

14th ASCOLA Conference

June 27-29 2019

Aix-en-Provence, Faculty of Law

**CHALLENGES
TO ASSUMPTIONS
AT THE BASIS
OF COMPETITION
LAW**

14th ASCOLA Conference
Aix-en-Provence Faculty of Law
27– 29 June 2019

CHALLENGES TO ASSUMPTIONS AT THE BASIS OF COMPETITION LAW
+ BREAKOUT SESSIONS ON WIDER COMPETITION LAW ISSUES

THURSDAY June 27, 2019 [*Amphithéâtre FAVOREU, Espace CASSIN*]

- 1:00-2:00pm** Ascola Board Meeting (members of the board only) [*Salle G.CAS, Espace CASSIN*]
- 1:30-2:00pm** Registration and coffee [*Hall, Espace CASSIN*]
- 2:00-3:10pm** **Welcome by** Michal Gal (ASCOLA Chair, University of Haifa), David Bosco (Aix-Marseille University) and Henri Piffaut (Vice President of French Competition Authority).
- Teaching Competition Law**
Moderator: Michal Gal (Haifa)
Panelists: Simonetta Vezzoso (Trento); William E. Kovacic (George Washington); Spencer Weber Waller (Loyola University Chicago); Rupprecht Podszun (Heinrich-Heine-Universität Düsseldorf), Juliana Oliveira Domingues (University of Sao Paolo)
- 3:10-4:20pm** **Plenary Panel I**
Panel Chair: David Bosco (Aix-Marseille University)
1. John M. Newman (Miami University), 'Attention and the Law'
2. Ioannis Lianos (University College London), 'Polycentric Competition Law'
3. William E. Kovacic (George Washington University), 'History, Learning, and Policy Implementation: The Case of Competition Policy'
- 4:20-4:45pm** Coffee break [*Hall, Espace CASSIN*]
- 4:45-6:15 pm** **Breakout Sessions I** [*see below*]
- 6:30-7:15pm** **Keynote Expert Panel: Current Economic Challenges at the basis of Competition Law**
Jorge Padilla (Lexecon) and Giacomo Calzolari (EUI Firenze)
- 7:15-8:15pm** Welcome reception [*Salle des ACTES & Patio*]

FRIDAY June 28, 2019 [*Amphithéâtre FAVOREU, Espace CASSIN*]

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|---------------|---|
| 8:00-9:00am | Breakfast [<i>Hall, Espace CASSIN</i>] |
| 9:00-11:00am | Breakout sessions II (see below) |
| 11:00-11:30am | Coffee break Poster Session I [<i>Hall, Espace CASSIN</i>] |
| 11:30- 1:00pm | Plenary Panel II Panel chair: Josef Drexler (Max Planck Institute for Innovation and Competition) <ol style="list-style-type: none">1. Stavros Makris (SciencePo and EUI Firenze), 'Openness and Integrity in Modern Antitrust'2. Alexandre de Streel (Telecom Paris Tech; University of Namur), 'Digital Conglomerates and EU Competition Policy'3. Omar Vasquez Duque (Stanford), 'No Alarms and Many Surprises: Salience as a Basis for Excessive Pricing Intervention in an Antitrust Context'4. Wolfgang Kerber (Philipps University Marburg), 'Data-sharing in IoT Ecosystems from a Competition Law Perspective: The Example of Connected Cars' |
| 1:00-2:00pm | Lunch [<i>Grand Hall, Bâtiment POUILLON</i>] |
| 2:00-4:00pm | Breakout sessions III (see below) |
| 4:00-4:30pm | Coffee break [<i>Hall, Espace CASSIN</i>] |
| 4:30-5:45pm | Plenary Panel III Panel chair: Paul Nihoul (Louvain) <ol style="list-style-type: none">1. Vikas Kathuria and Jure Globocnik (Max Planck Institute for Innovation and Competition), 'Exclusionary Conduct in Data-Driven Markets: Limitations of Data Sharing Remedy'2. Viktoria H. S. E. Robertson (University of Graz), 'Excessive Data Collection: Privacy Considerations and Abuse of Dominance in the Era of Big Data'3. Dirk Auer & Geoffrey Manne (Liege Competition and Innovation Institute; International Center for Law & Economics), 'The Antitrust Dystopia: The Case of Big Data Competition' |
| 5:45-6:30pm | General Assembly of all ASCOLA Members Including presentation of 2020 conference by Sofia Pais (Porto) |
| 7:30-10:00pm | Dinner [L'ORANGERIE - Hôtel AQUABELLA] [partly funded by ASCOLA] Keynote: Eric Posner (Chicago) "Why Has Antitrust Law Failed Workers?: The Problem of Labor Monopsony" Best Junior Paper and Special ASCOLA Contribution Awards |

