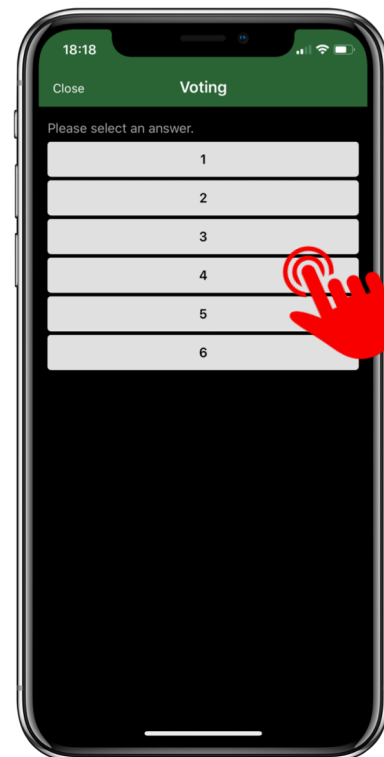
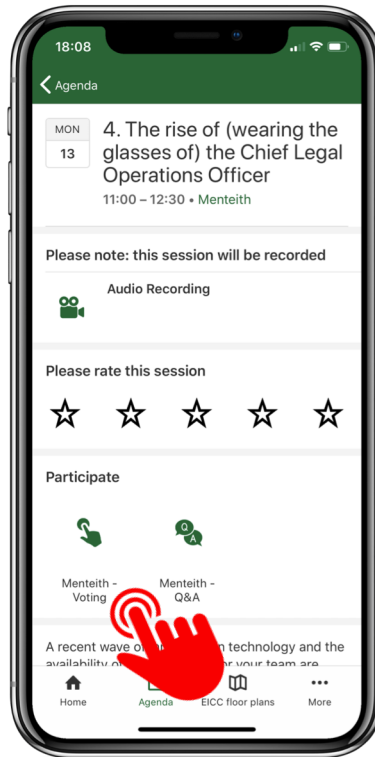


Competition law update

- **Laurent Godfroid**, Partner, Gide Loyrette – Lex Mundi Member France
- **Magdalena Jakubicz**, Senior Corporate Counsel, Cisco
- **Paolo Palmigiano**, Chairman, Association of in-house competition lawyers

Voting

- ▶ Tap on the voting button from the session you are attending to vote
- ▶ Tap on the number corresponding to your choice



Following Siemens/Alstom, some advocated to extend at EU level the system applicable in France, whereby the Ministry of Economy can substitute his decision to the French competition authority's, on grounds of general interest other than competition

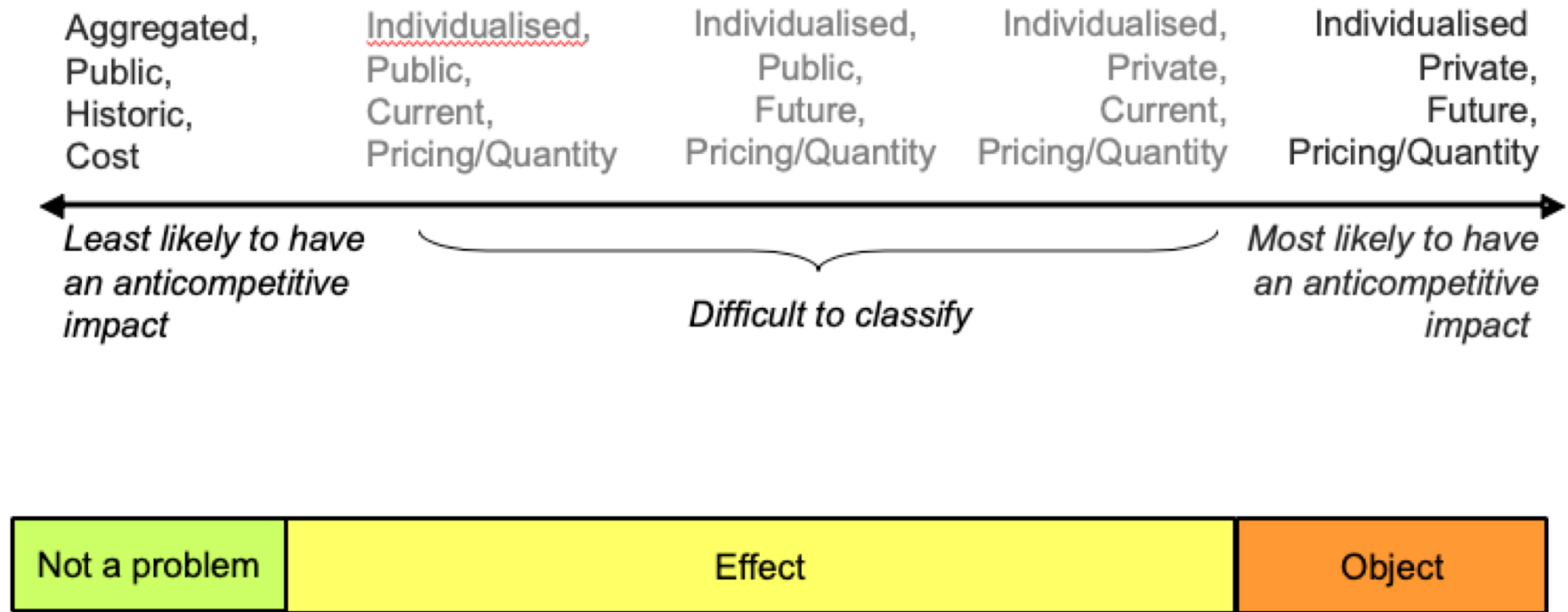
Would you favor such a solution?

