



## Letter From The Editor



**T**his year, as could not be otherwise, our Journal addresses the phenomenon of disruptive innovation and how new technological firms and the sharing economy are challenging authorities around the globe, including competition authorities.

We have witnessed, in particular, the rise –and partial fall- of Uber in different cities in most of the countries with competition laws. Regulators are hesitant whether to allow a service beloved by citizens to operate, or to rigidly enforce all the applicable laws, with the consequent ban of Uber services in many cases. Countries are facing a myriad of alternatives to tackle this problem, from adopting brand new regulations for this type of market, to amending or trying to fit them in the current ones, to simply leaving markets to decide what is best.

In our first symposium, we have contributions from leaders of two of the most prominent competition agencies in Europe. On the one hand, Alex Chisholm and Nelson Jung from CMA discuss how antitrust regulation ought to change and explains why more ex post and less ex ante regulation is required. In their opinion, blanket solutions are not appropriate and they fail to capture the specific circumstances these businesses operate in. Thus, acting prematurely with broad-brush ex ante legislation poses significant risk for business development and innovation. On the other hand, Bruno Lasserre from the French Autorité de la Concurrence, also shares a skeptical view on adopting new regulations. Sometimes new business models only bring to light the competitive constraints and inadequacy of rules designed for traditional models and the proposed legislation only seeks to perpetuate incumbents. Thus, caution is required when adopting new regulation. In his contribution, Bruno emphasizes the role of new business models in the application of competition law. In his view, a business model needs to encompass long term changes in demand and consumer patterns to be taken into consideration for competition agencies. Market definition or even merger control should be appraised in light of the maturity of this new business model.

Damien Geradin and Benjamin Edelman, regular contributors to CPI, offer a completely different spin in their articles. With vast academic and professional experience in this field, their opposing views on the matter bring a vivid debate on whether Uber should be applauded or criticized for pushing legal and regulatory boundaries.





While answering this question would need more than a simple letter, Damien stresses the need to let Uber operate until more legal certainty is achieved. In his view, it is not clear what the legal requirements for Uber are in some countries and thus, banning its services or adopting new rules may be equivalent to raising barriers to entry or forbidding liberalization. Damien does not answer that question but clearly prefers to benefit from the efficiencies created. If it's not broke, don't fix it. Benjamin, unlike Damien, considers these legal loopholes "regulatory shortcuts" that Uber and other companies use to grow while observing less-than-strict compliance with applicable rules. In his view, these new business models rather than competing on lawful activities are competing to circumvent and defy the law, which sometimes is achieved because of the huge customer support they get. This is an interesting point, as Uber has learnt that regulators, if they wish to stop it, have to do so before it reaches a critical mass of consumer support. Otherwise, the political pressure may be so high that the cost of adopting new regulation will not outweigh its benefits. Lastly in this symposium, we find Tom Brown and Molly Swartz' article debating new business models applicable to financial services, in particular to online marketplace for lending.

The second symposium in our Journal this year is devoted to the famous Tencent case, the first antitrust case tried by China Supreme People's Court (CSPC). This case is particularly relevant, not only because of the parties and the markets involved (big tech companies fighting in the online market) but also because of the ruling itself, where the court calls into question the traditional tools used to define relevant markets and to determine market power. In just few years of practice, Chinese courts, regulators and practitioners are pushing boundaries beyond what western regimes have accomplished in the last 20 years. It remains to be seen if this approach will succeed in the following years, but it takes courage to take these steps.

The first article by Huang Wei and Han Guizhen focuses on the consequences of this ruling on relevant market definition and market dominance determination. In their view, the ruling does not set aside the traditional tools to determine those factors, but it allows departing from the traditional analysis if circumstances require it. What is more, it is not even necessary to define relevant markets in special circumstances that apply in the particular case at stake with two sided markets in the online industry. A similar approach is adopted by Yong Huang and Roger Xin Zhang in their article. These authors emphasize the characteristics of online markets to prove the need for new tools for market definition. Competition for customer's attention, time spent online, quality of the product, etc. are have a more prominent role than the price itself. Judge Zhu Li further analyses these features in his contribution. These characteristics pose tremendous challenges for the judiciary for different reasons: (i) the difficulty of ruling on fast moving Internet industries with old-fashioned laws and regulations that do not foresee these situations. As judge Zhu explained, courts are required to define legal boundaries by virtue of creative application of the law in every specific case; (ii) the difficulty of legal evaluation using methods for market definition and market dominance that do not fit to these new markets and (iii) the new demands for judicial relief that in most cases may be granted when it is too late for proper restitution.

Antonio Bavasso, Will Tom, Vanessa Zhang and I maintained an interesting discussion on the Tencent case. We touched on a variety of aspects, from the unusual in-depth review of economic evidence by the court, to the analysis of effects and even the burden of proof on abuse of dominance. All the authors acknowledged the sophistication of the judges' analysis to derive from traditional antitrust analysis for market definition and dominance and declaring the absence of dominance by Tencent. It also pointed out the importance of this judgment not only for China, but for global antitrust development. Please note: In order to preserve the meaning and expressions from the original versions in Chinese, English translations may not be grammatically accurate in some parts. We apologize for this inconvenience.





To conclude our Journal, we include three articles from outstanding antitrust experts providing their views on current topics. The classic this year is dedicated to the very famous Microsoft case. Keith Hylton offers a very interesting spin in his article, where the more personal side of the case is discussed. This article brings to light the conflict between human frailty and the demands of judging. It is an interesting piece right now given the conflicts of the new tech companies with competition agencies and how the Microsoft decision could have tied American judges' hands for future cases.

Martin Cave and Ingo Vogelsang provide a EU/US comparison on net neutrality, discussing which jurisdiction provides a more open and business friendly environment and when allowing or forbidding net neutrality would have positive effects. Lastly, Nicolas Petit offers a very interesting piece on barriers to exit by conducting an empirical analysis on a topic barely examined in the economic literature, but that is it even more relevant when these barriers are created by the state in an attempt to help a national champion.

As always, we thank the contributors to this issue as well as our editorial team.

