

AI-enabled price discrimination

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Propositions

1. AI-enabled price discrimination is not always undesirable from an economic perspective as it can increase static efficiency, and in some market conditions, it can promote dynamic efficiency and boost consumer welfare.
2. AI-enabled price discrimination conducted by dominant undertakings may create exclusionary and/or exploitative effects as well as trigger fairness concerns vis-à-vis consumers (customers) and/or competitors.
3. Competition law alone is inadequate to achieve optimal deterrence when addressing concerns caused by anticompetitive AI-enabled price discrimination in the EU and China.
4. Data protection rules should serve as ex-ante measures to regulate the collection and processing of consumer data, which can prevent potential AI-assisted abuse of dominance from taking place.
5. Consumer protection rules should provide a direct remedy to protect consumer welfare in damage actions irrespective of the dominant or non-dominant position of the undertakings using AI-enabled abusive practice.
6. Close collaboration between competent authorities (i.e. competition authorities, data protection authorities and/or consumer protection authorities) is a must in order to tackle concerns caused by AI-assisted abusive practice with anticompetitive and welfare-reducing effects in an effective and efficient way.
7. The proposed approach to assess and remedy AI-enabled price discrimination will contribute to the legal and economic academic debate on AI-enabled price discrimination as well as offer a socially desirable and cost-effective solution to tackle concerns caused by AI-enabled price discrimination.
8. While Generative AI creates desirable economic effects, it also raises competition concerns once Big Techs using Generative AI abuse their dominant market position to exclude competition and exploit consumers in digital markets.
9. In addition to the traditional approach of abuse of dominance in competition law, the EU should adopt harmonized rules on relative dominance prohibiting a party from abusing its superior bargaining position even when it does not hold a dominant position under Article 102 TFEU.
10. In response to the introduction of relative dominance in the proposed Anti-unfair Competition Law Amendment 2022 in China, it would have been more appropriate to incorporate relative dominance under the Anti-Monopoly Law since rules on relative dominance are primarily introduced to protect competition on the merits rather than to protect a single competitor.