

C O N F E R E N C E R E P O R T S

4th Brazilian Institute for Competition and Innovation (IBCI) International Conference on Competition and Innovation 9–11 November 2021

From 9 to 11 November 2021, the Brazilian Institute for Competition and Innovation (IBCI) – an open, non-profit think tank created in 2012 based on the joint initiative of a group of Professors from the Pontifical Catholic University of São Paulo (PUC-SP) and from University of São Paulo (USP) and composed of a multidisciplinary and 100% equal number of directors (50% women and 50% men) – organized a series of webinars covering a range of topics related to competition law, innovation and data, rights, and law enforcement, with a Brazilian and global view.

The first webinar was held on 9th November 2021 under the theme *Dynamic Keynote Speech/Debate*. The speakers included: Waldemar Gonçalves (Chair of the Brazilian Data Protection Authority – ANPD) and Eduardo M. Gaban (Chair of IBCI/PUC-SP). Mr. Waldemar described the way in which the National Data Protection Authority (ANPD) was formed after the creation of the Brazilian General Data Protection Law (LGPD) and summarized the main objectives and achievements of the agency during the first year of operation, as well as the challenges of the data protection law enforcement with special focus on Brazilian culture and the benefits for the economic development. Mr. Eduardo Gaban, as a competition law practitioner, pointed out the educational – and not merely sanctioning – stance of the ANPD, and introduced the topic of personal data leakage.

The second webinar entitled *EU Economic Regulation: Between DMA And DSA* took place on 9th November 2021. The speakers included: Laura Zoboli (IBCI/University of Warsaw/Centre for Antitrust and Regulatory Studies), Frédéric Marty (IBCI/Université Côte d’Azur), Alexandre De Streel (University of Namur and the Research Centre for Information, Law and Society (CRIDS/NADI), Simonetta Vezzoso (University of Trento), Alessandra Tonazzi (Director of International and European Affairs at the Italian Competition Authority – ICA), Chiara Caccinelli (Head of Unit Economic Analysis and Digital Affairs at the French regulator for electronic communications, postal and print media distribution services – Arcep). First, Frédéric Marty – in his role as moderator – opened the discussion on the application of competition rules in the digital sector in the context of the European Commission’s Digital Markets Act proposal and the UK’s plans to regulate the major digital ecosystems. Then, Mr. Alexandre De Streel pointed out this is the first time that Europe has a law targeting only big techs, but he also highlighted that this

revolution is based on tradition. Next, Ms. Simonetta Vezzoso discussed the role of regulation toward the digital economy and the strategy of the European commission in the DMA; followed by Ms. Alessandra Tonazzi, who made a brief historical overview of the significant changes in competition law enforcement and addressed key specific problems of the digital economy. Afterwards, Ms. Chiara Caccinelli shared her view and listed three aspects that can be improved: (i) the regulatory dialogue, (ii) the design of the obligations; and (iii) the institutional design of the enforcement. At the end, Laura Zoboli – in her role as moderator – focused on the scope of the DMA and its mechanisms, sharing some insights on the mechanisms at the basis of the DMA, and asking the speakers some questions on that point.

The third webinar *Book Presentation + Fireside Chat: “Blockchain + Antitrust”* was held on 9th November 2021, with Thibault Schrepel (IBCI/Stanford University/University Amsterdam) and Eduardo M. Gaban (Chair of IBCI/PUC-SP). In this webinar, Mr. Gaban asks Mr. Thibault the main ideas of his book. Mr. Thibault Schrepel then shared his views on the themes contained in the book, explaining the parallel between the two concepts and then focusing on the law enforcement, arguing for the need to create ways for the law to intervene – but only when necessary – in the blockchain area.

After this webinar, the conference had its 3rd *IBCI Selected Papers Book Launch* which features articles selected via a call for papers as well as works by the event’s speakers related to the hosted panels and surveys. The book is available online at the IBCI webpage (<https://www.ibcibr.com.br/>).

