

Emma Watson pulls crowd as men urged to show respect

Having a bit of star power certainly doesn't hurt the fight for women's representation in senior positions

UN Women Goodwill Ambassador Emma Watson joined an esteemed panel of legal practitioners and professionals during Tuesday morning's *Men of Quality Respect Women's Equality* panel, led by the IBA Diversity & Inclusion Council. Speaking to a standing-room-only crowd, the panel presented findings on the current state of gender diversity in the legal industry and spoke about their experiences of gender diversity.

Speaking after the panel with IBA Daily News reporters Chynna Lewis and Danielle Ngwana-Joseph, human rights activist Watson stressed the strong, unbreakable relationship between gender equality and law. "I really enjoyed [the session]," she said. "The law is the epicenter of gender equality, and gender equality is the epicenter of law, so it was really important for me to be here."

Watson urged the men in the crowd to champion their daughters at home and support their female colleagues. "The elephant in the room is that women will not be able to lean into public life, professional roles and public roles, unless men step into the hole that is then created in the home," she said. "Having a father that championed me and was liberal with his love and praise, time and attention made a huge difference to my confidence as a young woman, so I hope that men don't underestimate their impact on their children and homes and the legacy they will leave."

Watson commented on the current



state of women's rights, mentioning setbacks in Afghanistan, Iran and the US. "I hope people can see how fragile these gains are," she stated, in a push to continue to support women's rights globally. "We need everyone to participate in the conversation – [men and women]."

The session began with a keynote speech from IBA vice president Almudena Arpón de Mendí. As of January 2023, Arpón de Mendí will assume the role of IBA president, becoming only the second woman to fill the position, and the first in 20 years. Breaking the glass ceiling, she stressed, is crucial.

Arpón de Mendí also emphasised that the issue of gender equality needs male support and allies to progress further – a point that ran as a leading motif through the session. She also spoke of her intentions to prioritise IBA's 50:50 by 2030 mandate and announced plans to appoint specific ambassadors to increase visibility of females championing of equality.

Speaking specifically to the women in the audience, she encouraged them to dare. "When you are in a position of responsibility, you must not run away," she emphasized.

Session chair Sara Carnegie then directed the discussion to the 50:50 by 2030 project. Launched in March 2021, the project is a longitudinal study into gender disparity in law, supported by the LexisNexis Rule of Law Foundation. Its goal is to chart the progress of gender parity, specifically focusing on women in senior positions, over the course of nine years in 16 jurisdictions.

So far, three reports have been released in England and Wales, Uganda and Spain, and reports are in the works for Nigeria and the Netherlands. Across the released reports, it was evident that the public sector consistently had the highest representation of women in senior positions, while in private practice, only 30% of women held senior roles.

Flexible working arrangements were also highlighted as an important factor when it comes to improving representation. It was also made evident in the research that quota setting is not popular, with multiple panellists suggesting that what is not being measured will not change.

Michelle Behnke, chair of the ABA commission on racial and ethnic

Continued on page 9



VOX POPS

How important is the International Bar Association to your practice?

PAGE 2



SESSION PREVIEW

A new AI framework

PAGE 10



SESSION PREVIEW

Protect journalists at all costs

PAGE 11



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QUESTION

How important is the International Bar Association to your practice?



Jamila Isah
Nigerian National
Petroleum Corporation
Nigeria

It's important because just recently my company transitioned from a government wholly owned company to a private limited liability company. It's important that I'm here to listen to trending topics and learn from other companies about how they were able to transit from being a government owned company to a private limited liability company.



Lilian Keene-Mugerwa
Kleeva Associated
Advocates
Uganda

The IBA is important to my practice in the context of getting new ideas about what is happening globally, new trends, and the challenges that clients may be facing. It's important to me in terms of growth, getting linkages with international law firms across the world where there could be collaboration within my regional work and within my country.



Hessam Kalantar
Kalantar Business Law
Group
UAE

Well frankly it's not been important to date because this is my first IBA conference. But this week has really opened my eyes to the resources that the IBA can offer, and I've been remiss in not exploiting this resource a lot earlier in my career. Now that I have gotten my bearings a bit I will certainly be back and be looking to cultivate the friendships I've made and to get involved in one or more committees.



Professor Katrin Klodt-Bussman
Konstanz University of
Applied Sciences
Germany

I think it's the most important platform for the global exchange of international law. I'm in international business law and there are not many platforms where you really get all this important exchange.



Kadri Kallas
TGS Baltics
Estonia

It's very important for the majority of my work. I'm a cross-border transactional lawyer so it is important for me to get new contacts in order to get new referrals.



Chief Gideon Kuttu
GM Kuttu & Co
Nigeria

Anyone who registers to participate in an organisation of such magnitude knows the importance of the IBA. Besides the meeting of great minds in the legal profession and developing the synergy of relationships that it draws from, the topics on the table are quite fulfilling.



Leslie Benton
Ethisphere
USA

This event is very important because I practice in international law. So, keeping abreast of developments, best practices and the leading issue of the day is crucial. The IBA is really one of the best sources of that information for me.



Florencia Beyhaut
Hughes & Hughes
Uruguay

The IBA is really important for my practice because it's my international career. Here we can be updated with the most important topics of the world in legal practice and also make good friends.



Sanjana Dasgupta
Khaitan Legal Associates
India

It's a great opportunity to network with international law firms, which helps over the years to get referral work and build relationships and have connections in every jurisdiction which is a very useful thing when we're doing cross-border deals so that you always have a friendly face in every jurisdiction.



Saroj Ghimire
Himalayan Lawyers &
Associates
Nepal

IBA is very important for our practice because it gives us an opportunity to understand the new legal development that is going on at the global level. We come to network with lawyers from various countries, find common understanding on legal and human rights issues, and enhance our own capacities, confidence and understanding. It's nice to visit a new place, see new lawyers, and network.



Behrad Nazarin
James Wait Law
USA

What makes it different from other events is that there are lawyers here; we're not trying to get clients. We're all attorneys, all on the same level, and at the same time it's a great opportunity to learn from one another.



Kunihiro Yoko
Anderson Mori & Tomotsune
Japan

It is important because it is a good opportunity to know the global trends and also a great opportunity to network with practices and lawyers from all over the world.



Gavin Dingley
Five Paper
United Kingdom

It's a good way to meet people from different jurisdictions that maybe don't even practice in your own area and it's nice to meet different people and learn about their culture and experiences.



Marion Anzinger
SKW Schwartz
Germany

The IBA is for me a good way to have a network around the world. There is always work coming in from the IBA, and of course, we need to have an international network and to know people personally when we send them work.

Private markets should get on with tackling ESG

Disclosure regimes for listed companies have made public markets the focus of ESG requirements, but the dynamic could be changing. As a matter of fact, private companies and M&A practitioners are in a perfect position to drive ESG forward.

