

Articles

JAN KUPČÍK

European tacit collusion theory and its application to price algorithms 533

The debate about a tacit collusion of price algorithms is widespread. However, not every alignment of prices that are set by algorithms is a tacit collusion. The author theoretically analyses the case law of the Court of Justice defining an agreement, a concerted practice and a collective dominance as opposed to the notion of a tacit collusion. The analysis allows us to formulate the relevant aspects of these concepts that differentiate them from a tacit collusion and, therefore, determine whether the conduct in question is legal or illegal. Furthermore, these theoretical conclusions are applied to both existing and expected collusive conduct inflicted by the use of algorithms. Conditions for the various types of an algorithmic collusion becoming illegal under arts 101 or 102 TFEU are identified. In the light of the findings, the author elaborates on viability and effectivity of suggestions presented in theory, aiming to address the suboptimal outputs caused by a tacit collusion.

ROBERT WALTERS

The current status of data portability in personal data and competition law 546

This article explores the current status of data portability in Australia, the European Union (EU), the United Kingdom (UK) and the United States (US). The right to data portability was introduced to provide consumers with greater choice to manage their personal data. It enables consumers to obtain a copy of their personal data, and the transfer of data from one controller to another controller. Thus, the resulting effect from exporting data between controllers is to facilitate and maximise competition. This comes at a time when significant fines have been handed down by the EU and the US for breaches in data protection law, and states in the US are implementing privacy laws that resemble the EU legal framework. Investigations have been carried out by various governments that have revealed monopoly type behaviour from large internet entities such as Google and Facebook. This article also explores some of the recent investigations and makes the point that the government will need to balance carefully the protection of personal data, while providing competition in the internet economy. However, it must be noted that these entities were some of the first in this new economy to emerge. There are calls for these entities to be broken up. Yet, one of the most pressing issues that will need to be managed, should it be the policy direction by governments to break these entities up, is the impact on the end consumer and the possibility of higher prices to access certain platforms over the internet. With Brexit looming, this article will also look at what impact this might have on the UK. In addition to these jurisdictions, this article will also look at what the US are proposing in the area of data protection and competition law. The article will demonstrate that the gap is closing between competition and data protection law, however, it will take a lot more work to close the gap permanently. It may never be settled.

SHAURYA ARON & SHWETA
MURARKA**Autonomous vehicles at the antitrust crossroads** 564

Autonomous vehicles are expected to bring a number of productivity and technological benefits. KPMG has concluded that India ranks 20th globally in the Autonomous Vehicles Readiness Index. Much of it can be attributed to the lack of central government's enthusiasm to enact a set of rules or guidelines which might facilitate the introduction of autonomous vehicles in the country as government believes that the introduction of self-driving cars will take away the jobs of the people. These vehicles might have to overcome a major hurdle under the legal regime of the country on account of the behaviour of manufacturers and service providers. There is also a threat to competition as entry barriers can be created by the owner of "SEP" by commanding its dominant position and also by "OEM" who has the access to data. The Indian competition enforcement authority has already inquired into the allegations of vertical restraints against the manufacturers of traditional vehicles. This article tries to look into the potential anti-competitive actions of the manufacturers of autonomous vehicles which might have an adverse effect on the consumer sovereignty in the market, protection of which is one of the primary objectives of the Indian Competition Act. It analyses how the conduct of manufacturers of autonomous vehicles may adversely affect competition by imposing vertical restraints and the evolution of economic thinking regarding vertical restraints, and also suggests some procedures for developing investigation into the cases of vertical restraint with respect to autonomous vehicles.

Comment

KONSTANTINA SIDERI

EU merger control: the novelties in gun-jumping 571

The Commission's latest decisional practice in gun-jumping stressed that, despite the fact that gun-jumping is not a new phenomenon, it has become a topic of current interest, especially following the recent Commission decision in the *Canon* case in June 2019 and the more recent ECJ judgment in the *Marine Harvest* case in March 2020.

SHREYA CHANDHOK

Exemptions and guidelines under antitrust law during Covid-19: a global review 574

The Covid-19 pandemic has not only affected the health of individuals but has had a perceptible impact on both consumers and businesses. The severity of the present circumstances has directed many jurisdictions to introduce new guidelines and exemptions for businesses. The author through this article has analysed the various exemptions and guidelines provided by five different jurisdictions, namely, the EU, the UK, Australia, India, and the US, and has further provided some suggestions for a future course of action.

KRUSHA BHATT

The indirect route of securing interest of consumers and competitors under the EU competition law 578

This article delivers the notion that to enforce competition rules which are aimed at maintaining a balance between profitability of the competitors and welfare of the consumers, the crucial aspect is a healthy competitive market. To convey the notion of the article, evidence is taken from the case of *GlaxoSmithKline v Commission*, and other relevant cases pertaining to arts 101 and 102 TFEU.

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