

Editor's note

Dear readers,

Our second edition of the year as usual offers a fascinating glimpse of competition law developments around the world.

Our first contribution, titled *Convincing neutral decision-makers: legal and evidentiary lessons from the Rogers–Shaw and Microsoft–Activision decisions* by Emrys Davis and Christina Skinner, reflects on the extent to which appeal or review by third parties, like an independent judiciary, has important implications for merging parties and enforcers alike, since these third parties may not approach the law and the evidence in the same way as the enforcers do. They illustrate this with reference to two recent Canadian and American merger cases; the CAD\$26bn Rogers–Shaw merger in Canada, and the US\$68.7bn Microsoft–Activision acquisition, in which judges dismissed the enforcer's case because they fundamentally disagreed with the enforcer's approach to the law and the evidence.

Our second contribution from Matt Liu, Roy Su and Sheila Hu focuses on recent digital economy policy developments and enforcement actions in Taiwan, and in particular, the White Paper on Competition Policy in the Digital Economy published by the Taiwan Fair Trade Commission (TFTC) in December 2022. They analyse its proposals to apply existing and/or proposed Taiwan competition laws in order to control abusive practices by online platforms, address killer acquisitions and new forms of collusion arising from the use of data and computer algorithms. Finally, they consider the extent to which the White Paper is responsive to the challenges confronted by the TFTC in its September 2021 decision in the *Foodpanda* case.

In our third contribution, Dr Willard Mwemba of the Common Market for Eastern and Southern Africa (COMESA) Competition Commission provides an insightful commentary into implications for competition law enforcement in Africa of the Africa Continental Free Trade Area (AfCFTA). The treaty, which was signed at an extraordinary summit of the AU Assembly on 21 March 2018 in Kigali, Rwanda, will create a single, integrated African market and will establish

the largest Free Trade Area in terms of Member States since the World Trade Organisation was formed in 1994. He considers some of the salient provisions of the Competition Protocol and asks whether it is necessary, or simply an overzealous endeavour.

In the fourth article, titled *Changes to the Competition Act – a catalyst for the Indian economy?*, Toshit Shandilya and Deepanshu Poddar point out that India is a key jurisdiction for foreign investment and that the Indian government is focused on a ‘business-friendly’ environment. In this context they analyse the impact of the 2023 Amendments to the Indian Competition Act with a focus on the Competition Commission of India’s approach to these new changes. The authors highlight that some changes – like the introduction of commitments and settlements – allow for quicker, more practical remedies for anti-competitive conduct. The authors contend that others, such as the deal value threshold change and penalty on global turnover, require further consideration.

The fifth article, by Albert Aukema, Chris Charter and Alistair Dey-van Heerden titled *Crouching dragon, paper tiger? Discerning the powers of the Competition Commission in market inquiries*, considers the increased use of market inquiries undertaken by the Competition Commission of South Africa (CCSA). In particular, the authors consider whether this is an alternative approach to specifically targeted ex ante regulation being introduced in other jurisdictions to prevent anti-competitive conduct. Their analysis raises concerns as to the ambiguity of the CCI’s powers within the legislation and queries whether the introduction of market inquiries powers stray unnecessarily into rulemaking.

The next article is titled *An analysis of the DOJ/FTC’s draft revised Merger Guidelines*, in which Christopher M Wilson considers the guidelines released in the United States earlier this year. Among other things, the author considers the changes to the structural presumption associated with market concentration figures and the ‘Thirteen Guidelines’ which outline how combinations can potentially cause competitive harm. The article highlights how the draft guidelines differ dramatically from prior guidance on both horizontal and vertical mergers, and which rather emphasise the policy and enforcement priorities of the DOJ and FTC.

The sixth article is an interview with Mrs Ravneet Kaur, the current Chairperson of the Competition Commission of India. In the interview she provides insights on some recent changes to the Indian Competition Act. These include the new settlement and commitment provisions that she indicates will assist in ensuring quicker market corrections. A reduction in overall merger timelines to help with the ease of doing business and deal value thresholds for mergers to ensure acquisitions, particularly in the digital sector, receive the necessary scrutiny.

Our final article is an interview with Andrea Coscelli CBE, the CEO of the UK’s Competition and Markets Authority (CMA) from 2017 to 2022, who has helped

shaped competition policy around the world. The IBA's Michael Reynolds sat down with him at the Antitrust Committee's popular annual mid-year conference in Florence and asked Andrea to reflect on his time at the helm of the CMA, his strategic decisions, especially around staffing of the agency and use of technology, as well as its interactions with the politics of the day and cooperation with the European Commission's DG Comp and the National European agencies, especially in the post-Brexit world.

We hope you enjoy these diverse contributions and extend our sincere thanks to the authors who have contributed to this second edition of 2023, as well as the members of our Editorial Board who assisted with curating and editing these contributions.

Next year, Carolyn Oddie, a partner at Allens based out of Sydney, Australia, will take over as our Editor. Our outgoing Editor, Heather Irvine, would like to wish her as much luck and delight as she has enjoyed in this role since 2020.

Finally, we wish you all a very happy 2024, and hope that the coming year will bless our global antitrust circle with many more fascinating developments.

CLIEditorial Board