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EDITORIAL 69

ARTICLES

The High Court Expounds on Systematic Unconscionable Conduct, Section 22 Factors and Accessorial Liability under the ACL – Adrian Coorey

In 2024, the High Court of Australian handed down its decision in *Productivity Partners Pty Ltd v Australian Competition and Consumer Commission*. The case is of importance for the reason, among other reasons, that it provides clarity to the knowledge requirement of accessorial liability in the context of unconscionable conduct, and confirms that it is not necessary to prove that the accessory knew that “the conduct of the primary contravener has the character or essential quality that renders the conduct unconscionable, whether described as predation, victimisation, exploitation or something else”. 72

A New Australian Retail Central Bank Digital Currency: Consumer Law Considerations – Nancy Michail

Because Australia has considered the deployment of a retail central bank digital currency (rCBDC), it is important to examine its compliance with the Australian Consumer Law (ACL) because central bank money represents the bank’s responsibility to depositors/holders. To do so, it is useful to consider the evolution of consumer policy, the nature of money and banknotes, account-based and tokenbased payment systems, and the “fit for purpose” requirement in Australian consumer protection law. Issues that need to be addressed include the proposed legal definition of “money”, the potential implications of rCBDC as an electronic representation of the Australian dollar, and how will it comply with the fit for purpose requirement. After analysing the rCBDC proposal and existing consumer law, it is suggested that the required cryptography mechanisms use for rCBDCs does not assist it with complying with the “fit for purpose” requirement under ACL. A glossary of terms used in this article, concludes it. 84

A Timely Reappraisal of the Pattinson Principles on Penalty Analysis – Adrian Coorey

This article provides an in-depth discussion of the landmark High Court decision of *Australian Building and Construction Commissioner v Pattinson*, the overturned decision of the Full Federal Court and the reasons given by the primary judge. The article concludes by pointing to several key implications the decision has had on the assessment of civil pecuniary penalties, including the clarification that the maximum civil penalties are not just reserved for the most serious contravention of the law, and that the criminal notion of proportionality is not relevant to civil penalty analysis. 98

ACCESS TO SERVICES – <i>Editor: John Hedge</i>	
Misuse of Market Power for Refusal to Provide Access – <i>John Hedge</i>	108
ENFORCEMENT AND REMEDIES – <i>Editor: Bill Keane SC</i>	
Enhancing Transparency and Predictability in Agreed Penalties and Penalty Discounts in Australian Competition Law – <i>Amy Glenister, Noa Zulman, Ian Reynolds and Richard Flitcroft</i>	112
CASE NOTE – <i>Editor: Christopher Hodgekiss SC</i>	
Eco-nomic Harm: ASIC v Mercer and the Road Ahead for Civil Penalties in Greenwashing Cases – <i>Alison McCook and Eloise Gluer</i>	121
TRIBUNAL TABLEAUX THE AUSTRALIAN COMPETITION TRIBUNAL	
New Merger Approval Regime – <i>Tim Luxton</i>	132
CONSUMER CONCERNS	
Price Gouging – Competition and Consumer Options for Reform – <i>Chantal Encavey</i>	134
SNAPSHOTS – <i>Editor: Rutendo Muchinguri</i>	
Record Penalties and Ghost Flights – Lessons from ACCC v Qantas – <i>Rutendo Muchinguri</i>	140
LANDMARKS – <i>Editor: Christopher Hodgekiss SC</i>	
Market Definition and Misuse of Market Power – The Touchstone Decision – <i>Morgan Blaschke-Broad, Alanna Harrigan and Katia Zotova</i>	143
REPORT FROM CHINA – <i>Editor: Wayne Leach</i>	
Update on China’s Anti-unfair Competition Law – <i>Nicola Jackson, Bonnie Huang and Katherine Cheng</i>	152
REPORT FROM NEW ZEALAND – <i>Editor: Lindsay Trotman</i>	
Excluding the Operation of the Statutory Prohibition on Misleading or Deceptive Conduct: Are There Trans-Tasman Differences? – <i>Matthew Berkahn and Lindsay Trotman</i>	160
REPORT FROM THE PACIFIC – <i>Editor: Rachel Burgess</i>	
Competition and Consumer Protection Laws in the Pacific – <i>Alexandra Dale, Holly Worrall and Tuyen Tran</i>	171
ODDS AND ENDS	193