



**British Institute of
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Competition Law Forum Hosts High Level Roundtable on Ecosystem Competition

The on/off merger of Microsoft and Activision Blizzard is one of the most controversial cases in recent history: first blocked by the Competition and Markets Authority (CMA) and now possibly going to be permitted after the US Federal Court refused an injunction against the merger. In a [Report](#) commissioned by the [British Institute for International and Comparative Law \(BIICL\)](#), **Dr Richard Cadman**, Director of SPC Network Ltd, argues that a merger review process which more explicitly recognises “dynamic competition” could have resulted in a more robust Decision by the CMA.

The Report notes that the CMA takes some account of dynamic competition in its analysis of the merger but argues that it does so in an ad hoc and unstructured manner. It argues that the CMA should set out a clear methodology for assessing whether possible new technology developments could overcome any loss of competition resulting from the merger.

Dynamic competition is about companies competing with innovative new products and process, not just on small product differences and lower prices. Think of how the iPhone with its full Internet connectivity stole the market from mobile email devices like the Blackberry. Most merger assessments are rooted in

a presumption that companies compete in slow-changing markets and do not take full account of innovation. The Report recommends a better process that explicitly sets out to first examine whether a market is susceptible to dynamic competition and, if it is, to then examine its possible effects on the market after the merger.

The Report sets out five questions a merger case should address so that the process could be made more robust:

- i) Do technical and economic conditions mean that the market is likely to be subject to dynamic competition?
- ii) What is the scope of the relevant market?
- iii) If a static Substantial Lessening of Competition (SLC) is not found, could there be a dynamic SLC?
- iv) If a static SLC is found, could dynamic competition be an effective counter?
- v) Do coordination benefits from integration outweigh an SLC?

“We cannot predict whether the CMA’s Decision would have been different had it followed this process” continued Dr Cadman, “but we suggest that it would have been more robust.”

At the report launch participants discussed the importance of understanding the dynamic effects of multi-product ecosystems and how to assess whether advantages flowing from such ecosystems can be harmful to competition in the future. It appears delusional to think we can tackle dynamic effects of ecosystems by simply relying on classic enforcement tools. We need to move away from simply saying ‘big is bad’ as it is too simplistic and the CMA ought to be mindful that even mergers involving big players may create efficiencies.

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The Competition Law Forum at BIICL

The Competition Law Forum is a centre of excellence for European competition and antitrust policy and law at the British Institute of International and Comparative Law. It provides a forum in which the practical application of competition policy is considered by lawyers, economists, senior business managers, public servants, public affairs professionals, consumer bodies and other specialist practitioners.

To join, or for further information contact the Co-Directors: **Dr Liza Lovdahl-Gormsen** (l.lovdahlgormsen@biicl.org) or **Phil Evans** (p.evans@biicl.org)

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