



## Ayman Guirguis

### Partner

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## OVERVIEW

Ayman Guirguis advises clients on all aspects of antitrust/competition law as well as consumer law.

Ayman has a wealth of experience advising clients on merger clearance, joint ventures and on supply chain arrangements between suppliers and customers. He also has experience defending court actions by the ACCC and other market participants and advising on, setting up and implementing competition law and consumer law compliance programs.

Ayman regularly advises on, and responds to, regulatory investigations by the Australian Competition & Consumer Commission (ACCC) alleging cartel conduct (price fixing, market sharing or bid rigging), including making immunity and leniency applications, competitor interactions at Industry Associations, as well as on other anti-competitive allegations such as misuse of market power, exclusivities, including defending litigation commenced by the ACCC.

Ayman also counsels clients on the Australian Consumer Law, including advertising and sales, marketing practices as well as compliance programs and audits.

Ayman has acted for clients across a range of industries including petroleum, oil and gas, property and construction, financial services, packaging, IT, retail, including food and fast moving consumer goods (FMCG) and pharmaceutical.

## PROFESSIONAL BACKGROUND

Prior to joining the firm, Ayman was a partner of two national Australian firms for a period of 16 years. He was also a senior officer in both the Mergers Branch and Enforcement branches of the ACCC.

## ACHIEVEMENTS

- *Euromoney's Expert Guide*, listed in Competition & Antitrust in Australia (2020)
- *Lawyers Weekly*, Finalist for Partner of the Year Awards for Competition, Trade and Regulation (2020 and 2021)

- *The Legal 500 Asia Pacific*, recognised in Regulatory Compliance and Investigations (2018 – 2020)
- *Who's Who Legal*, Recommended National Leader in Australia – Competition (2017 – present)
- *The Legal 500 Asia Pacific*, recognised in Competition and Trade by (2015 – present)
- *Best Lawyers in Australia*, listed in Competition Law (2013 – present)
- *Global Competition Review's Who's Who Legal*, Recommended Global Leader – Competition (2012 – present)
- *Chambers Asia Pacific*, ranked individual in Competition/Antitrust - Australia (2008 – present)
- "Ayman Guirguis has a deep interest and understanding in his client's businesses and industries which allows him to deliver holistic, commercially-sound legal advice that considers the broader practical implications for the business." and "Each member of the team down to associate level is highly capable and it is apparent that they have the benefit of the close mentorship of Ayman Guirguis." (*The Legal 500 Asia Pacific 2021*)
- Ayman Guirguis is identified by sources as "someone who takes the big picture and looks for solutions, as well as providing excellent legal analysis." (*Chambers Asia Pacific 2021*)
- Ayman Guirguis has this "insight into the mind of the regulator" and "very thorough, practical and timely advice on how things will play out" and known for his "very affable, down-to-earth manner" and willingness for clients to "bounce ideas off him." (*Chambers Asia Pacific 2020*)
- Ayman Guirguis is "a highly regarded competition lawyer whose practice combines a number of sector-specific skills with broad competition expertise. A satisfied client reports: He gets to the point, is at the forefront of the industry and regulation and is always pre-empting issues for us in an unprompted way." (*Chambers Asia Pacific 2019*)
- Ayman Guirguis is described as "very commercial and practical." (*The Legal 500 Asia Pacific 2019*)
- Ayman Guirguis is "well known in the market for his deep experience across all areas of Australian competition law. His dedication to his clients is also appreciated by interviewees, one of whom notes: Ayman is incredibly responsive and reliable and always makes you feel like your matter is top priority. He always goes out of his way to provide excellent service and to understand his client's business." (*Chambers Asia Pacific 2018*)
- Ayman Guirguis is "easy to work with and showcases a commercial approach with great breadth and depth of knowledge." (*The Legal 500 Asia Pacific 2018*)
- Australian Non-Government Adviser representative of the International Competition Network (2009 – 2017)

## PROFESSIONAL / CIVIC ACTIVITIES

- Law Council of Australia Competition and Consumer Law Committee member
- American Bar Association member

- International Bar Association member
- Association of Corporate Counsel member
- Law Society of New South Wales member

## EDUCATION

- LL.M., University of Sydney, 1999
- LL.B., University of Sydney, 1987
- Bachelor of Economics, University of Sydney, 1985

## ADMISSIONS

- Federal Court of Australia
- High Court of Australia
- Supreme Court of New South Wales
- Supreme Court of Victoria