SATURDAY June 29, 2019 [*Amphithéâtre FAVOREU, Espace CASSIN*]

8:00-9:00am Breakfast [*Hall, Espace CASSIN*]

9:00-11:00am **Breakout Sessions IV** ([see below](#))

11:00-11:30am Coffee break and **Poster Session II** [*Hall, Espace CASSIN*]

11:30-1:00pm **Plenary Panel IV**

Panel chair: Laurence Idot (Paris II)

1. Spencer Weber Waller (Loyola University Chicago), 'Antitrust and the Omega man'
2. Shilpi Bhattacharya (O.P. Jindal Global University, India), 'Management Studies, Firm Rationality & The Law of Predatory Pricing'
3. Edith Loozen (University of Bologna), 'Strict Competition Enforcement Is the Way Forward – Also to Promote Sustainable Consumption and Production'

Short Conclusions

Michal Gal (ASCOLA Chair) and David Bosco (Aix-Marseille University)

1:30-2:30pm **lunch** (optional, 15 euros) [*Restaurant, near the faculty*]

2:30pm **Trip** (optional, 25 euros)

Visit of the beautiful [CHÂTEAU LA COSTE](#)

2750 Route de La Cride, 13610 Le Puy Sainte Réparate

Walk the trail among vineyards and art pieces, visit Art & Architecture and the wine cellar designed by Jean Nouvel, and enjoy a tasting of wines of the domain

Breakout Session I (panels 1-5)

Thursday, June 27, 4:45-6:15pm



Some of the papers will also be presented in Poster Session I

Panel 1: Competition law in the digital environment [*Salle 1.02- PORTALIS*]

Panel chair: **Thomas Cheng** (University of Hong Kong)

1. Rupperecht Podszun (Dusseldorf), 'Let the Customer Decide! Taking Back Control from Ecosystems and Gatekeepers – An Exploration of the Value of Decentralised Decision-Making for Markets'
2. Margherita Colangelo & Mariateresa Maggolino (University of Roma), 'Manipulation of Information as an Antitrust Infringement'
3. Andrés Boix-Palop (Universitat de Valencia), 'Competitive Risks in the Sharing Economy and European Union Market Regulation'

Panel 2: Mergers [*Salle 1.03- PORTALIS*]

Panel chair: **Bjorn Lundqvist** (Stockholm)

1. Jörg Hoffmann and German Johannsen (Max Planck Institute for Innovation and Competition), 'Remedies in Data-Related Merger Cases'
2. Wolfgang Kerber (Marburg) and Simonetta Vezzoso (UniTrento Digital University), 'Dow/DuPont: Another Step Towards a Proper Assessment Concept of Innovation Effects of Mergers'
3. Oliver Budzinski and Annika Stör (Ilmenau), 'Non-Economic Aspects in Merger Control: Public Interest Considerations in Europe and Germany'
4. Yajie Gao (Queen Mary University of London), 'Merger Control in China's Digital Economy: Challenges and Prospects'

Panel 3: Big Data, Data Rights and Competition Law [*Salle Fabre 4*]

Panel chair: **Ioannis Lianos** (University College London)

1. Oscar Borgogno (Turin) and Giuseppe Colangelo (Basilicata), 'Data Sharing and Interoperability: Fostering Innovation and Competition Through APIs'
2. Peter Georg Picht (Vienna) 'The Role of Competition Law, Data Portability and Regulation in Framing the Access to Digital Resources in Connected Mobility and Other Market Sectors'
3. Giulia Ferrari (Bocconi), 'Data Misuse and the Interplay Between Competition, Privacy and Consumer Protection: An Overview of the Recent Italian and German Cases'

Panel 4: Competition Law and the Digital Environment II [*Salle Fabre 3*]

Panel chair: **Rafael Amaro** (Paris Descartes University)

