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Meeting the civil standard of proof that conduct is likely to have an effect of a substantial lessening of competition is not straightforward. The obligation of the judiciary is to apply the statutory requirements in the terms in which they have been promulgated. The judicial approach of comparing the present and future with and without the impugned conduct to ascertain if there is a real chance of a substantial lessening of competition reflects the terms of the legislation. The requirement that the comparison reflect rational commercial behaviour, and be based on evidence and not speculation, is orthodox and unexceptionable. It should not be overlooked that evidence based on economic theory is also capable of being explanatory and predictive of future circumstances. Other legislative choices, reflecting different policy choices about the protection of competitive markets are open and have been adopted in other jurisdictions. These include the application of the precautionary principle to concentrated markets in Europe and the incipiency doctrine in the USA. In all contexts, judicial decision-making involves close attention to and application of the statutory language.

While some consider the ACCC's call for merger reform a case of sour grapes over lost cases, the ACCC is not alone in calling for merger reform. The antitrust authorities in other jurisdictions are also concerned and there have been numerous international reports which have included recommended changes to merger provisions. The aim of this article is to explore the difficulties that anti-competitive mergers involving digital platforms raise in the context of s 50 of the Competition and Consumer Act 2010 (Cth) ('CCA') and to discuss possible solutions. First, market definition is often controversial, but when analysing the conduct of digital platform businesses, it appears to raise even more complex issues. Next, the issues encountered in assessing the competition effects of platform acquisitions are addressed, including whether acquisition of a nascent competitor will substantially lessen competition, and the complexity of assessing mergers involving platform ecosystems. Following this, consideration is given to the difficulty of complying with the Evidence Act 1995 (CTH) when the effects of the merger have yet to occur, and the future is dynamic and consequently uncertain. The final section provides suggestions for reforming Australia's merger provisions.

Today, multiple businesses are adopting and integrating price-setting algorithms or pricing algorithms into their businesses to aide them in reaching the perfect pricing points that will maximise profits. With the advent of artificial intelligence and machine learning, the real-time calculations provided by pricing algorithms are no longer second guessed by businesses before adoption. However, these pricing algorithms that are powered by artificial intelligence and machine learning and ones wherein human are not actively or intentionally colluding provide challenges to the current competition law regime. The effect of business' usage of pricing algorithms feels anti-competitive even though there might be a lack of collusive intention on part of the businesses. This article explores the anticompetitive effects of price-setting algorithms, specifically to horizontal agreements under pt IV of the Competition and Consumer Act 2010 (Cth). It argues that the anticompetitive effects of pricing algorithms fall in the grey area between conscious parallelism and concerted practices or cartel-like behaviour, and the provisions of pt IV of the Act are insufficient in their current form to deal with this challenge.

This article discusses how the factors of information privacy and sophisticated choice-shaping techniques pose novel and nuanced challenges to consumer protection in the digital marketplace as it concerns advantage-taking. The article demonstrates that prevailing conceptions and regulatory measures addressing consumer advantage-taking are inadequate and do not measure up to the dynamics thrown up by modern transactional technologies and practices. In the end, the article makes a case for the reformulation of legal rules that redefine advantage-taking to properly regulate contemporary patterns of consumer advantage-taking.

Book Review