

ACCC'S CHALLENGE TO PFIZER COMES TO THE END OF THE ROAD WITH THE HIGH COURT

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Legal Briefings - By **Sue Gilchrist and Emma Iles**

We have previously published an update on the Full Court decision in *ACCC v Pfizer*, where the Full Court dismissed an appeal by the ACCC, upholding a first instance decision that Pfizer had not misused its market power or engaged in prohibited anti-competitive exclusive dealing in its sales and distribution arrangements concerning its generic atorvastatin and branded Lipitor products.

By way of a further update, the High Court last week refused the ACCC's application for special leave. This means that the decision of the Full Court stands. Our earlier report on the Full Court decision is available on our [website](#).

The ACCC's case was brought under the old section 46 of the Competition and Consumer Act 2010 (**CCA**) which required there to be a proscribed anti-competitive purpose. As noted in our article, the new misuse of market power provision of the CCA enables the ACCC to bring actions where it believes that the conduct in question had the purpose, effect or likely effect of substantially lessening competition. Accordingly, it is important to recognise that while the ACCC may have failed against Pfizer, this is unlikely to deter the ACCC from future actions that will be decided under the new provisions. Indeed, the ACCC may be keen to test the new provisions in similar scenarios in the future.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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