



**British Institute of  
International and  
Comparative Law**

# Competition Law Forum

12 December 2018

## Annual Report

Dear Colleague

It is with great honour that I address this letter to you, at the end of another productive year at the Competition Law Forum (CLF). In the year that passed, the CLF's research activity covered, among other things the impact of Brexit in relation to the enforcement of competition law by the UK authorities and the challenges facing the UK administration and the Competition and Markets Authority (CMA) in particular, following Brexit. Another contentious topic that played an important role covered the challenges of applying competition law tools and concepts to digital markets and the impact of platforms with market power on the UK economy. These topics will continue to be high on the agenda in the year to come.

The CLF's research activity in 2018 also covered competition in financial services. At a time when Brexit is looming and the FinTech innovation is rapid, the Financial Conduct Authority (FCA) is highly active in developing its approach to the UK's exit from the EU in order to provide certainty and confidence for firms operating in the UK. Thus, the impact of Brexit on passporting and enforcement in financial services were discussed. This topic will continue to be on the CLF's agenda in 2019.

Responding to the increased interest of practitioners and academics in the challenges of the treatment of exclusivity rebates, the CLF hosted an event on 'New directions beyond Intel: The debate over rebates'. In a panel discussion, participants had the opportunity to discuss with Brice Allibert, who was one of the case handlers, who had worked on the Intel and Qualcomm decisions, how the recent landmark judgment in Intel, delivered by the Court of Justice, which set aside the judgement of the GC and referred the case back, informed the recent Commission's decision in the Qualcomm case. More importantly, Allibert laid out where he sees the Commission going from here. In light of the expected General Court judgment in Intel, this topic will continue to be high on the agenda in the year to come.

2019 will be an interesting year and the CLF has a number of events on the agenda. Starting with a seminar discussing the importance of economic effects in January, the challenges of antitrust enforcement



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in digital markets, will also be part of the agenda and the CLF will play an active role in informing discussions and decisions through its applied research, events and training activities.

May I take this opportunity to wish you all a happy holiday.

Warm regards,

Liza Lovdahl Gormsen

Director, Competition Law Forum

## **Membership**

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### **Benefits of Membership:**

- An invitation to exclusive Forum events. These are CPD-accredited.
- The opportunity to participate in an independently-run Forum that aims to influence policy and which provides an arena for ongoing and constructive debate with regulators and other decision-makers. An example of this is the CLF engagement with BIS on its consultation on the Damages Directive.
- The opportunity to act as speakers at both CLF and public events.
- Attendance at a preferential rate to all public events related to the field.
- Online access to ICLQ <http://www.biicl.org/iclq>. You should all have received login details, but if you have any questions about access please do not hesitate to contact Bart Kolerski at [b.kolerski@biicl.org](mailto:b.kolerski@biicl.org)

### **CLF's participation in speaker events:**

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- ❖ 'Privatisation of privacy: Freedom and democracy and the threat of global tech monopolies' *CPDP* Brussels, 26 January 2018
- ❖ 'State Aid and Taxation' *University of Copenhagen*, 7 May 2018
- ❖ 'Collective Dominance' Competition Law and Regulation in the Telecoms & Communications Sector Brussels, 6 November 2018
- ❖ 'Digital Competition' expert evidence for the Furman Review, *Law Society*, 29 November 2018
- ❖ 'The effect of Artificial Intelligence on Competition' *House of Lords*, 3 December 2018

### **CLF Events 2018:**

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The CLF identifies areas requiring debate and analysis, and provides the required forum and experts, thereby contributing to policy initiatives.

#### **Competition in Financial Services (28th February 2018)**

The conference's discussions covered topics such as: the information exchange in financial services, the impact of Brexit on passporting and enforcement in financial services and the importance of managing the interplay between antitrust and financial conduct.

The keynote speech delivered by Deb Jones from the FCA.

