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Articles

Pricing algorithms pose a conceptual and practical challenge for competition law. This article revisits the notion of agreement in Australian cartel law in the context of the algorithm-driven economy. It examines legal and academic approaches in the European Union, the US and the UK before applying these insights in the Australian context. The article focuses particularly on two kinds of pricing algorithms that pose challenges for Australian cartel law, namely parallel and signaling algorithms. We argue that parallel algorithms should be understood as falling within the concept of agreement for cartel law, although they present evidentiary challenges. Signaling algorithms, by contrast, constitute concerted practice under Australian law. They could also potentially fall within the cartel prohibition, but this would require empirical evidence of de facto collusion in the relevant market.

Increasingly, manufacturers are embedding our everyday smart goods such as fridges, washing machines, computers and smartphones with computer software with digital locks that prevent consumers from repairing or seeking third-party repairs when these devices malfunction or stop working. Contributing to this problem are the complex licences that accompany these goods that also place restrictions on seeking repair outside the manufacturer's authorised network. The use of these licences is creating tension between Australian consumers' general understanding of product warranties and their legal rights under the *Australian Consumer Law* ('*ACL*'). While consumers have the ability to seek manufacturer repairs under the *ACL*, many consumers are not familiar with these legal rights and tend to rely on the product warranties provided by manufacturers to seek redress when the product fails. This view was also supported in the findings of the recent Productivity Commission's Right to Repair report. Australian consumers' attitudes to the repairability of their smart goods and their understanding of their rights under the *ACL* and the relationship between manufacturers' warranties are the focus of this article. In this article, we explore Australian consumer law protections around repair as well as Australian consumers' perceptions of their ability to repair their smart goods, their products' warranties and lifespans through an empirical quantitative online survey that was undertaken on consumer perceptions of repairability, products' warranties and lifespans.

By undermining the power of traditional news broadcasters and providing a voice to individuals, digital platforms have transformed the social and economic landscape of society. However, the dominance of digital platforms and their unique operations have also raised concerns regarding the firms' 'gatekeeping' functions and their potential to cause new forms of consumer harm. Competition law is viewed as a regulatory tool that can be utilised to govern the conduct of digital platforms and protect consumers in the digital era. However, due to its emphasis on traditional markets and its inability to adapt to processes of digitisation, the law is currently of limited effectiveness. This article draws upon existing literature to develop a two-tiered model, which can be used to assess effectiveness of the law in governing digital platform conduct. It analyses the relevance of competition law policy objectives in the digital platform context, the effectiveness of legal principles and proposes reforms. It concludes that whilst ideologically competition law is a suitable means to regulate digital platforms, a more holistic approach to regulation is required, which extends beyond the competition law regime.

This article evaluates the recently appealed Federal Court decision in *Australian Competition and Consumer Commission* ('ACCC') *v NSW Ports Operations Hold Co* ('*NSW Ports*') in which crown and derivative crown immunity were available in the context of the NSW Government's privatisation of three ports — Kembla, Botany and Newcastle. Nearly 30 years on from the Hilmer Report, privatisation remains a double-edged sword. This decision is a contemporary examination of the intersection between competition law and privatisation amid the ACCC's increasing regulatory focus in this area. This article argues the scope of crown and derivative crown immunity in *NSW Ports* is overly deferential to government policy and prevents effective competition law scrutiny of significant economic conduct entangled in privatisation. This article also examines how governments minimise sovereign risk through the practice of offering anti-competitive sweeteners during privatisation to maximise the price of public assets.