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## Introduction

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# *THE ANTITRUST MARATHON*

## INTRODUCTION

CONSUL GENERAL BUDDEN: For those of you who didn't meet me last night at the residence, my name is Phil Budden. I'm the British Consul General to New England. Those of you last night - you've seen the house. This is the other side of British operations in Boston, over here in Cambridge MIT. So you're very welcome here in the consulate. I am going to be nipping in and out with a few consulate matters that have come up today, but I am going to be here as much as I can.

I'll say three very quick things. First of all, we're delighted to have you here. One of the things that this British Consulate has that most of them around the U.S. don't is a room like this. And we've discovered that these are invaluable because having space at the drop of a hat that we can actually set aside and say yes, we want to partner with these people and create space for them to have their conversations is largely how we get our job done. So we're delighted to see you today and look forward to hearing your conversation.

Secondly, we've just had to go through an exercise where we had to take out a new lease and for the British public service this means we have to go back to first principles, and we have to answer the existential question: should we have a British Consulate in Boston? If so, how many people, what should it do, where should it be? We are at the end of the process so I'm much more relaxed talking about this now. We have convinced London that there should be a British Consulate in Boston even though there were suggestions that they could cover it from New York. That doesn't work too well in this town, for those who know Boston. Rivalry and some sports teams have some history apparently. But also we can't even cover it from Boston. We are actually in Cambridge. We're on the left bank of the Charles River here, right next to MIT.

What we've discovered in doing our jobs here is that actually an awful lot of people in Boston will travel, come across one bridge, but to get our job done, particularly on the high-tech side, we need to be right here at the heart of this hub of innovation. So out of that window is MIT, they're building a business school right there and MIT stretches all the way down to the engineering buildings at the end. This is where we need to be. We discovered the finance people will cross the river, the venture capital people, and the people running trillions of assets of management over there in the high-rise area by my house, they'll cross the river. The IP lawyers, they'll cross the river straight over here. People who won't travel are those from MIT who are so busy creating the high-tech companies. They're lazy but they're really smart. So we are going to be right here because this is where it all comes together, having a bit of space where we're able to bring people together. For those of you here in the Boston area and who are interested in any of the things we as a consulate do, we work across a range of high-tech issues from biotech, info tech, telecom, and we do it right here.

The final thing I was going to say – I was just telling Terry this – I've just come from working at our embassy in Washington for the last couple of years where I was primarily focused on telecom and Internet and software companies, one of which is now in this building. And competition policy was just a little addendum at the end of my list of responsibilities until something came along called *Hoffmann-LaRoche*.<sup>1</sup> I was told very early on in my posting that we were going to do something because the Supreme Court had granted certiorari or whatnot and there were going to be some British interests. So as a diplomat generalist, I immediately reached for the nearest competition lawyer who turned out to be Don Baker.

Don sat with me and talked me through what all these bit and pieces meant, and we ended up producing this small green booklet that you all are pretty familiar with. For me as a diplomat, it was a rather interesting introduction. Fortunately, it got me even closer to very smart people who were working on competition policy and it ended up being one of the main standards of what we did there, and I'm delighted my successor furthered my work in Washington. He was actually a lawyer out of the Department of Trade and Industry who was able to take it to new levels and understand what was going on. For me as a last

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<sup>1</sup> F. Hoffman-La Roche Ltd. v. Empagran S.A., 542 U.S. 155 (2004).

historian, my contributions to these were fairly limited, but one I did work on with Don Baker was a historical aside in Footnote 18 of the original English statute of the monopoly of 1623.

PROFESSOR FIRST: Or 24, there is a dispute amongst us.

CONSUL GENERAL BUDDEN: The dispute was ended by the British Embassy, finally. We decided 23.

PROFESSOR FIRST: I'll have to pass that on. I talked to a historian recently about this.