1. Stavros Makris (SciencePo and EUI Firenze) and Alexandre Ruiz Feases (University College London), 'Experimentalist EU Antitrust and Digital Competition'
2. Can Atik (Tilburg), 'Assessing Data-Driven Market Power in the Digital Agriculture Sector: An Analysis of the Bayer/Monsanto Decision and a Comparison with Online Platforms - Does One Size Fit All?'
3. Jan Kupcik, 'Conscious Parallelism in Digital Markets Optics'

Panel 5: Globalization and Competition Law [*Salle G.CAS, Espace CASSIN*]

Panel chair: **Spencer Weber Waller** (Loyola University Chicago)

1. Chris Townley, Maria Tavares and Mattia Guidi (King's College London), 'Influence in the International Competition Network: Who Seeks It, How Do They Do This and Why?'
2. Galyna Kostiukevych (Columbia University), 'Using Trade Tools to Counteract Anticompetitive Conduct Within Global Value Chains: Competition Chapters in Trade Agreements'
3. Alexandr Svetlicinii (Macau), 'Levelling the Playing Field: Time to Reconsider the Treatment of China's State-Owned Undertakings in EU Competition Law?'
4. Wendy Ng (Melbourne), 'Changing Global Dynamics and International Competition Law: Considering China's Potential Impact'

Panel 6: Competition law and New Technologies [*Salle 1.02 - PORTALIS*]Panel chair: **Wolfgang Kerber** (Philipps University Marburg)

1. Thibault Schrepel (Utrecht & Harvard), 'Collusion by Blockchain and Smart Contracts'
2. Michal S. Gal (Haifa), 'Antitrust Implications of 3D Printing'
3. Salil K. Mehra (Temple), 'Antitrust Without Markets'
4. Oles Andriychuk (Strathclyde), 'Net Neutrality and Disruptive Innovation: Challenging the Conventional Antitrust Discourse'
5. Inge Graef (Tilburg), 'Consumer Sovereignty and the Need for Personalised Antitrust'

Panel 7: Remedies and Private Actions [*Salle 1.03 - PORTALIS*]Panel chair: **Dennis Davis**

1. Or Brook (Leeds), 'Has EU Competition Law Lost its Bite? A Hard Look on How "Soft" Enforcement Undermined the Basic Conventions and Goals of EU Competition Law'
2. Sofia Oliveira Pais & Catarina Vieira Peres (Universidade Catolica Portuguesa), 'Against Whom Can Damages for Competition Law Infringements Be Claimed?'
3. Penelope Alexia Giosa (East Anglia), 'Debarment, Self-Cleaning and Leniency: Friends or Foes?'
4. Eugenio Olmedo-Peralta (Malaga), 'The Evidential Effect of Commitment Decisions in Damage Claims. What's the Assumptive Value of a Pledge?'
5. Malgorzata Kozak (Utrecht), 'Finding the Equilibrium and Convergence between the Dominating Public Enforcement and Private Enforcement of Competition Law. The Damage Directive is not Enough'

Panel 8: Platforms and Ownership [*Salle Fabre 3*]Panel chair: **Fabiana Di Porto** (University of Salento)

1. Caio Mario Da Silva Pereira Neto (Sao Paulo) and Filippo Maria Lancieri (Chicago), 'Ohio v. Amex and Antitrust in Multi-sided Markets: A Multi-layered Approach To Relevant Markets in Two-sided Transaction Platforms'
2. Julian Nowag (University of Lund), 'The Evolving Conception of the Firm and the Future of the Public Policy and Competition Law Interaction'
3. Frédéric Marty (CNRS, University of Nice), 'Cooperation, Dependence and Eviction'
4. Francesco Ducci (University of Toronto), 'Competition as a process : is it really an alternative standard for antitrust policy'

Panel 9: Agreements in Restraint of Trade [*Salle Fabre 4*]Panel chair: **Valeria Falce** (European University of Rome)

1. Thomas Cheng (University of Hong Kong), 'A Consumer Behavioral Approach to Resale Price Maintenance'
2. Melanie Ariane Schwaderer (University of Erfurt), 'RPM is Not Generally Benign: Challenging the "Economic Consensus" on the Economic Effects of Resale Price Maintenance'
3. Patrick Actis Perinetti (Roma), 'Competition Law Uncertainty and The Weight of Intent in Article 101 TFEU Assessment – The Case of Hub-and-Spoke Exchanges of Information'
4. Andres Calderon (Universidad del Pacifico), 'Cartels Little Helpers: A Comparative Study of the Case Law Regarding the Facilitators of Collusion in South America'

