



"We're doing all we can to hold back the competition."

**2019 COMPETITION LAW CONFERENCE
SHERATON GRAND SYDNEY HYDE PARK HOTEL
SATURDAY 25 MAY 2019**

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SATURDAY, 25 MAY 2019
HYDE PARK ROOM
PROGRAMME

8.45 am	Registration	
9.10 am	Welcome and Opening Remarks	
	Convenor	Christopher Hodgekiss SC , Barrister Selborne Chambers, NSW Bar, and Adjunct Professor of Law, University of Sydney
9.20 am	KEYNOTE SESSION	<i>AVOIDING LIABILITY UNDER THE COMPETITION AND CONSUMER ACT</i>
	Speaker	The Hon Dyson Heydon AC QC Selborne Chambers, Sydney
10.05 am	Discussion	
10.25 am	Morning Tea	
10.55 am	SESSION 2	<i>DO NOT COMPLICATE THE CHALLENGES IN ASSESSING THE CONDUCT OF MULTI-SIDED PLATFORMS</i>
	Speaker	Rod Sims Chairman, Australian Competition and Consumer Commission
11.40 am	Commentator	
11.55 am	Discussion	
12.10 pm	LUNCH	(Feast Restaurant)
1.20 pm	SESSION 3	<i>SUBSTANTIAL LESSENING OF COMPETITION UNDER SECTION 46 - WILL WE KNOW IT WHEN WE SEE IT?</i>
	Speaker	Dr Katharine Kemp Lecturer, Faculty of Law, University of NSW
2.05 pm	Commentator	
2.20 pm	Discussion	

2.35 pm	Afternoon Tea		
3.05 pm	Session 4	<i>"PROOF OF COLLUSION" IN CARTEL CASES</i>	
3.05pm	Speakers	Luke Woodward Partner, Gilbert + Tobin	Genevieve Rahman Special Counsel. Gilbert + Tobin
3.35 pm	Speaker	Greg Houston Partner, HoustonKemp	
4.05 pm	Discussion		
4.25 pm	Close of Conference		
4.25 pm - 5.30 pm	Refreshments and Canapés (Hyde Park Room Lobby)		

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SESSION DETAILS**

Session 1 THE HON DYSON HEYDON AC QC, Selborne Chambers

Avoiding Liability Under the Competition and Consumer Act

The speaker will discuss the following issues in his presentation:

- Notice negating an integer in contravention
- Difficulties with criminal sanctions
- Difficulties with penal sanctions
- Modes of excluding s 18 liability
 - Acknowledgement that representation not made
 - Acknowledgement that representation not relied on
 - Is contracting out of s 18 against “public policy”?
 - Relevance of freedom of contract

Session 2 ROD SIMS, Chairman, Australian Competition and Consumer Commission

Do not complicate the challenges in assessing the conduct of multi-sided platforms

Rod will discuss some of the issues the ACCC encounters in assessing the competitive effects of conduct of multi-sided platforms. Issues such as: (i) is the conduct having the effect of handicapping and preventing rivals (or potential rivals) from competing on their merits, or (ii) is the conduct part of the dynamic of vigorous competition. In discussing the issues, Rod will:

- Outline the approach the ACCC takes in assessing the conduct of multi-sided platforms, drawing heavily on real world examples that have been encountered, including those in the Digital Platform Inquiry;
- Discuss some of the pitfalls the ACCC sees in focussing too heavily on technical tests for defining markets or measuring market power; and
- Remark on the implications of the nature of business models of multi-sided platforms for the ACCC’s approach to merger assessment and investigation of exclusionary conduct.

Session 3 DR KATHARINE KEMP, Lecturer, Faculty of Law, University of NSW

Substantial lessening of competition under section 46 - will we know it when we see it?

Katherine will discuss issues relevant to establishing the effect of single-firm conduct under the new and untested misuse of market power provision. She will refer to recent scholarship and decisions from other jurisdictions, to explore:

- How causation might be established in effect and likely effect cases, having regard to familiar competing narratives offered by litigants;
- Whether there are two, compounded counterfactuals to consider, given the need to prove both substantial market power and substantial lessening of competition;

- What amounts to “substantial” lessening when competition in the relevant market is already significantly restricted; and
- How Australian courts can take account of effects in multi-sided platform markets, considering the wording of the statute and existing authority

Session 4(1) LUKE WOODWARD, Partner, Gilbert + Tobin and GENEVIEVE RAHMAN, Special Counsel, Gilbert + Tobin

“Proof of collusion” - The evidentiary options when there is no “smoking gun”

