

immediately we arrived back home. The Institute Librarian then set up a Committee, to study and make recommendations on the Report to the Director General of the Institute. The Committee agreed that for NIALS to replicate the type of legal information delivery services in operation at IALS, we need to surmount the twin problems of inadequate funding and erratic power supply. Recently, NIALS acquired an electric power

generating set, but the cost of the fuel needed to run it is too high for it to be used effectively. We also need to look for alternative sources of funds, since total dependence on government subvention will not help NIALS attain and maintain the level of services offered at IALS. Finally, we believe that cooperation with IALS Library will expedite our efforts to provide an efficient and effective legal information service to our users.

### Footnotes

<sup>1</sup>Nigerian Institute of Advanced Legal Studies, University of Lagos. Information Brochure. – 2<sup>nd</sup> ed. – Lagos: NIALS, April 1980, 20p.

<sup>2</sup>See section 2, Nigerian Institute of Advanced Legal Studies Act Cap. NI 12 Laws of the Federation of Nigeria, 2004.

<sup>3</sup>A former Director General confessed at a management meeting, that it was when he failed to get a ministerial appointment which he was lobbying for, that he was offered the position of Director General as compensation.

<sup>4</sup>Dada, T. O. "The State of the Institute's Library". A Report presented at the Library Committee Meeting, 12 October 2010.

<sup>5</sup>16 September 2009.

*Legal Information Management*, 11 (2011), pp. 133–138  
© The British and Irish Association of Law Librarians

doi:10.1017/S1472669611000442

### Research and Resources

# Research and Resources for Competition Lawyers

**Abstract:** Daniel Harrison, professional support lawyer, and Lisa Bunker, senior information officer, at Clifford Chance LLP explain why competition law research is so heavily based on European Union (EU) law and briefly describe the organisational framework and where to find key documents.

**Keywords:** competition law; EU law; legal research

### Introduction

The Clifford Chance Global Antitrust Group is made up of about 150 lawyers in 20 offices around the world, including in the EU, United States and China.

### General characteristics of a competition law practice

A UK competition law practice typically includes lawyers from throughout the EU and from even further afield,

leading to a culturally stimulating environment in which to work. This is because competition law is substantially the same throughout the EU and there is an increasing convergence of competition laws globally (in the US, competition law is referred to as antitrust law). This gives competition lawyers the flexibility to work abroad and make use of foreign language skills. It also explains why international law firms tend to have competition teams in Brussels (the seat of the European Commission) as well as in other jurisdictions.

The UK competition researcher or librarian therefore needs to have an in-depth understanding of the regulatory bodies, legislative framework and judicial procedures of

the EU as well as the UK. They need to source for their lawyers the relevant competition legislation, decisions, case law, journal articles and regulators' speeches to help interpret the law and to identify shifts in policy. Peer reviewed papers and articles and practitioner conference papers provide a wide range of analysis and perspective. There are two levels of regulation that competition lawyers in the EU need to apply.

### EU competition law

The Treaty on the Functioning of the EU<sup>1</sup> ("TFEU") includes articles that aim to prevent the restriction or distortion of competition, as part of the larger aim to create a Single Market. Article 101 deals with anticompetitive agreements and Article 102 with abuses in the market place by dominant companies. The TFEU also regulates the ability of EU governments and public bodies to grant market-distorting subsidies and advantages (the State aid rules) and imposes requirements on the way in which they procure goods and services, with a view to ensuring a level playing field (the public procurement rules).

These competition articles are underpinned by a framework of secondary legislation, notices and policy statements, and are enforced by the Directorate General for Competition of the European Commission (DG Competition) and the appeal procedure is provided by the EU Courts (which are described below).

### National competition law

EU member states have domestic competition law regimes which cover cases that are not caught by EU competition law, e.g. where potentially anticompetitive activity does not have an appreciable effect on interstate trade. Where there is such an effect, they apply in parallel to the EU rules, subject to EU legislation, the 2004 "Modernisation Regulation"<sup>2</sup>, which limits the possibility of inconsistent application of EU and national competition laws. This is one of the reasons why member states have gradually aligned their laws to be the same, or substantially similar, as those of the EU.

