



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

28 March 2025

LIDC Questions Workshop: Thursday 8 May 2025 – 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 the concept of the abuse of relative market power beyond market dominance is necessary for a functioning competition and what criteria should be used to assess it

The IP question asks what responsibility or obligations should online platforms have when it comes to eliminating infringements by their users, especially in the areas of IP and unfair competition.

The full wording of, and the context for, the two questions that are to be discussed at the forthcoming LIDC Congress, which is taking place in **Vienna on 9-12 October**, are set out below.

We are delighted to announce that **Stephen Dnes** will be preparing the UK's national report on the competition question. **Aislinn O'Connell** is preparing the UK's national report on the IP question. Both Stephen and Aislinn are senior lecturers at the Royal Holloway University of London.

We shall be holding an evening workshop on **Thursday 8 May 2025 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 will be 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.

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.

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Members and Non-Members should please visit the [**NEW EVENTS**](#) section of our website to register their attendance.

Please note that online registration will close on [] May 2025.

With kind regards

Sharon Horwitz
Secretary

LIDC CONGRESS 2025 – VIENNA QUESTIONS FOR CONSIDERATION

COMPETITION QUESTION

Is the concept of the abuse of relative market power beyond market dominance necessary for a functioning competition and what criteria should be used to assess it?

Background & Context:

The term "relative market power", also known in other jurisdictions as "economic dependence", "superior or unbalanced bargaining power" or "significant imbalance in commercial relations", is used to describe circumstances in which a company exploits its superior bargaining position vis-à-vis business partners. These rules exist all over the world, from Europe to South Korea or Brazil. In contrast to the traditional concept of dominance, the concept of relative market power is concerned with the analysis of asymmetric dependencies or bargaining positions in business-to-business (B2B) relationships, irrespective of a dominant market position or monopoly power in the traditional sense. This is relevant to business-to-business relationships, including distribution, franchising, subcontracting, supply chains and others, in both traditional and digital markets.

This additional tool for regulating unilateral conduct has recently received renewed attention, reflecting a broader trend in the regulation of business-to-business (B2B) relationships. In recent years, several jurisdictions in Europe, including France, Belgium, Switzerland and Austria, have introduced or updated legislation targeting the abuse of economic dependence or relative market power. The proliferation of these legislative measures highlights the need for transparent, predictable and enforceable criteria for assessing relative market power, situations of dependence and imbalances in bargaining power in the B2B context. It also raises the question of the extent to which such provisions serve to maintain effective competition and thus form part of competition, anti-monopoly or antitrust law as it is commonly understood. This study aims to examine how these criteria are applied in practice, the challenges of enforcement and the wider implications of this regulatory trend for competition policy and the economy.

IP QUESTION

What responsibility or obligations should online platforms have when it comes to eliminating infringements by their users, especially in the areas of IP and unfair competition?

Background & Context:

The starting point for this topic remains the long-standing liability privilege of intermediaries: online platforms that provide pure intermediary services remain exempt from liability for illegal third-party content and have no general obligation to monitor the content posted by their users^[1].

However, some recent laws, such as the Digital Services Act (DSA) of the European Union (EU), establish uniform rules that require hosting providers to have a mechanism in place to allow third parties to report suspected illegal content. In the future, such a mechanism could be the starting point for the liability of providers who do not act quickly after notification and remove prohibited content. In addition, trusted flaggers, as entities designated by national digital coordinators, are new players in this "notice and action" procedure, in which the operator of an online platform must immediately block offers if it becomes aware of a clear violation under the applicable law. Another innovation is the "Good Samaritan" rule in this area, which ensures that online intermediaries do not lose their liability privilege just because they voluntarily review user content. This clause is intended to give providers legal certainty when they have their employees check uploaded content to detect infringements proactively.

Interesting developments have also emerged in non-EU jurisdictions. For example, in Brazil, the Civil Framework for the Internet, a federal law enacted in 2014, is currently under challenge before the Supreme Federal Court, the country's constitutional court. Central to the issue are legal provisions requiring a court order before illegal content on online platforms can be removed, potentially altering the dynamics of the notice-and-takedown process. Although these current developments represent a new basis for familiar principles, the significance of their specific details for the protection of intellectual property and unfair competition can be important. Moreover, the practical importance of special entities as experts at detecting certain types of illegal content and notifying online platforms will become apparent with the first experiences on it. Under the DSA, the notices they submit are supposed to be prioritised as they are expected to be more accurate than messages an average user submits.

Regardless of jurisdiction, there needs to be a balance between the aim to tackle illegal content online and fundamental rights such as freedom of expression or the right to a fair trial. National groups are invited to provide an account of the emerging trends and cases before courts in their respective jurisdictions from a legal and practical perspective in the online sector.

[1] The LIDC has addressed this issue, albeit from a different perspective, in the reports for Question B from 2011.