## THOUGHT LEADERSHIP POWERED BY HUB

- March 2021, ACCC Enforcement and Compliance Priorities: Risk Management for Your Business (*Webinar*)
- 5 March 2021, Regulating the Economic Pie: Key Takeaways From the ACCC's 2021 Enforcement Priorities (*Alerts/Updates*)
- 11 November 2020, Suppliers, Are You Prepared? Consumer Guarantees to Apply to More Goods and Services from July 2021 (*Alerts/Updates*)
- 19 October 2020, Prohibition on Advertising Below the RRP Amounts to Illegal Resale Price Maintenance, ACCC Alleges (*Alerts/Updates*)
- 8 October 2020, COVID-19 (Australia): Updated Guide to ACCC Authorisations (October 2020) (*Alerts/Updates*)
- 18 August 2020, COVID-19: (Australia) August 2020 Update to the Guide to ACCC Approvals on Industry Collaboration (*Alerts/Updates*)
- 18 June 2020, Australian Merger Control: SLC v Industry Engineering or Economic Theory – Takeaways From Vodafone/TPG & Pacific National (*Alerts/Updates*)
- 5 June 2020, Clarity for Consumer Data Right Participants on Regulatory Obligations: Is Your Business Ready? (*Alerts/Updates*)

- 20 May 2020, COVID-19 (Australia): Guide to ACCC Approvals on Industry Collaboration (*Alerts/Updates*)
- 13 May 2020, COVID-19: (Australia) Beware and Behold: Grounded Events and ACL Obligations During COVID-19 Recovery (*Alerts/Updates*)
- 10 April 2020, COVID-19: (Australia) Government Bans Price Gouging, Exploitative Exports of Personal Protective Equipment (*Alerts/Updates*)
- 8 April 2020, COVID-19: (Australia) Cancellations, Guarantees and Other Statements: Australian Consumer Law Obligations During COVID-19 (*Alerts/Updates*)
- 3 April 2020, COVID-19: (Australia) Competitor Collaboration in the Shadow of COVID-19 - The ACCC Takes a Pragmatic Approach (*Alerts/Updates*)
- 28 February 2020, Milk, Batteries, Healthy Snacks, two Cartels and a Coffin: The ACCC Enforcement Shopping List (*Alerts/Updates*)
- February 2020, Competition and Consumer Law Risks to be Aware of in 2020 (*Webinar*)
- 14 February 2020, Trivago Shows you all the Different Prices...or Does it? (*Alerts/Updates*)
- 12 August 2019, ACCC's Digital Platforms Report: Market Power in Advertising, Search Services & Media & Privacy Implications (*Alerts/Updates*)
- 2 August 2019, Australian Mid-Market M&A Report (*Alerts/Updates*)
- 29 July 2019, Ready or not, Competition Law Exemptions for IP Rights are About to be Repealed (*Alerts/Updates*)
- 3 May 2019, Changes to ACL Mandatory Wording for Warranties Against Defects. Are you Ready? (*Alerts/Updates*)
- 5 April 2019, Who's the Fairest of Them all? Government and Opposition Battle Over Small Business Contract Protections (*Alerts/Updates*)
- March 2019, Managing ACCC Investigations in the Wake of Increased Competition and Consumer Law Penalties (*Webinar*)
- 8 February 2019, ACCC 'Takes off' Against Airline's no Refund Policies: Passenger Transport, Hospitality & Leisure Providers Beware (*Alerts/Updates*)
- 14 December 2018, ACCC Seeks to Curb Digital Platform Market Power, Facebook Hits Back (*Alerts/Updates*)
- 27 November 2018, IP Exemptions to Competition Laws to be Removed: Restrictions in Licences to be Subject to Competition and Consumer Act 2010 (*Alerts/Updates*)
- 24 August 2018, Penalties for Australian Consumer Law Breaches Increase Tenfold (if not More) (*Alerts/Updates*)

