

**Prof. Dr. Claudia Schubert**

University of Hamburg  
Faculty of Law  
Chair for Civil Law, Labour Law, Company  
Law, Legal Comparison  
Rothenbaumchaussee 33 | D-20148 Ham-  
burg

Tel.: +49 40 42838-9370  
claudia.schubert@uni-hamburg.de

**Prof. Dr. Hans Micklitz**

European University Institute  
Robert Schuman Centre for Advanced  
Studies  
Villa Schifanoia  
Via Boccaccio 121 I-50133 Firenze

hans.micklitz@eui.eu

04.02.2020

## **Artificial Intelligence, Algorithms and Platform Economy - Fair Competition on Goods and Services and the Future of Labour**

### I. Aim and Background

Nowadays digital change and artificial intelligence are dominating competition law. The game changing effects of digital markets and the intensive use of algorithms and deep learning challenge competition law and call for a policy change or at least an adaption to new forms of collusion or discrimination in the digital market. Anti-competitive effects may arise out of the use of algorithms to determine competitive prices. Personalised pricing, its pros and cons are in the limelight. In order to improve competition law enforcement, it is necessary to understand the effects of algorithmic differentiation.

Platforms have gained significant influence on the market. Data portability and interoperability are competitive factors. The network effect and the pulling effect of platforms affect competition. Platforms can have detrimental effects on competitors, on consumers, on consumer welfare and total welfare. These developments are central issues in competition law. They influence the political debate on the prospective regulation of market organisation and market supervision. For competition law four issues stand out: the proper determination of the relevant markets, the evaluation of network effects, the criteria for defining a dominant position and the reach of abuse control (article 102 TFEU). In 2018, Heike Schweitzer, Justus Haucap, Wolfgang Kerber and Robert Welker published their expert opinion on behalf of the German Federal Ministry of Economy and Industry. In 2019, the European Commission presented the report on "Competition policy for the digital era" by Jacques Crémer, Aves-Alexandre de Montjoye and Heike Schweitzer. These issues concern all member states. Therefore, similar debates are taking place in other Member States and at the international level. The US competition authority argues for an intensification of supervising the dominant position of the key market players.

What is often overlooked, platforms bind a significant number of self-employed workers. The platforms or their client companies engage these workers instead of increasing their work-

force in order to have more flexibility and to benefit of lower (social) costs. The reputation systems and the lack of data portability seem to tie these workers to specific platforms, potentially causing economic dependencies. A number of EU member states (e.g. Austria, France, Germany, Italy, Spain) provide basic labour and social protection to their benefit. Still, the degree of legal protection varies heavily. The self-employed workers have started unionizing and are intending to bargain collective self-regulation to increase their social protection. The main obstacle for collective agreements on prices, terms and conditions is the cartel ban (article 101 TFEU). Labour lawyers have been discussing a general exemption for collective agreements after the CJEU's judgement in Albany. Competition authorities – e.g. the Dutch authority – are considering providing these self-employed the same protection. It has to be clarified whether self-employed activities should be understood as undertakings in the meaning of article 101 TFEU. By and large the CJEU does not regard commercial agents as undertakings. To summarize, platforms require rethinking the abuse control of dominant market players and the reach and applicability of collective agreements.

The conference intends to bring together competition lawyers and labour lawyers to discuss the interrelationship between the two disciplines in light of the increased importance of online platforms and the use of AI. The Robert Schuman Centre for Advanced Studies is a think tank which might help to put labour law issues into the limelight of the digital economy.

Part I: Artificial Intelligence and Competition Law

Part II: Platforms as Regulators and Game Changers in Competition

Part III: Social Protection of economically-dependent worker - Collective Agreements as exception of Art. 101 TFEU or the Improvement of Abuse Control

## II. Potential Participants

### Part I.

Prof. Dr. Giacomo Calzolari, EUI

Prof. Dr. Ariel Ezrachi, Oxford/UK

Prof. Dr. Simon Deakin, Oxford/UK (requested)

Prof. Dr. Mireille Hildebrandt, VUB Brüssel/Belgium

Prof. Dr. Mark Patterson, Fordham University/USA

Prof. Dr. Hans Micklitz, EUI (Chair)

### Part II.

Prof. Dr. Amelia Fletcher, University of East Anglia /UK

Prof. Dr. Bruno Julien, Toulouse/France (requested)

Prof. Dr. Justus Haucap, University of Düsseldorf/Germany (Chair)

Prof. Dr. Pablo Ibanez-Colomo, LSE/UK

Prof. Dr. Heike Schweitzer, Humboldt University Berlin/Germany

Prof. Dr. Philipp Staab, Humboldt University Berlin/Germany

### Part III.

Prof. Dr. Guiseppe Palmisano, University of Roma Tre/European Committee of Social Rights (requested)

Prof. Dr. Nicolas Petit, EUI

Prof. Dr. Franz Jürgen Säcker, FU Berlin/Germany

Prof. Dr. Claudia Schubert, University of Hamburg/Germany (Chair)

Marcel Canoy, Authority for Competition and Markets, Netherlands

Anna Vernet, EU Commission, DG Competition, Head of Unit A4 (European Competition Network and Private Enforcement)

Isabel Schömann, European Trade Union Confederation

### III. Date for the Conference

November 26 & 27, 2020

It is intended to start the conference on Thursday after lunchtime and to finish on Friday early afternoon.