

Competition and Consumer Law Journal (CCLJ)

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

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Articles

[What is wrong with mergers in the Federal Court](#)

— *Ray Finkelstein*

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The ACCC generally has been unsuccessful in court in establishing that a number of important mergers will breach s 50 of the Competition and Consumer Act 2010 (Cth). A likely factor explaining this is the approach of the Federal Court. This article explains why this is the case and concludes that the court has been led into error by failing to recognise that assessing the future with and without the merger is not a fact-finding exercise but rather a predictive one.

[Section 50 — Still working after all these years](#)

— *Ruth CA Higgins*

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Section 50 of the Competition and Consumer Act 2010 (Cth) remains in substantially the same form in which it was introduced in 1993. That longevity is striking in a provision so central to the conduct of commerce in Australia. It reflects the fact that it is fit for its purpose of ensuring the preservation of workable competition in circumstances of possible consolidation, and performs that purpose in a jurisprudence which recognises that mergers can generate benefits as well as harm.

[National Competition Policy's 25th anniversary: A reflection and observations on learnings for policymakers](#)

— *Ray Steinwall*

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This year marks the 25th anniversary of the National Competition Policy, which comprised changes to the competition law and a package of structural reforms implemented by all Australian jurisdictions. Its impact was profound, contributing to a significant increase in Australia's GDP and its overall prosperity. Many of the reforms transformed sectors like energy and the impacts of those structural reforms continue today. The National Competition Policy was also an unparalleled example of cooperative federalism. There is much from that period we can apply today, including lessons for broader areas of policymaking.

[The consumer data right: Right for competition in Australian retail energy markets?](#)

— *Jessica Scranton*

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The consumer data right for the energy sector aims to encourage competition in Australian retail energy markets by increasing competition for products and services available to consumers. In particular, the consumer data right aims to empower consumers through greater access to their

electricity data to help them navigate the market and increase their ability to either negotiate better deals with their current retail providers or to switch products. This article analyses the consumer data right with the purpose of assessing the likelihood that this policy will result in more empowered consumers that are able to navigate retail energy markets and thereby drive competition. This article concludes that the consumer data right in the energy sector is not the panacea to all of the issues facing consumers in Australian retail energy markets. However, the consumer data right should improve consumers' ability to access, assess and act on information where the current issues and barriers that consumers face are addressed. If designed well, the consumer data right may improve outcomes for actively and passively engaged consumers in Australian retail energy markets, but it is unclear that it will increase engagement overall to also improve outcomes for disengaged consumers.

The Spiderman calculus: Uber's safe driver consumer guarantee

— *Neerav Srivastava*

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In this article I submit first that Uber, a ridesourcing platform or booking service provider under the Commercial Passenger Vehicle Industry Act 2017 (Vic), owes the consumer (the contracting passenger) a guarantee of exercising due care and skill under the Australian Consumer Law. Second, that guarantee includes managing driver fatigue. As our road signs warn 'Fatigue Kills' and booking service providers have the means to monitor driver fatigue. Third, that being so, more generally the guarantee includes ensuring the driver is safe, eg is not intoxicated. Finally, this analysis is a springboard to submit that, at common law, there is a duty of due diligence owed to a guest passenger and other road users to ensure a safe driver.

Book Review

*Competition Policy and the Control of Buyer Power:
A Global Issue* by Peter C Carstensen

— *Rhonda L Smith*

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