- 7 August 2018, Continued Antitrust Enforcement Against Non-Compliant Manufacturers in Europe: Significant Penalties Imposed for Fixing Resale Prices (*Alerts/Updates*)
- 19 July 2018, Merger Parties Beware: ACCC Commences First Gun Jumping Cartel Prosecution (*Alerts/Updates*)
- 21 May 2018, Supplying Products & Managing Margin Down Under: Online Price Erosion Strategies for Product Manufacturers in Australia and New Zealand (*Alerts/Updates*)
- 11 April 2018, Australia's Fines Not High Enough: The ACCC Redoubles its Focus and Sets out its Priorities (*Alerts/Updates*)
- February 2018, Competition Law Update: The New Concerted Practice Prohibition and its Implications for Your Business (*Webinar*)
- 21 February 2018, Australian First: Criminal Charges Laid Against Individuals for Alleged Cartel Conduct (*Alerts/Updates*)
- 01 February 2018, EU Judgment On Banning Sales Via Online Marketplaces - What Does It Mean For Non-Luxury Brands? (*Alerts/Updates*)
- 20 October 2017, Harper Amendments to Australia's Competition Laws Passed: ACCC Heralds a "new era" in Competition Law (*Alerts/Updates*)
- 14 September 2017, Unfair Contract Terms in Small Business Contracts: ACCC Takes its First Court Action Against JJ Richards (*Alerts/Updates*)
- 26 July 2017, ACCC and CrownBet Roll the Dice - Apply for Judicial Review of Tabcorp/Tatts Merger Authorisation (*Alerts/Updates*)
- 27 February 2017, Higher Penalties, Construction, Health and Energy: the ACCC Sets its Enforcement Priorities for 2017 (*Alerts/Updates*)
- 15 December 2016, It is the Reality of the Commercial Relationship That Counts: Travel Agent Flight Centre is a Competitor to the Airlines (*Alerts/Updates*)
- 24 November 2016, Franchising Update (*Alerts/Updates*)
- 23 November 2016, ACCC Continues Probe into Offers of Extended Warranties (*Alerts/Updates*)
- 22 November 2016, Competition Law: Merger Clearance in Australia (*Books*)
- 3 August 2016, Are you Ready for the Extension of the Unfair Contract Terms Regime to Small Business? (*Alerts/Updates*)
- 27 July 2016, Are you Ready for the Extension of the Unfair Contract Terms Regime to Franchise Agreements? (*Alerts/Updates*)

## OTHER PUBLICATIONS

- Anti-trust in a Time of Global Crisis: An Australia Perspective, *Australian Law Council's Annual Competition and Consumer Law Workshop*, November 2020
- Competition Law: Merger Clearance in Australia, *Negotiated Acquisitions and Buyouts*, November 2016
- Chapter 2 - Australia, *The Cartels and Leniency Review - Edition 3*, January 2015
- Chapter 1 - Australia, *The Dominance & Monopolies Review*, September 2014

## NEWS & EVENTS

- 14 September 2021, K&L Gates Assists HP in Restructuring HP Online Stores in Australia & New Zealand: Obtains Clearance from ACCC & NZCC for Resale Price Maintenance (*Noteworthy Work*)
- 10 August 2021, K&L Gates Acts for Dicker Data in AU\$68 Million Acquisition (*Noteworthy Work*)
- 23 June 2021, K&L Gates Assists GlobalX In Securing ACCC Clearance for D&D Sale (*Noteworthy Work*)
- 18 June 2021, K&L Gates Acts for Sweden's Sinch in US\$1.3 Billion Australian Acquisition (*Noteworthy Work*)
- 16 December 2020, K&L Gates Recognized in Chambers 2021 Asia Pacific and FinTech Guides (*Rankings & Recognitions*)
- 8 April 2020, K&L Gates Advises Pharmaceutical Wholesalers on Successful Application for COVID-19 Collaboration (*Press Release*)

## AREAS OF FOCUS

- Antitrust, Competition, and Trade Regulation
- Investigations, Enforcement, and White Collar

## INDUSTRIES

- Agtech
- Consumer Products
- Energy
- Luxury Products and Fashion
- Technology
- Telco
- Utilities

