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## A Roundtable Discussion

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# *THE ANTITRUST MARATHON*

## A ROUNDTABLE DISCUSSION

**Location:** British Consulate

**Address:** One Memorial Drive, Cambridge, Massachusetts

**Date:** Friday, April 17, 2009

**Moderated by:** Spencer Weber Waller and Dr. Philip Marsden

## PANELISTS' BIOGRAPHIES

CHRISTIAN AHLBORN is a partner at Linklaters in London. He practices in the area of EC competition law and EC state aid control, UK competition law and German competition law, including notifications to EC and national competition authorities. Prior to joining Linklaters, Ahlborn worked at the NERA economic consultancy in Cambridge, Massachusetts. He also worked at the Federal Cartel Office in Berlin and at the European Commission for Competition.

FEMI ALESE was a Senior Research Fellow at the Institute for Consumer Antitrust Studies at Loyola University Chicago School of Law. Prior to his appointment as a Senior Research Fellow, Alese was a Senior Lecturer at the London Metropolitan University. Alese is the author of *Federal Antitrust and EC Competition Law Analysis*. He is a solicitor in the Supreme Court of England and Wales, and a member of the bar of the State of New York. As part of his Fellowship at the Institute for Consumer Antitrust Studies, Alese studied challenged and litigated mergers in the U.S. and EU.

RICHARD BRUNELL is the Director of Legal Advocacy and Senior Fellow of the American Antitrust Institute (AAI), a non-profit advocacy and research organization. Mr. Brunell is also a

lecturer at Boston College Law School, and was a visiting professor at Boston University School of Law and Roger Williams University School of Law. He practiced antitrust law at Foley Hoag in Boston and in the Antitrust Division of the Justice Department in Washington. A contributing editor of the *Antitrust Law Journal*, Mr. Brunell is the author of numerous antitrust articles, including "The Social Costs of Mergers: Restoring 'Local Control' as a Factor in Merger Policy, 85 N. Car. L. R. 149 (2006). He wrote AAI's amicus briefs in the *linkLine* and *Leegin* cases, and argued before the Supreme Court in *linkLine*. He has testified before Congress and the Federal Trade Commission on resale price maintenance issues.

DR. PHIL BUDDEN was appointed Consul General to New England following the departure of the previous Consul General, John Rankin. Prior to his assignment in Boston, Consul General Budden was the First Secretary for the UK's US Science, Technology, Innovation and Business network, as well as technology policy, transatlantic relations and British-American business affairs. His foreign office career has also included postings in London to the European Secretariat, which advises the Prime Minister on EU strategies, and supported the UK's Europe Minister. He was also head of a Public Diplomacy effort that today has led to, among many other innovations, placing science at the heart of UK foreign and public diplomacy.

TERRY CALVANI practices antitrust law in the Washington, DC office of Freshfields Bruckhaus Deringer LLP. Previously he served as commissioner of the US Federal Trade Commission (1983-1990) where he was acting chairman during 1985 and 1986, and later as a member of the Irish Competition Authority and director of the Criminal Cartels Division. During that period, he was an active member of advisory committees for the EU Competition Directorate. From 1974-1983, Terry was professor of law at Vanderbilt School of Law teaching courses on antitrust law. Following his term on the FTC, he returned to private practice until his appointment in Ireland. Terry has served as chairman of several ABA Antitrust Section committees and two terms on its governing council. He is a member of the American Law Institute and serves on the advisory board of the Antitrust Bulletin. Terry has written and spoken extensively on antitrust issues. While in private practice, Terry has worked on acquisitions/joint ventures in a very large number of industries

and their review by numerous competition agencies. He has participated in civil and criminal investigations in many industries by both federal and state authorities. He has also provided antitrust counseling to a large number of companies and several trade associations.

A. NEIL CAMPBELL is a partner in the Competition, International Trade and Public Policy Group at the law firm McMillan in Toronto. His competition law practice covers merger clearances under the Competition Act and foreign investment reviews under the Investment Canada Act. He advises companies on marketing, distribution, grey marketing and joint venture issues, and he represents companies in cartel, abuse of dominance and other competition law proceedings. Campbell's trade practice concentrates on anti-dumping and subsidy proceedings; NAFTA, WTO, GATT, GATS, TRIPS, TRIMS and Canadian Internal Trade Agreement matters; export/import controls and trade sanctions; and investor-state disputes under NAFTA and bilateral investment treaties. Previously, Campbell taught business and law classes at several Canadian universities, including the University of Toronto and York University.

EDWARD CAVANAGH is a professor of law at St John's University School of Law in New York. Prior to entering the teaching field, he practiced law with two major New York City law firms. Professor Cavanagh is currently chair of the ABA Antitrust Section Committee on Ethics and Professionalism and a member of the Section's Antitrust Remedies Task Force. He served as co-chair of the Antitrust Section's Civil Practice and Procedure Committee from 2001-2004 and as vice-chair from 1997-2001. He also served on the Section's Civil Litigation Task Force in 2000-2001. Professor Cavanagh is a past chair of the New York State Bar Association Antitrust Section and currently a member of its Executive Committee. He is a reporter to the EDNY Committee on Civil Litigation and served as a member of, and reporter to, the Civil Justice Reform Act Advisory Group from 1991-1997. He is also a member of the SDNY/EDNY Committee on Joint Local Rules. Professor Cavanagh has lectured and published widely in the areas of antitrust, federal procedure and practice and complex litigation. He teaches Antitrust Law, Civil Procedure, Federal Practice and Law & Economics.