1. Yes, it is important that in exceptional cases, the EU is able to take into account of public interests grounds to authorize a merger that raises competition issues, in particular when the situation outside Europe justifies it;
2. No, competition decisions should not be overridden by more political decisions; unfair international competition should be prevented by with trade defense instruments at WTO level / FDI screening, etc.

Themes in illegal horizontal agreements

- Antitrust risks resulting from different types of information exchanges
- Automated systems and risks of illegal collusion

The information exchange spectrum



Algorithmic collusion



Algorithmic collusion

Algorithmic collusion consists in any form of anti-competitive agreement or coordination among competing firms that is facilitated or implemented through means of automated systems.



Themes in vertical restraints



On-line sales



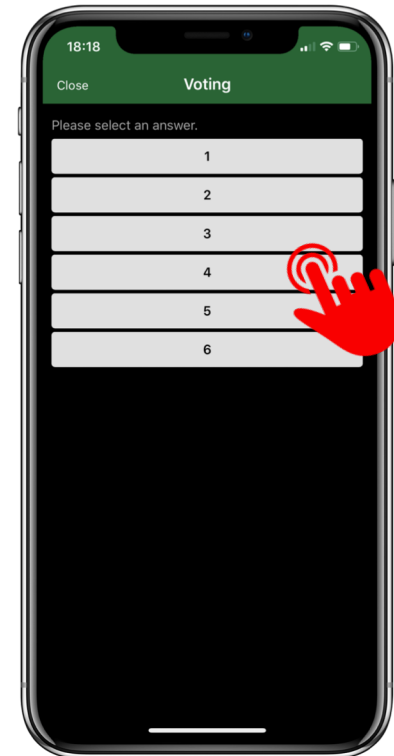
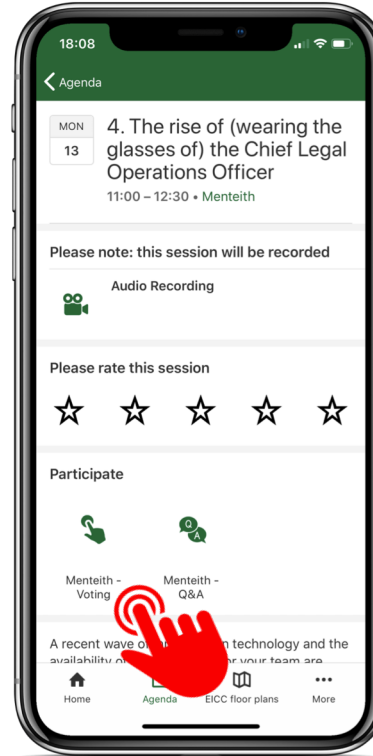
**Cross-border
trade**



RPM

Voting

- ▶ Tap on the voting button from the session you are attending to vote
- ▶ Tap on the number corresponding to your choice



Should companies with selective distribution model (irrespective of what products/services they offer) be able to restrict their resellers from selling via 3rd party on-line platforms?

1. Yes as long as SDS is valid
2. Yes but only companies that sell truly luxury goods
3. No as it restricts competition
4. I do not know

On-line sales

COTY



STIHL[®]

PING

asics[®]



Cross-border trade



GUESS



Resale price maintenance

ASUS®

PHILIPS

DENON®
marantz®

Pioneer

GUESS



Abuse of dominance in the EU

- **Article 102 TFEU** prohibits firms that hold a dominant position on a given market to abuse that position, for example by :
 - charging unfair prices,
 - limiting production,
 - or refusing to innovate to the prejudice of consumers

Overview: few cases but significant fines

Date	Case	Fine (€)
2019	Google AdSense	1.49 billion
2018	Qualcomm (exclusivity payments)	997 million
2018	Google Android	4.34 billion
2018	Bulgarian Energy Holding (BEH)	77 million
2018	Gazprom	Commitments
2018	TenneT	Commitments
2017	Google Search (Shopping)	2.42 billion
2017	Lithuanian Railways	28 million
2017	Amazon E-Books	Commitments
2017	International Skating Union	Commitments
2016	ARA	6 million
2016	CDS Information Market	Commitments



