Article Information

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ACCC's approaches to enforcement during COVID-19

COVID-19's impact on law and regulation continues to evolve. Regulators, such as the ACCC, have had to continually adapt their approaches. However, in some situations we are seeing a return to more robust enforcement priorities.

Background

In late March 2020 after the initial onset of the COVID-19 Coronavirus crisis, the Australian Competition and Consumer Commission (**ACCC**) adopted a restrained approach to its consumer law enforcement function, for example in relation to pressing consumer travel cancellation issues. On the competition front, ACCC also granted a series of interim authorisations for conduct which would otherwise be in breach of Australian competition laws. The ACCC recognised the challenges and effects of the COVID-19 pandemic on businesses and described a willingness to grant exemptions in appropriate cases.

For examples of interim authorisations granted by the ACCC see here.

More Robust Approach

ACCC, appears to have recently taken a more robust approach toward enforcement priorities in June and July 2020 culminating in the issuing of proceedings against multinational company, Google, for allegedly misleading Australian consumers about changes to its privacy policy and expanding the collection of data and personal information from consumers' internet activity without their explicit informed consent.

For example, in June, July and August 2020 the ACCC brought the following cases.

Megasave

Megasave Couriers Australia Pty Ltd (**Megasave**) is a franchised courier delivery business that claims to have more than 50 franchises across Australia. The ACCC has instituted proceedings against Megasave in the Federal Court, alleging that it misled prospective franchisees with false or misleading promises of guaranteed minimum weekly payments and annual income if they purchased a Megasave courier franchise. The ACCC alleges that representations to this effect resulted in franchisees suffering significant financial hardship and is seeking both redress for franchisees and penalties.

For further details see here.

Google

The ACCC has launched landmark Federal Court proceedings against Google LLC (**Google**), alleging that Google misled Australian consumers in the way it obtained their consent to expand the scope of personal information that Google could collect and combine about consumers' internet activity, for use by Google, including for targeted advertising. The ACCC alleges that millions of Australians with Google accounts have been affected by this conduct. It argues that that consumers effectively pay for Google's services with their data, noting Google derives the majority of its revenue from its advertising and analytics services. The ACCC alleges that the change to Google's privacy policy significantly increased the scope of information collected about consumers on a personally identifiable basis and was without consumers' express informed consent.

For further details [see here](#).

Sumo Power

Most recently, the ACCC instituted proceedings in the Federal Court against Sumo Power Pty Ltd (**Sumo**) alleging it made false or misleading representations to Victorian consumers in relation to its electricity plans. Sumo is an Australian owned energy retailer which the ACCC claims promoted low cost electricity plans promising large 'pay on time' discounts to consumers, while planning to, or knowing it was likely to, substantially increase the prices charged to consumers who signed up within a few months. The ACCC alleges these price increases were part of a pre-determined strategy not disclosed to consumers and is seeking corresponding penalties, declarations, publication orders, compliance program orders, consumer redress, and legal costs from Sumo.

For further details [see here](#).