CONSUMER LAW IMPLICATIONS OF ECOMMERCE AND GOODS WAREHOUSING

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Abstract

Australian consumers are increasingly purchasing goods online from platforms such as eBay. It is anticipated that global ecommerce sales will reach US$4.5 trillion by 2021, with Australia being in the top 10 countries worldwide to engage in this form of trade. Online platforms and logistic companies are increasingly providing overseas sellers with a local address, a warehouse and a local bank account.

This paper examines whether the consumers in Australia have adequate consumer protection against overseas online sellers and associated problems with redress in the case of consumer law breaches. The paper also explores the shortcomings of the Australian and the Organisation for Economic Co-operation and Development (OECD) guidelines for consumer protection of electronic commerce and offers possible solutions.

I Introduction

There is a growing demand for foreign goods and services in Australia, which is being satisfied with new ecommerce business models. This paper focuses on consumer law implications arising through a new and emerging ecommerce model based on the 'ship first, sell later' concept. Under this model, a foreign seller is able to hold stock of goods in an Australian warehouse ready to deliver when an Australian customer places an order through an electronic distribution platform such as eBay. This model allows an overseas seller to compete with local businesses by improving delivery times and other services such as returns or exchanges of products. This model has dramatically grown over recent years due to the sophistication of global ecommerce companies that provide comprehensive customised services, including international shipping, overseas warehouse management and delivery to the final consumer (a one-stop shop model). Consequently, there has been a growth of state-of-the-art warehousing facilities in Australia and around the world, where warehouses that use inventory management software are able to store the inventory of multiple clients and provide up-to-date reports to minimise stock holding and promote the growth of ecommerce.

An example of an ecommerce company that provides such services can be gleaned from an eBay China announcement in December 2014 that their ecommerce company Winit Corporation would offer comprehensive overseas warehousing services together with a one-stop supply chain solution, which includes international shipping, transparent tracking and inventory management.[1] Winit Corporation has warehouses in Australia, United States, United Kingdom, Germany and Belgium. The exponential growth of ecommerce has occurred in the last five to

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1 eBay Inc staff, 'EBay China Warehousing Deal Benefits All' (15 December 2014) eBay Inc <https://www.ebayinc.com/stories/news/ebay-china-warehousing-deal-benefits-all/?utm_source=301Redirect&utm_medium=301Redirect&utm_campaign=301Red> (accessed 15 November 2018).

10 years, and this paper argues that existing consumer laws in Australia are not able to adequately deal with sophisticated global ecommerce models of the type described in this article.

This paper explores the consumer protection issues arising from a hypothetical scenario based on the 'ship first, sell later' ecommerce model. The paper examines whether consumers in Australia have adequate consumer protection and are able to enforce their consumer rights against overseas online sellers due to losses arising from non-compliance with Australian laws and regulations. The paper explores the shortcomings of the Australian and the Organisation for Economic Co-operation and Development (OECD) guidelines for consumer protection of electronic commerce and offers possible solutions.

The structure of this paper is as follows: the next part of the paper describes a scenario of an ecommerce transaction between an Australian consumer and an overseas merchant, and explores the possible breaches of the Australian laws and regulations arising from that scenario. Part III explores whether the Australian Consumer Law provides adequate protection to the consumer in the stated scenario and problems associated with redress in the case of Consumer Law breaches. Part IV examines the shortcomings of the Australian and the OECD guidelines for consumer protection of electronic commerce in light of the stated scenario and proposes possible solutions. Part V concludes the paper.

II Scenario of an eCommerce Transaction Between an Australian Consumer and a Chinese Merchant

Arnold, an Australian resident consumer, surfs the web to purchase an inflatable dinghy in order to use it for recreational purposes with his family. He narrows down his decision to a choice of two dinghies from eBay: one for $750 supplied from China and the other for $999 supplied from Rubber Ducky Inflatable Boats (Rubber Ducky) from a Sydney location. Arnold had narrowed down his search on eBay to surf for Australian suppliers only and Rubber Ducky's dinghy was listed as an Australian supplier. The listing stated that the goods are located in Sydney. Arnold is prepared to pay the higher price because Arnold knows that it will be difficult to claim warranty from a foreign seller located in China. He places the order through Rubber Ducky's eBay website and makes the payment to Rubber Ducky using PayPal to effect payment. The dinghy arrives at his home address within four days.