## REPRESENTATIVE EXPERIENCE

- Obtained ACCC clearance for Visy Industries' acquisition of Owens-Illinois' glass manufacturing and beneficiation business in Australia.
- Obtained ACCC clearance for Americold's proposed acquisition of Agro Coldstores/Doboy.
- Obtained ACCC clearance for Evoqua/Memcor's sale of its water business to Dupont.
- Acted for Ericsson in the ACCC court proceedings regarding the acquisition of TPG by Vodafone.
- Acted for BlueScope Steel in the ACCC court proceedings regarding the acquisition of Aurizon's intermodal logistics business by Pacific National.
- Obtained ACCC clearance for Continental AG's proposed acquisition of Kmart Tyre and Auto network.
- Advised Hotels Combined on its sale to Booking Holdings (Booking.com).
- Acted for BASF in its acquisition of the divested assets from the Bayer/Monsanto merger.
- Obtained ACCC clearance for the sale of the Milemaker retail petrol network to Caltex.
- Advised Landmark Holdings on its acquisition of Louis Dreyfus' Macrofertil business.
- Obtained ACCC clearance for acquisitions by Qscan in the medical imaging and radiology markets in Australia.
- Obtained ACCC clearance for acquisitions by Superior Food Services in foodservice markets in Australia.
- Obtained ACCC clearance for Archer Daniels Midland's proposed AUD3.4 billion takeover of GrainCorp.
- Obtained ACCC clearance for the sale of Australian Power & Gas to AGL.
- Obtained ACCC clearance for ExxonMobil's sale of its Australian retail assets to Caltex and ultimately to 7-Eleven.
- Advised IOOF on merger control issues and on the acquisition of an interest in Equity Trustees.
- Obtained ACCC clearance in Australia and New Zealand for the proposed acquisition by Visy Industries of the plastics business of HP Industries.
- Obtained clearance from the ACCC for HP for certain resale price maintenance on online market places; Obtained clearance for HP from the ACCC for resale price maintenance conduct on HP Online Stores.
- Acting for Engage Marine, new entrant into towage and shipping pilotage in the ACCC's first prosecution under the new Misuse of Market Power provisions.
- Defended Landmark in a prosecution by the ACCC alleging misleading conduct in the marketing of barley.
- Advised rental car companies (Avis, Thrifty, Hertz, Europcar, Enterprise) in seeking clearance from the ACCC to collectively negotiate terms with Cairns Airport.

- Advised major engineered stone manufacturers (Caesarstone, Smartstone and WK Marble and Granite) in seeking clearance from the ACCC to require fabricator accreditation and potential refusal to supply.
- Advised HP in an investigation by the ACCC into the installation of firmware into HP printers to limit use of cartridges with non-HP chips.
- Acted for Clubs Australia in its application to the ACCC for clearance to collectively negotiate with suppliers including Tabcorp and Foxtel.
- Advising Belkin following an investigation by the ACCC into Belkin's warranty practices.
- Advised Visy Industries in an investigation by the ACCC into Unfair Contract Terms in the waste management industry.
- Acting for Peak Care (and one of its executives) in the criminal prosecution of Country Care for cartel conduct.
- Advised an international Investment Bank in the ACCC's investigation of cartel conduct into foreign exchange and other bank benchmark rates.
- Advising a number of individuals in ACCC investigations into cartel conduct in financial services and rehabilitation industries.
- Defended HP in proceedings commenced by the ACCC alleging misleading or deceptive conduct and breaches of the Australian Consumer Guarantee regime.
- Defended ExxonMobil in Australia's largest 'dawn raids' by the ACCC alleging price fixing in the petroleum and bitumen industries and successfully defending proceedings commenced by the ACCC alleging price fixing.
- Advised LPO Group on collective negotiation issues and seeking Authorisation from the ACCC for collective negotiations with Australia Post.
- Advising Honda Australia on its response to Australia wide airbag recalls.
- Advising clients on investigations by the ACCC in the IT, agriculture, car rental and travel industries.
- Defended Campbell Arnott's in an ACCC investigation of claims by its biscuit business.
- Defended Australian Power & Gas in proceedings commenced by the ACCC alleging misleading and deceptive conduct and unconscionable conduct.
- Acted for Goodman Fielder in litigations against Unilever and George Weston Foods.
- Acted for each of Goodyear and De-Longhi in relation to allegations by the ACCC of misleading conduct in respect of environmental claims.
- Advised ANZ Banking Group in relation to various enquiries and ACCC litigation and, more generally; and advising its consumer business on credit card and ATM issues, as well as other suppliers of financial services including Macquarie Bank, UBS and GE.



- Advising industry associations such as the Australian Medical Association, the Australian Dental Association and the Australian Steel Institute regarding various competition issues and initiatives.
- Rolled out national compliance programs for HP, Visy Industries, Honda Australia, Belkin, CIMIC/Leighton Group companies, De-Longhi and Medical Media.
- Provided compliance training to Americold, ANZ, Medibank, GMHBA, Leidos, McDonald Jones Homes, Porter Davis, Carlisle Homes and Stockland.