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Concerns about how e-commerce poses a serious threat to the existing competition law regime has been raised by scholars as well as by regulatory authorities across the world, and the possibility of using algorithms to induce or facilitate tacit collusion has emerged as a serious issue. The Indian competition law, like the law in the US or the EU, requires some human element in the form of an agreement in order to hold the enterprises liable for engaging in concerted practice, but this legal framework is now facing a challenge—as algorithms digitally fix the prices without any interaction between the executives of the enterprises, it has become impossible to prove the existence of any anti-competitive agreement or anti-competitive intent on the part of the firms. Although this issue has not been debated much in the Indian legal context, the ongoing inquiry by the CCI into allegations of algorithmic price-fixing in the airlines industry has made it imperative to ask whether collusion using algorithms can be prosecuted under the existing laws in India. This article explores the challenge posed by pricing algorithms to the existing legal framework in India and evaluates whether the existing restriction on horizontal restraints in Indian law are enough to deal with a tacit collusion facilitated by algorithms.

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Disclosure of evidence in private enforcement was the main achievement of the 2014 EU Damages Directive. As competition law litigation is characterised by an information asymmetry, it is appropriate to ensure that claimants are afforded the right to obtain the disclosure of evidence relevant to their claim. However, the documents that must be disclosed often contain confidential information, especially business secrets. This article analyses how the Damages Directive intends to protect confidential information during disclosure. Furthermore, this article suggests effective procedural measures that can be used in practice and such measures that parties can provide themselves.

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