When Arnold tries to register the dinghy with the Department of Transport, he is asked for the Australian Builders Plate. He contacts Rubber Ducky through eBay and receives a reply from an apologetic Ken, who is located in China. Ken could only provide Arnold with the boat-building specifications from China and a Chinese certificate. Arnold questions the location in Sydney and is informed that Ken's Chinese incorporated company has an arrangement with an ecommerce logistics company that has a warehouse located in Sydney to store the dinghies and the company delivers them to customers when Ken forwards the sale details of orders he receives through eBay. On further investigation about how to register his new dinghy, Arnold finds out that he may be able to obtain an Australian Builders Plate through the Boating Industry Association (BIA). However, the BIA informs Arnold that the Australian Builders Plate cannot be obtained without a Hull Identification Number (HIN) certificate, and this requires the dinghy to be inspected by a recognised Boatcode provider listed on the Department of Transport website.

Arnold persists and finally gets the dinghy registered with the Department of Transport. He is excited to use the dinghy with his wife and children. However, on the fifth outing and after just nine hours of use, when Arnold is about to take the children on the Murray River, he hears a hissing sound of air escaping from the dinghy. On further inspection, he finds the glue has given way in many places and the dinghy is deflating rapidly. Arnold was glad that he realised this before exposing his young children to the danger of drowning.

A *Analysis of the eCommerce Scenario*

The advertisement on eBay from Rubber Ducky has misled Arnold into believing that the dinghy he purchased for $999 was from an Australian supplier and not an overseas supplier. The advertisement may be in breach of s 18 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (CCA) (Australian Consumer Law, or ACL) for misleading and deceptive conduct. Rubber Ducky has also not complied with Australian regulations pertaining to boat registration in relation to the dinghy and, as a result, the dinghy cannot be registered with the Department of Transport without incurring further expenses. Arnold appears to have been misled into believing that the dinghy is an Australian-compliant product ready to put into use. This could also give rise to a breach of s 18 of the ACL. In addition, the dinghy only lasted for nine hours of use before the glue gave way. Therefore, there may be a breach of consumer guarantees that pt 3-2 div 1 of the ACL attaches to the supply of goods and services to consumers. For example, the consumer guarantee in s 54 of ACL[2] may have been breached for the dinghy not being of acceptable quality. Where the consumer guarantees are not complied with, pt 5-4 of the ACL gives the consumer, like Arnold, a remedy against the supplier and possibly the manufacturer. In addition, pt 3-5 of the ACL could have been invoked against the manufacturer if Arnold or his family member suffered personal injury or death as a result of the defective dinghy.

The possible breaches of the ACL may give rise to remedies; it is therefore necessary to identify the responsible parties to seek the remedies against, and whether the ACL provisions apply to a foreign seller. This is explored in the next part. Rubber Ducky is likely to be only a Chinese trading company that has purchased goods from wholesale distributors in China and sells goods through an online distribution platform such as eBay, utilising the services of a logistic company that uses the 'ship first, sell later' warehousing model. The next part also explores the answer to the question of whether the responsibility under the ACL can be extended to the person who imported the goods through the Australian Customs Service, which in the stated scenario is the ecommerce logistic company that enabled the transportation, warehousing and distribution of the goods.

III Redress of Consumer Law Breach Arising from an eCommerce Transaction

In order for Australian consumers like Arnold to obtain remedies from foreign sellers like Rubber Ducky in the above scenario, an analysis of whether the ACL consumer guarantees are attached to the foreign seller in an ecommerce transaction is required. Section 5(1) of the CCA states that the provisions of the Act, including the ACL, applies to conduct by Australian incorporated bodies or those carrying on business in Australia, and Australian citizens or people

2 Section 54 of the Australian Consumer Law (ACL) requires goods that are advertised and sold in Australia to be of acceptable quality, meaning 'that they are safe, durable and free from defects, are acceptable in appearance and finish and do what they are ordinarily expected to do': 'Advertising and Selling Guide' (2018) Australian Competition and Consumer Commission <https://www.accc.gov.au/publications/advertising-selling/advertising-and-selling-guide/consumer-guarantees/what-are-the-guarantees> (accessed 15 November 2018).

ordinarily resident within Australia.[3] Thus, unless the foreign seller is carrying on a business in Australia, the ACL provisions may not apply.

