

AUSTRALIAN JOURNAL OF COMPETITION AND CONSUMER LAW

Volume 29, Number 3

2021

EDITORIAL

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ARTICLES

Do Androids Dream of Electronic Collusion? An Analysis of Algorithmic Collusion under Australian Law – Deniz Kayis

Sophisticated algorithms are becoming ever more commonplace. With them comes the risk of “algorithmic collusion”. That is, collusion enabled, facilitated or conducted by algorithms. Adopting the conceptual framework developed by Ezrachi and Stucke, this article examines the Australian legal system’s interaction with four potential ways in which algorithms could enable anti-competitive outcomes: as facilitators of traditional collusion, as digital connectors between hubs and spokes, as tools used unilaterally to enable stable tacit collusion and, finally, as autonomous self-learning actors. The article concludes that current statutory provisions may not be capable of overcoming the challenges associated with detecting, investigating and litigating algorithm-enabled co-operation. 176

Proving Civil Cartel Conduct: Evidentiary Issues, “Commitment” and the Effect of the Concerted Practices Prohibition – Jarryd Cox

This article reviews the state of civil cartel liability in Australia with a focus on the difficulties faced by the Australian Competition and Consumer Commission when prosecuting cartel conduct. The greatest stumbling block faced by the Commission when prosecuting civil cartel conduct is its substantial evidentiary burden. In comparison to other jurisdictions (United States and Europe), this evidentiary threshold is arbitrarily elevated due to proof of the element of “commitment” being a necessary condition of successfully prosecuting cartel conduct. The introduction of a concerted practices prohibition in the 2017 amendments to the *Competition and Consumer Act 2010* (Cth) is expected to aid the Commission in reducing anti-competitive behaviour. This article recommends that the Australian cartel laws be further amended for the purpose of establishing “commitment” as a sufficient but not necessary element of cartel liability. 193

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