CONSUL GENERAL BUDDEN: You can appeal. Which said that back in blighty in those days provided for treble damages and double costs, which Don Baker was delighted about. Having a sense of history is fairly useful for a Brit in this town. The pilgrims landed just south of here in Plymouth. The Puritans landed in just across the way. There was a bit of a fracas in which we are going to be celebrating Patriot's Day. So having a good sense of history and being able to tell a pilgrim from a puritan and a red coat from a revolutionary turns out to be quite useful for a Brit.

I digressed. It's wonderful to have you here. I've made my welcome remarks, which I have to do as I provided the space. I've given away just how nerdy I am. I really love competition law. You don't get many diplomats saying that, but I'm interested in the substance. It's great to have you here. This is what we do at the consulate. We provide this space for people to have these interesting conversations. Thank you for coming together, and I look forward to joining you for as much as I can.

PROFESSOR WALLER: Thank you so much. We are so grateful for your being a co-sponsor and the reception last night, and to Tim Cowen and Phil Marsden who set the ball in motion. My co-host, if you don't already know him, is Phil Marsden who heads the competition law forum for the British Institute of International and Comparative Law. Welcome to the third Antitrust Marathon: Antitrust and the Rule of Law. For me, on behalf of Loyola University Chicago, and our Institute for Consumer Antitrust Studies, this is the first of five conferences and other events that celebrate our 15th anniversary. So I'm happy you're all here to participate in the discussion today on antitrust and the rule of law.

If you haven't already done so, please pick up any and all of the handouts that are outside. And I have been asked by our court reporter that in connection with our discussion you all have

the nameplates. So once we're rolling, when you want to make a submission, turn it up so we can keep track of the queue of who is going to speak and when, and I just ask that when you speak, particularly for the first time, if you would just identify your name so the court reporter can have that and of course speak slowly and be patient if she asks you to repronounce something or the spelling of a particularly odd name.

We are on the record, but prior to publication you'll all have a chance to edit your remarks so it will truly reflect your intent, not necessarily the words that came out. If you haven't already met him, Pete Bergan is Editor-in-Chief of the *Loyola Consumer Law Review*, which will be publishing both the issue papers in their final form and the transcript for today's discussion.

The format is going to be similar to what we have done in the past. The first marathon was in Chicago the Friday before the Chicago Marathon. The second antitrust marathon was in London just before the London Marathon. There is a pattern here. The fourth marathon will be in Dublin in October, the day after the Dublin Marathon. The formats are roughly the same. We hope you've read or at least skimmed each of the issue papers. The authors of those papers are going to very quickly summarize them in five minutes or so. We designated a commentator, which really just means that person gets to go first, offer a few thoughts, let us gather our thoughts, and then the general discussion begins. Phil and I will chair each of the sessions and basically serve as time keepers and keep the queue of who wants to talk and in what order. And I think those are really all the details. It's my pleasure to introduce my co-host and runner for Monday. We wish him well in his athletic endeavor. Phil Marsden, the first panel is yours.

DR. MARSDEN: Thank you very much. It's great to see so many familiar faces again. Some of you have participated in previous antitrust marathons. When Spencer and I came up with this gimmick about marathons, of course it was related to the fact that in such endurance discussions, we usually took on intractable subjects. So the first couple of marathons were about abuse of dominance and monopolization, and while these can seem like subjects without an end, continued discussion and sharing of views will get us closer to improving our understanding of different regimes.

Perhaps it's appropriate that the space the Consul General has provided for us today is the Watson and Crick Room because

I'm reminded of a paper Bill Kovacic wrote a while ago about the DNA of antitrust. The paper discussed the different forms of antitrust around the world and whether or not when they intermix and intermingle there is any form of mutation in some way or at least learning or improvement. Equally, my co-chair, Spencer, has written on whether or not the Chicago School is some form of virus. Like any virus, this can spread or be rejected, and one question that often comes up in our discussions is whether European competition policy is immune to the Chicago School in some way. Some of those topics I am sure will come up again today.