In order to answer the question whether Rubber Ducky, a Chinese trading company, in the above scenario is carrying on a business in Australia, it is necessary to examine the Full Federal Court judgment in *Valve Corporation v Australian Competition and Consumer Commission* ('*Valve Appeal*').[4] In this case, Valve, a US company distributed an online game called *Steam* to worldwide customers. It had 118 million subscribers worldwide, of which 2.2 million were located in Australia. The content servers in Australia supplied the content to Australian customers. The customers in Australia had ticked an online term of the contract that all *Steam* fees were payable in advance and not refundable in whole or in part. The Australian Competition and Consumer Commission (ACCC) alleged that Valve had engaged in misleading and deceptive conduct and breached s 18 of the ACL by trying to exclude consumer guarantees under the ACL. At first instance, Justice Edelman found that Valve had engaged in misleading and deceptive conduct and imposed a AU$3 million pecuniary penalty.[5] Valve appealed to the Full Court where the appeal was dismissed.

In the Full Federal Court, Valve contended that, having regard to s 67 of the ACL,[6] the consumer guarantees in the ACL do not apply where the supply is made pursuant to a contract and the objective proper law governing that contract is the law of a country other than Australia. Valve submitted that, in their case, the law of Washington State applied. The trial judge held that although the proper law of contract was Washington State, s 67(b) extended the ACL to consumer guarantees and Valve could not rely on the choice of law term in a contract to substitute the consumer guarantee provisions in pt 3-2 div 1 of the ACL. The Full Federal Court also rejected Valve's argument and held that ACL guarantees could not be shifted through contractual obligations.

Valve also contended that Valve did not carry on business in Australia, and therefore the relevant misleading conduct did not occur in Australia. Section 5(1)(g) of CCA provides an extended application of the ACL (other than pt 5-3) to conduct outside Australia by bodies corporate incorporated or carrying on a business within Australia. The trial judge examined the ordinary meaning of 'carrying on business' and, relying on cases such as *Thiel v Commissioner of Taxation* (Cth),[7] *Pioneer Concrete Services Ltd v Gall*[8] and *Hope v Bathurst City Council*,[9] he concluded that it involves a series of repetitive acts; those acts will commonly involve 'activities

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3 For a discussion of s 5(1) of the *Competition and Consumer Act 2010* (Cth), see J Malbon 'Online Cross-border Consumer Transactions: A Proposal for Developing Fair Standard Form Contract Terms' (2013) 37 *University of Western Australia Law Review* 20–44. Also see Justin Malbon, *Application of Australian Consumer Law to Overseas Internet Purchases: Expert Legal Commentary* (2013) Monash University Faculty of Law <https://www.monash.edu/law/news-and-events/news/expert-legal-commentary-application-of-australian-consumer-law-to-overseas-internet-purchases> (accessed 15 November 2018).

4 [2017] FCAFC 224 (22 December 2017) ('*Valve Appeal*').

5 *Australian Competition and Consumer Commission v Valve Corporation (No 3)* [2016] FCA 196 (24 March 2016) ('*Valve*').

6 Section 67 of ACL states: 'If: (a) the proper law of a contract for the supply of goods or services to a consumer would be the law of any part of Australia but for a term of the contract that provides otherwise; or (b) a contract for the supply of goods or services to a consumer contains a term that purports to substitute, or has the effect of substituting, the following provisions for all or any of the provisions of this Division: (i) the provisions of the law of a country other than Australia; (ii) the provisions of the law of a State or a Territory; the provisions of this Division apply in relation to the supply under the contract despite that term.'

7 [1990] HCA 37; (1990) 171 CLR 338, 350 per Dawson J.

8 [1985] VicRp 68; [1985] VR 675, 705.

9 [1980] HCA 16; (1980) 144 CLR 1, 8–9

undertaken as a commercial enterprise in the nature of a going concern, that is, activities engaged in for the purpose of profit on a continuous and repetitive basis'.[10] The primary judge concluded that Valve undoubtedly carried on business in Australia for six reasons being:

1. Valve had many customers in Australia and earned significant revenues from Australian customers on an ongoing basis.
2. The content was 'deposited' on Valve's three servers in Australia; the ACCC compared these content servers to 'digital warehouses'.
3. Valve had significant personal property and servers located in Australia.
4. Valve incurred tens of thousands of dollars per month of expenses in Australia for the rack space and power to its servers.
5. Valve relied on relationships with third-party members of content delivery providers who provide proxy catching for Valve in Australia.
6. Valve has entered into contracts with third-party service providers.[11]