TIM COWEN is the general counsel for BT Global Services. Prior to that, he was general counsel of BT Ignite. He is a member of the BT Global Services Executive Team, with director-level responsibility. Mr. Cowen originally joined BT in 1991, after working in private practice at the Regulatory, Competition and Public Law Division. From 1994 to 1999, he was the head of European Law, responsible for all aspects of EU law and telecommunications regulation affecting the BT Group, and of the legal and regulatory team dealing with deregulation and worldwide alliances. From 1999 to 2000, he was promoted to chief counsel for competition law and public policy. Mr. Cowan worked for five years in private practice for the law firms of Lovell White Durrant and Baker McKenzie, in the London offices. He represents BT as a member of the International Chamber of Commerce Council and chairs the Development Board of the British Institute of International and Comparative Law, as well as the Board of the International Association of Commercial Contract Managers. He is a frequent speaker on management of commercial/legal departments and issues relating to multinational trading and has written numerous academic papers.

STACY DOGAN is a professor of law at Northeastern University Law School. Professor Dogan is a leading scholar in intellectual property and competition law. She has written many articles on the application of trademark and copyright law to the online environment, with a particular emphasis on the role of intermediaries such as Napster and Google. Her most recent article considers the role of antitrust law in regulated industries, and contends that antitrust courts have an important role to play in curbing "regulatory games." In the fall of 2008, she became the co-editor-in-chief of the *Journal of the Copyright Society*, a peer-reviewed copyright journal. She is also the incoming chair of the Intellectual Property Section of the Association of American Law Schools. Before joining the Northeastern faculty, Professor Dogan practiced with the Washington, DC, law firm of Covington & Burling, where she specialized in antitrust litigation. After law school, she practiced with Heller, Ehrman, White & McAuliffe in San Francisco and served as a law clerk to the Hon. Judith Rogers of the US Court of Appeals for the District of Columbia.

HARRY FIRST is a professor of law at the New York University School of Law. He published the first law school casebook dealing with business crime. He is an antitrust and trade regulation specialist, with teaching and research interests in both antitrust and business crime. From 1999 to 2001, while on leave from the Law School, First was the chief of the Antitrust Bureau of the Office of the New York State Attorney General.

HILLARY GREENE is an Associate Professor of Law at the University of Connecticut Law School where she is the Director of the Law School's Intellectual Property and Entrepreneurship Law Clinic. Most recently, Professor Greene was Associate Professor at the S.J. Quinney College of Law at the University of Utah where she taught intellectual property, antitrust, and patent law. Two of her most recent publications include *Guideline Institutionalization: The Role of Merger Guidelines in Antitrust Discourse* in the William and Mary Law Review (2006), and *Articulating Trade-Offs: The Political Economy of State Action* in the Utah Law Review (2006). She has also been a Visiting Scholar at the University of Pennsylvania Law School and a Visiting Researcher at Harvard Law School. Prior to teaching law, Greene served as Project Director for Intellectual Property at the Federal Trade Commission and as a litigation associate at Cahill, Gordon & Reindel in New York City. She is admitted to practice in New York and before the U.S. Supreme Court and the U.S. District Court, Eastern District in New York. Professor Greene currently serves on the advisory board of the American Antitrust Institute and is a contributing editor to the Antitrust Law Journal. Professor Greene's research and teaching interests focus upon intellectual property (with a particular emphasis on patent law), antitrust/competition policy and First Amendment Law.

KEITH HYLTON is a professor of law at Boston University School of Law. He has published numerous articles in American law journals and peer-reviewed law and economics journals. His textbook, *Antitrust Law: Economic Theory and Common Law Evolution*, was published by Cambridge University Press in 2003. Professor Hylton joined the Boston University School of Law faculty in 1995 after teaching for six years and receiving tenure at Northwestern University School of Law. At BUSL, he teaches courses in antitrust, torts, and labor law. In addition to teaching, he serves as Editor of the Social Science Research Network's Torts and Products Liability Law Abstracts and Co-

Editor of Competition Policy International, and he also is a former Chair of the Section on Torts and Compensation Systems of the American Association of Law Schools, a former Chair of the Section on Antitrust and Economic Regulation of the American Association of Law Schools, a former Director of the American Law and Economics Association, a former Secretary of the American Bar Association Labor and Employment Law Section, a former member of the editorial board of the Journal of Legal Education, and a current member of the American Law Institute.

