be used in arbitrations involving gas pipelines and their users (shippers), even though it is incompatible with price formation in workably competitive markets (which underpins the objective of Pt 23). The default status of the RCM under Pt 23 arguably says more about the short-term political and regulatory imperative to reduce delivered gas prices in a supply-constrained environment, than good regulatory design that is focused on producing sensible price signals and facilitating robust commercial outcomes in future investment in and use of Australian gas transmission pipelines. 262

ACCESS TO SERVICES – *Editor: John Hedge*

Dalrymple Bay Coal Terminal Service – Implications for the Scope of Access Regulation – *John Hedge* 268

DEFECTIVE GOODS – <i>Editor: T H J Cadd</i>	
Gym Equipment, Higher Education Expectations and Framed Bathing Pools – T H J Cadd	272
RESTRICTIVE TRADE PRACTICES – <i>Editor: Julie Clarke</i>	
Resale Price Maintenance: A Stocktake – Julie Clarke	275
CASE NOTE – <i>Editor: Christopher Hodgekiss SC</i>	
Undertakings in Merger Proceedings Following Australian Competition and Consumer Commission v Pacific National Pty Ltd: Has the Train Left the Station? – Michael Gvozdenovic and Stephen Puttick	286
COUNCIL CONSIDERATIONS	
The Council’s Work during 2019–2020 – Maureen Ip Hee Wai	297
COMMISSION CAMEOS	
Travel Issues During the Pandemic – Hank Spier	302
WHAT IF ...	
What If Australia Took More Notice of EU Competition Law? – Russell Miller AM	305
COMMENTS FROM COMMERCE	
Competition in the Time of COVID-19 – Peter Strong	316
REPORT FROM CHINA – <i>Editor: Sharon Henrick</i>	
SAMR’s Approach to Failing Firms – Sharon Henrick and Christopher Kok	317
REPORT FROM INDIA – <i>Editor: Pravin Anand</i>	
Updates from Competition Law Regime for the Year 2019–2020 – Pravin Anand and Bobby Jain	320
<hr/> VOLUME 28 – 2020 <hr/>	
Table of Authors	329
Table of Cases	333
Index	347