

Articles

DR BEVERLEY WILLIAMSON

Incentivising compliance with competition law: could liability insurance be the answer? 177

Given the significance of the consequences of breaching competition law it is clear that businesses should take the matter of compliance seriously, yet the available evidence would appear to demonstrate that they do not. This is despite the fact that “[b]oth the EU Commission and the Competition and Markets Authority have sought to reinforce the importance of business compliance with competition law and have website material dedicated to this purpose”. This article, building upon the work of Tom Tyler into what influences individuals, and thereby corporations, to comply with the law, looks at the role that competition law specific liability insurance could play in incentivising those legal obedience stimulators that have not yet been effectively targeted.

PROF. AVV. EMILIANO MARCHISIO

EU competition law and the “just price” in times of crisis 186

The debate about the “just price” has ancient origin and returns forcefully to the scene when, in the event of crises of various kinds, there is a rapid and significant increase in prices of given goods or services. In this article the problem of whether price increases of such a nature could, or should, be considered illicit under EU competition law is examined. The central part of the article reviews different theories on what a “just price” should be and focuses on the idea that a price is “just” when it functions as an index of relative scarcity in free markets. It is claimed that such a function deserves protection by EU law. Therefore price adjustments in response to shocks cannot and should not be considered illegal: it is unacceptable to sanction private firms by attributing to them the wrong of not being substituted, at their own expense, for the exercise of a public function (that of making sure that price increases do not put solidarity and other constitutional principles at risk).

SIMON ALBERT

Sabre/Farelogix and the jurisdiction of the UK’s Competition & Markets Authority to review international transactions 200

As the Brexit process unfolds, the question of the jurisdictional powers exercised by the UK’s Competition & Markets Authority (CMA) as regards merger control has become more pressing. The recent *Sabre/Farelogix* transaction has raised important questions about the CMA’s exercise of those jurisdictional powers, which were heard on appeal before the UK’s Competition Appeal Tribunal (CAT) in November 2020. This article explains the transaction’s importance and in particular why it may have significant effects on the exercise of the CMA’s jurisdictional powers in the future. As a result, the outcome of the case is likely to be of direct interest to international deal-makers and their competition law advisers, in the US, UK and elsewhere.

PRAKHAR BHATNAGAR & AFIF KHAN

The curious absence of collective dominance in the Indian competition law regime — is an amendment to Section 4 the only answer? 207

Collective dominance in the EU competition regime is used to deal with situations of “tacit co-ordination”, which arise especially in oligopolistic markets. In India, however, this concept has not been recognised. This article argues that there is no need to formally recognise the concept by way of an amendment; rather, the provision prohibiting anti-competitive agreements, coupled with the merger control regime is sufficient to counter the oligopoly problem.

GIULIA SONDEREGGER

Algorithms and collusion 213

Increasingly more companies implement algorithms to monitor price changes, observe price settings and adjust their prices accordingly. This raises major concerns in competition law, especially since self-learning algorithms act independently and therefore do not rely on any human intervention. This article aims to critically analyse the various challenges that algorithms pose to EU competition law in order to address the question of whether the existing standards of concerted behaviour according to art.101(1) TFEU are applicable to self-learning algorithms or whether new approaches would be more effective in ensuring “fair” competition. Overall, it argues that although no major amendments are needed, the condition of causality in self-learning algorithm cases seems obsolete due to the independent character of such computer programs.

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