



**British Institute of  
International and  
Comparative Law**

## Media Release

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### The Competition Law Forum host a Roundtable discussion on the forthcoming Article 102 TFEU Guidelines

On Thursday 22<sup>nd</sup> of February, the Competition Law Forum held a lively discussion in Brussels on the forthcoming guidelines on exclusionary abuses under Article 102 TFEU. The audience included practicing lawyers, economists, business and academics.

The discussion was hosted under the Chatham House Rule.

#### **Some takeaways:**

- The purpose of guidelines is to codify case law and create transparency.
- The Commission was urged to be honest in its interpretation of the case law. For example, it should not read too much into the reference to 'object infringement' in the Super League case due to the specific facts of the case.
- The forthcoming exclusionary guidelines will not depart from the effects-based approach or the consumer welfare standard.
- The consumer welfare standard in the EU has always been considered as covering more than just effects on prices.
- The guidelines will take into account that, in line with the case law, the general legal standard as regards establishing exclusionary effects is the capability of the conduct to produce such effects or, in other words, the standard is potential effects as opposed to hypothetical or actual effects.

- Some believe that the 'As Efficient Competitor' test (AEC) lends itself better to pricing than non-pricing cases.
- Others even believe that the AEC test means very little unless it is applied to a regulated industry.
- There was a call for the Commission to make a distinction between the rationale underlying the AEC test and the test itself as well as provide some guidance on the former.
- There was also a call for some guidance on the meaning of competition on the merits although it was acknowledged that it is a concept developed by the courts and they have not provided much guidance on this concept.
- The Commission is hoping to have a draft of the guidelines ready for public consultation by the summer.

**Ends**

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**Notes to editors:**

**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](mailto:l.lovdahlgormsen@biicl.org)) or **Phil Evans** ([p.evans@biicl.org](mailto:p.evans@biicl.org))