Panellists at a sustainability focus session at the conference said the key was not just to view ESG investing as a tool for impact firms, but as a way to encourage all investees to incorporate ESG standards.

"There's a difference between dedicated ESG impact investment firms and investors looking to involve ESG in their portfolio," said Danielle Price, partner at Holland & Knight in Miami. "Businesses and investors would benefit from adopting ESG standards and look at how it can impact business – they don't have to be an impact fund to do that."

While companies that offer ESG as a product in itself are attractive, having a vanilla product and adding ESG features to it can also be a good option, argued Freshfields partner and panel co-moderator Damien Zoubek. Incorporating ESG in companies' business models can also help at different stages of their lifecycle.

"If a company has to exit in the public markets, having an ESG story behind them is helpful," said Amisha Parekh, managing director for portfolio operations at Blackstone in New York. "No matter what your sector, being mindful of these second-order impacts is important. Building that into your business model makes you a better strategist and operator, and also helps



you capture market growth or valuation opportunities."

The way private market investors tackle ESG challenges also tends to vary from one company to another.

"Some practitioners look at ESG with an exclusion mindset, but that's much more a European than American trend," said Parekh. "US investors tend to prefer the approach of finding out about the risk and figuring out how those ESG factors align with their investments."

M&A practitioners are in a particularly strong position to move this trend forward in the private sector, the panellists argued.

"One of the big differences between the ESG context for private and public companies is that they're not bound by having to fit in a box that a policy-maker may disclose," said Lisa Forbes, general counsel at impact fund Builders Vision in Chicago. "Company founders drive some of that impact and create sustainable businesses that funds want to invest in not because they are ESG-focused funds, but because they see it as a good business opportunity."

For those investors working on impact-driven agendas, a key challenge

is being able to measure these firms' ESG footprint.

"Managing impact is really difficult because it's subjective," Forbes added. "It can be difficult to judge whether something is just correlated or causation. For example, trying to figure out whether a particular investment is the cause of a reduction in carbon emissions in the world at large can be very difficult to do."

For Blackstone's Parekh, qualitative research is essential for this type of impact measurement – especially when it comes to early-stage companies. If a benchmark such as carbon emissions per dollar revenue is being used, for instance, then outside events such as inflation can skew the data and make it seem like the firm is decarbonising.

"Looking at data alone ends up being insufficient," said Parekh. "For private equity and VC investors, there needs to be more engagement, looking at how firms are driving the maturity of their processes, whether they have an ESG person in charge, conduct materiality assessments, and go up the maturity curve."

However, the nature of investments and of the M&A industry adds other

challenges to the mix. "The other issue with private equity is that we're constantly doing M&A," Parekh continued. "We're constantly adding further companies to the ones we've already acquired, so we're re-baselining the data after a bunch of new acquisitions. As these companies grow, your baseline changes. The data is just one element of the broader story."

Another important factor to consider for investors looking to boost their ESG impact is the stage at which the investment is being made, as the level of influence that they have on firms can vary accordingly.

"It's easier to be more impactful with the company when you come in really early," said Forbes. "You can look at strategic direction and customer acquisition. When we invest in firms at later stages, it's usually because they already have a proven track record and a thesis we feel really strongly about and want to support it. For the earlier stage ones, it's more about helping them start that path."

Regardless of the stage at which investors choose to come in, it is always important to work in collaboration with other investors in the firm.

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IBA is more important now than ever

IBA executive director Mark Ellis talks to IFLR reporter Lucy Frost about the role of the legal profession in the face of human rights and rule of law breaches in Ukraine, Afghanistan and further afield

You've been with IBA for more than 20 years now, what changes have you noticed in that time?

In the last 20 years, there's been a growing realisation that major issues such as the rule of law and human rights are a significant part of the legal profession's responsibility.

This has meant that, with the great support of commercial lawyers who understand the importance of this association being relevant in other areas of law, we've been able to create new entities. These include the Southern Africa Litigation Centre, which is at the forefront of litigating human rights and rule of law violations throughout southern Africa. We have also been able to create the International Legal Assistance Consortium and eyeWitness to Atrocities.

Even in the last three years, the world has changed so much – what should the legal profession prioritise coming out of Covid?

Since Covid, many of our existing priorities have been accelerated, such as the focus on justice, rule of law, and responding to what has been a significant rise in nationalism and populism during these past few years. These are significant challenges to the liberal world order and, thus, it's even more important now that we speak out on these issues. In yesterday's conversation with Kerry Kennedy, she discussed how her father, Robert F. Kennedy, spoke about ripples of hope. That's what the IBA is about, we engage on these really crucial issues. By doing so, we create these ripples of hope, not just for members in the legal profession but, more importantly, for society at large.

What are some of the examples of work the IBA has done on human rights violations since Covid?

We have been working with our two Ukrainian bar members, the Ukrainian National Bar Association and the Ukrainian Bar Association. At the start of the war, we immediately started a series of programmes including providing financial assistance to the associations and have created a significant voice and force among the legal profession in assisting Ukraine at such a critical moment. I'm very honoured that the IBA can play this role.

How has the eyeWitness to Atrocities programme you set up worked in Ukraine?

In short, brilliantly. EyeWitness to Atrocities was created to bridge the authenticity gap, so people on the ground can use the app to photograph and video human rights violations and evidence of atrocity crimes and to be confident that the metadata embedded will ensure that the evidence can be used in a court of law. We now have more than 25,000 (and gaining) videos and pictures from Ukraine, evidencing human rights violations that can be used by accountability mechanisms.

The IBA took an active role in aiding Afghan lawyers after the Taliban takeover, what activities have you undertaken there?

The IBA has been involved in Afghanistan for over 20 years and we created the Afghan Independent Bar Association (AIBA). For the AIBA to disappear overnight was a real blow not only to our colleagues in Afghanistan, but to us as well.



"We now have more than 25,000 (and gaining) videos and pictures from Ukraine, evidencing human rights violations that can be used by accountability mechanisms"

We are now working with our colleagues to create a new association – the Afghan Bar Association in exile – and I'm excited that the IBA is taking the lead in creating this entity. We have also worked very hard to evacuate the leadership of the AIBA, as well as hundreds of women judges, through our HRI, who were particularly vulnerable to the Taliban takeover.

In Ukraine, Afghanistan and elsewhere, it's a real honour to work with our colleagues in-country who are combatting these human rights violations every day.

What are you most looking forward to at this year's conference?

For me it is the opportunity for the legal profession to come together and

focus on issues that matter, not just for us, but for the international community at large. This year's programme is all about responding to these challenges. Now that we're coming out of the cloud of Covid, I'm very excited about being able to reinforce the role the IBA has played and will continue to play in as the global voice of the legal profession.

