

MAK, C.H.W. 2023. *Navigating the multi-jurisdiction landscape of blockchain and competition law*. [Blog post].

Posted on the Kluwer Competition Law Blog [online], 18 February 2023. Available from:

<https://competitionlawblog.kluwercompetitionlaw.com/2023/02/18/navigating-the-multi-jurisdiction-landscape-of-blockchain-and-competition-law/>

Navigating the multi-jurisdiction landscape of blockchain and competition law.

MAK, C.H.W.

2023

© Wolters Kluwer. This blog post was originally distributed on the Kluwer Competition Law Blog:
<https://competitionlawblog.kluwercompetitionlaw.com/2023/02/18/navigating-the-multi-jurisdiction-landscape-of-blockchain-and-competition-law/>

Navigating the Multi-Jurisdictional Landscape of Blockchain and Competition Law

Introduction:

Blockchain technology is a complex and innovative field that has raised questions about its potential impact on competition laws. As the use of blockchain increases, its unique characteristics, such as market power, interoperability, network effects, and transparency, become increasingly challenging to regulate. To tackle these challenges, competition authorities across the globe, including the European Union (EU), the United States (US), and Asia, have taken various steps to harmonize blockchain and competition law. This blog post delves into the diverse strategies employed by these authorities. By analysing these approaches and incorporating the concepts of perplexity and burstiness, readers can understand how blockchain technology can promote competition, innovation, and consumer well-being in a world of interconnected markets.

The European Union's Proactive Approach to Integrating Blockchain and Competition Law:

The EU has taken a forward-thinking stance in aligning blockchain and competition law, taking proactive steps to regulate and monitor digital market activity. The EU has implemented several regulations, such as the [General Data Protection Regulation](#) and the [Digital Markets Act](#), aimed at promoting fair play in the digital market. The EU has also launched investigations into blockchain firms and proposed new legislation to address blockchain-related challenges.

One of the EU's primary concerns is the potential for market power to become overly concentrated among a small number of players, particularly in blockchain ecosystems where network effects and entry barriers are significant. To counteract this, the EU has introduced the [Digital Services Act](#), a regulation designed to prevent anti-competitive behaviour and preserve market openness for new entrants. This regulation sets guidelines for digital platforms, including those built on blockchain technology, to advance competition, consumer protection, and innovation. [It will have a major impact on the competitive environment by redefining the cost structures and dynamics between market actors and EU institutions.](#)

The EU has developed [different strategies](#) to promote interoperability in the digital market, including blockchain ecosystems, aiming to unify blockchain systems and avoid isolated networks. In essence, the EU's approach to integrating blockchain and competition law is comprehensive and considers data privacy, competition, and innovation. The EU's focus on interoperability and preventing market concentration promotes competition and fosters innovation in the blockchain space.

The United States' Reactive Approach to Integrating Blockchain and Competition Law:

The US has adopted a vigilant stance towards the convergence of blockchain and competition law, leveraging its time-tested antitrust laws to oversee the blockchain domain. The [Federal Trade Commission](#) (FTC) and the [Department of Justice](#) (DOJ) have taken a strong enforcement posture, ensuring that blockchain companies adhere to fair competition practices. They have been closely scrutinizing the market, poised to act against future violations swiftly.

The US perspective on blockchain and competition law is deeply rooted in the framework of antitrust laws, such as the Clayton Antitrust Act. These laws, which strictly prohibit anti-

competitive conduct such as monopolization, price-fixing, and anti-competitive mergers and acquisitions, have been harnessed by the FTC and the DOJ to tackle anti-competitive behaviour in the blockchain space, including market concentration and illegal collaboration. In addition to enforcement, the US approach also recognizes the significance of fostering innovation in the blockchain sector. To this end, [the FTC has organized public workshops and released reports on blockchain technology to promote innovation and educate the public on blockchain's potential benefits and risks.](#)

Consumer protection is also a critical component of the US approach to blockchain and competition law. [The US Securities and Exchange Commission has taken a firm stand against companies that engage in deceptive and unfair practices in the blockchain space, such as fraudulent initial coin offerings \(ICOs\) and cryptocurrency scams.](#)

In conclusion, the US approach to integrating blockchain and competition law is marked by proactive enforcement of existing antitrust laws to prevent anti-competitive behaviour in the blockchain sector. The emphasis on innovation and consumer protection is a crucial aspect of this approach, reflecting the US's commitment to the fair and responsible development of the blockchain ecosystem.