The legal framework in the UK is provided by the Competition Act 1998, with its parallel provisions to Articles 101 and 102 and the Enterprise Act 2002, which for the first time made dishonest participation in a hardcore cartel a criminal offence punishable by prison. The Office of Fair Trading (OFT) is the principal competition authority in the UK. It carries out investigations, issues decisions and levies punishments. The OFT also has the responsibility to monitor markets and can refer in-depth scrutiny of a particular market to the Competition Commission.

The Competition Appeal Tribunal hears appeals against decisions made by the OFT and the Competition Commission. Private actions for damages for breaches of competition law can be taken either to the Competition Appeal Tribunal or the High Court.

## Merger control laws

The EU Merger Regulation<sup>3</sup> gives the European Commission the sole power to vet large cross-border mergers for their impact on competition, in which case national merger laws will not apply. Large multi-national transactions may require merger notifications to be made not only to the Commission but also to the competition authorities of non EU countries as well, or, if the EU Merger Regulation thresholds are not met, notifications to the authorities of affected member states. Obtaining clearances for a multi-jurisdictional merger requires liaison with local lawyers, potentially from all over the globe, as there are around 100 countries now with merger control laws and the number is growing.

For UK mergers the OFT carries out the initial review and unless it can clear a merger outright or with undertakings to remedy competition concerns it must refer the case to the Competition Commission. The UK government has announced that it plans to reform the institutional structure by merging the OFT and the Competition Commission, and various proposals for reform of the substance and procedure of competition law in the UK are also under consideration<sup>4</sup>.

## Key sources

### EU online resources

EU competition lawyers are fortunate in that most material is available free on official websites. The DG Competition website<sup>5</sup> has an excellent case tracker for its competition, merger control and State aid Commission decisions, searchable by case number, name, date or market sector (Nace code) with links to the relevant documents such as press releases or decisions. Commission decisions are published on the website in one, two or three of the main languages but, in recent years, only the summary decisions are published in the Official Journal (the EU institutions' legal gazette) in all official languages of the EU. Likewise, merger decisions are published on the website in only one language (the most appropriate for the case) and only decisions for mergers that trigger a second phase in-depth review are published in the Official Journal. Competition lawyers or their translators must provide translations when required.

A limitation of the DG Competition case tracker is that it is not possible to search for key words across multiple documents. EU Competition Law Online is a commercial online resource that provides this functionality.

The DG Competition website also has links to EU competition legislation, notices and best practice guidance, their annual reports, speeches and a newsletter of articles published three times a year.

DG Competition uses press releases to publicise case developments e.g. it will typically publish a press release

when it confirms that it has made an unannounced inspection (a “dawn raid”) of the premises of persons or companies suspected of anticompetitive activity, when it has opened an investigation, settled or closed a case. In merger cases it will usually publish a press release when it clears a merger with or without undertakings, opens a second phase investigation for problematic mergers, or decides to block a merger. Merger clearance announcements for straightforward mergers notified under the simplified mergers procedure are published in a daily press release called *Middy Express*<sup>6</sup>. The EU institutions publish their press releases on a *Europa*<sup>7</sup> website called *Rapid*<sup>8</sup> and the researcher can either go direct to this source for press releases or go to the “What’s New” link on the DG Competition website.

*Curia*<sup>9</sup> is the EU Courts’ website for access to orders, opinions of the Advocates General and judgments of the General Court (formerly the Court of First Instance) and the Court of Justice. Most competition cases are heard before the General Court, with appeals to the Court of Justice. It is important to be aware that the *Curia* search menu only retrieves case law from mid-June 1997. For earlier case law it is necessary to go to *Eurlex*<sup>10</sup>. This is another *Europa* database and is the EU institutions’ portal website for access to EU law. As well as being the repository for the complete library of EU case law, it can also be used by the researcher to source EU competition legislation, treaties, consolidated legislation, preparatory materials and the *Official Journal*.

The *Curia* website also has details of cases in the judicial diary a month ahead, press releases, rules of procedure and a list of links to all cases for each EU Court in order of case number. This is a useful way to find out whether a case has been appealed, as new cases will be described as “pending” and listed with details of parties’ names and case number. In due course, details of new cases will be published in the *Official Journal*.

EU Courts’ case law will first appear in the languages that are most appropriate to the case and, subject to the workload of the translators, will eventually be translated into all languages of the EU. It is not uncommon for English language translations to be accorded a surprisingly low priority in this respect.