It's special to be back in person after the pandemic. I'm looking forward to the "A Conversation with..." series. We have Kerry Kennedy, ambassador Beth Van Schaack and prosecutor general of Ukraine, Andriy Kostin – they're set to be great discussions. But the best thing about the conference is that all of our speakers are truly the best and brightest, you can walk into any event and know they are the top lawyers in their field.

"In Ukraine, Afghanistan and elsewhere, it's a real honour to work with our colleagues in-country who are combatting these human rights violations every day"

The winners and losers of climate change

Around two thirds of the world's population have no meaningful access to justice, creating deep threats of litigious exposure

Climate change isn't just harmful to the planet – it is also damaging the lives of those who populate it. Yet, many vulnerable communities have limited or non-existent means to hold accountable those who are most responsible for those negative impacts.

While not a panacea, the right to a healthy environment is key to addressing the environmental crisis and protecting human rights, argued Rose Wall, CEO of Dublin-based Community Law & Mediation during today's sustainability focus session, *Access to climate change justice for our most vulnerable citizens*.

At present, several barriers stand in the way of that. These include issues such as lack of knowledge of the law, inaccessibility of legal services, intimidation of the legal world, limitations on the types of arguments that can be advanced in court, fear of retaliation, as well as costs.

"Lack of knowledge of the law impacts disadvantaged communities the most, but lack of climate literacy among legal professions themselves, including in the judiciary, should also be considered," said Wall. "In Ireland and other countries, there is no judicial recognition of the right to a healthy environment. Enshrining this into law would place environmental protection at the heart of European policymaking, ensuring that legislation is made in a manner that's compatible with that right."

The United Nations' special rapporteur on human rights and the



environment recently carried out a study that found that countries with a constitutional recognition of the right to a healthy environment tend to have stronger environmental protection, score better on metrics of sustainable development, have lower incidence of environmental injustice, and perform overall better public health.

"Climate change involves winners and losers, and the losers are invariably those who are the most vulnerable," said Mark Woods, former director of the Law Council of Australia, and co-chair of the International Bar Association's Access to Justice Committee. "According to the UN, 80% of those displaced by climate change are women, and roughly two thirds of the world's population have no meaningful access to justice. It is for that reason that the threat of litigious exposure can be so profound."

In the Asia-Pacific region, the performance of legal aid systems in supporting climate justice for the vulnerable has been "lamentable", Woods deplored. In Australia, there is

"Climate change involves winners and losers, and the losers are invariably those who are the most vulnerable"

currently no right to legal aid in most civil cases, with the exception of family law, which makes it very unlikely for legal rights against polluters to be funded in that manner under any circumstances.

"Litigation is but one way of resolving disputes between legal persons, and the question is whether it's the most appropriate if the search is on human-centred means of access to climate justice," said Woods. "If the science of most climate change being man-made is accepted, then people really damage the planet just for the fun of it. The reasons for doing so are in the main connected with profit, or personal gain. Even the most well-meaning governments...find their intentions frustrated by those whose motive to pollute is greater than any motive to act for the common good."

The power of the jurisprudence that this creates, is where the real value of litigation lies, Woods argued. "Politicians come and go, and so do regulators whose powers can be expanded or retired at their whim," he said. "But precedents remain just that and are a powerful deterrent to bad behaviour, irrespective of the jurisdiction."

The downside of litigation is that it is expensive – not the least because of the resources that are required to conduct it. And although alternative dispute resolution is now a common, if not mandatory, feature of modern litigation, and provides a human-centred outcome, it doesn't develop a jurisprudence that aids the plaintiff.

"Those seeking to defend their role or rights have become adept at strategic litigious, filibustering, flimflamery or fainting," said Woods. "That is especially so in common law jurisdictions around the world. Even the most determined plaintiff can be brought to heel by the sheer volume and complexity of the requirements of the legal process."

In the face of these realities, the prime motivation to continue often sadly becomes "what have I got to lose?" Woods explained.

"My thesis is simple," he concluded. "We lawyers have an important role to play in the fight for climate justice. If we don't put into action the means to remedy the denial of basic human rights that cause climate change, clearly, we don't fulfill that role at all. So go to it."

"We lawyers have an important role to play in the fight for climate justice. If we don't put into action the means to remedy the denial of basic human rights that cause climate change, clearly, we don't fulfill that role at all. So go to it"

When virtual becomes reality

IBA members online networking group #FabWeds meet face to face for the first in Miami

In March 2020, a few weeks after Covid shut offices and sent everyone to an indefinite work-from-home existence, Sarah Fitts – partner at ArentFox Schiff in New York – got an unexpected email from Fabrizio Paratore – partner at Paratore and Paratore in Rome – inviting her to join a call the following Wednesday morning.

It was not a regular meeting. There was no obvious agenda or plan in the invitation, other than that the attendees were all IBA members and like the rest of the working world, were working from home during the pandemic.

But being included on the group wasn't random either. All of the people invited to the first call had attended Itzik Amiel's networking session at the Seoul 2019 Annual Conference. During the session, Paratore told the room that he was about to ask Amiel whether following-up with business contacts weekly (as Amiel suggested) really was just stalking.

But when Amiel called on him, instead of letting Fabrizio ask his planned question he asked why he was at the event, to which Paratore answered "to meet new friends". Amiel looked at the audience and asked if anyone did in fact want to be



his friend, before instructing everyone who did to pass him a business card as they left the room. Paratore collected more than 60 business cards in less than five minutes.

A few months later, Paratore contacted Amiel for suggestions about what to do with the cards, to which he responded: "invite them to a weekly Zoom call!" So, he did just that.

The first call – and for many the first chance in weeks to talk with someone new – was on April 1. Somehow the core group of 15 or so invitees who joined that day felt like they had known each other for a long time, said Fitts. "We were all experiencing the same isolation and dislocation, advising clients on the same issues and sharing the same experiences even though we were spread around the globe."

Fabrizio suggested inviting other IBA friends who might be interested. The little group of regulars grew to 35

people, with members on every continent except Australia. The group continued to meet every Wednesday throughout the pandemic and was soon named #FabWeds.

Time zones were managed (although it was rarely a good time for California – apologies Gerard Melling) by moving the call time around. Meetings continued, sometimes with more than 20 on the call and sometimes with just five. As members started to return to work in offices, attendance dropped, but the calls continue.

Since April 2020, group members got Covid-19 and recovered, had babies, lost loved ones, got divorced, quit jobs, moved cities, started new businesses, started new hobbies and had children graduate college.

Paratore gave a walking tour of a park in Rome, Hin Han Shum joined a call during her commute home from the office and showed off the Hong Kong bus system. Members were able

to see pictures of Gerard Melling's daughter's wedding in his Los Angeles backyard and a year later, saw pictures of his new grandchild.

