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Antitrust Marathon IV: With Authority

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ANTITRUST MARATHON IV: WITH AUTHORITY

Location: The Irish Writers' Museum, Parnell Square, Dublin

Date and time: 27 October 2009

Moderated by: Dr Philip Marsden and Spencer Weber Waller

Organised by: The British Institute of International and Comparative Law and the Institute For Consumer Antitrust Studies, Loyola University Chicago School of Law with the Assistance of the Irish Competition Authority

FOREWORD

A few years ago Spencer Waller and I got the idea to hold a series of Antitrust Marathons—roundtables of senior officials, practitioners and academics to discuss “enduring” issues of competition and consumer policy in more depth than is possible on the conference circuit. Thoughtful papers are commissioned and a court reporter is present to capture a transcript, which we then publish in alternate years in the *Loyola Consumer Law Review* or the *European Competition Journal*. The event is always adjacent to a marathon, and so far we have run, written and debated in Chicago, London, Boston and most recently—with this report which follows—in Dublin. We hope that the report is of interest and that it stimulates further running commentary as well! Our thanks to all participants in this year's event, to the Irish Competition Authority for assisting in preparing a challenging agenda, and to my colleague Justine Stefanelli at the British Institute for marshalling the various arguments into the final edited format.

Philip Marsden

ORDER OF PROCEEDINGS

Introduction: Philip Marsden

First Session: Competition law and consumer protection—the debate is no longer about whether these two should be integrated, the question now is how

Chair: Spencer Weber Waller, *Loyola University Chicago School of Law*

Paper author: Max Huffman, *Indiana University-Indianapolis School of Law*

Discussants:

Cavendish Elithorn, *Office of Fair Trading*

Melanie Aitken, *Canadian Competition Bureau*

Paul Gorecki, *ESRI*

Issues:

- How do we ensure that consumer protection issues are adequately resourced and attended to by competition authorities?
- How do we ensure that competition policy and consumer protection issues and cases are resolved with as little conflict as possible with the other area?
- How can competition authorities help strengthen consumer NGOs, and consumer redress generally?

Second Session: Conflicts of process v conflicts of values

Chair: Philip Marsden, *British Institute of International and Comparative Law*

Topic 1: Competition agency interaction with concurrent regulators (ie competition-related); and all-in-one models: conflicts of process

Paper author: Giorgio Monti, *London School of Economics*

Discussants:

Isolde Goggin, *Ofcom Advisory Committee Northern Ireland*

Imelda Maher, *University College Dublin*

Issues:

- Concurrency and conflicts of process: how best to manage jurisdiction and case resolution among “competing” agencies

- What is the rationale for concurrent jurisdiction to be given to sectoral regulators and a competition agency? If a regulator is given competition enforcement powers, is this a recognition that the regulator is expected to balance regulatory goals and competition enforcement goals? If there is a difference of view between two agencies with concurrent jurisdiction on enforcement of competition laws, how should that be resolved?

Topic 2: Competition agency interaction with Other Government Departments, other non-competition areas: conflict of values

Paper author: Edward J Janger, *Brooklyn Law School*

Discussant:

Philippa Watson, *City Law School and Essex Court Chambers*

Issues:

- Spotlight on financial services: when other policy areas override competition concerns, how best is this accomplished with a minimum of damage to the credibility of the competition regime?
- When OGDs request that businesses implement change (for environmental, social reasons, stimulating “innovation”, procurement, other policy rationales), how best do competition authorities engage in this process to ensure that this does not induce anti-competitive conduct?
- When competition laws and policy clash with other public policy goals, how should they be resolved? If they can be reconciled, what mechanism should be in place to do this? Who should do this? If other public policy goals should have primacy, should the competition policy issues still need to be articulated?

Third Session: Institutional design generally: administrative v judicial models v mixed

Chair: Spencer Weber Waller

Paper author: Vincent Power, *A&L Goodbody*

Discussants:

Stanley Wong, *Irish Competition Authority*

Bruno Lasserre, *Autorité de la concurrence*

Issues:

- What is the appropriate model for adjudication at first instance of competition law? Administrative or judicial or a mixed?
- Does the nature of remedies sought affect the choice, having regard to the legal system?

- If a decision at first instance is appealed to a judicial body, what should be the standard of review?

Other participants include:

Maurice Stucke, *University of Tennessee College of Law*

Bill Prasifka, *Irish Competition Authority*

Matthew Newman, *Bloomberg News*

Pat Massey, *CompEcon*

Paolo Palmigiano, *ComReg*

Gerald FitzGerald, *McCann Fitzgerald*

Margaret Gray, *Brick Court Chambers*

Moore McDowell, *University College Dublin*

Declan Walsh, *University College Cork*

Carlos Orci, *Basham Ringe y Correa and Kings College London*

Emily Gibson, *Irish Society of European Law*