

# Summary Report

Placement at the ACCC

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# What is ACCC ?

- ACCC stands for Australian Competition and Consumer Commission (the Commission)
- The Commission is an independent statutory authority. It was formed in 1995 to administer the *Trade Practices Act 1974* and other acts.
- The ACCC is the only national agency dealing generally with competition matters and the only agency with responsibility for enforcing the TPA

# What is ACCC ?

Cont'd

- The Trade Practices Act's purpose is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.
- In broad terms the Act covers unfair market practices, industry codes, mergers and acquisitions of companies, product safety, product labelling, price monitoring, and the regulation of industries such as telecommunications, gas, electricity and airports.

In short, it actually is ...

# What is ACCC ?

Cont'd

Watchdogs



ACCC

ASIC



# ACCC

# ASIC

The ACCC is Australia's Market regulator.

The ACCC promotes competition and fair trade in the market place to benefit consumers, business and the community.

It also regulates national infrastructure industries.

Its primary responsibility is to ensure that individuals and businesses comply with the Commonwealth's competition, fair trading and consumer protection laws.

ASIC is Australia's corporate, markets and financial services regulator set up under ASIC Act, has different jurisdictions.

**corporate regulator** - responsible for ensuring that company directors and officers carry out their duties honestly, diligently and in the best interests of their company.

**markets regulator** - assess how effectively authorized financial markets are complying with their legal obligations to operate fair, orderly and transparent markets. We also advise the Minister about authorizing new markets.

**financial services regulator** - license and monitor financial services businesses to ensure that they operate efficiently, honestly and fairly.

Differ in jurisdiction, power

# What is ACCC ?

Its primary role is to ensure that individuals and businesses comply with the Commonwealth's **competition, fair trading and consumer protection laws.**

# My Placement

- Enforcement Branch (Mar. 3 - Apr. 29)
  - Enforce the provisions against anti-competitive conducts.
- Merger Branch (May 1, - May 23)
  - M&A Competition Review

# Competition Law Enforcement

- Enforcement practice covers:
  - Section 45 anti-competitive agreements like boycotts, price fixing, market sharing (haven't come across this section)
  - Section 46 –misuse of market power, vertical price squeeze, predatory pricing
  - Section 47 –exclusive dealing, third line forcing
  - Section 48 –resale price maintenance

- CASE I DID: *eBay* an *PayPal* allegedly breached:
  - Abuse of Market Power (s.46), and/or
  - Exclusive Dealings (s.47)

eBay introduces a new policy that requires users to list PayPal as a payment method. This case is all about Network Effects. The leading authority is *US Department of Justice v. Microsoft* - the “browser war”.

# Competition Law Enforcement

- The Test: “Substantial Lessening of Competition”
- The Chinese Anti-Monopoly Law (AML) Test: “eliminates or restricts competition or might be eliminating or restricting competition”

# Merger Review

## Merger Review

- Administration of s. 50 merger section.
- Test: “substantial lessening of competition” + s 50(3) factors ss.95ACs.95AT “public benefit test” if the matter goes to the Competition Tribunal

Chinese AML merger test

- Chinese AML Merger Test: Art 28 “effect of eliminating or restricting competition” + Art 27 factors, e.g.:
  - market shares;
  - degree of concentration;
  - effect on market access and technology development; effect on consumers;
  - effect on the development of the national economy; other matters affecting competition considered relevant by MOFCOM

# Merger Review cases

## 1. *Nufarm + Dow*

- Australian Chemical company N acquires D in UK through its UK subsidiary. N and D's combined Australian market share exceeds 90% - (dominant players, vertical integration) - final decision pending - likely to be a green light

## 2. *Pfizer + Wyeth*

- Merger (in US) between two leading pharmaceutical companies raises competition concerns in Australian human and animal health markets (reviewing, undertakings proposed)

### 3. Coca-Cola + Berri (2003) / Schweppes (1999) implications

- I had the opportunity to inspect some of these Coca-Cola + Berri (the largest fruit juice producer in Aus) documents and found, interestingly, they essentially mirrors our extensively criticized Coca-Cola acquisition of Huiyuan decision made by the Anti-Monopoly Bureau of the Ministry of Commerce. The market definitions are exactly the same, market concentrations are almost identical.
- The Commission rejected both notwithstanding that the acquiring party proposed behavioral undertakings. On a similar ground, the Ministry refused to grant a clearance upon the Coca-Cola acquisition application.

# What I have learned.

- Solid understanding of competition law
- Economics behind the theory from a pragmatic perspective - how to make the best out of our external business consultants and economists.
- Obtained analytical skills required by an effective competition law practice

# Acknowledgement

I would like to convey my sincere thanks to

The Attorney General's Office

ACLA

ACCC

&

Everyone of you

Thank you !

# Farewell Party at ACCC