One #FabWeds friend in Africa joined a call quite shaken shortly after being carjacked (she was unharmed), and members learned about patent law in Israel from Orit Gonon and about Melina Pyrgou's Cyprus law firm.

In February 2022 conversations took a serious turn, as the group heard first-hand accounts from Sergiy Gryshko who joined from Ukraine, and told stories that left everyone misty-eyed, helpless and admiring his courage. Gryshko gave advice on which charities to support and insights the group wouldn't have learnt anywhere else.

One #FabWeds friend sadly feels helpless in Moscow as sanctions closed down the country and her law firm. Meanwhile Thomasz Cyrol gave updates on Poland's efforts to welcome and house Ukrainian refugees and his personal efforts to help Ukrainians restart their businesses in Poland. Every #FabWeds friend had a story to tell.

Of course, the entire group wasn't able to make it to Miami Beach – war, lack of visas and sanctions as well as work prevented many from joining – but on Sunday the group finally went from meeting on Zoom to meeting at a table as 18 #FabWeds friends finally met in person.

"It's definitely better in person than on screen," said Fitts. "We are grateful for the IBA and the friends we made, even during Covid, and how we could stay connected and engaged in a time of stress. We are hoping for peace and good health, and for an even bigger gathering in Paris next year. In the meantime, our Wednesday meetings will surely continue."

Partecipanti (18)

- Tomasz Cyrol
- Fabrizio Paratore
- Gabriela Kubicova
- Sergiy Gryshko, R.
- David Williams
- Itzik Amiel
- Lars Karsten
- Kunihiro Yokoi
- Kurniawan Tanzil
- Sarah Fitts
- Márcia Estrela
- Anna Volgina
- Derya Durlu Gurz... Bergstein Abogados
- Phil Tully
- christophe rapin
- gerard melling
- Bergstein Abogados
- Mikhail Aleksandrov

Invita Silenzia tutti

Antitrust at a 'crucial inflection point'

Competition law needs to be reassessed in a context of increasing inequality and economic disquiet

Yesterday, panellists in Miami discussed ways in which antitrust and competition law could be improved to address issues of inequality across the world.

"If you're worried about human rights, then you should also be worried about inequality and the effect on democracy," said Dennis Davis, former judge president of South Africa's Competition Appeal Court. "There's a huge disconnect between the pressing political reality confronting the world at large, and as it were, a traditional view of law."

A key point, Davis continued, is where the boundary of competition – which can deal with egregious forms of harm and help take it away – should sit.

"We need to ask ourselves where competition law resides in a world of increasing inequality and greater disquiet about the economies of the world, and the levels of inequality that exist," he said. "We need to rethink these issues and start thinking about what appropriate normative framework is for competition and antitrust law in the twenty-first century."

A symbiotic relationship between antitrust or competition law and inequality exists, in that corporate power should not be allowed to deprive people of a fair opportunity to compete or be faced with unnecessarily high prices or low wages.

"We are at an inflection point in antitrust right across the world, and this is the fundamental proposition from which we should start," said Davis. "We need to look at the antitrust prohibitions against creation entrenchments and abuses of market power."

In certain jurisdictions, this may mean substantive legal standards for mergers and monopolies may have to change. It also requires better policy on remedies, where anti-competitive mergers should almost always be enjoined.

"It also means rethinking what is substantial market power and whether, if the law insists on proof of monopoly or dominance, major offences may fall below the radar," Davis added.

According to Diana Moss, president of the American Antitrust Institute in Washington, inequality in the antitrust context means two things: outcomes from the exercise of market power that result in the disproportionate distribution of wealth and income

across market participants, including workers, consumers, and smaller businesses; and institutional under-service to marginalised and vulnerable groups – whether that's by income, socio-economic status, race, or location.

In the US, Moss argued, many rural communities are severely underserved in the context of antitrust.

"The reason why we're having this discussion today is because of a failure to enforce antitrust laws," she said. "In the US, we have been facing 40 years of weak enforcement. That is a systemic problem. Jumping ship and throwing this to the courts will only lead to an even more significant bogging down. What we need is better case law to set precedents."

There also needs to be better coordination on antitrust policies



between the US and other countries that have put inequality higher on their priority list, as well as a need for harder negotiations with large antitrust authorities.

"It is indisputable that markets and competition are supported by democratic principles," said Moss.

"There's a feedback loop in there that is very strong and demonstrable. The incubator for a market-based economy in the US, which is now over 200 years old, truly shows that."

A market-based economy, Moss continued, is supported by underpinnings such as entrepreneurial freedoms, consumer freedoms, choice and diversity.

"We now have mounds of economic evidence: labour economists and members of the Industrial Organisation have jumped into the fray, and more work is coming out of the Federal Reserve Bank on the effects of high concentration on inequality, such as wage gaps and disproportionate distributions of wealth and income," she said.

"It is unquestionable that high concentration, at least in the US, has led to inequality. Market power leads to inequality. There is a need to push back on the conservative ideology that has promoted under-enforcement of the antitrust law."

"Jumping ship and throwing this to the courts will only lead to an even more significant bogging down. What we need is better case law to set precedents"

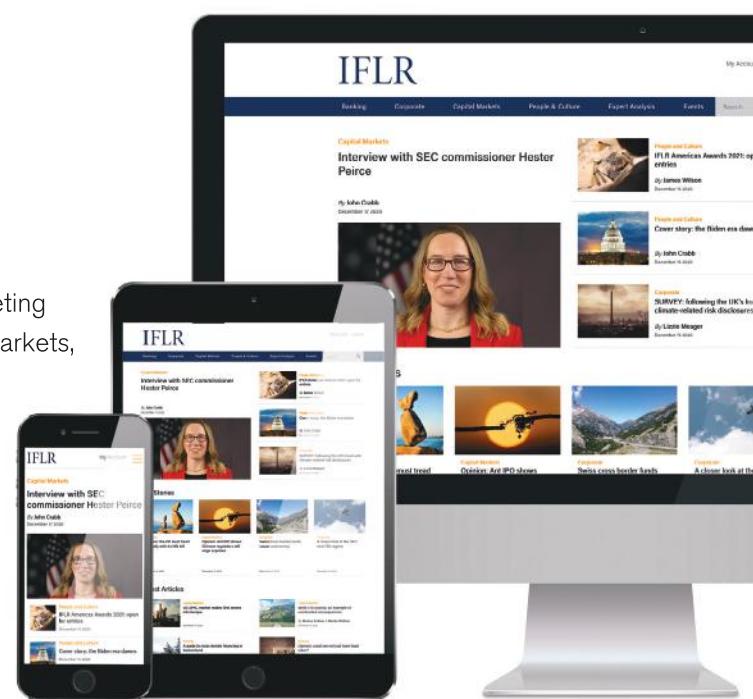
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Debevoise & Plimpton recognised with IBA pro bono award

The firm has been recognised for outstanding contributions to public service in areas including human trafficking and modern slavery

Debevoise & Plimpton has been recognised with an IBA Group Member Award for outstanding pro bono contributions to the work of the International Bar Association.