The fourth webinar *Book Presentation: Populism and Antitrust (Cambridge University Press)* was held on 9th November 2021, with Maciej Bernatt (University of Warsaw), Pablo Trevisán (Commissioner at Comisión Nacional de Defensa de la Competencia – CNDC), Fabiola Zibetti (IBCI/University of Chile) and María José Contreras Velasco (General Director at Mexican Competition Authority). First, Mr. Maciej Bernatt presented his book, that brings the subtitle “the liberal influence of populism government on the competition law”, underlining some central issues, such as: analysis of how the political, legal, and socio-economic order influence on the competition law system, what is the impact of rule of populist governments on competition law – looking at the institutions and enforcement – as well as empirical research on the democratic backsliding and concentration of power. Following the presentation, Mr. Pablo Trevisán shared his view of the book considering the scenario of Argentina, presenting an historical development on the market and competition and the specific challenges present in the country. He concluded his analysis in the same direction of the book, stressing the importance of independence, transparency, and accountability. Ms. María José Contreras Velasco then argued that Bernatt’s book offers an analytical framework to identify and manage the impact of the manifestations of populism on competition law systems and stressed that it can be helpful to prevent and prepare for some of the manifestations even when they have not already appeared, in countries that are not facing populism yet. She explained that competition advocacy can help addressing three of the main challenges that populism governments pose to competition law systems identified in the book, namely: (i) jeopardizing the independence and expertise of the competition authorities and courts; (ii) transforming the systems of competition law

into protectionists; and (iii) endangering non-competition law systems. At the end, Ms. Fabiola Zibetti, as a moderator, shared some insights and raised questions to the speakers.

The fifth webinar of IBCI *Privacy, Data Protection and Competition* was held on 9th November 2021, and featured the following speakers: Nicolo Zingales (FGV/RJ) and Lenisa Prado (CADE); and as moderator Juliana Domingues (IBCI/National Secretary for Consumer Affairs/USP). Ms. Lenisa Prado talked about antitrust, privacy and consumption, discussing the Brazilian scenario, and concluding that competition law practitioners must verify if the proxies brought by antitrust law are useful to analyze situations involving consumers in different markets (such as merger and control submissions to CADE). On another hand, Mr. Nicolò Zingales discussed the role of data in competitive dynamics, and after exposing a series of cases, he called for cooperation between competition, consumer, and data protection authorities. At the end, he reported on his experience in the EU, pointing out the advancements in regulatory cooperation. Juliana Domingues – as the moderator – finally addressed her view about the partnership between the regulatory agencies to achieve effective data protection and consumer protection.

The sixth webinar *Re-Examining Schumpeter's Legacy: Creative Destruction as Competition, Innovation and Capitalism* was held on 10th November 2021, with Magali Eben (IBCI/University of Glasgow/Creative Economy Centre), Ayse Yasar (Sciencespo) and Francisco Cabral (Tilburg University). First, Ms. Ayse Yasar presented the main thoughts contained in her paper, qualifying some of the ossified narratives around Schumpeter's legacy. For that purpose, she provided an overview of the concept of creative destruction and Schumpeter's account of 'monopolistic practices' as they were developed in Capitalism, Socialism and Democracy, focusing then on the so-called 'Schumpeterian thesis', *i.e.*, the proposition that big business or monopoly is more advantageous to innovation. Then, Mr. Francisco Cabral focused on three main points: (i) what has been done with Schumpeter's guides; (ii) what could be competition policy on Schumpeter's lands; and, finally, (iii) what would be the evolution for competition law. Magali Eben – as the moderator – shared her impressions on the paper, especially on the concept of perfect competition – that is never going to happen in reality – and on the way people interpret Schumpeter's Legacy. At the end, all three speakers presented some convergent and divergent opinions on the topic.

The seventh webinar *Class Action Vs. Transfer of Claim – Pros and Cons* took place on 10th November 2021 and featured Giacomo Pailli (IBCI/University of Florence), Giorgio Afferni (University of Genoa) and Till Schreiber (CDC Cartel Damage Claims). Mr. Till Schreiber spoke about the model of transfer of claims, based on the practical experience of the CDC Cartel Damage Claims, explaining the challenges of antitrust litigation and the support provided by CDC in the damage/economic recovery of the companies involved in a process of this nature. Mr. Giorgio Afferni then made a comparison between the American system of antitrust class action and the emerging EU system. At the end, Giacomo Pailli – as the moderator – pointed out a few pros and cons of those models, considering the arguments presented by the speakers.

