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(articles and book review included in this part are linked to the LexisNexis platform)

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Articles

Over much of the past 2 decades, the public benefit test in New Zealand was viewed as essentially an efficiency defence. In *NZME Ltd v Commerce Commission*, the Court of Appeal, upholding the Commerce Commission's decision to decline authorisation for the merger of New Zealand's two largest media organisations, refocused the Act on the long-term benefit of consumers and rejected the total surplus standard as the touchstone for the public benefit test. In doing so, the Court empowered the Commission to consider all types of benefits and detriments, whether or not quantifiable, including out of market detriments such as media plurality, and rejected the notion that the Act was blind to distributional consequences. The decision should initiative a re-thinking of the conceptual basis of the public benefit test. The Commission's 2019 draft Authorisation Guidelines, however, reveal a reluctance to depart from existing practice. The first part of this article reviews the way in which the Court of Appeal has reshaped the public benefit test including broadening of the benefits and detriments that should be considered, permitting consideration of the impact of distributional considerations, liberalising the manner in which the relevant factors should be weighed, reducing reliance on quantification of benefits and detriments, and, against the general flow, limiting which uncertain benefits and detriments can be considered. The second part (appearing in the next issue of this journal) examines the normative foundations of the revised public benefit test, identifying the manner in which it departs from both the total or consumer surplus standards and the value judgments implicit in those standards. More comprehensive economic frameworks which might better account for the range of considerations that the application of the public benefit test throws up exist and their use could bring greater consistency to government policy. The decision of the Court of Appeal may be best seen as initiating an exploratory and inductive process of rethinking, guided by a few principles.

The Australian Competition and Consumer Commission has successfully litigated number of major cartel cases connected to a party's defection or cooperation. In October 2019, the Australian Competition and Consumer Commission revised its cartel immunity policy and, among other things, excluded immunity for contraventions of the concerted practices provision. This article examines the purpose of immunity policies and their use in Australia. It analyses the merits and drawbacks of excluding concerted practices from immunity. It proposes an alternative approach using an appropriated 'descending discount'. The proposal addresses both the Commission's desire to not allow overly easy access to full immunity and the need to provide incentives for cartel members to defect.

application of unfair contract terms protections to insurance contracts has potential to address consumer harm without resulting in prohibitive costs for the insurance industry.

Book Review

— Ray Steinwall