A Diverse Landscape: Asia's Varied Approaches to Integrating Blockchain and Competition Law:

The intricacy of the regulatory regime governing blockchain and competition law across Asia is marked by a tapestry of divergent perspectives, with each jurisdiction taking a unique stance. Despite this variability, a considerable number of Asian nations have implemented legislation and regulations that aim to uphold fair competition and secure the rights of consumers in the digital sphere.

For instance, in Australia, has enacted laws and regulations to promote competition and protect consumers in the digital market. The primary competition law in Australia is the [Competition and Consumer Act 2010 \(CCA\)](#), which is administered by the [Australian Competition and Consumer Commission \(ACCC\)](#). The CCA prohibits certain types of conduct that may be detrimental to competition, such as cartel conduct, anti-competitive agreements, and abuse of market power.

Similarly, [Singapore's Competition Act](#) imposes restrictions on anti-competitive arrangements, abuse of market dominance, and mergers that potentially reduce competition significantly. The [Monetary Authority of Singapore](#) has also published guidelines on digital token offerings to safeguard consumers and foster blockchain innovation.

In Japan, the [Antimonopoly Act](#) prohibits monopolistic practices by private entities, unfair trade practices, and bid manipulation. The [Japan Virtual Currency Exchange Association](#) is a self-regulatory body that oversees cryptocurrency exchanges in Japan, promoting transparency and protecting consumers.

In its proactive approach towards blockchain and competition law, China issued the [Anti-Unfair Competition Law of the People's Republic of China 2019](#). [On November 22, 2022, the State Administration for Market Regulation took a significant step forward in its ongoing efforts to combat unfair competition practices in the rapidly evolving Chinese market.](#) The government body released a draft revision to the Anti-Unfair Competition Law of the People's

Republic of China, inviting public comment on the proposed changes. This Draft Revision is a testament to the authorities' vigilance against the emergence of unregulated, unfair business practices that have arisen alongside the market's swift transformation. The new business forms and models brought about by these market forces have prompted the government to take action, ensuring a level playing field for all businesses and safeguarding the interests of consumers. China has These guidelines aim to deter anti-competitive behaviour by digital platform operators, including those in the blockchain sector.

In general, the Asia-Pacific region's method of integrating blockchain and competition law is a mosaic of varying approaches, focusing on consumer protection and promoting innovation as a recurring theme. The divergent perspectives of each jurisdiction reflect the complexity of the regulatory landscape in Asia.

Conclusion:

Integrating blockchain and competition law is a labyrinthine, ever-changing terrain, with various regions adopting disparate strategies. In the EU, competition regulators have taken a proactive stance to tackle the complexities of blockchain and foster equitable competition, focusing on consumer protection. Conversely, the US has employed a reactive strategy, implementing existing antitrust laws within the blockchain industry.

In Asia, the regulatory scenario is varied, with multiple nations implementing laws and regulations to promote competition and safeguard consumers in the digital realm. A strong emphasis on consumer protection and fostering innovation is a key component of Asia's approach.

Despite the differing strategies pursued by competition regulators, the ultimate objective remains to foster fair competition and protect consumer welfare. The challenges posed by blockchain technology, including market power, interoperability, network effects, and transparency, have compelled regulators to adopt unique approaches. As blockchain continues to evolve, competition regulators must remain alert and flexible, updating antitrust laws to address the specific challenges posed by this technology. By promoting fair competition, protecting consumer welfare, and fostering innovation, we can assure a stable, progressive future for blockchain with a positive impact on both businesses and consumers.

Charles Ho Wang MAK*

* Charles Ho Wang Mak is a PhD Candidate in law and a Graduate Teaching Assistant at the University of Glasgow.