The eighth webinar was held on 10th November 2021 under the theme *Dynamic Competition*. The speakers included: Thibault Schrepel (IBCI/Stanford University Amsterdam), Constance Helfat (Tuck School of Business at Dartmouth) and Peter Gordon Klein (Baylor University). The moderator Thibault Schrepel, in a very interactive way, structured some questions for the panel, to be answered by the panelists: (i) what dynamic competition is and the latest findings in this space; (ii) is antitrust law static, and if so, how to improve it; (iii) what dynamic capability is and how do we operationalize this concept. Both speakers showed their views, putting the issue of antitrust and politics in the context, focusing on the challenges of competition law enforcement and discussing the enforcement procedures.

The ninth webinar was devoted to *Papers Presentation*, with the moderators Aluísio Miele (IBCI/USP), Ana Cristina Gomes (IBCI/University of Salamanca) and Vinicius Klein (IBCI/UFPR). In particular, some articles sent by the participants to the call for papers were selected by the organizing committee to be presented in this panel. These papers addressed topics linked to the event, such as competition and innovation, technology, digital platforms, big techs, regulated sectors, ESG and innovation, big data, net neutrality, privacy, consumer manipulation in digital markets.

The tenth webinar *IP and Digital Markets* happened on 10th November 2021, with Vinicius Klein (IBCI/UFPR), Paula Forgioni (USP) and Rita Matulionyte (Macquarie University). First, Ms. Rita Matulionyte delivered a presentation on artificial intelligence and intellectual property, focusing on the developing world, bringing some information on the international debate rounding IPRs, trade secrets, and the IP and AI framework suitable for developing countries. After, Ms. Paula Forgioni, in sequence, illustrated two main challenges faced when it comes to digital markets during the pandemic that can generate concentration of power: (i) distribution and (ii) services. The moderator Vinicius Klein then addressed some insights and asked a few questions to the speakers.

The eleventh webinar, entitled *Judicial Courts and Regulatory Agencies*, featured Vinicius Klein (IBCI/UFPR), Luciana Yeung (IBCI/INSPER), Felix B. Chang (University of Cincinnati) and Paulo Furquim (INSPER). Prof. Felix B. Chang exposed his recent project – a machine learning platform – that can feed large data sets and shows latent patterns that the human eye cannot detect as a form of natural language processing. As he explained, it checks the probability that terms are going to recur across a large corpus of text or a data set. This platform stores every published decision in almost every US jurisdiction until 2018, and after Prof. Felix B. Chang team searched for the federal cases for antitrust and regulation, they concluded for the existence of two bodies in the decisions: (i) regulation and (ii) antitrust and market power, and exposed, empirically, a historic of cases in 15 clusters, revising the type of litigation, the matter discussed in the decisions, and a few other standards on the judicial courts. After, Mr Paulo Furquim, in a theoretical way, started dialoguing about the function of the regulatory agencies and the judicial reviews, exposing some features, such as average length, administrative decision overruled, and the changes in the administrative decision status. Last, Ms. Luciana Yeung and Mr. Vinicius Klein discussed a work in development about the levels of deference in Brazil through an empirical analysis,

beginning with the role of judicial review of regulatory standards, the goals and the methodology used for the research of the agencies' regulatory standards.