Overview: few cases but significant fines

- Enforcement focused on **transport, energy and digital**
- Not many cases but **substantial fines impose (9 billions in 3 years)**
- **Many settlement cases** through commitments made legally binding

Enforcement focus on dominance in the technology sector



“Platforms like Google play a vital role in digital markets. Businesses and consumers depend on platforms to get the best out of digitalization. So the illegal behaviour in these cases is very serious”

“In spite of Google’s long history of innovation, its first efforts in that market were not at all successful. And Google’s solution was to call in the big guns – to use the power of its search engine to give its own comparison shopping service a head start”



Shortcomings in enforcement

- There is a need for **interim measures** at EU level
 - *We are ready to use them. Our barrier is that we have very, very high legal thresholds. Some of the national competition authorities – the French, for instance, and the Belgians, use interim measures much more than we do”* (Margrethe Vestager, GCR, 21 May 2018)

Far-reaching settlements

- **Gazprom:** Gazprom pursued an overall strategy to partition gas markets along national borders in 8 Member States, which increased prices.

- The Decision imposes a detailed set of rules:
 - No more contractual barriers to the free flow of gas
 - Obligation to facilitate gas flows to and from isolated markets
 - Structured process to ensure competitive gas prices
 - No leveraging of dominance in gas supply

Success in EU Courts

Servier, 12 December 2018, T-691/14:

- The originator cannot be held dominant because the Commission **has not assessed relevant market rigorously**
- The Court **annulled the fine imposed on Servier** since the Commission wrongly concluded that Servier held a dominant position
- Fine reduced from 330 millions € to 228 millions

Key takeaways

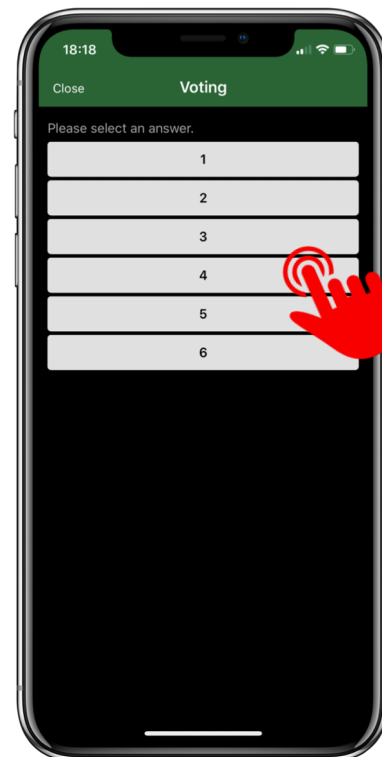
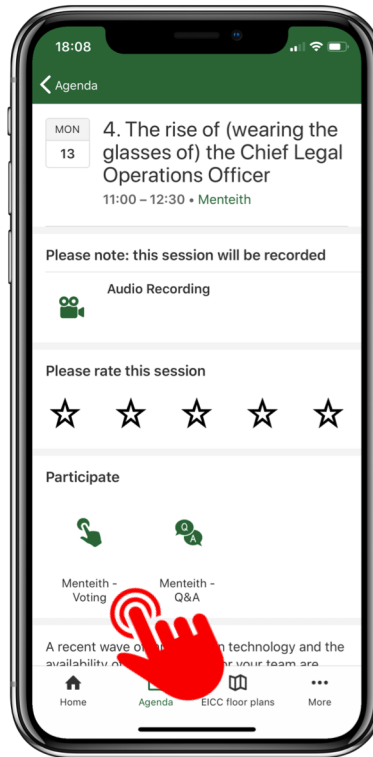
- Lengthy and complex procedures / No interim measures
- Risk of very heavy fines or far-reaching settlements and then damages
- Possible success in Court but it takes time
- The EU is not the end of the story

Abuse of dominance at French level

Date	Case	Fine
2019	Google Ads - Discriminatory advertising rules	Interim measures
2018	Groupe Canal Plus – Prevent competing TV decoders from offering linear broadcast of Canal Plus programmes	Commitments
2017	ENGIE – Use of resources inherited from former status as the incumbent gas supplier	100 million €
2017	Janssen-Cilag / Johnson & Johnson – Restriction on the development of generic versions of medicinal products	25 million €
2017	INRAP – Cross-subsidy	Commitments
2016	UMICORE – Constraints on distributors to supply themselves exclusively from the company	69 million €
2016	TDF – Hindering the establishment of competitors, notably through loyalty rebates	20.6 million €
2016	ENGIE – Predatory pricing	Interim measures

Voting

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Do digital markets require a bespoke competition regime?

1. Yes ex ante regulation
2. Yes but for merger control only
3. No the current regime is sufficient to address concerns