

HOT TOPICS OF ANTITRUST: TOWARDS EUROPEAN CONVERGENCE

The European competition law landscape is characterized by a high level of convergence between the legislative frameworks of the Member States of the European Union and of close allies, such as Switzerland and EEA countries.

This means that the practitioner can learn a lot from the case-law and the decision practice of those countries. Not only in cases where one specific situation hasn't been dealt with in some jurisdictions, but also in those situations where the application of convergent legal principles has led to different outcomes in different countries.

With this in mind,
the European Competition Lawyers Association invites you to its
1ST ANNUAL CONFERENCE, 18-19 MAY 2018, LISBON
for a detailed discussion of five hot competition law issues that are of direct interest to all practitioners in Europe and beyond.

FRIDAY, 18 MAY 2018

WELCOME AND INTRODUCTION

David Mamane, Schellenberg Wittmer, Switzerland

Panel 1.

SPOOKY SPOKES

Information exchange and collusion through third parties.

*With: Alexander Birnstiel, Noerr, Germany | Camilla Holtse, Maersk, Denmark
Adrian Majumdar, RBB, UK | Miguel Rato, Quinn Emanuel, Belgium | Grégoire Ryelandt, Depevernet, Belgium*

Panel moderator: Kristian Hugmark, Roschier, Sweden

This panel will focus on recent enforcement trends related to hub-and-spoke and signaling cases. Is there a coherent and credible legal test developing in the Member States despite the lack of guidance from the European Commission and the Courts in Luxembourg? And if so, is that test the right one both from the perspective of the legal requirements for a “concerted practice” and theories of harm?

The discussion will cover topics such as:

- What role does actual intent play when identifying a concerted practice through an intermediary?
- Can anybody be a hub? Even customer representatives?
- One-way communication – what are you allowed to say? To whom? Where? When?
- The receiving end of one-way communication – when does “adapting oneself intelligently” become collusion?
- “Speak to the hand” – practical guidelines for self-assessment.

Panel 2.

ABUSE OF DOMINANCE

Practical challenges in an effects-based world.

*With: Daniel Colgan, DLA Piper, Belgium | David Hull, Van Bael & Bellis, Belgium
Tero Louko, Google, Belgium | Andrea Pomana, Debevoise & Plimpton, Germany
Elena Zoido, Compass Lexecon, Spain*

Panel moderator: Stephen Whitfield, Travers Smith, UK

In their recent enforcement of abuse of dominance cases, in particular in the technology sector and other IP-rich industries such as life sciences or healthcare, authorities have embraced effects-based approaches to assessing the (alleged) abuses of dominance. However, what does this approach mean in practice for complainants, defendants, authorities, and also counsel in daily practice?

This panel will examine the kinds of evidence which have been persuasive in abuse of dominance cases, and the kinds of evidence which have been discounted. The panelists will also discuss whether the authorities are getting the balance right, and their expectations for the future.

We will explore:

- To what extent (if at all) are competition authorities accounting for innovation in carrying out abuse of dominance investigations?
- What has been persuasive in recent abuse of dominance cases, and what has not been persuasive?
- What is the burden on complainants and defendants in an effects-based world?
- How do these considerations change as a case progresses from its earliest stages through to the decision?
- What are the kinds of economic evidence that work well, and is there still a meaningful role for non-economic evidence?
- Are authorities getting the balance right?

Panel 3.

COMPETITION LAW IN THE ONLINE WORLD

From platforms to algorithms

With: Aurélien Condomines, Aramis, France | Yusuke Kaeriyama, Nagashima Ohno & Tsunematsu, Japan | John Synder, Alston & Bird, USA | Lars Wiethaus, Charles River Associates, Belgium | N.N., European Commission

Panel moderator: Sebastian Janka, Noerr, Germany

Antitrust law in the online/digitalized world has many features and raises, amongst others, the following core issues:

- Market definition – how can/must markets be defined?
- Big Data / Big Analytics (AI/deep- & self-learning) and market power.
- Robot cartels and responsibility of algorithms.
- Cooperation between competitors – new forms of interfaces in the industry 4.0.
- Platforms and platform regulation.

SATURDAY, 19 MAY 2018

Panel 4.

