



Competition Law Association

British Group of the
Ligue Internationale du Droit de la Concurrence
(International League for Competition Law)

www.competitionlawassociation.org.uk
www.ligue.org

25 May 2023

LIDC Questions Workshop: Wednesday 5 July 2023 – 6:00 to 8:00pm

Each year the LIDC examines two topical questions concerning competition law and IP/unfair competition law. The two questions are then the focus of discussions at the annual LIDC Congress with a view to adopting resolutions in the areas concerned.

This year the competition law question asks whether recent developments in enforcement, case-law, and guidance from competition authorities and regulators make the delineation between legitimate and efficient purchasing and supply arrangements and infringing conduct sufficiently clear in practice. The IP question asks what mechanisms exist to avoid over-broad trademarks and whether these mechanisms are effective.

The two questions that are to be discussed at the forthcoming LIDC Congress in Gothenburg, Sweden, between 21 and 24 September 2023, are set out in full below.

We are delighted to announce that Sima Ostrovsky and Emily Burke of Linklaters are preparing the UK's national report on the competition question, and Sima will act as the UK National Rapporteur on the competition question at the LIDC Congress in Gothenburg. Dr Luminita Olteanu, Research Fellow at LSE Law School, is preparing the UK's national report on the IP question. Before joining academia, Dr Olteanu practised as a dispute resolution lawyer specialising in IP&IT disputes.

We shall be holding an evening workshop on **Wednesday 5 July 2023** at **Linklaters LLP, One Silk Street, London EC2Y 8HQ** to seek Members' contributions and comments on the draft UK reports prepared by our National Rapporteurs. The working session will begin at **6.00pm** and conclude by **8.00pm**. The workshop is informal and refreshments will be on offer.

There is no additional charge for attendance at the workshop for members. However, there is a charge for non-members: £50, or £35 (full time academic/public sector employees), or £10 (students, trainees, pupil barristers). Registrations can be completed and paid for on-line.

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We would be delighted if you could come along to this meeting, which should be an excellent opportunity to discuss the issues raised by the questions with other practitioners in an informal setting. If you cannot come yourself, you might consider sending a colleague along in your place.

Members and Non-Members should please visit the 'new events' section of our website at: <https://www.competitionlawassociation.org.uk/newevents.htm> to register their attendance.

Please note that online registration will close on Tuesday 4 July 2023.

With kind regards

Sharon Horwitz
Secretary

LIDC CONGRESS 2023 – GOTHENBURG QUESTIONS FOR CONSIDERATION

Competition Law Question:

Do recent developments in enforcement, case-law, and guidance from competition authorities and regulators make the delineation between legitimate and efficient purchasing and supply arrangements and infringing conduct sufficiently clear in practice that businesses and their advisors know how to stay on the right side of the law?

Background/Context:

We are seeing consumer prices rising at pace globally, central banks have increased rates, and events such as the COVID pandemic, the war in Ukraine, and Brexit continue to stress supply chains.

Against this backdrop, it is important that companies are able to distinguish clearly between legitimate and efficient conduct and infringements of the applicable rules and to assess the impact on their commercial relationships.

In addition to focusing on sellers and the conditions on which they sell their products or services to buyers, buyers' conduct in their interactions with suppliers and markets when purchasing goods and services has recently come under increased scrutiny from competition law, enforcement and guidance (e.g. the Horizontal Guidelines).

From co-ordinated conduct by buyers, such as joint purchasing/buying alliances (e.g. rules for purchasing alliances in the food retail sector in France), buyers' cartels and purchase price fixing (e.g. the Ethylene and Car Battery Recycling cases), to unilateral conduct by buyers that hold substantial purchasing power. As regards the latter, new rules and cases (e.g. in Belgium) have considered the "abuse of economic dependence", which targets situations where a company abuses the relative economic dependence of another company (supplier or customer).

Different jurisdictions have taken a range of approaches, which have evolved and changed over time. What is the current situation in these jurisdictions and what are the LIDC National Chapters' and members' respective experiences – is the line between legitimate and infringing conduct sufficiently clear or is further guidance from authorities and courts required?

IP Question:

What mechanisms exist to avoid over-broad trademarks and address concerns that the trademark registers are clogged (e.g. bad faith in *Sky v SkyKick*; requirements for evidence of use), and are these mechanisms effective?

Background/Context:

Trademark owners understandably want to protect as widely as possible around their brand. However, this can lead to cluttered trademark registers which increase the cost (deadweight loss) of launching a new brand, and may restrict dynamic competition particularly from smaller players.

Different jurisdictions have taken a range of approaches, which have evolved and changed over time: from requirements of use (and/or evidence of use) to potential revocation for non-use; from requirements of filing by class and limiting scope within class to requirements that filings are not made in bad faith. For example, bad faith has been an issue in recent cases (from Hasbro through *Sky v SkyKick* which still pending in the English courts).

What are the LIDC National Chapters' and members' respective experiences in the effectiveness of these mechanisms, or other rules and practices, in seeking to allow the 'right' scope of protection?