



HIGH COURT OF AUSTRALIA

7 September 2012

P T GARUDA INDONESIA LTD v AUSTRALIAN COMPETITION & CONSUMER COMMISSION

[2012] HCA 33

Today the High Court unanimously dismissed an appeal by P T Garuda Indonesia Ltd ("Garuda") and held that Garuda had no claim to immunity under the *Foreign States Immunities Act 1985* (Cth) ("the Act") from proceedings brought in the Federal Court by the Australian Competition and Consumer Commission ("the ACCC").

The ACCC alleged that, with respect to commercial freight services to Australia, Garuda and several other airlines had engaged in anti-competitive conduct which contravened s 45 of the *Trade Practices Act 1974* (Cth) ("the TPA"). The remedies sought by the ACCC included an injunction, declaration and pecuniary penalties under the TPA.

It was not disputed in the High Court that Garuda was a "separate entity" of the Republic of Indonesia. The High Court held however, that Garuda could not claim immunity because the proceedings against it concerned a commercial transaction within the meaning of s 11(1) of the Act. The conduct alleged by the ACCC against Garuda comprised dealings of a commercial trading and business character. It was no answer to the denial of immunity that the ACCC proceedings were not brought to vindicate private law contractual rights.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*