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## **“You are not the Consumer, You are the Product”**

*Article from the AICC(WA) Executive Lunch Event featuring Guest Speaker: Mr Rod Sims, Chairman, Australian Competition and Consumer Commission speaking on “**Looking west: an ACCC overview of the WA market and other issues**”, held at Herbert Smith Freehills in Perth, on Tuesday 31 July 2018.*



From L to R: Mr John Cluer, Chief Executive, Australia-Israel Chamber of Commerce (WA), Professor Peter Klinken AC, Chief Scientist of Western Australia, Mr Rod Sims, Chairman, Australian Competition & Consumer Commission (ACCC), The Hon Cheryl Edwardes AM GAICD, Senior Advisor, Strategic Communications, FTI Consulting and The Hon Kim Beazley AC, Governor of Western Australia

In welcoming guests, Mr Tony Joyner, Managing Partner, [Herbert Smith Freehills](#), Perth, introduced Mr Rod Sims as a Chairman who brought “great intellectual heft to the role”, and thanked the AICC(WA) for a long and enduring partnership.

Mr Sims outlined his address on the theme of enforcement policy, drawing on the telecommunications, digital media, banking and energy industries. His overarching theme related to the power of the consumer, in both being aware of market choices, and exercising proactive engagement as a customer. Mr Sims noted “The ACCC will continue to give a voice to consumers and push companies to live up to their responsibilities”.

Recent cases of the ACCC regarding car safety, email masking, and cartel conduct were highlighted. The ACCC uses its enforcement powers to oversee open competition and fair conduct in the market. Mr Sims noted the strength and capability of the Western Australian team to lead high profile cases, with particular reference to the Nurofen case that was led in Perth and attracted global attention. The ACCC took the company to court over misleading representations on the packaging of each of its four Nurofen specific pain products which represented that each was specifically formulated to treat a particular type of pain, when in fact each product contained the same active ingredient.



**Mr Rod Sims, Chairman, Australian Competition & Consumer Commission (ACCC)**

Mr Sims spoke about pending legislative change that will increase the penalties for breaches of consumer and competition law, and advocated for stronger deterrents.

“In our experience many companies behave badly at least occasionally, putting their short-term profit before the needs of their customers who they profess to serve by engaging in misleading or unfair conduct, anti-competitive conduct or cartel activities.”

“What is needed to provide greater deterrence are penalties so large that companies, their boards and shareholders must take our competition and consumer laws more seriously.”

“A bill to increase penalties for companies breaching Australian Consumer Law is before the Parliament when it resumes next month. We hope the parliament will agree that higher penalties are badly and urgently needed to improve the behaviour of companies and protect consumers.”

“Further, our recent electricity inquiry and our continuing residential mortgage pricing inquiry have both shown a trend that causes considerable friction between companies and their customers. We see loyal customers paying more than customers who are prepared to, and able to, challenge their bank or electricity provider and ask for a better price,” Mr Sims said.



**From L to R: Mr Tony Joyner, Managing Partner, Perth, Herbert Smith Freehills, Mr Rod Sims, Chairman, Australian Competition & Consumer Commission (ACCC), and The Hon Kim Beazley AC, Governor of Western Australia**

“While companies are not breaching the law with this conduct, they are imposing a ‘loyalty tax’ on their customers who will then need to spend more time than they would like searching for better deals.”

“One answer, which is an excellent initiative already in train, is the consumer data right, also known as the open banking initiative, because it will first apply in banking.”

“It will give customers a right to their data to improve consumers’ ability to compare and switch between goods and services on offer and so reduce often wasteful search costs. We expect the scheme to encourage competition between service providers, leading not only to better prices for customers but also more innovation of products and services”

“Another focus area for the ACCC is the NBN, and only this morning we published our most recent report on broadband speed tests. While most consumers get good speeds on their NBN plans, there is an unfortunate few – about one in 13 test results – which indicate there is considerable room for improvement. Our monitoring program will enable consumers to choose wisely and encourage providers who offer customers a service which operates at the speeds they advertise.”

Finally, Mr Sims spoke about the ACCC’s Digital Platform Inquiry.

“Consumers are facing powerful platforms like Google and Facebook whose business model is based on immense data-gathering powers which many of us fail to fully understand. We are exploring the implications for our privacy, our society and our democracy.”

“Our inquiry will look at four key questions to work out how best to respond to the huge disruption posed by the emergence of these powerful platforms.”

- Do digital platforms have market power and how is that being exercised, and does this damage competition?
- Are digital platforms sufficiently transparent in the collection and use of consumer data? Are they complying with the Australian Consumer Law?
- Do digital platforms have an unfair competitive advantage due to the unequal treatment of regulation?
- Have digital platforms substantially changed media and advertising markets in Australia to the detriment of news, journalism and therefore Australia?