Debevoise's international disputes partner David W Rivkin and London co-managing partner, Lord Peter Goldsmith KC, accepted the award on Monday at an exclusive event in Miami during this week's conference.

Rivkin, a former President of the IBA, said: 'We are honoured to be recognised by the IBA for our long-standing commitment to public service and to the profession. Equally, we are proud to have led many important IBA projects over the years.'

As the global voice of the legal profession, the IBA has a crucial role to play in raising awareness of legal issues across the world, supporting lawyers through education and training provision and fighting against injustice, he continued.

'Without such organisations, the legal profession, and the world in general, would be a much poorer place. I am incredibly proud of my Debevoise colleagues' collaborative efforts with the IBA and look forward to working on future IBA projects.'

The IBA Judicial Integrity Initiative launched in 2015, during Rivkin's tenure as IBA President. With the overall aim of improving the level of integrity in the judiciary, it was designed to contribute to the efforts of



From left to right: Lord Peter Goldsmith KC, David W Rivkin, Sternford Moyo

"Without the extraordinary pro bono assistance of Debevoise & Plimpton, some of the IBA's most consequential projects would not have been possible"

members of the judiciary to fight corruption and encourage independence and impartiality in judicial decision making by raising awareness of the causes and consequences of judicial corruption where it exists, promoting the highest standards of integrity among lawyers and judges, and considering how countries have worked effectively to eliminate judicial corruption.

Rivkin continues to support the Initiative.

IBA President Sternford Moyo said: 'It is simply the case that without the extraordinary pro bono assistance of Debevoise & Plimpton, some of the

IBA's most consequential projects would not have been possible. Most notably, Debevoise committed more than 2000 pro bono hours to a high-level inquiry on crimes against humanity in North Korean detention centres, making it the largest pro bono contribution in the IBA's history.'

Debevoise's Inquiry on Crimes Against Humanity in North Korean Detention Centers was led by Natalie Reid and Nawi Ukabiala. Four international judges overseeing the Inquiry – each a luminary in the field of international criminal justice – expressed deep appreciation for the caliber of the team's work. A mini

documentary about the inquiry has been released.

Lord Goldsmith KC, Debevoise's Chair of European and Asian Litigation, commented: 'We also take the opportunity to salute our partner David W Rivkin, former IBA President, for his inspiration and leadership on these and similar projects.'

Rivkin has led many projects that have been actively supported by Debevoise with immense pro bono assistance. Topics tackled include human trafficking, sustainability and modern slavery, and sustainability.

The IBA is immensely grateful to the Debevoise team.

Continued from page 1

diversity in the profession, shared heartbreak, yet all-too-common stories of setbacks she has faced as a lawyer. Recalling a time when she was told by other female partners to "suck it up buttercup" upon coming back to work following the birth of

her child, Behnke also spoke about intersectionality, noting that since her graduation from law school there has been virtually no movement in the number of women of colour in senior positions, and a lack of progress in racial and ethnic diversity.

Later in the session, Judge Winfred

Naigaga provided her view of women's equality in the legal profession in her home country, Uganda. As a key stakeholder of the 50:50 by 2030 project, she has been able to include her country as one of the 16 jurisdictions represented in the initiative. She also explained that

while women make up 49% of the bench in Uganda, there are currently no women in positions of power.

Concluding a touching session, incoming IBA President Arpón de Mendí reminded the audience that equality is not only a matter of law – it is the centre of law.

A new AI framework

This afternoon's showcase will discuss how to regulate AI as it threatens to outpace human development

AI is increasingly becoming part of our lives. Robots are involved in healthcare, self-driving cars are making more progress each day and even microwaves and fridges are now ‘smart’.

This conference's attendees are likely aware that AI is also transforming the work of attorneys. Such tools can help companies do due diligence before acquisitions, patent examiners conduct prior art searches, and are even said to help litigators predict their case outcomes.

Amid this change, citizens are wondering whether and when AI will outpace human development. It's therefore important to consider how the law can catch up to or stay in line with the technology.

Speakers at today's showcase session will discuss what kind of regulation will be required to make sure that humans remain in control and human rights are preserved as AI continues to develop. They will address this issue in light of the fact that AI can increase access to justice. Huge swathes of the populations of many countries have access to the legal system, and AI technology could help narrow this gap.

But there could be implications for fundamental legal rights if AI-based tech is applied in courtrooms.

A number of prominent speakers, including private practice lawyers and academics who focus on a variety of practice areas, will share their insights.

"Artificial intelligence is no longer simply the stuff of science fiction," said Steven Richman, member at Clark Hill in the US and chair of the IBA Credentials Committee. "Not only is it here, but it is increasingly integrated into daily life and particularly legal practice. Beyond the technical mastery and understanding of what it can and cannot do, lawyers must also understand their ethical obligations with regard to using artificial intelligence and be prepared to address regulation of the use of artificial intelligence as may be on the horizon."

The issue is of immediate importance and I am looking forward to a robust discussion between the panel and the audience, he added.

Speakers include Riccardo Cajola, managing partner at Cajola &



Associati in Milan, who also spoke about the topic yesterday in a panel focused on the regulation and use of AI in the legal profession.

Diego Muñoz-Tamayo, a corporate partner at Muñoz Tamayo & Asociados, will also be on the panel, alongside senior associate Fernandez Obiene of Tsedaqah Attorneys in Nigeria.

Attendees will also hear from Lyra Jakuleviciene, professor at Mykolas Romeris University in Lithuania, and Christian Duve, founder of Duve Law and honorary professor at the Ruprecht Karls University of Heidelberg in Germany.

Steven Richman will chair this event.

SESSION: BIC Showcase: key questions to be discussed when drafting a new framework on AI
TIME: Today, 14.30 – 17.30
VENUE: Rooms 203-205, Level 2

Disability and the law

This Thursday, the Section on Public and Professional Interest committee is excited to welcome Breaking Bad actor RJ Mitte as a keynote speaker.

Mitte will be giving the keynote address on how law affects individuals with disabilities, and the positive impact of hiring individuals with disabilities in the workplace.

Best known for his portrayal of Walter "Flynn" White Jr. for five riveting seasons of AMC's Emmy and Golden Globe Award-winning dramatic thriller *Breaking Bad*, Mitte is an actor, advocate and philanthropist who has carved out his niche in Hollywood by breaking down stereotypes and changing people's mindsets with his easy going demeanor and positive outlook.