### UK online resources

The Office of Fair Trading website<sup>11</sup> has links to its decisions, press releases and guidance. Unlike the DG Competition site, the OFT website is not devoted exclusively to competition matters and takes a bit more time to navigate. In addition, the case trackers are more rudimentary. For example, the mergers case tracker is searchable by date, company name and decision type, but not by market sector. The OFT does not allocate a particular market classification code to each decision in the way that the Commission uses Nace codes. However, each decision has a brief text description of the relevant “affected market.” A good way to assess how the OFT

has defined a particular market is to use the powerful Google Advanced search menu to search the OFT site. This method allows the researcher to retrieve all relevant documents by inputting the phrase “affected market” close to key terms describing the market under review.

UK legislation is available on the *legislation.gov.uk* website although, due to the importance for lawyers to have access to reliably up to date and consolidated legislation, law firms tend to have subscriptions to commercial databases that provide this information, such as *Westlaw UK*<sup>12</sup> or *LexisLibrary*<sup>13</sup>.

The Competition Commission website<sup>14</sup> has comprehensive information on its current and closed inquiries, including its final reports, which are searchable in full text and by date, name and market sector. It also has guidance notes, press releases and speeches.

Competition Appeal Tribunal case law can be accessed from its website<sup>15</sup> and competition cases that have been heard in the High Court and its superior courts are available from the *BAILLI* database<sup>16</sup>. These cases are also available through commercial databases such as the ones mentioned above.

### Multi-jurisdictional online resources

Sometimes competition lawyers need to review competition legislation and case law from other jurisdictions. For example, it can be helpful when making a market analysis to review definitions applied by other competition authorities. Similarly, when co-ordinating a multi-jurisdictional merger, the lawyer will make an initial assessment of which countries may require merger notification. Some competition authorities have information in English on their websites but frequently supplementary information is required. Some law firms, including *Clifford Chance*, maintain their own comprehensive databases of information on national merger control laws, but there exist a number of publicly available sources of information which cover the majority of jurisdictions, including the commercial website “Getting the deal through<sup>17</sup>” and free alternatives such as the *International Comparative Legal Guide* series<sup>18</sup>.

The DG Competition website has a National Courts Cases Database but the coverage is patchy. Ways to source information about decisions of national competition authorities and competition rulings of national courts include searching aggregator sites of law firm newsletters (such as *Clifford Chance’s* bi-monthly *Antitrust Review*) and “E-competitions bulletin”, a newsletter on national cases on the *Institute of Competition Law* website<sup>19</sup> where some of the content is free.

### Journal articles and commentary

There is a wide range of journals on competition law and most of these can be searched and purchased online. The

commercial database Westlaw UK is a particularly useful resource because its extensive bibliographic Legal Journals Index provides article summaries and articles in full text for certain titles. Examples of competition law titles include the *European Competition Law Review*, *Competition Law Insight*, *European Competition Journal*, *Global Competition Review*, and for the UK perspective, *Competition Law Journal*.

Competition Policy International is a website<sup>20</sup> that has peer reviewed articles from a range of authors. The Antitrust & Competition Policy Blog<sup>21</sup>, edited by Daniel Sokol, is a useful site with links to free and subscription articles. The Social Science Research Network is a free portal<sup>22</sup> for academic working papers and articles on competition law. Competition economics articles are available from these sources and through the websites of competition economics consultancies.

PLC competition law<sup>23</sup> is an excellent commercial database for practitioner practice notes, articles, checklists, standard form contractual clauses and case trackers for EU, UK and multi-jurisdictional law. The practice notes include introductory overviews and are particularly useful for those new to competition law.

## Books

There is a large and growing library of competition law books available and the ones listed here are only a representative sample. *Competition Law*<sup>24</sup> by Professor Whish is an excellent introductory book for the student as well as practitioner; the more detailed *European Community Law of Competition*<sup>25</sup> by Bellamy & Child is popular among practitioners; *EC Antitrust Procedure*<sup>26</sup> by Kerse and Khan is a thorough text on enforcement procedure; and the annual *EU Competition Law Handbook*<sup>27</sup> by Professor van der Woude and Christopher Jones is a useful bibliographic handbook for the practitioner. There are also texts on merger control include *UK merger control law and practice*<sup>28</sup> by Parr, Finbow and Hughes and the loose-leaf *European Merger Control Law: a Guide to the Merger Regulation*<sup>29</sup> by Levy.

