

October 31, 2024



European Commission  
Directorate-General for Competition  
Antitrust Registry  
1049 Bruxelles /Brussel  
Belgique /België

Per email: [COMP-GREFFE-ANTITRUST@ec.europa.eu](mailto:COMP-GREFFE-ANTITRUST@ec.europa.eu) with copy to [COMP-ARTICLE-102-GUIDELINES@ec.europa.eu](mailto:COMP-ARTICLE-102-GUIDELINES@ec.europa.eu)

ATT: Directorate-General for Competition – Unit A1

**RE: *HT.100055 Guidelines on exclusionary abuses***

The International Bar Association's Unilateral Conduct And Behavioural Issues Working Group (the "**Working Group**") is grateful for the opportunity to contribute to the EC's public consultation on the draft guidelines on exclusionary abuses of dominance ("**Guidelines**").

The International Bar Association is the world's leading organisation of international legal practitioners, bar associations and law societies. It takes an interest in the development of international law reform and seeks to shape the future of the legal profession throughout the world. Bringing together antitrust practitioners and experts among the IBA's 30,000 international lawyers from across the world, with a blend of jurisdictional backgrounds and professional experience spanning all continents, the IBA is in a unique position to provide an international and comparative analysis in this area. Further information on the IBA is available at <http://ibanet.org>.

The Working Group's central focus is to provide an international forum for thought leadership with respect to competition / antitrust law developments. The Working Group comprise lawyers with significant experience in a number of jurisdictions and brings together experience from advising a large number of clients on competition law compliance.

The Working Group commends the Commission on the production of the guidelines, which provide

valuable insights into the Commission's approach and interpretation of a considerable body of case law. In commenting, the Working Group has sought constructively to indicate where clearer guidance might be provided, and where additional interpretation of certain case law (including recent decisions) might be brought to bear. While the Working Group supports the need to prevent exclusionary abuse with rigorous enforcement, certain concerns arise around whether some of the proposed standards for intervention where generally legitimate business conduct may inadvertently be trammled.

The Working Group trusts that its attached response, which includes a high-level comparison of approaches in other jurisdictions, will assist the Commission as it develops final guidelines. The Working Group looks forward to participating in such future consultations as may be presented, and to the extent that any opportunities arise for further interaction with the Commission, select members of the Working Group would gladly make themselves available for any discussions or workshops.

The submission has been prepared by Nikolaos Peristerakis (K&L Gates - EU), Joanna Goyder (Freshfields - EU), Ronan Scanlan (Steptoe - EU), Katrin Schallenberg (Clifford Chance – EU), Lauren Battaglia (Hogan Lovells - USA), Antonio Di Domenico (Fasken - Canada), Francisco Borquez (Barros & Errázuriz - Chile), Ding Liang (DeHeng Law Offices – China), Claudio Tesauro (BonelliErede – Italy), Daren Shiau (Allen & Gledhill – Singapore), Bora Ikiler (Baseak – Turkey) with Working Group Co-chairs Daniel Andreoli (Demarest - Brazil), and Chris Charter (Cliffe Dekker Hofmeyr – South Africa).

Yours sincerely,

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Samantha Mobley  
Co-Chair Antitrust Committee

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Janet Hui  
Co-Chair Antitrust Committee