As Walt Jr., referred to by fans as The Breakfast King, Mitte acted as the cerebral palsy afflicted son of Walter (Bryan Cranston) and Skyler White (Anna Gunn). As Walter continues his descent into drug manufacturing and trade, Walt Jr. finds himself torn



between his father's deceit, his mother's protectiveness, and his own developing sense of independence as a disabled teenager.

The lunch will take place on Thursday 3 November between 1245 and 1415, and cost \$115.

SESSION: Section on Public and Professional Interest lunch
TIME: Thursday, 3 November,
12.45 – 14.15
VENUE: Rooms 201-202, Level 2

Protect journalists at all costs

In 2020, the independent advisory body to the Media Freedom Coalition, the High Level Panel of Legal Experts on Media Freedom, published an advisory report called 'A Pressing Concern: Protecting and Promoting Press Freedom by Strengthening Consular Support to Journalists at Risk' examining the existing state approaches respecting consular assistance for journalists at risk abroad, and proposing a new paradigm of justice and accountability.

Every day, journalists and media personnel around the world fall victim to arbitrary detention, violence or intimidation on account of their work. These attacks resonate beyond their individual cases, being not only attacks on free expression, but also exponential assaults that silence the subjects of the reporting and deprive the public of their stories.

"Today is the UN's International Day to End Impunity for Crimes against Journalists, we want to use today to highlight the recent surge in the arbitrary arrest and detention of journalists," Can Yegin-su, deputy chair of the High Level Panel of Legal Experts on Media Freedom, told IBA Daily News.

"Journalists are being arbitrarily detained like never before, notwithstanding states' clear obligations under Article 9 of ICCPR and Article 9 of the Universal Declaration. We as a Panel have in our work for the coalition set out concrete actions that states can take to stem the tide. But the effort will also require the renewed engagement of the IBA's members and a concerted commitment to our core principles of human rights, consular relations, the rule of law and

the independence of the judiciary. These are, of course, universal values, firmly grounded in international law."

By threatening and targeting journalists, states seek to send a dissuasive message, suppressing those who would report on their wrongdoings. According to Reporters Without Borders, as of 2022, over 500 journalists are arbitrarily detained worldwide. This is the highest number of journalists detained in connection with their work that they have ever recorded.

Today's session has been organised by the International Bar Association's Human Rights Institute, which act as secretariat to the High Level Panel. It will feature members of the panel and guest speakers in conversation on the role of international law in finding concerted approaches to address this mounting issue.

Alongside Yegin-su, Catherine Amirfar of Debevoise & Plimpton will co-chair the event. The rest of the panel will be comprised of Michael Breen, of Human Rights First in DC, Dana Freen of The New York Times in New York, and Professor Seong-Phil Hong of the High Level Panel of Legal Experts on Media Freedom in Seoul.

SESSION: The safety of journalists and the problem of arbitrary detention: a conversation hosted by the High Level Panel of Legal Experts on Media Freedom

TIME: Today, 14.30 – 15.45

VENUE: Room 234, Level 2

IBA announces new committee for public and government lawyers

The Forum for Government and Public Lawyers will discuss ethics and the need for higher thresholds in claim bringing and defending

The IBA will establish a new Section on Public and Professional Interest committee to be known as the Forum for Government and Public Lawyers.

Andrew Mackenzie and Federica D'Alessandra, both SPPI Council Advisory Board Members, will establish and co-chair the Forum. D'Alessandra, deputy director of the Oxford Institute for Ethics Law and Armed Conflict, said: "Although the IBA offers general content that would be of interest to government and public lawyers, including lawyers working

for international and supranational organisations, focused content around the role and practice of the government/public lawyer, including around the values and objectives that ground public service, is required."

D'Alessandra encourage government and public lawyers attending the IBA Miami and from the wider IBA membership to join this new forum. "We also want to reach out to public lawyers not currently involved in the IBA and to encourage them to engage in this project," he added.

Mackenzie, a Scottish government lawyer on secondment to manage the Scottish Arbitration Centre, added: "There has been limited authoritative writing on government lawyers, their roles, and the values that ground their public service. For example, considerable thought and effort have been put into exploring and fixing the ethical rights and professional responsibilities of private lawyers, but little energy has been directed towards defining and defending the role and duties of government lawyers."



As a result, the traditional understanding seems to be that government lawyers are to consider themselves as being under the same regime and restrictions as their private counterparts.

However, some argue there is a "public interest serving role" for government lawyers, namely, the proposition that government lawyers have greater duties to serve the public interest than their counterparts in private practice, although this concept remains controversial. We need a forum where public lawyers can discuss these issues.

Aside from ethics, the forum will consider suggestions that government lawyers may also face a higher threshold in bringing or defending a claim, legal privilege, and politicisation.

Despite the complex matters facing public lawyers, authoritative examination of such matters is limited and there are no international forums to bring public lawyers together to discuss relevant legal issues.

"No other organisation is better placed than the IBA, with its global reach, reputation and prestige, to foster and grow this community," said Mackenzie.



From Rwanda to Ukraine, international law still matters

Bringing perpetrators of atrocity crimes to justice is the topic of today's stand out showcase

Today's highlight IBA showcase will take a deep dive into the timely and important issue of atrocity prevention and ensuring that those who commit atrocity crimes are brought to justice.

The session will focus specifically on Rwanda and Ukraine, with case studies relevant to each country giving attendees the opportunity to review, comment and debate the ways atrocity crimes can be revealed to the general public.

In 1994, the Rwandan genocide saw 800,000 people slaughtered by extremist ethnic majority Hutu within just 100 days. The Hutus were mostly targeting members of the Tutsi community – the second largest of three main ethnic groups across Rwanda and Burundi. Started by Hutu nationalists in Rwanda's capital city of Kigali, the genocide rapidly spread throughout the country with shocking speed and violence.

The International Criminal Tribunal for Rwanda was established that same year, as an extension of the International Criminal Tribunal for the former Yugoslavia in The Hague (the first international tribunal since the post-World War II Nuremberg trials). Following more than 10 years of trials, 93 individuals were indicted and dozens of former senior officials convicted, including three former Rwandan defence and military officers who were charged with organising the genocide.

The International Criminal Court (ICC) was only established in 2002, and as such did not deal with the Rwandan genocide case.

Almost 30 years later, Europe is faced with its own threat of attempted genocide, in the form of Russia's brutal invasion of Ukraine. Although most conversations are currently focused on the potential outcomes of the conflict, the raging war has raised fresh questions over how those responsible should be held to account and brought to justice after it ends.

Join Mark Ellis, executive director at IBA, and Leila Sadat, professor at Washington University of Law and



"Started by Hutu nationalists in Rwanda's capital city of Kigali, the genocide rapidly spread throughout the country with shocking speed and violence"

member of the War Crimes Committee advisory board, for a panel discussion that will explore subjects such as justice through the ICC, universal jurisdiction, the UN Security Council, the Responsibility to Protect principle, and other accountability mechanisms.