## News and alerting services

Because competition law is so case driven, official announcements on case developments are important. It is also a dynamic and fast moving area of law and the competition lawyer needs to monitor carefully regulators' speeches and statements to detect shifts in policy and interpretation. From this a number of commercial news and alerting services have emerged. Mlex<sup>30</sup> is an excellent example, providing breaking news email alerts on primarily EU competition developments. Mlex case trackers are also a valuable resource. *Global Competition Review*<sup>31</sup> is a commercial website for its journal and news service,

particularly useful for following career moves by competition law players and regulators.

It is possible to sign up to daily email alerts for many of the regulator websites including EU competition and merger press releases from the Rapid website, "what's new" emails from the OFT, Competition Commission and Competition Appeal Tribunal. DG Competition provides weekly email alerts on competition and state aid.

## Themes in competition law research

### Cross border collection and management of know how

As explained above, there is a degree of convergence in the competition laws applied in many jurisdictions, particularly within the EU. This means that research and advice that lawyers have carried out or given in one jurisdiction will often be useful to lawyers in another. A key task for competition librarians is therefore to encourage the submission of this valuable know how and to ensure that it is available throughout the network, anonymised where appropriate, in a searchable and appropriately structured internal database.

### Understanding the market

Centrally important to practising competition law is the need to understand the clients' markets i.e. have a detailed knowledge of their business operations in terms of products, services, customer base, sales strategy, geographical reach, their competitors and market shares. This is because, in order to measure the potential anti-competitive effect of a merger, agreement or activity, it is first necessary to ascertain which products or services are in competition with each other and can be said to be in the same market. In recent years, EU and national competition authorities have made much greater use of economic principles to define markets and typically have in-house economists advising their case teams. Likewise, a growing number of competition lawyers have economics backgrounds.

Competition analysis of markets includes reviewing competition authorities' decisions to see if a particular market has already been defined and any published information on that market. The librarian can help with this analysis by obtaining details about research reports compiled by market research companies, data from trade associations and articles from newspapers and trade journals. Finding market information can be challenging because players in the same market are not allowed to share information that may lead to collusive behaviour (such as information about each others' prices). For this reason, statistical information provided by trade associations is generally anonymised or historic.



### Cartels, sanctions and compliance programmes

In recent years, competition authorities have focused on cartels, because of the damage they cause to consumers, businesses and the economy. This has resulted in the use of high fines at EU and national level to punish and deter cartelists. The impending accession of the EU institutions to the European Convention on Human Rights (pursuant to the Lisbon Treaty) has resulted in an increased focus on the compliance of the EU competition law regime with the rights of defence of parties who are investigated and penalised by the European Commission. Competition lawyers are therefore needing increasingly to research and be aware of the case law of the European Court of Human Rights.

In addition, a number of jurisdictions, such as the UK, have introduced criminal sanctions including prison sentences for individuals, as well as leniency regimes, which reward whistleblowers with immunity or substantial reductions in the fines that would otherwise be imposed. Moreover, competition authorities around the world are increasingly communicating with each other and it is not uncommon for cartel investigations to be launched by co-ordinated dawn raids in a number of jurisdictions. Consequently, competition lawyers must now be able to access information quickly on the specific features of numerous different regimes in order to ensure that their clients receive appropriate strategic advice. Many law firms rely on their international network and internal know how in order to do so, but there are some publicly available sources which track cartel and leniency regimes in a number of jurisdictions, including the “Getting the deal through” and International Comparative Legal Guide series referred to above.

### Abuse of dominance

Fines for abuse of dominance have increased at a similar pace to those for cartel conduct. Indeed, the highest fine ever imposed for a breach of competition or antitrust law was the €1.06 billion fine imposed by the European Commission against Intel in 2009 for illegally inducing PC manufacturers to use its chips over those of its rival AMD. There is considerably less uniformity in the approach of regulators around the world to regulating

companies with dominant positions than is the case for the regulation of anticompetitive agreements. For example, EU Courts impose considerably more constraints on the conduct of dominant firms than those of the US, and EU member states are permitted to apply even stricter standards under their national competition and consumer protection laws. While the European Commission has in recent years signalled its intention to pursue only those cases in which harmful effects for competition and consumers can be demonstrated, multinational companies with strong market positions still face a patchwork of regulatory standards, which necessitates increasingly sophisticated and internationally aware advice from their competition counsel.

