



Quay Regulatory Update for August 2023

A round up of key Australian regulatory actions during August 2023

Competition Law

- **Competition Taskforce:** On 23 August 2023 the Treasurer and the Assistant Minister for Competition announced a review of Australia's competition policy settings to facilitate the building of a more dynamic and productive economy. The review, to be undertaken by a Competition Taskforce in Treasury and assisted by an expert panel including Rod Sims AO, the former ACCC Chair, will assess competition laws, policies, and institutions to see if they remain fit for purpose, to ensure they will assist in enhancing productivity, improving wages and alleviating the cost-of-living pressures for Australians. See the Government's media release [here](#) and our Insight [here](#).
- **Investigating economic dynamism:** The Inquiry into Promoting Economic Dynamism, Competition and Business Formation being undertaken by the House of Representatives Standing Committee on Economics held further public hearings in late August 2023. Witnesses included Google, Apple and Amazon. Those hearings provided an insight into the views of politicians as to the negative impacts these international digital platforms are having on the Australian economy. It also demonstrated the views of the platforms. For example, Apple continued to defend its position of not allowing other payment systems on iPhones on the basis that this would prevent fraud and also defended its self-preferencing of various apps, which are preloaded on iPhones. See [here](#) for the terms of reference for the Inquiry.
- **Significant penalties imposed for cartel conduct:** In December 2022 the Federal Court held that BlueScope and its former general manager had attempted to enter into price fixing agreements for steel products during the period September 2013 to June 2014. On 29 August 2023 in [Australian Competition and Consumer Commission v BlueScope Steel Limited \(No 6\) \[2023\] FCA 1029](#) BlueScope was ordered by the Federal Court to pay a penalty of \$57.5 million (and the former executive was ordered to pay \$575,000). BlueScope's penalty was the highest awarded by an Australian court for this type of conduct. The Court made these orders given the serious nature of the conduct, the fact that it was undertaken by a senior officer of BlueScope, it had the potential to create significant loss for purchasers of the relevant products and also the conduct, if successfully engaged in, would have resulted in significant gains for BlueScope. The only mitigating factors were that, since the time the conduct was uncovered, BlueScope had taken action to improve its compliance processes and it had not previously breached the cartel provisions of the Competition and Consumer Act 2010 (Cth). The ACCC welcomed the high penalties stating these are needed to provide a sufficient

deterrence to businesses, but the judgement is also a reminder that compliance programs are critical.

Consumer Protection

- **ACCC (finally) takes action against Qantas:** Qantas has received significant negative publicity in recent times, including in relation to its failure to refund more than half a billion dollars to customers for cancelled flights, while at the same time announcing record profits. The ACCC commenced proceedings against Qantas on 31 August 2023, though those proceedings do not relate to Qantas' slow pace of refunds. Instead, the ACCC has alleged that Qantas engaged in false, misleading or deceptive conduct by advertising (and selling) airline tickets for over 8,000 flights scheduled to depart between May and July 2022 when those flights had already been cancelled. In addition, the ACCC has alleged that Qantas did not notify ticketholders for more than 10,000 flights that those flights were cancelled for up to 48 days after the cancellation decision had been made by Qantas. If true, the allegations demonstrate outrageous corporate behaviour. The ACCC is seeking penalties, injunctions and declarations. The ACCC has encouraged consumers to seek refunds if their flights were cancelled – though arguably the ACCC should take further steps to help consumers do this. For further details see the ACCC media release [here](#).
- **ACCC continues to focus on unfair contract terms:** On 21 August 2023 the ACCC announced that fertiliser suppliers had agreed to amend their standard form contracts, following an ACCC investigation. The types of clauses the ACCC considered were potentially unfair under the Australian Consumer Law included clauses providing the supplier with the unilateral right to vary the quantity of fertiliser to be sold, clauses providing the supplier the right to terminate the contract if it considered that it would not be able to supply the contracted amounts of fertiliser and clauses restricting buyers' rights to claim defects. See the ACCC's media release [here](#).
- **Bank coordination approved by the ACCC to combat scams:** On 3 August 2023 the ACCC issued an interim authorisation to the Australian Banking Association and its member banks to coordinate on development of an industry standard to prevent, detect and disrupt scams. The Federal Government had previously announced that a legislated cross-industry code would be introduced for banks, and in due course telcos and social media platforms, to assist with the prevention of scams in Australia. The Australian Banking Association believes the proposed new standard can be built into the new code. See the ACCC's media release [here](#).
- **Self-exclusions from online betting:** On 21 August 2023 BetStop was launched, which is regulated by the ACMA. BetStop is an online tool that allows Australians to block themselves from all licensed Australian online and phone gambling providers. Those services will not be able to open accounts for, accept bets from or send marketing material to self-excluded individuals. The commencement of BetStop was the final step to give effect to the measures from the National Consumer Protection Framework for Online Wagering. See the BetStop website [here](#).

Media

- **Broadcasting and the anti-siphoning list:** On 19 August 2023 the Department of Infrastructure, Transport, Regional Development, Communications and the Arts commenced consultation on proposals for reform of Australia's anti-siphoning regime. At the current time,

the scheme restricts sports rights being granted to subscription TV before free-to-air TV has been offered those rights and applies to a limited list of male dominated sports. The proposal favoured by the Government would extend the regime to also restrict the offer of rights to streaming services prior to free-to-air TV being offered those rights and will expand the list of protected sports to additional categories, particular women and para competitions. See the proposals paper [here](#).

Telecommunications

- **Other news on scams:** On 8 August 2023 the ACMA announced that over one billion telco scams were blocked in the previous year as a result of the Reducing Scam Calls and Scam SMS Industry Code. That Code requires telcos to identify, trace and block scam texts. Given the ongoing concerns with scams, and the costs incurred by Australians as a result, the Code has been an amazing success. See a speech from ACMA Chair, Nerida O’Loughlin discussing the work of Australian regulators to combat scam activity [here](#).
- **NBN Co’s revised Special Access Undertaking variation:** On 23 August 2023 the ACCC commenced consultation on NBN Co’s revised Special Access Undertaking variation proposal. The SAU is intended to continue until 2040. The ACCC had previously twice rejected NBN Co’s proposed variations to the SAU. Preliminary statements by the ACCC indicate that it is predisposed to consider that the revised proposal is likely to promote the long-term interests of Australian consumers and businesses. The consultation paper may be accessed [here](#) and the ACCC’s media release may be read [here](#).

Digital platforms

- **eSafety Commissioner:** On 15 August 2023 the eSafety Commissioner issued a Position Paper in response to the rapid development and increasing use of generative AI. The Position Paper highlights the potential use and misuse of generative AI in an online environment and, having regard to the risks and opportunities, makes recommendations for good practice guidance and safety by design measures to minimise existing and emerging harms. See the Position Paper [here](#).

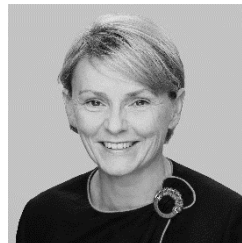
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