In the three panel discussions, participants had the opportunity to discuss information exchange in financial services with a focus on lessons learned from the insurance sector and syndicated lending investigations, the impact of Brexit on passporting and enforcement in financial services and the importance of managing the interplay between antitrust and financial conduct rules.

<https://www.biicl.org/event/1301/competition-in-financial-services>

#### **15th Annual BIICL International Mergers and Antitrust Conference (23 April 2018)**

Freshfields Bruckhaus Deringer and RBB Economics kindly sponsored the annual international mergers and antitrust conference. The conference covered a range of topical questions, such as global transactions, foreign

investment reviews, recent case law on pricing and distribution practices, the implications of the Coty judgment and future trends in Merger control enforcement. Amongst the speakers were Sir Jonathan Faull (Partner, Chair of European Public Affairs, Brunswick Group), Stephanie Parker (Engagement and project management lead, National Security and Infrastructure Investment Review, Department for Business, Energy and Industrial Strategy), Mark Rawlinson (Chairman, UK Investment Banking, Morgan Stanley), Rt Hon Sir Malcolm Rifkind QC (Visiting Professor in the Department of War Studies, King's College London), Sir Nicholas Forwood QC (Counsel, White & Case LLP; Barrister, Brick Court, Chambers), Guillaume Lorient (Director, Markets and Cases II, Information, Communication and Media, DG COMP) and Martim Della Valle (Global Head of Antitrust and Litigation, AB InBev), Andrea Gomes da Silva (Executive Director – Markets and Mergers, CMA), Helen Gornall (Director, Competition Law, AkzoNobel Legal Group), Michele Piergiovanni (Head of the Unit, Mergers IT, Telecom and Media, DG COMP).

<https://www.biicl.org/event/1302/15th-annual-biicl-international-mergers-and-antitrust-conference>

### **New directions beyond Intel: The debate over rebates (22nd May 2018)**

In a judgment delivered on 6<sup>th</sup> September 2016, the Court of Justice, sitting in Grand Chamber, set aside the General Court's judgment fining Intel €1 billion for abuse of dominance through exclusivity rebates. At the same time, a DG Comp team was finishing its assessment of allegations that Qualcomm shut out rival makers of chipsets for LTE smartphones.

Brice Allibert, who was one of the case handlers, needed to call a pause to ponder what that meant for their work on Qualcomm. Allibert, who had also worked on the Intel decision, sat with their team, and assessed the effect of the new law created by the Court of Justice. This event offered the attendees the chance to discuss the lessons Allibert's team learned from the Intel judgment and how they applied them to the decision, adopted by the Commission on January 24, 2018 in the Qualcomm case.

Miguel Rato, one of the lawyers for Qualcomm in the case, was part of a panel of lawyers, economists, and an academic who questioned Allibert and provided his point of view. The panel was moderated by Natalie McNelis, an experienced Brussels competition lawyer who has become a journalist reporting on the issues for MLex.

<https://www.biicl.org/event/1314/new-directions-beyond-intel-the-debate-over-rebates>

**Highlights from the 2018 annual ICN meeting in Delhi and an interactive exchange of views for ICN priorities for the year ahead (13th June 2018)**

This event was organized in collaboration with the CMA and the CLF with the aim of bringing together CMA officials, UK NGAs and businesses to discuss some of the issues from this year's annual ICN meeting in Delhi as well as the future direction of the ICN, how to make the network even more effective and to help enable NGAs to contribute effectively. Amongst the speakers were Alex Baker (Director, Fingleton Associates (UK NGA)), Joel Bamford (Director, Mergers, CMA), Cristina Caffarra (Vice President, Charles River Associates (UK NGA)), Simon Constantine (Director, Policy and International, CMA), Jackie Holland (Special Adviser, Slaughter and May (UK NGA)), Grant Murray (Senior PSL, Baker & McKenzie (UK NGA)), Paolo Palmigiano (Chairman, Association of European In-House Competition Lawyers (UK NGA)), Tony Penny (Assistant Director, Policy & International, CMA), Ann Pope (Senior Director, Antitrust, CMA), Dan Rawling (Assistant Director, Policy & International, CMA), James Wright (Legal Adviser, CMA).

