



@Echelle event on 11 April 11 2019 looks at blockchain

In early 2019, the *Autorité de la concurrence* launched a new series of events, @Echelle.

Its goal is to provide an opportunity to understand new challenges in competition law resulting from technological innovations and new commercial and industrial practices and to address the ongoing debates on adapting competition policy to these new realities. These events are an opportunity to hear from economic stakeholders and those thinking about competition policy.

On 11 April 2019 the first @Echelle event, “**Blockchain: What is it? What is its impact for competition law?**” was held at the *Autorité de la concurrence* with the participation of **MP Laure de la Raudière**, co-author of the information report for the National Assembly's joint fact-finding mission on blockchains published on 12 December 2018 (<http://www.assemblee-nationale.fr/15/pdf/rap-info/i1501.pdf>) and **Professor Thibault Schrepel**, author of several articles on blockchain, including “Is blockchain the death of antitrust law? The blockchain antitrust paradox” published on 25 June 2018 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3193576) and “Collusion by blockchain and smart contracts” published in January 2019 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3315182).

The debate was moderated by Isabelle de Silva, President of the *Autorité de la concurrence*, Emmanuel Combe, Vice-President of the *Autorité* and Elodie Vandenhende, Counsel to the President on Digital Issues.

The event provided a better understanding of the new technology, which some people consider to be part of the Internet revolution.

According to the definition of the French Parliamentary Office for the Assessment of Scientific and Technological Choices, blockchain refers to “data storage and transmission technologies used in the creation of replicated and distributed ledgers, without a central control body, secured by cryptography, and structured by blocks linked to each other, at regular time intervals”. The technology is sometimes likened to a ledger of accounts updated in real time, held and accessed by a large number of people and no longer by a single trusted third party.

According to the speakers, the new technology has several main characteristics: **pseudonymity, transparency, decentralised governance, unfalsifiability and irreversibility**. These different components vary according to the type of blockchain used (**blockchains can be open or private**).

According to MP Laure de la Raudière, blockchain constitutes a new disruptive technology that the government must take up in order to preserve its sovereignty. It is therefore necessary to ensure that the **regulatory, financial and fiscal conditions are in place** for a blockchain ecosystem to thrive effectively and to be of sufficient size in the upcoming technological revolution. De la Raudière cited the work of the PACTE Law on the growth and transformation of companies, which has advanced the regulation of blockchains and cryptoassets in particular.

The speakers then focused on the concrete applications of blockchain technology.

De la Raudière reminded the audience of the challenges related to technical capacity, protocol security as well as the energy consumption of some blockchains. Moreover, the use of blockchains opens the prospect of **possible profound changes in organisations, economic and labour**



relations, and consumer habits. This disruptive effect goes far beyond the use of cryptoassets or cryptocurrencies. De la Raudière cited the value of the blockchain in the logistics sector to ensure, on the one hand, product traceability, as well as preserving the contributions of the various members in a production and distribution chain and, on the other hand, to reduce formalities and create the conditions for cooperation between the participants in a sector, particularly in the field of information exchange.

The last part of the debate focused more specifically on the anticompetitive practices that could be implemented within blockchains or when using these technologies.

Professor Schrepel's work shows that this technology raises **several challenges** in the field of competition law: (1) a technical challenge, in order to be able to identify the perpetrators of anticompetitive practices, (2) a legal challenge, linked to how to assign liability to the perpetrators of anticompetitive practices and (3) a philosophical challenge, since the possible infringement of competition law comes from a decentralised entity rather than from a defined entity.

According to Schrepel, certain anticompetitive practices could be facilitated by this technology, **particularly in private blockchains** with more flexible governance and structure.

New practices may also emerge, such as specific exclusionary practices (including predatory innovation) or new forms of cartels (linked in particular to smart contracts).

PRACTICES ON THE BLOCKCHAIN	EXCLUSIONARY ABUSE						EXPLOITATIVE ABUSE	DISCRIMINATORY ABUSE
	Predatory pricing	Tying / bundling + predatory innovation	Margin squeeze	Exclusive dealing	Loyalty rebates/ discounts	Refusal to deal		
PUBLIC BLOCKCHAIN	Very unlikely (implies a new governance to be adopted to raise the price, which is public information)	Unlikely (would imply sales on blockchain + goes against network effect + would have to be in the governance design)	Unlikely (public blockchain is horizontal by definition)	Unlikely (user terms only protect the blockchain + hard to monitor + would have to be integrated in the governance)	Unlikely (granting such rebates/ discounts would greatly reduce the blockchain attractiveness)	Very unlikely (public blockchain run on public access, by definition)	Unlikely (access to the blockchain is free and easy, switching costs are low)	Unlikely (price discrimination will deter incentive to use the blockchain, this is public information)
PRIVATE BLOCKCHAIN	Likely (simply implies a new governance to be adopted to raise the price)	Very likely (the access to the chain could be subjected to another platform)	Likely (private blockchains allow many income-generating applications/ uses)	Very likely (foreclosing competitors : increase the overall blockchain price for users + attractiveness)	Very likely (it could motivate some users to stick to the blockchain)	Very likely (refusal to give access is one reason why private blockchains exist)	Likely (switching costs may be high + aggregative theory strengthens the power on the short term)	Very likely (discrimination between users is likely to be done if only as an incentive to join the chain or stay active on it)

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The solution, according to Schrepel, would be **an approach using incentives to convince the blockchain stakeholders of the importance of integrating competition law concerns into the technology itself (“law is code”).**