



British Institute of
International and
Comparative Law

Competition Law Forum

13 December 2019

Annual Report

Dear Colleague

Competition Law globally is evolving, in particular, within the space of digital platforms. We have seen a number of reports within this area being published, for example, *Digital Platforms Inquiry*, *Unlocking Digital Competition*, *Competition Policy for the Digital era* and *Digital Platforms Final report*. A common concern espoused in these reports are the growth of market power of digital platforms. Yet digital is still a small part of the overall economy. So why do we see a global rise against “Big Tech?” and what role does data play in digital markets? These were some of the questions the Competition Law Forum (CLF) discussed at our 16th Annual International Mergers & Markets conference in May co-hosted with RBB Economics and Freshfields Bruckhaus derringier. The debate continued with Commissioner Christine S. Wilson from the US Federal Trade Commission and Commissioner Reiko Aiko from the Japanese Federal Trade Commission when they visited BIICL in June. It further developed during the cause of the year, and in November we questioned whether antitrust is still fit for purpose in a digital age in a roundtable co-hosted with Linklaters. Representatives from across Europe including the European Commission, the CMA and the French and Germany competition authorities were involved in the debate. The digital economy and its impact on competition will continue to be high on the agenda for the CLF in 2020.

In the UK, we saw the Competition Markets Authority (CMA) carrying out a market study into online platforms and digital advertising market. The CLF submitted a response to the market study and will continue its dialog with the CMA well into 2020. On EU level, the CLF is involved in the Commission’s current review of its rules on vertical and horizontal agreements and will engage with the Commission when it starts reviewing its Notice on Market Definition. Hopefully, many of you would like to get involved in these reviews.



CLF Annual Report 2019

While the CLF has its main hub in the UK, it is rapidly expanding in Brussels. This year, the CLF hosted a number of discussions in Brussels, latest its roundtable considering the General Court's judgments in *Fiat* and *Starbucks*. State aid and tax rulings is an important area for the European Commission and the debate shows no signs of retreating. The CLF will follow the developments closely while waiting for the General Court's judgment in the so-called *Apple* case against Ireland.

I trust that you will enjoy reading this Report of the CLF's activities in 2019 and that it will provide you with insights into the work of our Forum. As always, I would like to extend a huge thanks to all members of the CLF, it is all of you who have made it my joy and privilege to steer the Forum towards 2020. I am grateful for your continued support and wish you all a happy holiday and a fantastic New Year.

Warm regards,

Liza Lovdahl Gormsen

Director, Competition Law Forum

Membership

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.
- 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

CLF Events 2019:

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

Competition in Financial services (5 March 2019)

This event was organised in collaboration with the Bryan Cave Leighton Paisner, which kindly sponsored the event. Three topics were discussed: Antitrust enforcement against individuals; Retail markets - vulnerability and switching; and wholesale markets - pervasive themes. We had speakers from the CMA, FCA, SFO and business. <https://www.biicl.org/events/1377/bclp-biicl-conference-competition-in-financial-services>

The importance of economic effects (6 march 2019)

Roger P. Alford and Jeff Wilder from the US Justice Department came to discuss the importance of economic effects in antitrust. <https://www.biicl.org/event/1361/clf-lunchtime-seminar-the-importance-of-economic-effects>

16th Annual International Mergers and Markets Conference (2 May 2019)

RBB Economics and Freshfields Bruckhaus Deringer kindly sponsored the annual international mergers and antitrust conference. The conference covered a range of topical questions, such as implications of recent influential reports for all stakeholders active on digital markets. Merger control is was discussed, as authorities are testing the impact of deals on potential competition and innovation in rapidly changing markets. The speakers also looked ahead and discussed how the global economic and political dynamics will shape antitrust policy in the next 10 years. We had speakers from the European Commission, CMA, companies such as Facebook, Mozilla

and Siemens and academia. <https://www.biicl.org/events/1397/16th-annual-biicl-international-mergers-and-antitrust-conference>

Highlights from the 2019 annual ICN meeting in Cartagena (13 June 2016)

This event was organised in collaboration with the CMA 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 Cartagena as well as the future direction of the ICN. We discussed how to make the network even more effective and to help enable NGAs to contribute effectively. Amongst the speakers were CMA officials and NGAs attending the annual conference in Columbia. <https://www.biicl.org/events/1412/highlights-from-the-2019-annual-icn-meeting-in-cartagena-and-the-direction-for-the-icn-in-2020>

Digital Platforms and other pressing Antitrust Issues (28 June 2019)

This CLF lunch seminar looked at the political change in Europe and its trans-Atlantic affect on platform power. The Bundeskartellamt's decision against Facebook and the European Commission's interventions against Google were discussed. FTC Commissioner Christine S. Wilson and JFTC Commissioner Reiko Aoki will address principles for sound enforcement in high technology markets including how to deal with digital platforms. <https://www.biicl.org/events/1410/clf-lunch-seminar-on-digital-platforms-and-other-pressing-antitrust-issues>

State Aid and Tax (9 October 2019)

On September 24 the General Court announced the decisions on the appeals brought by the Netherlands and Luxembourg governments regarding the Commission's decisions on Starbucks and Fiat. The CLF hosted an afternoon seminar in Brussels where we discussed the European Arm's Length Principle, the degree of discretion remaining at Member State level in making advanced pricing agreements and the decisions implications for other cases such as the

so-called Apple case <https://www.biicl.org/events/11319/state-aid-and-tax-two-ecj-landmark-rulings>

Is Antitrust still fit for Purpose? (21 November 2019)

Linklaters kindly sponsored this roundtable discussion, which took place at the Mandarin Oriental in Hyde Park. The roundtable tackled the question of whether existing antitrust law and enforcement practice remains fit for purpose. The event brought together leading officials (including from the European Commission, France, Germany and the UK, academics and economists, with senior leaders from the tech industry and disrupted corporates. The roundtable provided a forum for an open and constructive dialogue about antitrust enforcement in the tech space. <https://www.biicl.org/events/11325/is-antitrust-still-fit-for-purpose-in-a-digital-age>

Publications

- ❖ *State Aid and Tax Rulings* (Edward Elgar, 2019)
- ❖ 'Facebook's Anticompetitive Lean in Strategies'
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3400204

Annual Invoices:

The Institute will shortly be sending out invoices to all Forum Members for CLF membership for 2020. Should you have any questions regarding membership, please contact Jayantha Sivanathan on j.sivanathan@biicl.org or Stephen Oates on s.oates@biicl.org.