Speakers on the day will include Arnold & Porter partner John Bellinger, IBA eyeWitness project director Wendy Betts, ICC Assembly of States Parties president Judge Silvia Fernández de Gurmendi, Case Western Reserve University School of Law co-dean Michael Scharf, Georgetown Law School professor David Tolbert, US ambassador-at-large for global criminal justice Beth Van Schaack, and David Scheffer, clinical professor emeritus and director emeritus of the Center for International Human Rights at Northwestern Pritzker School of Law, who served as the first US ambassador-at-large for war crimes issues.

SESSION: IBA Showcase: atrocity prevention – from Rwanda to Ukraine, why international law still matters

TIME: Today, 09.30 – 12.30

VENUE: Rooms 203-205, Level 2

SPPI Awards breakfast

Join us on Thursday morning for our awards breakfast where the IBA Award for Outstanding Contribution by a Legal Practitioner to Human Rights, the IBA Outstanding Young Lawyer Award, in recognition of William Reece Smith Jr, and the IBA Pro Bono Award, will be presented.

Co-hosted by the Human Rights Law Committee, the Pro Bono Committee, the Section on Public and Professional Interest, the Women Lawyers'

TIME: Thursday, 3 November 08.00 – 09.15

VENUE: Sunset Vista A, Level 4 MBCC

Committee and the Young Lawyers' Committee, IBA will also be recognising the award winners from 2020 and 2021, which includes the recipient of the 2021 IBA Outstanding International Woman Lawyer.

A brief history of Miami

Miami is known for its buzzing beaches, lavish parties and endless sunny days; but the sprawling metropolitan city was once a rugged swampland inhabited by native Americans

The early native American settlers, known as Tequesta, were already making a livelihood for themselves from the Miami river 2000 years before the arrival of European settlers. The name Miami is derived from the historic name of Lake Okeechobee (known as Florida's inland sea) and the native Americans that lived around it – the 'Mayaimi' people. Remains of a village dating as far back as 500-600 BCE have been found near the mouth of the Miami river.

The first European settlers

In 1513, a young Spanish conquistador named Juan Ponce de León led the first known European expedition to 'La Florida', while allegedly searching for the fountain of youth. Though he did not find the mystical fountain, León returned to Florida in 1521 to try and establish a Spanish colony in the southwest (Miami is located in the southeast). The colonisation attempt was met with great resistance from the local tribes, which ultimately led to its failure. León died from injuries sustained during battle with the native Americans. Despite this, it would not be the last time Spain attempted to build a colony in Florida.

In 1566, Spain was able to establish a mission on the north bank of the Miami river. The Spaniards had attempted to convert the local tribespeople to Christianity, but the attempt failed. This failure was just as horrific as the last. Aside from European language, culture and weapons, the Spanish also brought with them smallpox and other diseases – the novel pathogens wiped out most of the local tribe during their attempted conversion to Christianity.



"Miami was the battleground of a brutal drug war in the 1970s and 1980s between the US government and multiple drug cartels"

Hundred years of wars

In the 21st century, Miami has boomed as a major international financial and trade centre. Downtown Miami has one of the largest concentrations of international banks in the US. However, business has not always been booming – the city has been both ravaged and rewarded by several wars throughout its history.

After the US purchased Florida from Spain in 1819, three major wars

were fought between the US government and the Seminoles (the native American people local to Florida in the 18th century). The wars devastated the city and led to slow development and migration of people into Miami until 1842.

100 years on, the reverse happened, and Miami benefited from the second world war. The city's economy was stabilised after hundreds of thousands of servicemen were sent to Miami as part of their military training. After the end of the war, these same men returned to the city, sparking another development boom.

Miami further benefited from the mass exodus caused by the communist revolution in Cuba. Cuban culture can still be felt heavily today in the city, particularly in 'Little Havana' – a buzzing neighbourhood filled with art galleries, Cuban coffee houses and Latin-inspired restaurants.

While the city provided a safe home for refugees, it was not free of its own domestic troubles. Miami was the battleground of a brutal drug war in the 1970s and 1980s between the

US government and multiple drug cartels. Coconut Grove's Mutiny Hotel at Sailboat Bay was the infamous centre of this trade, where traffickers would often meet to discuss business.

It is reported that in those two decades, around \$2 billion worth of cocaine was smuggled from Colombia by major traffickers – the likes of the Falcon brothers and Sal Magluta. The ensuing turf wars led to Miami being dubbed 'the drug capital of the world'. While exact numbers are unknown, it is estimated over 200 murders were carried out by the top drug lords of the time.

In too deep

Miami's future looks to be in deep water. Florida has been identified as one of the key places on Earth that is in significant risk of being fully submerged due to rising sea levels. Scientists have predicted that the lower third of the state will be underwater by the end of this century. However, hope remains.

The looming threat of submerging millions of people underwater has rallied politicians, scientists and businesses to uncover a solution. The costly Rising Above programme focuses on elevating roads, and building new sea walls and drainage systems around Miami beach (also known as ground zero).

History continues and Miamians face tough choices ahead as the city braces for a different kind of war.



Pillar Two: global effort meets jurisdictional differences

Key challenges for lawyers and policymakers will be understanding how the OECD's Pillar Two tax regime will fit with existing regulation

On Tuesday morning, the conversation turned to tax and new laws to reduce tax avoidance around the world.

Pillar Two introduces a global minimum effective tax rate (ETR) by placing a minimum ETR of 15% on income arising in low-tax jurisdictions for multinational groups with more than €750 million in revenue.

"Pillar Two was introduced to end the race to the bottom on tax rates by ensuring a minimum rate," said Rebecca Wald, partner at Flick Gocke Schaumburg in Frankfurt.

Panellists from India, the EU and the US updated the room on the challenges coming with the regime and how it will fit with existing laws in each jurisdiction.

"In terms of next steps, we are still waiting on the implementation package with more information on how local jurisdictions can apply Pillar Two," said Wald. "This is expected to cover more details on the development of formal requirements like tax return forms or the review process."

For now, different jurisdictions are beginning the process of implementing Pillar Two to meet the initial timeline which required the legislation to go live in 2023.

In the EU, progress is hindered by the lack of a broad approach.

"There is still no approval among the member states on Pillar Two implementation," said Clemens Schindler, partner at Schindler Rechtsanwälte in Vienna. "Hungary, for example, has not approved it."

This will be interesting, as the EU law requires unanimous approval for such directives. How the EU works around this is a key question for market participants.

