

# AUSTRALIAN JOURNAL OF COMPETITION AND CONSUMER LAW

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**“Pay-for-delay” Arrangements in the Pharmaceutical Industry: How Will They Be Treated under Australian Competition Law?** – *Diana Biscoe, Rosie Finlayson and Andrew Christopher*

In the pharmaceutical industry, “pay-for-delay” arrangements involve a transfer of value from a patent holder (originator) to a generic pharmaceutical company in return for the generic company not launching, or delaying the launch of, its equivalent generic product. Pay-for-delay arrangements can damage competition by delaying generic competition, leading to higher prices for consumers and the government. These arrangements have attracted scrutiny and significant enforcement actions in the United States and Europe. The application of Australia’s highly prescriptive competition laws to these types of arrangements is not straightforward. This article identifies a number of key challenges, including satisfying the “competition condition”, establishing a prohibited cartel or other anti-competitive purpose or effect, and the application of the exclusive dealing “anti-overlap” exception to cartel conduct. It remains to be seen how pay-for-delay arrangements in the pharmaceutical industry will be treated under Australian competition law. .... 111

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