

Competition & Consumer Law Journal (CCLJ)
Volume 29 Part 1
(articles included in this part are linked to the LexisNexis platform)

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Articles

[Evaluating the role of efficiencies in merger review: Should they form a key component of the merger review process?](#)

— *Dietrich Marquardt*

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This article considers the role of efficiencies in the context of horizontal merger review in the US, European Union and Australia. The analysis concludes that while the merger regimes in each of the three jurisdictions contemplate that efficiencies arising from a proposed merger might offset or mitigate any identified anticompetitive risks, such efficiencies claims are viewed with a high degree of scepticism by competition authorities, effectively requiring a higher evidentiary threshold be satisfied to rely on such claims. It is argued there is a deviation between the role of efficiencies contemplated in merger guidelines and how they are assessed in practice, which may inadvertently lead to type-1 errors on the part of the competition authorities reviewing a merger. Accordingly, it is suggested that efficiencies should be considered concurrently to any competition risks to allow for a more holistic merger review. In particular, it is noted that Australia is presented with an opportunity to revisit the role of efficiencies in merger review, given the current discussion around merger law reform.

[Australia's product intervention power and protection from consumer harm: An evaluation](#)

— *Lucinda O'Brien, Ian Ramsay and Paul Ali*

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In 2019, the Australian Government invested the Australian Securities and Investments Commission ('ASIC') with a new Product Intervention Power ('PIP'), enabling it to intervene directly in the market for financial products to reduce the risk of consumer harm. ASIC made its first Product Intervention Order in September 2019. The order banned a short-term lending model that targeted vulnerable consumers and charged extremely high fees, taking advantage of an exemption in the National Credit Code. This article is the first scholarly study to be published since the Full Federal Court rejected a legal challenge to the order in June 2021. Drawing on this litigation, as well as commentary from legal scholars, industry bodies and consumer advocates, it assesses the value of the PIP as a means of preventing harm to vulnerable consumers. While concluding that the power is a valuable addition to Australia's consumer protection framework, it identifies several measures that would enhance the new regime and increase its effectiveness.

[Protecting the consumer by fighting fake and manipulated online reviews](#)

— *Trish O'Sullivan*

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Online reviews have a significant impact on consumers and review authenticity must be safeguarded to avoid abuse of consumer trust in decision making. The fight against online reviews which mislead or deceive consumers becomes more difficult as the means of manipulation of the review process

becomes more sophisticated. In *ACCC v Meriton Property Services Pty Ltd* (2017) 350 ALR 494, the Australian Competition and Consumer Commission successfully prosecuted an accommodation provider for manipulating customer reviews on the Tripadvisor website. In 2019, the Commerce Commission in New Zealand achieved a significant result in *Commerce Commission v Bachcare Ltd* [2019] NZDC 25483 which also involved review manipulation. Bachcare Ltd had systematically removed poor guest reviews from its accommodation booking website. These cases show how the manipulation of reviews can be quite sophisticated and difficult to detect. Prosecuting authorities need all the weapons possible to fight fake or manipulated reviews. This article recommends expanding and strengthening the arsenal in New Zealand by encouraging a broad approach to the definition of 'conduct' in the Fair Trading Act 1986, similar to that taken by the Federal Court of Australia in *Meriton*, introducing a new offence of impersonating a consumer and imposing obligations on review website operators to incorporate robust fake review detection mechanisms into their websites.

Statutory unconscionable conduct under the Australian Consumer Law: A remedy to combat non-refundable expired gift cards post COVID-19

— Dr Wei Wen

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Consumers cannot obtain refunds for the monetary value of expired gift cards. The Treasury Laws Amendment (Gift Cards) Act 2018 requires that gift cards sold on or after 1 November 2019 must be valid for at least 3 years, but it does not mandate expired gift cards to be refundable.

The article argues that statutory unconscionable conduct (ss 21 and 22(1)) under the Australian Consumer Law can solve the no refund problem. This powerful statutory relief is more necessary during the COVID-19 outbreak.