ANTITRUST DAMAGES ROUNDTABLE Hot Issues and Trends

*With: Rick Cornelissen, Houthoff, Netherlands | Nadine Hermann, Quinn Emanuel, Germany
Anna Morfey, Hausfeld, UK | Florian Neumayr, bpv Hügél, Austria | Ricardo Oliveira, PLMJ
Advogados, Portugal | Stephen Smith, Bristows, UK*

Panel moderator: Pedro Callol, Callol, Coca & Asociados, Spain

Antitrust damages claims have been widely regarded as potentially the most powerful deterrent to antitrust infringements. The EU Antitrust Damages Directive seeks to harmonize Member State law applicable to antitrust damages claims; yet its implementation at the national level leaves questions unanswered that the courts will have to address.

Issues we intend to explore include:

- Jurisdictional and conflicts of laws issues (competent courts and applicable law).
- The interaction between public enforcement and private enforcement of competition law.
- Funding of damage claims. Legal vehicles and their treatment under national law.
- Discovery. Implementation throughout the various Member States and lessons to be learned from those jurisdictions with more experience in the area.
- Joint and several liability. The rule and the exceptions. Temporal application.
- Lack of harmonized rules on class actions. How do Member States cope?

Panel 5.

"I WILL SEE YOU IN COURT"

What does and does not work when you appeal against a decision of the competition authority.

With: Astrid Ablasser-Neuhuber, bpv Hügél, Austria | Aleksandra Boutin, Compass Lexecon, Belgium | Martin André Dittmer, Gorrisen Federspiel, Denmark | Robert Neruda, Havel & Partners, Czech Republic | Inês Sequeira Mendes, Abreu Advogados, Portugal

Panel moderator: Aleksander Stawicki, WKB Wierciński Kwieciński Baehr, Poland

This panel will focus on practical experience obtained when appealing against decisions of competition authorities. We will discuss what works and what does not work before EU & national courts, with particular attention to issues relating to various types of formal (procedural) charges (including charges related to violation of fundamental rights of undertakings) and the role of economic evidence.

We will also discuss strategies for handling the appeal process:

- The scope of judicial review & grounds for appeal.
- Protection of fundamental rights of undertakings – a secret weapon?
- Other procedural infringements – do courts want to hear about them?
- EU competition law – does it have a real impact on national jurisprudence?
- The influence of Strasbourg and Luxembourg case-law on national jurisprudence.
- What is the role of economic evidence?
- Is there any appetite for stand-alone damage claims?
- Strategy for an appeal.

SOCIAL PROGRAM

Thursday, 17 May 2018

WELCOME DRINKS AND OPTIONAL DINNER

Friday, 18 May 2018

DINNER WITH SPECIAL EVENT

Saturday, 19 May 2018

OPTIONAL AFTERNOON SOCIAL PROGRAM AND DINNER

VENUE AND ACCOMMODATION

EPIC SANA Lisboa Hotel | Av. Eng. Duarte Pacheco, 15 | 1070-100 Lisbon - Portugal

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www.lisboa.epic.sanahotels.com | www.sanahotels.com

We have reserved a limited number of hotel rooms with breakfast included at a preferential rate of EUR 230 for a single room / EUR 250 for a double room. Please contact the hotel directly and mention your participation in the event. Make your reservations as soon as possible to ensure availability.

FEES AND REGISTRATION

The participation fee is EUR 390 and includes the entire academic program, as well as the welcome drinks on Thursday, lunches on Friday/Saturday, and the dinner on Friday evening. Tickets for the welcome drinks and Friday evening dinner for accompanying persons are available for EUR 120.

You can register for the conference at www.competitionlawyers.org



EUROPEAN COMPETITION LAWYERS ASSOCIATION

www.competitionlawyers.org

The European Competition Lawyers Association has the following mission:

- To organize specialized competition law conferences, allowing the exchange of views on legal developments and practical topics
- To promote the scientific and practical legal discussion about important competition law developments
- To allow the exchange of national and international practical experiences in competition law procedures and advocacy
- To connect dedicated competition lawyers from Europe and beyond in order to allow continuing professional and social relationships
- To provide a forum to meet and discuss with specialized colleagues and friends

The main organizers of the association are:

Aurélien Condomines, Aramis, Paris

David Mamane, Schellenberg Wittmer, Zurich

Grégoire Ryelandt, Deprevernet, Brussels

The membership in the European Competition Lawyers Association is open for all lawyers and economists with a strong interest in competition law developments. We welcome all lawyers and in-house counsels as well as legal and economic experts in specialized consulting firms to participate and become a supporting member of the European Competition Lawyers Association.

The supporting membership in the European Competition Lawyers Association is free and you can register on our website www.competitionlawyers.org