On appeal to the Full Federal Court, Valve argued that s 5(1)(g) required a particular nexus with Australia, and since Valve had no physical activity in Australia through human instrumentalities, no place of business in Australia, the members of their management team did not reside in Australia, had no subsidiary companies through which it transacted and had no employees or agents who regularly acted on its behalf, Valve therefore had no nexus with Australia.[12] Valve had relied on the case of *Bray v F Hoffman-La Roche Ltd*.[13] However, the Full Court in Valve's judgment took Merkel J's approach in Bray's case, where he said:

in the context of s 5(1), he saw no reason for importing the additional requirement that to carry on business in the jurisdiction the foreign company must also have a place of business in the jurisdiction; a place of business is not a requirement of comity; and importing such a requirement would impermissibly supplement the corporate requirement of carrying on business with the additional requirement of corporate presence or residence.[14]

The Full Federal Court judges in *Valve* also examined the case of *Campbell v Gebo Investments (Labuan) Ltd* ('*Gebo Investments*'),[15] where Barrett J considered whether the mere solicitation of business transactions by the internet constituted carrying on business in Australia. The mere fact that materials posted on the internet from an unknown place can be accessed by anyone in Australia would not amount to carrying on a business in Australia, as this would only amount to internet solicitation. Carrying on a business requires evidence of activities, such as placing materials on the internet, or processing and dealing with inquiries or applications received through the internet.[16] The Full Federal Court judgment in Valve's case stated that 'the case of *Gebo Investments* makes clear that the territorial concept of carrying on business involves acts within the relevant authority that amount to, or are ancillary to, transactions that make up or support the business'.[17] The appeal judges held that the primary judge had not made an error in concluding that Valve Corporation carried on a business in Australia since Valve has a business presence in Australia.[18]

Thus, Valve's decision confirms that the ACL applies to transactions that involve sales to Australian consumers by online overseas providers, regardless of where the contract is

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10 *Valve*, above n 5, [197].
11 Ibid [199]–[204].
12 *Valve Appeal*, above n 4, [142].
13 [2002] FCA 243; (2002) 118 FCR 1, [60].
14 *Valve Appeal*, above n 4, [145].
15 [2005] NSWSC 544; (2005) 190 FLR 209; 54 ACSR 111.
16 *Valve Appeal*, above n 4, [148].
17 Ibid [149].
18 Ibid [150].

concluded. The decision also confirms that a foreign company can be regarded as carrying on a business in Australia if the company makes repeated sales, generates revenue and has business relationships in Australia.[19]

Applying Valve's case to the scenario in Part II, Rubber Ducky is likely to be carrying on a business in Australia for ACL purposes since:

- Rubber Ducky has been continuously advertising a range of dinghies through eBay Australia and is earning revenues from Australian customers on an ongoing basis.
- The advertisement states that the dinghy is located in Australia at the time of sale; this implies that Rubber Ducky has placed some stock in a warehouse in Sydney that is intended for sale in Australia.
- Rubber Ducky has entered into a contractual relationship with warehouse owners for storage and delivery of dinghies to customers in Australia.

Although Rubber Ducky is not incorporated in Australia and has no Australian-based staff, it has evidence of activities of placing an advertisement on the Australian eBay and processing and dealing with inquiries and customer orders, and this would amount to carrying on a business in Australia. These acts are more than just mere internet solicitations. Thus, Rubber Ducky will be subject to the CCA and the ACL, and Arnold may be able to invoke s 54 and s 18 of ACL against Rubber Ducky. However, there is likely to be a problem of enforcement. An expert legal commentary by Professor Justin Malbon appropriately sums up the position of a consumer: it would be expensive to bring an action against an overseas seller and, even if they succeed in obtaining an order against the overseas seller in an Australian court, the enforcement may not be easy if the seller does not voluntarily comply with the order or does not have assets within Australia.[20]

Thus, it is necessary to explore whether the new ecommerce goods warehousing model of 'ship first, sell later' can extend the consumer guarantees to the person who imported the goods into Australia. Part 5-4 of the ACL provides the consumer to take action against the supplier for failure to comply with consumer guarantees, and also against the manufacturer for breach of a guarantee under s 54 of the ACL. A supplier is defined under the ACL as a person who, in relation to goods, supply by way of sale, exchange, lease, hire or hire purchase. A manufacturer is defined in s 7 of the ACL to include a person who imports goods into Australia if the person is not a manufacturer and, at the time of importation, the manufacturer does not have a place of business in Australia. Section 7(3) of the ACL further states that if goods are imported into Australia on behalf of a person, the person, being the importer, is taken to have imported goods into Australia.

