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Automatic harm to competition? Pricing algorithms and co-ordination 341

This article assesses how pricing algorithms might create co-ordination concerns. Algorithms deserve attention, but they can exert a variety of pro- and anti-competitive influences in oligopolistic markets. We find that recent regulatory statements on the possible dangers of algorithmic pricing have not established a case for increased competition law intervention.

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Internet sales of luxury (and maybe also other) products within selective distribution systems after Coty 345

Until the decision in *Pierre Fabre*, the need to preserve the “luxury image” of a product appeared sufficient to consider a selective distribution system compliant with art.101(1) TFEU. In *Pierre Fabre*, at [46], such principle appeared to be abandoned—even if the decision appeared not indisputably clear in this respect. The decision in *Coty Germany v Parfümerie Akzente* narrowed the effect of *Pierre Fabre* and, in consideration of the underlying economic logic of contractual agreements and of the specific facts dealt with in *Pierre Fabre* (an outright ban on internet sales was imposed on resellers), repositioned it within previous case law. Pursuant to *Coty*, the need to preserve the “luxury image” of a product may legitimately justify a selective distribution system and, more particularly, a clause prohibiting distributors from selling luxury products through internet sites which customers clearly recognise as run by third parties. It suggested that a similar approach could (and maybe should) be adopted also with respect to products, even if not falling within the “luxury” markets, as far as their brand image is appreciated as relevant by consumers.

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International competition law is often seen as a strategy for dealing with high transaction costs between domestic antitrust regimes, thus arising as an innovative tool for economic policy. This article addresses this question by discussing the benefits and challenges involved in the creation of such international regimes, by weighing the limits of harmonisation and the drivers for more legal certainty.

KNUT FOURNIER

The MyEG case: the first Malaysian finding of abuse of dominance reveals issues with the regulator’s methodology, and an opportunity to play an advocacy role 366

In December 2017, the Malaysian Competition Appeal Tribunal confirmed the first fine ever imposed by the Malaysian Competition Commission (“MyCC”) for abuse of dominance. MyEG, a government contractor, was granted a sole concession for the online renewal of foreign workers permits. MyEG also acted as an insurance agent, and employers are required by law to purchase several insurance policies for their foreign workers. MyEG abused its dominant position by forcing employers to purchase mandatory insurance through MyEG, and by adding artificial technical hurdles and delays when employers purchased insurance through other agents. This article argues that MyCC failed to properly define the relevant market, to assess MyEG’s market power, and that MyCC partly mischaracterised MyEG’s abusive behaviour. This article submits that MyCC must reinforce its methodology, as it gradually addresses more complex and varied anti-competitive practices. MyCC also overstepped its authority by imposing an unusual remedy on MyEG, which it did not properly explain. More importantly, the case is the second in which MyCC deals with government action. In the context of Asia, where less sophisticated regulatory environments often produce anti-competitive outcomes and inefficiencies, MyCC should have addressed the role of the Malaysian government in setting up an anti-competitive situation from the onset, when it outsourced government services to a sole concession owner. This article argues that MyCC must follow the example of Singapore and other jurisdictions in which competition authorities have embraced their role as government advisors and competition advocates in relation to public policy. From the silence of the Malaysian regulator on this important aspect of competition law enforcement, this article draws lessons which are relevant beyond the borders of Malaysia, and potentially impacts all new and recent competition authorities.