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CONTENTS

Publisher's Note

Publisher's Note	1
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Articles

The case for banning most worker non-competes in Australia — <i>Tom Kennedy</i>	2
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Around 20% of Australian workers are affected by a non-compete restraint (NCR). An NCR prevents a worker from joining a competitor of their current employer for a period after their employment is terminated. Though ostensibly necessary to protect sensitive business information and relationships, NCRs have recently faced an increasing level of criticism in Australia and overseas, due to their deleterious effects on labour mobility and dynamism. This article considers whether banning NCRs, either entirely or below an income threshold, would be likely to increase Australia's real GDP. It conducts this evaluation via a comparative study with the US, where empirical evidence on the economy-wide effects of NCRs is more plentiful. Based on that evidence, it recommends that Australia ban NCRs below the high-income threshold set out in the Fair Work Act 2009.

More than theory: Data privacy as a competitive parameter in Australian merger review — <i>Rory Dolan</i>	27
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Consumers often have little choice but to consent to data practices which commodify their dignity, undermine their autonomy and threaten their well-being. Two market failures — substantial market power and information and behavioural problems — are responsible for the supracompetitive privacy costs consumers suffer in many digital markets. These market failures have been the subject of close scrutiny by the Australian Competition and Consumer Commission in recent years. One interaction effect that has received little attention, however, is the relationship between data-driven mergers and privacy quality. This article presents three theories of harm which identify how a merger may substantially lessen privacy competition and thereby increase the privacy costs consumers suffer in a market. It argues that, in certain digital markets, theories of privacy harm are growing in significance as platforms become more responsive to consumers' stated privacy preferences.

Price discrimination: Time to rethink competition law's indifference? — <i>Rhonda L Smith and Arlen Duke</i>	61
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Although price discrimination generally is not anti-competitive, sometimes alone or in combination with other conduct it may be anti-competitive. This article considers the issues raised by an allegation

of anti-competitive price discrimination, particularly those in relation to market definition. As always, market definition is purposive and so recognises that the conduct of concern may be price discrimination which requires consideration of whether some of those in a market with the same product and geographic dimensions are in different customer markets. The conditions required to identify price discrimination are identified before the implications of price discrimination for the competitive process are considered.

Algorithmic price personalisation and consumer protection in Australia

— *Son Tan Nguyen*

80

The Australian Consumer Law was designed to protect consumers when conduct in trade or commerce was primarily made by human actors. However, as the world of business and consumer interactions undergoes a transformative phase, new phenomena have emerged. One such transformation is the widespread adoption of algorithmic price personalisation in business, where pricing algorithms are used to determine individualised prices based on consumer willingness to pay. Powered by emerging technologies such as big data, machine learning and artificial intelligence, algorithmic price personalisation has gained prominence in the current business landscape, raising various concerns about consumer protection. This article examines whether the key provisions of the Australian Consumer Law — particularly the provisions on misleading or deceptive conduct, unconscionable conduct, and unfair contract terms — are capable of safeguarding consumers amidst the rise of personalised pricing algorithms. This article finds that while the Australian Consumer Law can provide a basic protection to consumers, various challenges exist and need to be addressed to ensure consumer rights in the face of algorithmic price personalisation.

Product intervention orders — Anti-avoidance provisions in the National Consumer Credit Protection Act and the Corporations Act

— *Paul Latimer*

117

This article examines the anti-avoidance amendments in ss 1023S–1023U of the Corporations Act 2001 (Cth) added in 2023 which apply to credit products. They parallel the amendments which were added in 2022 to the National Consumer Credit Protection Act 2009 (Cth) in Pt 7-1 Div 1A to prohibit a person entering a scheme to avoid the application of a product intervention order in relation to financial products which are credit facilities. They also parallel the anti-avoidance s 965 which was included in the best interests amendments to the Corporations Act 2001 (Cth) in 2012. The article examines issues arising from the new credit product intervention powers including the definition of a scheme, an avoidance purpose, exemptions and penalties. The amendments provide for new subordinate legislation, so it is important that the Australian Securities and Investments Commission exercises its new powers appropriately especially in relation to legislative instruments. For this purpose, there is some guidance in the scoping order reforms recommended by the Australian Law Reform Commission in 2023 if enacted.

The article builds on and updates the seminal paper on product intervention orders in this journal by Lucinda O'Brien, Ian Ramsay and Paul Ali, 'Australia's Product Intervention Power and Protection from Consumer Harm: An Evaluation' (2022) 29(1) *Competition and Consumer Law Journal* 32.