

CLPINZ Chair's report 2019

In August 2018, we held the 29th Annual Workshop of the Competition Law and Policy Institute of New Zealand at the Wellington offices of Chapman Tripp. It was the largest workshop we have ever had in terms of attendance, at least as far as anyone on the CLPINZ Board can remember.

We were extremely lucky to have Professor Joseph Harrington from Wharton School deliver the keynote speech. The first part of Professor Harrington's talk focused on collusion through public statements. Professor Harrington gave many examples of statements that had the ability to facilitate collusion and offered simple guidelines for the types of public statements that should be prohibited. The second part of Professor Harrington's talk focused on collusion when pricing is done by algorithms. There are many challenges in this area, such as whether or not platforms should be allowed to set prices, how to deal with outsourcing of digital pricing when one digital marketing agency has competing clients as well as what to do when the pricing algorithms adopted by rivals lead to collusive outcomes. Should algorithmic pricing be legal because there is no communication between rivals or should we prohibit pricing rules that have a tendency to lead to collusive outcomes? The keynote speech was thought provoking and showed that there is a lot of work to be done to sort out these issues. The discussant of the session, Dr Tom Hird from CEG Asia-Pacific, offered further food for thought by giving examples of blatant tacit collusion in spectrum auctions where firms were communicating by outbidding rivals as a punishment for deviating from the tacit agreement in another auction. While this may have sent a stern message to the rival and potentially stopped it from placing further bids, it is hard to see how such behaviour, that looks a lot like competition, could be banned without causing issues to competition elsewhere.

In the second session, David Blacktop from Blacktop Lawyers shared his insights into the trends in cartel cases in New Zealand in 2012-2017. According to David, the majority of the cases had been domestic cartels that had started from a shock in the market that made the firms look for ways to restore profits. David also discussed the trends towards individual focus in proceedings and for cartel cases to be settled, the latter of which had the unwanted consequence of not giving the courts a chance to develop substantive case law. John Land's commentary provided insights into how the very similar wordings in the cartel law were interpreted quite differently by the Courts of New Zealand and Australia. This session was chaired by Glenn Shewan.

Session three, chaired by Oliver Meech, was a panel discussion of administrative settlements used by the Commerce Commission. The experienced panel included Mary-Anne Borrowdale from the Commerce Commission as well as Miriam Dean, QC and Les Taylor, QC. It was certainly interesting to hear views from both sides that gave us a comprehensive idea of the pros and cons about the use of administrative settlements.

The Workshop Dinner was held at the Dockside restaurant that proved to be a fabulous venue. We were privileged to have Hon. Kris Faafoi deliver the pre-dinner speech where he talked about his goals for competition policy. Thank you, James Craig, for hosting the Minister's visit.



Day two of the workshop started with session four that covered the future of telecommunication regulation. Our speaker Sasha Daniels from Spark discussed the challenges that the Commerce Commission may face when implementing the new regulatory framework for fibre services that is based on the building blocks model methodology more commonly used for regulating the more static electricity, gas or water markets. The commentary for the session was provided by Dr Ross Patterson from MinterEllisonRuddWatts. The main point of Dr Patterson was that the fibre network should not be considered as a natural monopoly, due to competition from other network providers, and thus that fibre should not be regulated as one. The session was chaired by Simon Peart.

Session five discussed the possible issues with the introduction of market studies in New Zealand. The speaker of the session was Mike Tilley from Bell Gully who has been involved in market studies in the UK and Australia and thus was the ideal person to speak to us about this new tool. One of the issues Mike discussed was the vague “public interest” threshold in the current proposal that needs to be tightened to avoid costly false starts. Dr Richard Meade expanded on some of the ideas in Mike’s talk and left us with an interesting thought – should all oligopolies be subject to some basic information disclosure requirement on an ongoing basis? The session was chaired by Donal Curtin.

In session six, our speaker Sarah Keene from Russell McVeagh pondered how consumer law can be used to control the regulatory challenges caused by the collection and use of consumer data and the use of artificial intelligence without stifling their welfare-enhancing effects. Anna Ryan from Lane Neave provided astute commentary, and the session was chaired by James Craig.

In session seven, James Mellsop and Kevin Counsell of NERA Economic Consulting gave us an accessible introduction to the economic tools that are used in merger analysis, including assessing unilateral effects in auction markets, the risk of foreclosure in vertical mergers and the effects of a merger using a merger simulation. Reuben Irvine from the Commerce Commission provided commentary, and the session was chaired by Alan Lear.

