

Malbon on Online Cross Border Consumer Transactions

Justin Malbon (Monash University Faculty of Law) has posted Online Cross-Border Consumer Transactions: A Proposal for Developing Fair Standard Form Contract Terms on SSRN.

Online consumer sales are growing at a substantial rate. An estimated 45% of online purchases by consumers in Australia are from overseas sellers, including US sellers. The question whether these transactions are governed by the Australian Consumer Law (ACL) is examined. The conclusion drawn is that cross-border transactions are usually governed by the ACL – at least in theory. In practice a consumer will invariably confront a bewildering array of procedural complexities and face prohibitive costs. US law and standard form terms are generally less favourable to consumers than Australian and European laws. There also appears to be an increasingly pro-seller bias developing in US standard form terms. The article considers why this is so. Why, for instance, are market forces not operating to provide incentives for the development of party balanced terms? The article then considers ways in which the interests of consumers can be better protected and enhanced regarding cross-border online transactions. It is proposed that a series of standard form ‘Fair Terms’ which could be made freely available on the Internet for parties to voluntarily incorporate into their contracts should be developed. This proposal follows the lead provided by developments for international commercial transactions. The article concludes by suggesting starting points for the development of fair terms provisions.