The twelfth webinar entitled *Create and IBCI – Innovation and Transparency Regulation* was held on 11th November 2021. The speakers included: Magali Eben (IBCI/University of Glasgow/Creative Economy Centre), Philip Schlesinger (University of Glasgow/Deputy Director of CREATE/LSE), Martin Kretschmer (Professor of Intellectual Property Law and Director of CREATE), Aline Iramine (PhD student at University of Glasgow, CREATE), Xiaoren Wang (Research Associate at CREATE, funded by the AHRC Creative Industries Policy & Evidence Centre (PEC)), Eduardo M. Gaban (Chair of IBCI/PUC-SP) and Vinicius Klein (IBCI/UFPR). First, Mr. Philip Kretschmer gave a presentation regarding intermediary liability, transparency, and the new wave of platform regulation, going through the US and Germany rules, presenting some policy issues on copyright takedown, and a paradox arising from the fact that states delegate traditional regulatory powers to the platforms, the power of which is worrisome. Secondly, Ms. Aline Iramine discussed copyright governance by algorithms and called for a more transparent regime – addressing rules, standards, challenges and takeaways. Thirdly, Ms. Xiaoren Wang focused on the anti-creative factors of YouTube, the economic theories on cultural goods, and the psychological theories on creativity. Last, Mr. Philip Schlesinger, as a sociologist of the cultural media, focused on the new regulation of digital platforms in the UK. Constructing his argumentation, he focused on two sub-aspects: (i) the first one geopolitical – since the UK left the EU; and (ii) the second one organizational – namely the process of innovation and re-organization of the bodies and the intersecting competences. At the end, the moderators Magali Eben and Vinicius Klein stressed out a few convergent points between all the presentations, sharing some insights.

The thirteenth webinar, *Leniency Agreements, Negotiated Justice, Consensus (Acuerdos de Clemencia, Justicia Negociada, Consenso)* happened on 11th November 2021 with Professor Nicolás Rodríguez-García (University of Salamanca), Renato Machado de Souza (Office of the Comptroller General – CGU) and Ana Cristina Gomes (IBCI/University of Salamanca). First, Mr. Nicolás Rodríguez presented the challenges of leniency programs and other means of negotiated justice in Spain, mainly in the case of corruption. Mr. Renato Machado de Souza, in sequence, presented the relevance and the obstacles for leniency programs in Brazil with the focus on bid rigging cartels cases. At the end, moderator Ana Cristina Gomes (IBCI/University of Salamanca) stressed out a few convergent points between both presentations and raised some open questions.

The fourteenth webinar, *DSA (In the EU/And Reflexes in Brazil)*, happened on 11th November 2021 with Thibault Schrepel (IBCI/Stanford University/University Amsterdam), Silvia de Conca (University Amsterdam), Mateusz Grochowski (Polish Academy of Sciences/Supreme Court of Poland) and Eduardo M. Gaban (Chair of IBCI/PUC-SP). On this panel, Mr. Thibault Schrepel asked a few questions for the speakers Ms. Silvia de Conca and Mr. Mateusz Grochowski, first to frame the DSA, and then to check if there is something similar outside Europe – like in Brazil – and how this affects competition dynamics. In a very interactive panel, the speakers

talked about what they consider the best and the worst aspects of the DSA, if they consider the DSA is coming at the right time and other practical aspects in Europe. Mr. Eduardo M. Gaban explained the existing scenario in Brazil and the similarities with the DSA.

The last webinar, called *Dynamic Keynote Speech/Debate – A Fireside Chat: Bill Kovacic & Thibault Schrepel*, took place on 11th November 2021 and featured William Kovacic (George Washington University) and Thibault Schrepel (IBCI/Stanford University/University Amsterdam). Moderator Thibault Schrepel structured the conversation on two main subjects: (i) the substance of antitrust, its evolution and where it might grow; (ii) the transformation of US antitrust policy. Mr William Kovacic began by stating his skepticism about the use of categorical and linear prohibitions in this area, considering that they can easily be converted into presumptions – but not conclusive presumptions. As he explained, antitrust law should have some flexibility to take into account valid business justifications. In his view, in a dynamic technical environment, it is difficult to foresee all the circumstances under which certain justifications might be valid. Mr. Kovacic also developed some thoughts on the regulatory framework as well as enforcement actions and discussed possible reform scenarios.

The event had more than a thousand views on YouTube and more than 400 followers on LinkedIn. Detailed information about the webinars is available at: <https://www.ibr.com.br/> and on LinkedIn: <https://www.linkedin.com/feed/update/urn:li:activity:6862500808877989888/>.

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