



Funded by the Training of National Judges Programme of the European Commission

Seminar on European Competition Law for National Judges

New challenges for National Judges in the application of Articles 101 & 102 TFEU

 Budapest, Hungary

 22-23 November 2019

Seminar objectives

The antitrust legal landscape is changing due to the transformation of the market environment in which companies are active. The application of traditional legal theories is being challenged by the existence of dynamic markets in digital sectors. Antitrust competition authorities are being forced to adapt their approach in order to deal with new types of illegal behaviours, particularly those committed by Big Tech companies. Consequently, the spotlight is currently on national courts and EU judges dealing with antitrust cases to provide appropriate legal guidance.

This training aims to update national judges about the new legal and procedural challenges they may face when dealing with competition law cases as a result of the latest legal developments that have taken place in the antitrust field. This two-day event will provide national judges with specific knowledge and practice related to cases involving the application of Articles 101 and 102 TFEU, with the aim of familiarising them with the main questions that have recently been the focus of the decisions of antitrust enforcers and courts.

The seminar will focus on the considerations affecting judicial assessment in cases concerning (i) the interaction between privacy and antitrust (*e.g.*, the German *Facebook* case), (ii) issues related to online platforms (*e.g.*, the *Amazon* investigation, algorithms and exchange of information), (iii) commercial practices (*e.g.*, “pay-for-delay” agreements in the *Lundbeck* and *Servier* cases), (iv) dominance and exclusionary abuses in dynamic markets (*e.g.*, the *Google* cases), and (v) exploitative pricing abuses (*e.g.*, the *AKKA/LAA* case). Particular emphasis will be placed on the renewed importance of procedural rights within the EU case law (*e.g.*, the *Air Freight* cases, the *Intel* cases).

This judicial training will be based on hypothetical case exercises, requiring active participation through working groups. One or more experts will then give an in-depth presentation on the specific legal and/or economics aspects that should be kept in mind. Finally, a judicial expert will provide advice on the best practices to adopt in court proceedings. In addition, participants will be engaged in Q&A sessions with the experts and will be encouraged to share their experiences with one another in order to promote cooperation and networking.

SPEAKERS

- Mr Thomas Vinje, *Partner*, Clifford Chance, Brussels
- Mr Henri Piffaut, *Vice-President*, French Competition Authority (AdIC), Paris
- Mr Jérémie Jourdan, *Partner*, White & Case, Brussels
- Ms Sabine Zigelski, *Senior Competition Expert*, OECD, Paris
- Mr Gábor Gál, *Member of the Competition Council*, Hungarian Competition Authority (GVH), Budapest
- Mr Viktor Łuszcz, *former President*, Hungarian Intellectual Property Office (HIPO), Budapest
- Mr Vivien Terrien, *Référéndaire*, Court of Justice of the European Union (CJEU), Luxembourg

Agenda

Friday, 22 November 2019

09.30-09.45 Welcome and Opening Remarks *by Vivien Terrien (CJEU, Luxembourg)*

09.45-10.00 Group Photo and Introduction

THEME #1 COMMERCIAL PRACTICES #1: VERTICAL RELATIONSHIPS

10.00-10.25 E-commerce: Characteristics, EU Commission's initiatives & Current rules
by Gábor Gál (GVH, Budapest)

10.25-10.50 Online sales restrictions: main EU and national cases
by Sabine Zigelski (OECD, Paris)

10.50-11.00 *Exercise Instructions by Sabine Zigelski (OECD, Paris)*

11.00-11.15 Coffee Break

11.15-11.50 *Exercise #1: Mock Trial Simulation – Working Groups*

11.50-12.15 *Mock Hearing*

12.15-12.35 Retail MFNs: overview and the Hungarian experience
by Gábor Gál (GVH, Budapest)

12.35-12.50 Q&A and Experience Sharing Session

12.50-14.20 Lunch in the hotel's restaurant

THEME #2 COMMERCIAL PRACTICES #2: INTELLECTUAL PROPERTY ISSUES

14.20-14.40 Recent Developments in Intellectual Property and Antitrust Laws
by Viktor Luszcz (ex-HIPO, Budapest)

14.40-14.55 Comments *by Thomas Vinje (Clifford Chance, Brussels)*

14.55-15.10 Introduction to patent settlement agreements and *Exercise Instructions*
by Jérémie Jourdan (White & Case, Brussels)

15.10-16.10 *Exercise #2: Hypothetical Case – Working Groups*

16.10-16.25 Coffee break

16.25-16.45 *Reports from the Groups' Representatives*

16.45-17.15 *Wrap-Up Hypo and Pay-for-delay: state of the play*
by Jérémie Jourdan (White & Case, Brussels)

17.15-17.35 Pay-for-delay agreements: a critical view *by Henri Piffaut (AdIC, Paris)*

17.35-17.50 *Q&A and Experience Sharing Session*

Networking Event

19:00: Dinner (meeting at the hotel reception)

Saturday, 23 November 2019

09.30-09.45 Presentation of the second day by *Vivien Terrien (CJEU, Luxembourg)*

THEME #3 ANTITRUST PROCEEDINGS: PROCEDURAL ISSUES

09.45-11.00 Interventions, *inter alia*, on:

- *Interim measures revival*
- *Right to a fair hearing*
- *Access to file and confidentiality*

11.00-11.15 Coffee Break

11.15-11.45 *Discussions (cont'd)*

THEME #4 ANTITRUST ABUSES #1: EXCLUSIONARY PRACTICES

11.45-11.05 From the *Microsoft* case to the *Google Shopping* case [TDC]
by Henri Piffaut (AdlC, Paris)

11.05-12.25 Comments by *Thomas Vinje (Clifford Chance, Brussels)*

12.25-12.30 *Exercise Instructions by [TBD]*

12.30 – 14.00 Lunch in the hotel's restaurant

14.00-15.00 *Exercise #4: Hypothetical Case – Working Groups*

15.00-15.20 *Reports from the Groups' Representatives*

15.20-15.30 *Wrap-up Hypo*
by Henri Piffaut (AdlC, Paris) and Thomas Vinje (Clifford Chance, Brussels)

15.30 – 15.45 Coffee break

THEME #5 ANTITRUST ABUSES #2: EXPLOITATIVE PRACTICES

ROUNDTABLE

15.45-16.00 The German *Facebook* case by *Sabine Zigelski (OECD, Paris)*

16.00-16.20 Digital platforms and exploitative abuses: a necessary evil? [TBC]
by Henri Piffaut (AdlC, Paris)

16.20-16.40 Comments by *Thomas Vinje (Clifford Chance, Brussels)*

16.40-16.50 Q&A and Experience Sharing Session

16.50-17.00 Wrap-up Session and Closing Remarks

17.00: End of the seminar