PHILIP MARSDEN is Director of the Competition Law Forum and Senior Research Fellow at the British Institute of International and Comparative Law in London. He is a competition lawyer with a particular interest in abuse of dominance, consumer welfare, international competition issues and aspects of the law of the World Trade Organization (WTO) relating to competition policy, telecommunications and dispute settlement proceedings. Philip is editor of the European Competition Journal. Dr. Marsden earned his DPhil from Oxford University, an LLM in European Law from Leicester University, and an LLB and BA from the University of Toronto. He qualified as a Barrister and Solicitor at the Law Society of Upper Canada in 1991, and has been in private practice with law firms in Toronto, Tokyo and, most recently, with Linklaters in London. From 1994-96, he was a case officer with the Economics and International Affairs Branch of the Canadian Competition Bureau.

BECKET MCGRATH practices law at Berwin Leighton Paisner LLP in London. McGrath advises clients on all aspects of competition law, with an emphasis on behavioral issues, compliance, competition litigation and merger control. McGrath was formerly a Branch Director in the Competition Enforcement Division at the Office of Fair Trading (OFT), with responsibility for enforcing competition law in the media, sport and IT sectors. During his time at the OFT, McGrath led teams on numerous high profile cases, including two cases before the Competition Appeal Tribunal, and had a key role in the preparation of the competition provisions of the Communications Act 2003. For a transitional period, he was also responsible for the OFT's competition enforcement work in the financial services sector, including the OFT's relationship with the FSA.

MARK PATTERSON is an associate professor of law at Fordham University School of Law in New York. He received his B.S. and M.S. from the Ohio State University and his J.D. from Stanford University. He has been a member of the faculty at Fordham since 1995. Prior to that, he was the Harry A. Bigelow Teaching Fellow and Lecturer at the University of Chicago Law School and a law clerk for Justice John M. Greaney at the Supreme Judicial Court of Massachusetts. Patterson practiced law at Choate, Hall & Stewart in Boston from 1991-1993. His principal areas of interest include antitrust, corporations, and law and science.

ELBERT ROBERTSON is a professor of law at the Suffolk University Law School in Boston, Massachusetts. He earned a B.A. from Brown University, an M.A. from the University of Pennsylvania's Wharton School of Business, and his J.D. from Columbia University Law School. He teaches Administrative Law, Antitrust, Business Associations, Corporations, Criminal Law, Jurisprudence, Law & Economics, Legal Method, and Torts. His legal experience has included working as a litigation associate for Jenner & Block in Chicago, Illinois, and as a special antitrust attorney and advisor for the Office of General Counsel (Competition Division) for the Federal Communications Commission in Washington, D.C.

DANIEL SAVRIN is a trial lawyer at Bingham McCutchen LLP in Boston, Massachusetts. He represents clients in a wide range of antitrust, white collar defense and complex commercial litigation matters. Daniel has litigated matters in federal and state courts throughout the United States and in various arbitration venues and has provided counsel with respect to proceedings outside the United States. Daniel's antitrust and trade regulation practice includes the representation of individuals and corporations in criminal antitrust matters; civil enforcement matters; individual and class action civil litigation; merger-related proceedings and litigation; and counseling on trade regulation, distribution, and merger and acquisition issues. He is a frequent speaker and author on antitrust subjects. Daniel's white collar defense and business regulation practice includes the representation of both individuals and corporate entities in criminal and civil enforcement proceedings and related internal investigations; litigation; and the implementation of regulatory compliance

programs.

MAURICE STUCKE is a professor of law at the University of Tennessee School of Law in Knoxville, Tennessee. Stucke brought 13 years of litigation experience when he joined the UT College of Law faculty in 2007. As a trial attorney at the U.S. Department of Justice, Antitrust Division, he successfully challenged anticompetitive mergers and restraints in numerous industries, and focused on policy issues involving antitrust and the media. As a Special Assistant U.S. Attorney, he prosecuted a variety of felony and misdemeanor offenses, including running a weekly docket before the Honorable Thomas Rawles Jones, Jr. As an associate at Sullivan & Cromwell, Stucke assisted in defending Goldman Sachs, CS First Boston, and Microsoft in civil antitrust litigation. In 2008, Stucke was elected to the Advisory Board of the American Antitrust Institute, an independent Washington, D.C.-based non-profit education, research, and advocacy organization devoted to competition policy. In 2009, he was appointed Senior Fellow at AAI for a term of two years, elected as a member to the Academic Society for Competition Law, and appointed to the advisory board of the Institute for Consumer Antitrust Studies. In 2009, Stucke was asked to serve as one of the United States' non-governmental advisors to the International Competition Network. His scholarship has been cited by the OECD, competition agencies, and policymakers.

SPENCER WEBER WALLER is a professor of law and associate dean for research at Loyola University Chicago School of Law. He also serves as the director of Loyola's Institute for Consumer Antitrust Studies. He received his J.D. from Northwestern University School of Law, and his B.A. from the University of Michigan. He was a full-time faculty member at Brooklyn Law School for ten years until joining Loyola in 2000. Prior to his teaching career, Professor Waller served as a staff law clerk for the U.S. Court of Appeals for the Seventh Circuit. He also worked for the U.S. Department of Justice, first as a trial attorney in the Foreign Commerce Section of the Antitrust Division and later as a special attorney in the Chicago Strike Force of the Criminal Division. He then practiced at the Chicago law firm of Freeborn & Peters.