<https://www.biicl.org/event/1329/highlights-from-the-2018-annual-icn-meeting-in-delhi-and-an-interactive-exchange-of-views-for-icn-priorities-for-the-year-ahead>

**CLF Meeting: Paroxetine and beyond (8th October 2018)**

The aim of this event was to discuss the recent CMA's Paroxetine decision and the subsequent appeal to the CAT as well as the preliminary questions to the CJEU. Lluís Sauri, who is a member of the Competition Chief Economist Team at the European Commission, provided his view on the economics of pay for delay cases from a European perspective. The panel also discussed the economics behind the pay for delay inference and the restriction of competition by object and the potential effect on competition. Speakers included Avantika Chowdhury (Partner, Oxera), Ronit Kreisberger (Barrister, Monckton Chambers), Dr. Lluís Sauri Romero (Economist, European Commission) and Jon Turner QC (Barrister, Monckton Chambers)

<https://www.biicl.org/event/1343/clf-meeting-paroxetine-and-beyond>

**CLF meeting in Brussels on Foreign Direct Investment (14 December 2018)** Speakers: Dr Sylvia Baule (Deputy Head of the Investment Unit, DG Trade European Commission) and Marta Busz (Policy officer, DG Trade, European Commission) provided insights into the European Commission's thinking behind the FDI screening and Maxime Obe, Attaché parlementaire de Franck Proust, European Parliament provided an

overview of the different proposals of the European Parliament in the final regulation and the political signal sent to the businesses, citizens and foreign countries.

<https://www.biicl.org/event/1369/clffipra-meeting>

## **Publications**

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- ❖ Liza Lovdahl Gormsen, ‘Post-Brexit Challenges’ (2018) Vol 1710 Competition Law Insight
- ❖ Liza Lovdahl Gormsen, ‘Stumbling Towards the UK’s New Administrative Settlement: a Case study of Competition Law and Enforcement after Brexit’ (2018) Cambridge Yearbook of European Legal Studies
- ❖ Effective Enforcement of EU Law & Policy Blog ‘Administrative Reform of the Competition and Markets Authority Following Brexit’ 15 November 2018 <https://www.euenforcement.com/single-post/2018/11/15/Administrative-Reform-of-the-Competition-and-Markets-Authority-following-Brexit>

## **Forthcoming events 2019 – Save the dates!**

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- **Thursday 10<sup>th</sup> January 2019 12:30-13:30 lunchtime seminar: The importance of economic effects.**

Confirmed speaker: **Roger P. Alford** <https://law.nd.edu/directory/roger-alford/>. He will be discussing the importance of economic effects in antitrust and Christian Ahlborn, <https://www.linklaters.com/en/find-a-lawyer/christian-ahlborn> , will provide comments to his presentation.

- **Tuesday 5<sup>th</sup> March 2019 - Competition in Financial services**

Confirmed speakers are: Andrea Gomes da Silva (Executive Director – Markets and Mergers, CMA), Sheldon Mills (Director of Competition, FCA), Helen Ralston (Oxera) and Miguel de la Mano (Compass Lexecon) and Mukul Chawla QC (BCLP). More speakers to be confirmed.

- **Annual mergers and markets conference April/May (date TBC).**



- **Thursday 13th June 2019 - Highlights from the 2019 annual ICN meeting in Columbia and an interactive exchange of views for ICN priorities for the year ahead**

**Annual Invoices:**

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The Institute will shortly be sending out invoices to all Forum Members for CLF membership for 2019. Should you have any questions regarding membership, please contact Jayantha Sivanathan ([j.sivanathan@BIICL.ORG](mailto:j.sivanathan@BIICL.ORG)) or telephone on +44 (0)20 7862 4901.