

Competition & Consumer Law Journal (CCLJ)

Volume 29 Part 3

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

CONTENTS

Speech

[Economic dynamism: A global perspective](#)

— *Hon Andrew Leigh MP*

193

Articles

[Two sides of the same coin: Reigniting the interface between Australian competition and consumer protection law](#)

— *Damiano Fritz*

201

It is generally understood that there is at least some relationship between competition and consumer protection laws. Yet the interface between these two disciplines of economic policy has remained, from an Australian perspective, largely undertheorised. In the face of renewed calls for reform to the Australian competition law, this article argues that the existing provisions of the Australian Consumer Law provide an alternative — and to date, underappreciated — means of addressing harms traditionally classified as ‘anti-competitive’ (rather than the ordinary subject of consumer policy). Part I summarises the normative aims underpinning each field, including Australia’s unitary trade practices law. Part II considers how both disciplines may complement, and conflict with, the other in theory and in practice. Part III then attempts to crystallise the interface by considering how the unconscionable conduct and unfair contract terms laws might be used to enforce misuses of market power and exclusive dealing respectively, by reference to the case law. Part IV concludes.

[Responding to the challenges of Consumer Internet of Things devices: The case for reforming the Australian consumer guarantees](#)

— *David Lindsay, Genevieve Wilkinson and Evana Wright*

226

Consumer Internet of Things (‘CloT’) devices such as smart locks, connected refrigerators and smart assistants are increasingly becoming popular. These devices differ fundamentally from traditional consumer products and as a result, exacerbate existing threats and pose new threats of consumer harms that challenge existing consumer protections. This article analyses the implications of CloT devices for the consumer guarantees under the Australian Consumer Law. It makes the case for reforms that take into account the distinctive features of the devices, including introducing a new sui generis category of ‘digital products’, which would be distinct from the existing categories of ‘goods’ and ‘services’, and new bespoke consumer guarantees. The proposed new guarantees would address problems relating to outdated software, device security and interoperability of CloT devices and services.

Rubbing salt into the wound: Could unsolicited emergency ambulance fees fall foul of the *Australian Consumer Law*?

— Dr Mark A Giancaspro

253

Throughout most of Australia, emergency services laws stipulate that patients are responsible for the (significant) cost of emergency ambulance services they receive. This is so even if a third party summons the ambulance and the patient did not want, need, or consent to this. Section 40(2) of the federal Australian Consumer Law ('ACL'), however, proscribes (with a limited exception) parties in trade or commerce from asserting a right to payment for unsolicited services they have provided. This article is the first to comprehensively analyse the interaction of these provisions, examining whether unsolicited emergency ambulance fees could come within the ambit of the ACL and conflict with the s 40(2) proscription. As will be discussed, this analysis requires consideration of many important commercial, constitutional, and practical questions. It is ultimately argued that, while plausible, emergency ambulance fees are unlikely to fall foul of the ACL, but that this uncertainty warrants statutory clarification.

Book Review

Populism and Antitrust: The Illiberal Influence of Populist Government on the Competition Law System, Maciej Bernatt

— Ray Steinwall

273