Discussion of the key challenges to establishing “proof of collusion”, the evidentiary methods for overcoming these challenges and the limitations of those methods. Luke and Genevieve will explore, from a practitioners perspective, why some cartel contraventions are more complex to prove and the potential implications of a higher burden of proof in criminal cartel cases including:

- The core challenge for “proof of collusion” has historically been around “proof of commitment”;
- The key elements of the cartel contravention, including the mental and fault elements and the relevant standard of proof;
- How these key challenges could be overcome from a proof perspective including inferences that can be drawn from certain circumstances and from expert economic evidence and explore the limitations of these methods of proof;
- Highlight how particular types of contraventions can be even more complex to establish, i.e. attempt cases; and
- Discuss the additional requirement of a fault element and the higher burden of proof and observations/speculations in criminal cartel cases regarding the role of the jury as the trier of fact.

Session 4(2) GREG HOUSTON, Partner, HoustonKemp

“Proof of collusion” - Or optical illusion?

Greg will discuss the economic challenge of distinguishing collusive from competitive conduct, by reference to market or empirical evidence. After describing market structures and circumstances that are more prone to collusive conduct, he will identify some economic ‘must haves’ for collusive conduct to take place and be ‘effective’ in lessening competition. Greg will then explore the range of empirical techniques that can be deployed to help determine whether and when collusion has taken place. In discussing these techniques, he will identify:

- some of the challenges in deploying them;
- the circumstances under which they are more likely to be helpful based on their:
 - practicability;
 - robustness; and
 - data and other resource requirements necessary to apply them;
- some simple checks that can be used to identify whether an empirical analysis is robust; and
- lastly, some observations on the challenge of deploying such evidence in a criminal context

Competition Law Conference
25 May 2019
Sheraton Grand Sydney Hyde Park Hotel
161 Elizabeth Street, Sydney NSW 2000

Registration Form and Tax Invoice
ABN: 25 102 381 674

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REGISTRATION FEES: AUD\$960 per person (inclusive of GST)

This fee includes payment for all Conference materials, lunch, refreshments and post-conference canapes and beverages. If this conference is relevant to your professional development, you may claim one CLE/CPD point for each hour of attendance, excluding lunch and refreshment breaks.

**** Please advise if you have any dietary restrictions:**.....

PAYMENT: closing date for registrations is 6 April 2019

Payment can be made by either:

1. By **cheque** made payable to the 'Competition Law Conference'
- or
2. By **EFTPOS** - account details are set out on following page.

Please note that, unfortunately, payment by credit card is **NOT available**

The completed Registration Form may be returned by email or by mail. However, a place will not be reserved without receipt of the registration fee. This Form can be used as a Tax Invoice once payment is made and a receipt issued.

Please send your completed Registration Form by email to: chrishodgekiss@bigpond.com, or by mail to: Christopher C Hodgekiss SC, Fifth Floor, Selborne Chambers, 174 Phillip Street, Sydney NSW 2000

Privacy Statement: To protect your privacy, the information provided on this form will be used only for the purposes of processing your registration at this conference. It will not be disclosed to any third party.

Programme Changes: The organisers reserve the right to vary the programme and context if occasion obliges us to do so.

Cancellation Policy: Written cancellation will be accepted up to two weeks before the conference and the fees will be refunded less a \$100.00 administrative charge. Withdrawal after this time or registered delegates who do not attend the conference will not be entitled to a refund. However, substitutions are allowed at any time.

Losses: The organisers are not responsible for any financial or other losses incurred by delegates or for injury or damage to persons or property. The organisers' maximum liability for conference cancellation or any other loss or liability is the refund of the registration fee paid less the \$100 administration charge.

Competition Law Conference
25 May 2019

ACCOUNT DETAILS

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Unless this is done, the full registration fee is not credited to the conference account and a second payment will be required to make up the shortfall which will, unfortunately, incur additional costs for your firm

ACCOMMODATION AT THE SHERATON GRAND SYDNEY HYDE PARK HOTEL

Website: [Sheraton on the Park Hotel, Sydney](#)

Those delegates wishing to stay at the Sheraton Grand Sydney Hotel should contact the hotel's in-house reservations team directly on +61 2 9286 6462 and quote "**Competition Law Conference**" when making the booking in order to be entitled to a 10% discount off the Best Available Flexible Rate

For those who do not wish to stay at the Sheraton Hotel, there are many websites which offer information about hotel accommodation in Sydney, including [Wotif](#); [Expedia](#); and [Booking.com](#)

For further information please contact: chrishodgekiss@bigpond.com

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