Panel 10: European Competition Law Developments [*Salle G.CAS , Espace CASSIN*]Panel chair: **Rupprecht Podszun** (Heinrich Heine University)

1. Peter Thalmann (University of Vienna), 'The More Economic Approach and its Divergent Manifestations in EU Antitrust and State Aid Law'
2. Kati J. Cseres (University of Amsterdam), 'A Case – Study of Hungary and its Implications for EU Law'
3. Anne C. Witt (University of Leicester), 'The European Court of Justice and the More Economic Approach to EU Competition Law – Is the Tide Turning?'
4. Kathryn McMahon (University of Warwick), '"Modern Economic Theory" or "Back to the Stone Age"? The Role of the European Courts in Article 102 Adjudication'

Panel 11: Goals of Competition Law [*Salle Fabre 3*]Panel chair: **Michal Gal** (Haifa)

1. Konstantina Bania, 'The Role of Media Pluralism in the Enforcement of EU Competition Law'
2. Dina I. Waked (Sciences Po), 'A Genealogy of Antitrust as Public Interest Law, 1890-1980'
3. Niamh Dunne (London School of Economics) 'Unpicking Hipster Antitrust (or, The Goals of Antitrust Redux)'
4. Giacomo Tagiuri (Bocconi), 'Aiding Small Businesses in the Name of Plurality: Towards a Liberal Defense'
5. Aurelien Portuese (George Mason), 'Antitrust Populism Conceptualized'

Panel 12: Competition Law in Developing Economies [*Salle 1.02 - PORTALIS*]Panel chair: **Juliana Oliveira Domingues** (Brazil)

1. Francisco Beneke (Max Planck Institute for Innovation and Competition), "Market Power and Entry Analysis in Developing Countries"
2. Claudia Patricia O'Kane (Utah), 'Transplants and Commonalities Among Latin American Countries'
3. Rachid El Bazzim (University Hassan 1er Morocco), 'Why Should the Competition Council be Independent?'
4. Juan David Gutiérrez (Blavatnik School of Government), 'Metering Antitrust Authorities: How Performance Measurement is Implemented in the Americas'

Panel 13: Dominant Firm Conduct [*Salle 1.03 - PORTALIS*]Panel chair: **Valeria Falce** (European University of Rome)

1. Ittai Paldor (Hebrew University), 'Challenging the Fundamentals of Exclusivity: Substantial Foreclosure as a Competitive Safeguard'
2. Miroslava Marinova (Reading), 'What Can We Learn About the Application of the As Efficient Competitor Test in Fidelity Rebate Cases from the Recent US Case Law?'
3. Victoria Daskalova (Twente), 'Stricter Unilateral Conduct Laws: Innovative Responses to Gaps in the Competition Law Framework?'
4. Stephen Dnes, 'Technological Tying: Unbundling the Assumptions'

Panel 14: Market Power, Algorithms and Intent [*Salle Fabre 4*]Panel chair: **Ioannis Lianos** (University College London)

1. Francisco Beneke and Mark-Oliver Mackenrodt (Max Planck Institute for Innovation and Competition), 'Remedies for Algorithmic Collusion'
2. Ina Fey, 'The Application of Current Antitrust Law to Explicit Collusion by Autonomously Acting Pricing Algorithms'
3. Nicolo Zingales (Sussex), 'Scrutinizing individual-level market power'
4. Jan Blockx (Antwerp), 'Revaluing the Role of Intent Evidence in Antitrust Law'

Panel 15: Institutions and Procedures [*Salle G.CAS, Espace CASSIN*]Panel chair: **Frederic Marty** (Nice University)

1. Paul Nihoul (UCLouvain), 'The Role of Judges in Antitrust'
2. Francisco Marcos (IE Law School), 'Competition Authorities as Inimicus Curiae? Friends or Enemies of Courts in Private Antitrust Claims'
3. Mark Williams (University of Melbourne), 'China's Competition Enforcement Institutions: A Failure of Design'
4. Carmen Rodilla Marti (Valencia), 'The Control Over the Discretionary Power of European Competition Authorities: Quis Custodiet Ipsos Custodes?'