In the above scenario, Rubber Ducky has used the services of a global logistics and warehousing corporation. The question is whether the global logistics and warehousing corporation, who made the taxable importation on behalf of Rubber Ducky within the meaning of the *Customs Act 1901* (Cth) when the dinghies entered Australia, can be classified as an importer and hence a deemed manufacturer under s 7 of the ACL. In order to import goods into Australia, the *Customs Act 1901* requires the 'owner' of the goods to provide appropriate information to Customs. However, an 'owner' is widely defined in s 4 of the *Customs Act 1901*, and includes 'any person (other than an officer of Customs) being or holding himself out to be the owner, importer, exporter, consignee, agent, or person possessed of, or beneficially

19 James North, Richard Flitcroft, Carly Chenoweth and James Wallace, 'Businesses Beware — Are You Caught By The Australian Consumer Law? Implications of the ACCC v Valve Decision' (21 April 2016) Corrs Chambers Westgarth Lawyers <http://www.corrs.com.au/publications/corrs-in-brief/businesses-beware-are-you-caught-by-the-australian-consumer-law-implications-of-the-accc-v-valve-decision/> (accessed 15 November 2018).

20 Malbon, above n 3.

interested in, or having any control of, or power of disposition over, the goods'.[21] The reason for the broad definition is for Customs to ensure that the person named as the owner under Customs declaration is responsible for the payment of duty. Thus, a global logistics company is likely to be the importer for record purposes under the *Customs Act 1901*. As a result, it is proposed that s 7 of the ACL should recognise the 'owner' under the *Customs Act 1901* as a deemed manufacturer against whom consumers can enforce the consumer guarantees under the ACL. The reason for this is that it is the sophisticated ecommerce and logistics companies that are behind the scenes and providing the physical presence of foreign goods into Australia, and hence they should bear the responsibility of ensuring that the goods comply with the ACL. Both the *Customs Act 1901* and the ACL should be reformed to promote the safe growth of ecommerce. With the growth of ecommerce and the use of new ecommerce models such as the 'ship first, sell later' model, it is time for the Australian Government to examine the inadequacy of the law in this emerging area of consumer protection for ecommerce transactions. The next part explores whether the Australian and the global OECD guidelines for consumer protection of electronic commerce are effective in protecting consumers.

IV The Australian and the Global OECD Guidelines for Consumer Protection of Electronic Commerce and Possible Solutions

At the end of 1999, the OECD Committee on Consumer Policy developed Guidelines for Consumer Protection in the Context of Electronic Commerce. These OECD Guidelines were revised in 2016.[22] The objective of the OECD Guidelines are 'to provide a framework for governments to use when reviewing, formulating and implementing consumer and law enforcement policies in the context of effective online commerce protection'.[23] The Guidelines are a first step in encouraging a global approach to consumer protection. Some of the provisions include:

- consumers who participate in ecommerce should be provided the same level of consumer protection as in other forms of commerce
- businesses engaged in ecommerce should engage in fair business, advertising and marketing practices and should not misrepresent or hide terms and conditions that may affect a consumer's decision regarding the transaction
- businesses should make themselves readily identifiable by providing name and contact details, and make it easy for the consumer to communicate in order to appropriately and effectively resolve any disputes.

The Australian Government also developed *The Australian E-commerce Best Practice Model* in 2000,[24] which was replaced in 2006 by *Australian Guidelines for Electronic Commerce* ('Australian Guidelines').[25] The Australian Guidelines do not apply to traders located outside

21 *Customs Act 1901* (Cth) s 4.

22 See OECD, *Consumer Protection in E-commerce: OECD Recommendation* (OECD Publishing, 2016) <https://www.oecd.org/sti/consumer/ECommerce-Recommendation-2016.pdf> (accessed 15 November 2018).

23 Kananke Chinthaka Liyanage, 'The Regulation of Online Dispute Resolution: Effectiveness of Online Consumer Protection Guidelines' (2012) 17(2) *Deakin Law Review* 251, 256 <http://www5.austlii.edu.au/au/journals/DeakinLawRw/2012/11.html> (accessed 15 November 2018).

24 L Boxall, 'E-commerce Codes of Conduct' (2000) 74(10) *The Law Institute Journal* 44.

25 Commonwealth, *The Australian Guidelines for Electronic Commerce* (Treasury, Australian Government, 2006). Also see Dan Svantesson and Roger Clarke, 'A Best Practice Model for E-Consumer Protection' (2010) 26(1) *Computer Law & Security Review* 31 <http://linkinghub.elsevier.com/retrieve/pii/S0267364909001915> (accessed 15 November 2018).