"There are rumours that other EU processes may be considered to implement Pillar Two," continued Schindler. "On the other hand, there are other member states that might voluntarily



"For now we don't have the unanimity to follow the standard procedure for EU tax directives but it's still the hope that unanimity will be reached eventually"

introduce it or apply it through bilateral or multilateral agreements. For now we don't have the unanimity to follow the standard procedure for EU tax directives but it's still the hope that unanimity will be reached eventually."

Some member states are taking their own approach to the issue due to the political nature of corporate tax evasion.

"From a German perspective, not much has happened yet," said Wald. "But the government are pushing it forward as they have anchored it in the coalition agreement."

The directive which the EU has proposed is very similar to the OECD's concept, but there are areas in which the EU has gone further.

"The OCED proposal only applies in a cross-border context, but to prevent discrimination on cross-border cases, the EU has proposed applying it to domestic groups with the same threshold," said Schindler.

The EU is also considering the relationship between itself, member states and third countries. The proposals suggest the EU may make

multilateral or bilateral agreements with other countries too.

One source of tension in implementing Pillar Two in the EU, if it's approved, will be how it works with controlled foreign company (CFC) regimes.

"There is clearly a certain conflict between CFC regimes and Pillar Two," said Schindler. "The European Commission has seen this and they've said they don't see any reason to limit member states to implement CFC even though it's linked to Pillar Two."

In the US, a key part of implementing the rules will be a new way of computing taxes in how they fit with corporate alternative minimum tax (CAMT).

"US tax laws have not previously looked at financial statements and the way income is calculated is different in the US to the Pillar Two proposals," said Michael Orchowski, partner at Sullivan & Cromwell in London. "This will be difficult for people with permanent differences between their financial statement income and taxable income such as from equity."

For many lawyers, however, the regime looks very similar to the requirements in CAMT.

"CAMT came from President Biden's campaign based on the fact that companies that are reporting high profits weren't paying tax," said Jason Yen, principal at EY in Washington D.C. "In contrast, the Pillar Two framework was more about tax competition. This is very different to some of the purposes behind Pillar Two."

In India, the concerns have been around how the Pillar Two requirements will fit with tax incentives.

Over the past decade, the country has phased out straightforward tax incentives and replaced them with more sophisticated regimes.

"We will need to see how India will handle implementing Pillar Two," said Amit Singhania, partner at Shardul Amarchand Mangaldas & Co in Delhi. "Phasing out these incentives may be a daunting task as companies have just started adopting these kinds of incentives. How to cope with the more sophisticated tax regime, and whether these incentives can survive along with Pillar Two as well, will be the questions."

Going forward, market participants can look out for the implementation package. After that, the implementation of Pillar Two and domestic laws with regard to the subject to tax rule will be key as countries tackle the issues laid out. This is expected in law next year.

Stronger enforcement of antitrust can help tackle inequality

Much can be done with the existing US consumer welfare standard before developing a new framework

Poor enforcement of competition and antitrust laws has fostered issues of inequality across the US and should be addressed, American Antitrust Institute (AAI) president Diana Moss said during the *Antitrust's role in addressing inequality* session at this week's annual conference.

"Under-enforcement of antitrust laws in the US absolutely impacts inequality," she said. "There is a big role for prosecutorial discretion in terms of what cases are brought or not brought, that could better serve certain communities and promote equality, alongside other factors at play."

Although the debate on the role of antitrust and inequality has been largely focused on changing or creating new standards, much can be done under existing law to promote more equitable outcomes.

"Before jumping ship and developing new, broader standards and tasking the courts with interpreting these, we should ask ourselves what we can do within the confines of the existing welfare standard," said Moss. "We're not doing a very good job at working the consumer welfare standard, framing coherent complaints, litigating cases in ways that are going to be successful. There's more to be done, but we're not seeing it."

However, the existing standard is robust, Moss argued. It can address issues such as harm to consumers, adverse effect on price quality, the effects of a loss of bargaining power on innovation, or supply chain issues resulting from anti-competitive reductions in output.

"Antitrust can also address the



redistribution of wealth as a result of the exercise of market power through remedies," she added. "That means compensating victims in private antitrust class action cases and victims of antitrust crimes through treble damages settlements. It also includes injunctions at the federal level or the public level, as well as structural remedies, such as reducing incentives and the ability to exercise market power."

Antitrust law in the US was not designed to protect competitors, but competition. As such, a key pathway forward would be to leverage the existing standard to reach different types of anti-competitive mergers that create or worsen inequality issues.

"On the merger side, we're not seeing many cases of enforcement involving products and services that have an outsized effect on disadvantaged or marginalised communities," said Moss. "We need to go after mergers creating food deserts or where there is a significant loss of choice for disadvantaged communities."

A similar approach should be taken to ban mergers that negatively impact rural communities and risk marginalising certain socio-economic groups, particularly in the farming and agriculture sectors. "Any mergers

that depress prices to farmers or ranchers should be presumptively illegal," argued Moss.

Concurrent work to strengthen and develop other policy tools, including labour law, intellectual property law and education policy, should also take place to support and complement efforts to improve antitrust rules.

"There's a lot of low-hanging fruit in terms of equity and antitrust cases to promote the goal of a more equitable society and economy under existing rules," Moss reiterated. "Those are straight up price-fixing cases or agreements to limit competition. For example, there are all the horizontal, no-poaching agreements, where companies agree not to go out and hire each other's employees. That has a direct effect on labour market mobility and the welfare of workers."

A particularly pernicious form of agreement is the non-compete clauses for employees, which are expressly restrictive and designed to hamper and limit competition in labour markets, the AAI president argued. "We also see conspiracies to fix prices for services that are particularly important to vulnerable communities," she added.

Consideration should also be given to the protection of small businesses,

which are often at a disadvantage in merger processes.

"Small businesses are innovative, they're disruptive, and their inability to enter markets and get a foothold to compete effectively with larger rivals absolutely translates into inequality," said Moss. "We should also be policing for exclusionary conduct against smaller firms and monopolisation by deception, such as the Becton Dickinson case in which a small manufacturer of retractable syringes was pushed out of the market through deceptive practices by the large incumbent."

The AAI president cited the abandoned Visa-Plaid and John Deere-Precision Planting cases as two recent examples of mergers that could have taken disruptive smaller rivals out of market, had they been completed.

"Finally, we should absolutely avoid conduct remedies that require smaller market participants to come forward and complain about the behaviour of a dominant firm," Moss added. "We are now seeing so much fear of retaliation by small market participants if they have to speak up against a large market partner. They want to keep their heads down and keep quiet, and they do not want to come forward and complain."

Conduct remedies relying on smaller market participants to come forward are typically ineffective due to that fear of speaking out, and to high levels of concentration.

"This is another way to promote equality through the use of the antitrust device while we think about other policy tools that can bootstrap and support the process," Moss concluded.



"There's a lot of low-hanging fruit in terms of equity and antitrust cases to promote the goal of a more equitable society and economy under existing rules"

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