### State aid

This is an increasingly important area of EU competition law and has received much press attention since the introduction of special state aid rules to help member states preserve financial stability during the recent international financial and economic crisis triggered by the failure of the banking system. There are fewer English language resources for researching state aid issues and the law tends to be less consistent than is the case for other areas of competition law, so UK practitioners rely on the relatively few English language textbooks – such as *European State Aid Law and Policy* by Quigley<sup>32</sup>, *European Community Law of State Aid* by Bacon<sup>33</sup> or *EC State Aids*<sup>34</sup> – combined with updates on developments such as those produced by Mlex and PLC Competition Law (see above).

### Conclusion

Competition librarians and researchers must be skilled in researching and sourcing EU law as well as national law. Competition law practices are international and diverse places to work in and competition law is a rapidly developing area, with political, economic and social aspects and one with an increasingly prominent public profile. There is a myriad of public and commercial resources to draw from, including press releases, case trackers and blog opinions.

### Footnotes

<sup>1</sup><http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:EN:PDF>

<sup>2</sup>Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty Official Journal L 1, 04.01.2003, p. 1–25

<sup>3</sup>Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) Official Journal L 24, 29.01.2004, p. 1–22

<sup>4</sup><http://www.bis.gov.uk/Consultations/competition-regime-for-growth?cat=open>

<sup>5</sup>[http://ec.europa.eu/competition/index\\_en.html](http://ec.europa.eu/competition/index_en.html)

<sup>6</sup><http://europa.eu/rapid/showInformation.do?pageName=middayExpress&guiLanguage=en>

<sup>7</sup><http://europa.eu/> (the official portal website of the European Union)

<sup>8</sup><http://europa.eu/rapid/>

<sup>9</sup><http://curia.europa.eu/>

<sup>10</sup><http://eur-lex.europa.eu/>

<sup>11</sup><http://www.ofc.gov.uk/>

<sup>12</sup><http://www.westlaw.co.uk/>

<sup>13</sup><http://www.lexisnexis.co.uk/our-solutions/academic/online-services/lexislibrary.aspx>

<sup>14</sup><http://www.competition-commission.org.uk/>

<sup>15</sup><http://www.catribunal.org.uk/>

<sup>16</sup><http://www.bailii.org/>

<sup>17</sup><http://www.gettingthedealthrough.com/>

<sup>18</sup><http://www.iclg.co.uk/>

<sup>19</sup><http://www.concurrences.com>

<sup>20</sup><https://www.competitionpolicyinternational.com/>

<sup>21</sup>[http://lawprofessors.typepad.com/antitrustprof\\_blog/](http://lawprofessors.typepad.com/antitrustprof_blog/)

<sup>22</sup><http://www.ssrn.com/>

<sup>23</sup><http://competition.practicallaw.com/>

<sup>24</sup>R Whish, *Competition Law*, 6th Edition, Oxford University Press, 2008

<sup>25</sup>Bellamy and Child, *European Community Law of Competition* (Gen. Ed.: P. Roth QC), 6th Edition, Oxford University Press, 2008)

<sup>26</sup>Kerse, C., and Khan, N., *EC Antitrust Procedure*, 5th Edition, Sweet & Maxwell, 2004

<sup>27</sup>Van der Woude, M and Jones, C, *EU Competition Law Handbook 2011* Sweet & Maxwell, 2010

<sup>28</sup>Finbow, R and Parr, N and Hughes, M, *UK Merger Control: Law and Practice*, 2nd Edition, Sweet & Maxwell, 2005

<sup>29</sup>Levy, N *European Merger Control Law: a guide to the Merger Regulation*, LexisNexis, loose-leaf

<sup>30</sup><http://www.mlex.com/>

<sup>31</sup><http://www.globalcompetitionreview.com/>

<sup>32</sup>Quigley, C., *European State Aid Law and Policy*, 2<sup>nd</sup> Edition, Hart Publishing, 2009

<sup>33</sup>Bacon, K, *European Community Law of State Aid*, Oxford University Press, 2009

<sup>34</sup>Hancher, L., Ottervanger, T., Slot, P. *EC State Aids*, 3rd Edition, Sweet & Maxwell, 2006

## Biography

Daniel Harrison is the professional support lawyer for the Global Antitrust Group at Clifford Chance and was formerly a senior lawyer at Freshfields Bruckhaus Deringer LLP. Lisa Bunker is a competition law senior information officer.