



Competition Law Forum

16 December 2021

Annual Report

Dear Colleague

As 2021 draws to a close, the pandemic is still here. Despite the twists and the turns the year has brought us, we have had some opportunities to meet in person and many more virtually. While some suffer from webinar inertia, our new zoom reality undeniably brings benefits. It has a tremendous outreach and many more members have been able to participate while working from home.

2021 was the year where the Brexit transition period came to an end and the UK entered into a world outside the EU. This has had a huge impact with implications for enforcement, merger control and State aid. The CLF has been discussing its impact and will continue to do so as we enter into 2022. Digital technologies have been high on the CLF agenda. In the UK, the government has consulted on a new pro-competition regime for digital markets. In the EU, the European Parliament's key plenary vote for the *Digital Markets Act* has just taken place. There is strong political pressure for the *Digital Markets Act* to be finally agreed between the three EU institutions in "trilogue" negotiations in the first half of 2022, during the French presidency of the EU. The CLF will continue to follow these developments in the year to come. Equally high on the CLF agenda is sustainability and competition law. Over the last year, there has been increased interest from companies and competition regulators in the interaction between sustainability and competition law. Some call for competition law to support sustainability initiatives others propose that competition law holds back sustainability collaboration initiatives. A number of initiatives have developed globally and the CLF will continue to be engaged in this important debate. You will find some of our planned activities for 2022 at the end of this report.

I am delighted to announce that our Advisory Board has decided to appoint two new board members. We warmly welcome Jackie Holland, Partner at Cleary Gottlieb, and Sir Philip Lowe, Partner at Oxera. We also welcome a number of new members to the CLF namely Shell, Anglo American, HSBC, DuckDuckGo, BP and Rolls-Royce. We are thrilled that



CLF Annual Report 2021

the forum is expanding and we will host a drinks reception in the New Year for our members, so they can welcome our newest members. Many thanks for your continued support of the CLF in these uncertain times. Hopefully 2022 will be the year where we can leave the pandemic behind us.

May I take this opportunity to wish you all a Happy Holiday.

Warm regards,

Dr 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 on-going 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 2021:

The CLF identifies areas requiring debate and analysis, and provides the required forum and experts, thereby contributing to policy initiatives. Below you will find a list of subjects and issues being discussed during 2021.

Webinar: Competition Enforcement after Brexit: Agreements, Unilateral Conduct and State Aid (25 January 2021)

This was our second panel on competition enforcement post Brexit. The Panel discussed the enforcement issues that arise as a result of Brexit in unilateral conduct and state aid enforcement as well as enforcement against anticompetitive agreements. The webinar also provided an overview of the competition enforcement relationship between UK and EU post Brexit.

Webinar: Industrial Policy and Competition Enforcement (25 February 2021)

The panel discussed the importance of industrial policy for competition enforcement in the EU and the UK following the Commission's presentation of a new strategy to help Europe's industry lead. The strategy's aim is to drive Europe's competitiveness and its strategic autonomy at a time of moving geopolitical plates and increasing global competition.

Webinar: Is the definition of a Gatekeeper in the DMA the right one? (10 March 2021)

This webinar considered whether the DMA proposal of the asymmetric regulation of gatekeepers was covering the right gatekeepers. There has been a decline in some gatekeepers and the rise of other gatekeepers with the Internet revolution and the growing impact of the digital economy. The impact of gatekeepers on startups was also discussed during the webinar.

Webinar: Sustainability Considerations in Competition Enforcement (18 March 2021)

This event explored whether the competition regime needs to become more flexible to achieve desirable societal goals in the future. It was discussed how this would be achieved following the twin

crises of climate change and Covid-19 which has brought home the urgent need for greater collaboration between businesses to achieve desirable social and political objectives.

Webinar: BIICL/Linklaters Antitrust Roundtable: Digital disruption in financial services (25 March 2021)

This interactive roundtable webinar brought together leading officials, economists and senior leaders from industry to discuss the impact of tech/fintech entrants in financial services markets to date and how regulation and antitrust enforcement could adapt to address future challenges.

Webinar: A Conversation with Sir Nicholas Green: Reflections on the changing competition law environment (15 April 2021)

Sir Nicholas Green, the first lawyer with extensive experience in the fields of competition and EU law to become Chair of the Law Commission, gave participants a unique insight into the work of the Law Commission, and enabled them to explore his views on the development of the UK legal system. He has himself said that the Law Commission needs to examine 'what society and the economy is going to look like in next ten years'.

Webinar: Class action certification: The implications of the Supreme Court's Merricks Judgment (19 May 2021)

The panel focused on the recent developments in relation to class actions in the UK, discussed recent high profile litigations and took stock of how such cases can evolve in the future. The panel also considered conditions for class action certification, the role of economic analysis and the relevance of recent cases (incl. the Merricks case) for the future of private enforcement.

Webinar: A new Pro Competition Regime in Digital Markets (6 September 2021)

Representatives from DCMS, BEIS, DMU and industry came together for this online roundtable to discuss the new pro-competition consultation launched by the UK government on 20 July 2021. The consultation set out the government's vision for transforming the UK's competition regime to better

tackle the challenges of the 21st century with proposals for a new pro-competition regime for digital markets.

Roundtable: 3rd Annual BIICL/Linklaters Tech Antitrust Roundtable (16 November 2021)

This event, hosted in partnership with Linklaters at the Mandarin Oriental, provided a forum for an open and constructive dialogue amongst our exclusive group of experts about the regulation of digital markets and merger control in the tech space. It enabled participants to exchange views and learn from one another's perspectives, promoting a more effective understanding of how authorities can most effectively respond to these challenges.

Can regulation promote innovation and competition, while guarding against harms online (24 November 2021)

This event, hosted in partnership with RBB Economics and Ofcom, explored the synergies and tensions that might arise between promoting competition, innovation, and public policy objectives online. The first panel debated successes and failures of ex-ante regulation in recent years and how any lessons may be applied to regulating digital markets. Against this backdrop, the second panel extended the discussion to protecting privacy, promoting plurality, and removing harmful online content. The question arose of whether these aims are compatible with competition and does it matter if they are not.

Webinar: Unintended consequences of the DMA (6 December 2021)

This webinar discussed the fast moving developments of tech regulation in both the EU and the UK (the EU proposed DMA regulation and in the UK BEIS' recent consultation on proposed legislation). Neither proposal has any specific provisions for private action. As the DMA Proposal and the UK proposed rules currently stand, private enforcement will be a reality. The obligations in the proposed DMA Regulation will have direct effect after designation. National courts will be competent to grant permanent or interim injunctions and order gatekeepers and firms with significant market status to take specific measures of a negative or positive nature. Such national decisions will inevitably result

in a considerable degree of fragmentation within the EU and could jeopardise the efficient and effective enforcement of the proposed regulations.

Some of the planned CLF events for 2022:

- The vertical blog exemption regulation and digital platforms (early February)
- Climate change economics
- Merger control and the CMA role in the post-Brexit world
- Private vs public enforcement
- National security regime and FDI
- Remedies design in digital markets

Annual Invoices:

The Institute will shortly be sending out invoices to all Forum Members for CLF membership for 2022.

Should you have any questions regarding membership, please contact Nadine Foster on

n.foster@biicl.org or Stephen Oates on s.oates@biicl.org.