In the last session, John Small from Covec looked at issues that may be coming our way in competition policy and regulation. John started by pointing out that New Zealand has a productivity issue and that weak competition is playing a role. He then discussed what he thought were or could become the issues in regulated industries as well as oligopoly markets in general, including insurance, transport fuels, banking and retail electricity markets. John suggested a basic ongoing information disclosure requirement for oligopolies, echoing the thoughts of Richard Meade in session five, with no apparent collusion between the two! Pat Duignan's commentary added an extra dimension by discussing the important role that imports play in the competitiveness of the markets. His message was to not let the anti-globalist views that seem to be gaining momentum to change that. The session was chaired by Lucy Cooper.

The AGM followed the last session. In the AGM the rules of CLPINZ were amended to be better fit-for purpose going forward. As a result, my title changed from the Director to the Chair of CLPINZ, and the Advisory Board is now the Board.

I would like to thank all our speakers, panellists, commentators and session chairs for contributing to the success of our 29th Annual Workshop. I would also like to thank Chapman Tripp for hosting our workshop at their premises, helping us keep down the registration fee.

In 2018/2019 we have continued to work with Conference Innovators (CI), including our personal secretariat, Charlotte Emery (nee Sloane), and have now fully completed the transitioning to the new secretarial service. One of the highlights of this year has been the launching of our new logo and website. We trust that the site offers a much-improved user experience and, as a bonus, looks very stylish! This website was designed by the web team at CI and Charlotte looks after the content. Charlotte has very quickly become our rock – she keeps us going forward and ensures that everything is done on time. Her attention to detail and professionalism have certainly lightened the workload of the chair. Thank you, Charlotte, for all your hard work with our institute. You have been everything we hoped for and more.

Our financials show that we made a healthy profit in the 2018-2019 financial year, after a small loss the year before 2017-2018. We have now come to expect this bi-annual fluctuation in profit, with a lean year the years of the Commerce Commission conference. So far, the profits of the good years have outweighed the losses of the lean years, which has kept us solvent. We do appreciate the support of the Competition Law and Policy community that has enabled us to continue having annual workshops. We will keep on monitoring the situation to ensure that our institute is financially sustainable to be able to deliver exciting workshops for our community for the years to come.

This year we continued having Board meeting via a 3-way video conference facility between Auckland, Wellington and Christchurch. We are grateful to Chapman Tripp for having the use of their video conference facilities, allowing us to conduct our board meetings without having to pay a penny on travel. The quality of the AV facilities has been superb.

Our 30th anniversary workshop will be held at Crown Plaza in Christchurch on 20-21 September 2019. Bringing the workshop to Christchurch was always going to be financially risky given that the majority of the Competition Law and Policy community resides in Wellington and that we sometimes even make a loss in Auckland that certainly has more people working in the area than Christchurch. However, we felt strongly about bringing the workshop to Christchurch where the institute was born 30 years ago. Those of us from Christchurch wanted to showcase the lovely progress our city has made in the past few years. I hope the delegates have the chance to explore all the new and exciting things the city has to offer. If you have any spare time, make sure you check out the new Riverside Market on Cashel Street – at the time of writing this report it has not yet opened but I am sure that

it will become my favourite place in Christchurch! Due to not hosting the 30th workshop in Wellington, we anticipated lower registrations than for the 2018 workshop, but a few weeks before the workshop it does look like we have a good uptake for the anniversary workshop albeit not what we saw in 2018. We look forward to an exciting programme, including a keynote speech by Dr David Evans, the Chairman of the Global Economics Group, based in Boston, who is one of the world's leading authorities on platform-based businesses in two-sided markets. Dr Evans will talk about how authorities can deter anti-competitive behaviour in digital platform markets.

It has been another great year for the institute. I would like to sign off by expressing my gratitude for the Board of CLPINZ that has worked hard to plan the 2019 workshop - James Craig, John Land, Alan Lear, Troy Pilkington, Neil Anderson, Glenn Shewan, Oliver Meech, Anna Ryan, Donal Curtin, Simon Peart and Alicia Murray. What a team! This is my last Chair's report and next year you will get a shiny new chair. My plan is to stay on the board as the immediate past chair until the next election in 2021.

We thank you for your contribution to the success of the institute this year and look forward to seeing you again next year.

A handwritten signature in black ink, reading "Laura Meriluoto". The signature is fluid and cursive, with a large, stylized loop at the end of the name.

Laura Meriluoto
Chair, Competition Law and Policy Institute of New Zealand