“It is clear that we need to look at the digital platforms through both a competition and consumer lens. Our experience as a competition and consumer regulator, and as a communication and general infrastructure regulator, and with the powers we have under this inquiry, means we have the right tools to complete this huge and fascinating task.”



**Mr Tony Joyner, Managing Partner, Perth, Herbert Smith Freehills and The Hon Cheryl Edwardes AM GAICD, Senior Advisor, Strategic Communications, FTI Consulting**



**Clockwise - Ms Jan Stewart, Chairman, Raine Medical Research Study, Mr Dick Lester AM, Non-Executive Chairman, Lester Group Pty Ltd, Mr Tony Joyner, Managing Partner, Perth, Herbert Smith Freehills, The Hon Kim Beazley AC, Governor of Western Australia, Professor Peter Klinken AC, Chief Scientist of Western Australia and Mr Russell Lester, Executive Director, Lester Group Pty Ltd**

Through discussion and engagement Mr Sims spoke further about the proposed merger between Nine Entertainment and Fairfax Media and particularly the impact of social media on media ownership laws. The tension between the role of investigative journalism and the availability of news feeds through free mediums of access can lead to an uneven playing field. Online consumers are “not the consumer, but the product” as online providers mine data and sell advertising. This will inevitably impact the viability of more traditional media. However a balance is still required to preserve the integrity of news services.

Mr Sims also further referenced the Banking Inquiry, responding to comments by WA Governor The Honourable Kim Beazley AC. He concurred that the banks had emerged from the GFC in a sound position, and affirmed the need for greater executive attention on responding to consumer expectations. Mr Sims also spoke further about his views in relation to privatisation, noting that he had advocated for some time for privatisation of commercial enterprises to improve competition. However he cautioned against privatisation in ways that maximised sale proceeds without regard to consumer outcomes. Such poor implementation could result in increased costs and loss of opportunity for the consumer.

A vote of thanks was proposed by Hon Cheryl Edwardes AM GAICD, Senior Advisor, Strategic Communications, FTI Consulting. She responded enthusiastically to the Digital Platform Enquiry and Competition in the Banking Sector reports and their impact on open markets. Ms Edwardes also invited delegates to join her for the [Men and Women of Impact Delegation](#) to Israel this November.



Ms Jan Stewart, Chairman, Raine Medical Research Study and Mr Russell Lester, Executive Director, Lester Group Pty Ltd



Mr Gavin Hegney, Property Analyst and Ms Kathleen Kusinski, Director, MKDC

### ***About Rod Sims***

Rod Sims was appointed Chairman of the Australian Competition and Consumer Commission in August 2011 for a five year term and reappointed for a further three years in August 2016.

Rod has extensive business and public sector experience. Immediately prior to his appointment to the ACCC, he was the Chairman of the Independent Pricing and Regulatory Tribunal of New South Wales, Commissioner on the National Competition Council, Chairman of InfraCo Asia, Director of Ingeus Limited, and member of the Research and Policy Council of the Committee for Economic Development of Australia. Rod was also a Director of Port Jackson's Partners Limited where he advised the CEOs and Boards of some of Australia's top 50 companies on commercial corporate strategy over many years. Rod relinquished all of these roles on becoming Chairman of the ACCC.

Rod is also a past Chairman of the NSW Rail Infrastructure Corporation and the State Rail Authority and has been a Director of a number of private sector companies. During the late 1980s and early 1990s, Rod worked as the Deputy Secretary in the Commonwealth Department of Prime Minister and Cabinet responsible for economic, infrastructure and social policy and the Cabinet Office. He also worked as Deputy Secretary in the Department of Transport and Communications.

Rod Sims holds a first class honours degree in Commerce from the University of Melbourne and a Master of Economics from the Australian National University.



**Mr Yehuda Cohen, Director, Banksia Capital and Mr Dick Lester AM, Non-Executive Chairman, Lester Group Pty Ltd**



**Mr Tom Baddeley, Public Affairs Manager - Offshore, Santos Ltd, Mr Tony Joyner, Managing Partner, Perth, Herbert Smith Freehills and Professor Peter Klinken AC, Chief Scientist of Western Australia**



**Ms Nancy Lim, Counsel, BHP Billiton Limited and Ms Fiona Drummond, Managing Partner – Western Region & Assurance Partner, EY**



The Hon Kim Beazley AC, Governor of Western Australia, Mr Roger Davies, Partner, Ashurst and Emeritus Professor Tracey Horton AO, Non-Executive Chairman, Navitas



Mr Gavin Hegney, Property Analyst, Ms Gina Soos, Economic Advisor, U.S. Consulate General Perth, The Hon Cheryl Edwardes AM GAICD, Senior Advisor, Strategic Communications, FTI Consulting and Mr Rod Sims, Chairman, Australian Competition & Consumer Commission (ACCC)



Mr Mark Majzner, Managing Director, Thirty One North South