

**November 25th: BRICS + Digital Competition Workshop**

**13.00- 15.00 Case-study: Hypothetical BRICS Merger Review**

3 topics. 12 questions. Up to 10 minutes of discussion per question (30-40 minutes per topic). One round of initial responses by 2 panelists, followed by comments. Possible Q&A at the end (15 minutes), should time allow.

**Opportunities and challenges for BRICS Cooperation**

1. Interest in cooperation - would the BRICS authorities have interest in cooperating with other authorities in this matter? What benefits would be expected from cooperation? What would be the priority? Cooperation within BRICS or with other jurisdictions (e.g. EU/US)?
  - FUP - To what extent a decision on cooperation would depend on observed data of regional market penetration or other empirical findings?
2. Timeline - do the different timelines of notification and analysis pose any challenges for cooperation? To what extent may the fact that the transaction is filed first in China, US and EU increase the difficulties for cooperation among BRICS authorities?
3. Exchange of information - what are the limits to exchange information among BRICS authorities? To what extent may or may not confidential information be exchanged? How do authorities deal with waivers of confidentiality?
4. Channel of Cooperation - Would it be feasible or desirable to use the Liaison Committee established under the 2016 MoU? What other channels of cooperation would be available?

**Theories of harm / Merits of the case**

1. Relevant Markets / Horizontal v. Conglomerate effects - how would different BRICS authorities look at this merger? Would they consider that Twitter and TikTok are in the same relevant market? Would they consider horizontal, vertical and/or conglomerate effects?
2. Theories of harm - what would be potential theories of harm to be explored and tested in this case?
3. Intensity of concern - Would a merger like this raise significant concerns in your jurisdiction? What would be the main concerns? What theories of harm are more likely to generate especial attention and investigation?
4. Harmonization - would it be possible or even desirable that BRICS authorities exchange views about theories of harm and try to harmonize perspectives? Why?

**Remedies**

1. Types of remedies – Would remedies be necessary? What kinds of remedies could the authority consider in this type of merger? Do you have any precedents of similar mergers with remedies? E.g.
  - Transparency obligations
  - Compulsory licensing of IP
  - Mandated access to data
  - Legal and technical separation of applications/platforms
  - Creation of an API (Application Program Interface) for regulators/third parties to monitor compliance
  - Behavioral remedies, including in relation to the moderation of content like fake news, fake accounts and political advertising.
2. Cooperation in remedies - Would there be room for cooperation in the design of the remedy? How about in the implementation and monitoring of the remedy? Would cooperation with non-BRICS jurisdictions about remedies be useful as well?
  - Would remedy design require cooperation with other public authorities (such as the central bank, the communication authority, the consumer protection and the data protection authority)? To what extent would that delay collaboration with sister antitrust authorities?
  - In case of divestments, should or could authorities agree on the key aspects of the divestiture? How about the rules and procedure for divestiture? Would it be possible to have a common divestiture trustee?

3. Information Exchange - What type of information exchange might be useful during the design and implementation of a remedy? Would it be possible to have market tests of the remedy across jurisdictions?
4. Timing of implementation - Would it be possible or desirable to harmonize the timing of implementation?