Panel 16: General Challenges to Current Enforcement [*Salle Fabre 3*]Panel chair: **Peter Picht** (Vienna)

1. Michael Ristaniemi (University of Turku), 'Incentivizing Competition Compliance'
2. Deborah Healey (New South Wales University), 'Paradigms for Competitive Neutrality: Interrogating Law and Policy'
3. Jasminka Pecotic Kaufman (Zagreb), 'On the Development of (Not So) New Competition Systems – Findings from an Empirical Study'
4. Jan Broulik (Jean Monnet Center), 'Cultural Capture of Competition Policy by Business Interests'

Panel 17: Exploitative Abuses [*Salle Fabre 4*]Panel chair: **Francisco Marcos** (IE Law School)

1. Marco Botta (Max Planck Institute for Innovation and Competition) and Alexandre de Streel (Namour), 'What is "Fair" and "Reasonable"? Lessons on the Concept of FRAND From EU Competition Policy and Electronic Communications Regulation'
2. Miriam C. Buiten (Universitat Mannheim), 'Reconfiguring Exploitative Abuses for Digital Markets'
3. Sangyun Lee and Jan Schiöler (Korean University), 'Platform Dependence and Exploitation'
4. Zeynep Ayata (Koç University), 'Excessive Pricing in a Multisided Platform: The Turkish Competition Authority's Sahibinden.com Decision'
5. Jasper P. Sluijs (University of Utrecht), 'Commercial Subsidiaries of Public Entities and the Limits of EU Competition Law'

Panel 18: Challenging Competition Law Assumptions [*Salle 1.03 - PORTALIS*]Panel chair: **Mariateresa Maggolino** (Bocconi)

1. George Raitt (Monash), 'Market Power and the Paradigm of Competition'
2. Andriani Kalintiri (University of London), 'On Presumptions, Premises and Proxies in EU Competition Enforcement'
3. Claudio Lombardi (KIMEP University), 'Assumptions, Presumptions, and Inferences in Competition Law Enforcement'
4. Masako Wakui (Osaka City University) and Johnathan Galloway (Newcastle University), 'Revisiting the Japanese Enforcement System: Challenging Norms and Orthodoxy'
5. Sih Yuliana Wahyuningtyas (University of Java), 'Best Price Guarantee: Examining the Effect of Harms to Competition'

Panel 19: Goals of Competition Law [*Salle G.CAS, Espace CASSIN*]Panel chair: **David Bosco** (Aix-Marseille University)

1. Sandra Marco Colino (Chinese University of Hong Kong), 'The Antitrust F Word: Fairness Considerations in Competition Law'
2. Elias Deutscher (University of East Anglia), 'Competition and Democracy – An Analytical Framework'
3. Konstantinos Stylianou (Leeds) and Marios Iacovides (Stockholm), 'Goals and Purposes of Competition Law: What Does the Data Say?'
4. Xiaomin Fang (Chinese Academy of Sciences), 'Multiple Goals of Competition Law and their Achievement from Comparative Perspective of Chinese, German and European Law'
5. Beata Mäihäniemi (University of Helsinki), 'Classifying Information as 'Commons' as a Tool to Enable Fairness as a Goal of Antitrust'

Panel 20: The Intersection of Competition Law and Other Policies [*Salle 1.02 - PORTALIS*]Panel chair: **Josef Drexler** (Max Planck Institute for Competition and Innovation)

1. Fabiana Di Porto (Salento) and Gustavo Ghidini (Statale di Milano), 'Access to Account (XS2A) Rule in the Payment Service Market: A Competition Law Assessment With a Proposal'
2. Valeria Falce (University of Rome), 'EU Fight Against Geofactors, Towards a "Circular" Interplay Between Regulation and Competition'
3. Toshiaki Takigawa (Osaka), 'How to Address Patent Holdup and Holdout in Standard-Essential-Patent Licensing: The Japanese Approach in Global Context'
4. Hedvig Schmidt (Southampton), 'EU Competition Law and IP Rights: PAEs, an Example of the Interface Being Misaligned'
5. Claudia Seitz (Basel), 'Strong and Weak Rights and the Challenge of Assumptions – How to Assess the Anti-Competitive Effects of a Settlement Agreement in the Pharmaceutical Sector if You Don't Know the Value of the Patent?'