Australia who are dealing with Australian consumers. Overseas traders are only encouraged to follow the Australian Guidelines.

Both sets of guidelines are only recommendations and do not have any binding force. The recent focus of the OECD Committee on Consumer Policy is to encourage consumer protection enforcement authorities to cooperate across borders.[26] The ACCC is active in this area with the signing of a Memorandum of Understanding (MoU) in 2012 with China to promote cooperation and coordination of enforcement and training activities.[27]

The OECD and the Australian guidelines only show the Australian Government's commitment to develop rules and incorporate the principles reflected in the guidelines. However, from the discussion above, it is obvious that the Australian consumer protection laws pertaining to ecommerce, especially the 'ship first, sell later' model of ecommerce, has yet to be developed. Australian consumers would want to know that the products that are available for sale in Australia, whether purchased through a physical store or online, are safe to use and comply with the consumer guarantees under the ACL. In addition, the Australian consumer would want to know whether the seller is or is not an Australian entity in order to assess problems with return of goods, warranties and the difficulty of enforcing their strict legal rights. It may be better to protect the Australian consumers by placing the responsibility on the overseas traders and also include all parties that assist the overseas traders in bringing about an ecommerce transaction.[28]

A concept proposed as a possible solution could be that the Australian Government legislate and require all foreign entities carrying on a business in Australia to apply for a Foreign Business Number (FBN) to a central government authority, should the foreign entity wish to advertise and sell products and services in Australia. The FBN should not be granted unless the foreign entity can demonstrate that the goods and services they are selling comply with the Australian laws and regulations, and the foreign entity has appropriate insurance coverage. The foreign entity should be required to quote their FBN number in their dealings with Australian consumers and to Customs authorities under the *Customs Act 1901*. This would not only inform Australian consumers about the type of entity they are contracting with and be able to extract further information about the foreign business, if required, but would also give confidence to Customs authorities when approving the goods as they pass through Customs and assist in the collection of duties and taxes.[29] It is not possible to explore the proposed concept solution in detail in this paper; however, it may be a concept worth exploring with further research.

V Conclusion

This paper has highlighted that, as a result of the growth in ecommerce, foreign entities are able to capture the Australian market without the need for any physical presence in the country. Although the growth of ecommerce cannot and should not be halted, the current laws need to change and incorporate implications on Australian consumers and businesses. As demonstrated

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26 See Yoshida Akira, 'Consumer Protection Enforcement in a Global Digital Marketplace' (OECD Digital Economy Papers, No 266) 49.

27 Ibid 24.

28 Similar thinking has been applied in the *GST Low Value Goods Act 2017*. The legislation establishes a hierarchy of who is responsible for the Goods and Services Tax (GST) for supplies of goods whose Customs value is $1,000 or less. The operator of the electronic distribution platform (EDP) is liable for the GST in the first instance if the supply is made through an EDP, even if it is the merchant who actually assisted in the delivery of goods into Australia. If the EDP operator is not responsible for the GST, then the merchant could be liable for the GST. A re-deliverer is only responsible for GST if the EDP operator or the merchant is not responsible.

29 This would be similar to the *Corporations Act 2001* (Cth) that requires Australian Company Numbers (ACN) to be displayed on all public documents.

in the scenario discussed in this paper, the consumer protection laws have not kept up with the implications arising on Australian consumers if foreign entities have breached consumer guarantees under the ACL or have engaged in conduct that is misleading or deceptive. Besides the consumer protection implications highlighted in this paper, the growth of ecommerce has wider implications, including the effect on local businesses that may lose their market share, and also taxation implications for the Australian Government as highlighted in the recent Treasury consultation paper on the digital economy and Australia's corporate tax system.[30]

The Australian Government should not wait for any global solutions promoted through the OECD Guidelines, but take immediate steps in ensuring that the goods that enter Australia comply with the ACL and that Australian consumers have and are able to enforce the same level of consumer protection as in other forms of commerce. It is time for the Australian Government to bring about conversations for possible future reform of laws in order to inform and protect Australian consumers when purchasing foreign goods and services, such as the possible solution proposed in this paper of requiring an FBN for foreign entities conducting business in Australia.

30 Commonwealth, *The Digital Economy and Australia's Corporate Tax System*, Treasury Discussion Paper, (October 2018).