

Competition Law and Policy Institute of New Zealand

Chair's Report 2022

The 32nd CLPINZ workshop

Following the online delivery of CLPINZ's 2020 workshop due to the global pandemic, it was invigorating in 2021 for CLPINZ to find itself in the privileged position of being able to return to an in-person workshop format. With the spectre of snap lockdowns still looming large, the Board jumped on the hybrid bandwagon and offered participants the choice of attending the 2021 workshop either in person or online. One benefit of this was that despite New Zealand's borders remaining closed, some of our Australian colleagues were able to attend the workshop remotely, which was an exciting innovation and one that helped us to feel connected with our Australian counterparts despite the restrictions on trans-Tasman travel.

CLPINZ's 32nd annual workshop was held at Chapman Tripp's offices in Wellington on 6th and 7th of August. With it having been 2 years since workshop participants had last had the opportunity to get together in person, the atmosphere at the workshop was particularly convivial.

Our keynote speaker for the 2021 workshop was Professor Dennis Carlton, who spoke remotely from Washington DC on the topic of merger retrospectives. Dennis was a returning keynote speaker for CLPINZ, having travelled to New Zealand to deliver the keynote address at CLIPNZ 21st annual workshop back in 2010. On that occasion, Dennis spoke on the topic of "Use and Misuse of Empirical Methods in Antitrust". We were delighted to welcome Dennis back to the CLPINZ workshop, albeit virtually, and sincerely appreciated

him accepting our invitation to present virtually in light of New Zealand's borders being close to international travellers.

Dennis delivered a very engaging keynote address, demonstrating his natural talent for conveying complex economic principles clearly and in plain English. One reflection was that as well as reviewing merger decisions and examining levels of competition in markets both pre- and post-merger, competition authorities should also use retrospective merger analysis as an opportunity to review their modelling and assumptions for accuracy.

The keynote session was commentated by Lin Johnson, the New Zealand Commerce Commission's Chief Economist, who, again due to travel restraints connected to the pandemic, presented virtually from Sydney. Lin picked up on the point made by Dennis about the importance of reviewing modelling and assumptions, and noted that sometimes too great an emphasis may be placed on the likelihood of entry, expansion or imports constraining the merged entity.

Our speaker for session 2 was John Land from Bankside Chambers, who delivered an informative (and rather concerning) paper on the like implications of the proposed removal of the intellectual property exemptions from section 36 of the Commerce Act. Session 2 was ably commentated by Petra Carey who was at that time a Senior Associate at Russell McVeagh (now Partner). Session 2 was chaired by Russell McVeagh Partner Troy Pilkington.

Session 3 saw Dr Will Taylor, Associate Director at NERA and Gillian Blythe, CEO of Water New Zealand, discussing the interesting topic of the economic regulation of water, with Simon Peart from Chapman Tripp chairing the session. This illuminating session left many workshop attendees considerably better informed about the regulatory issues arising out of the 'Three Waters' reform (i.e.

drinking, storm and waste water), how the industry currently operates and the issues that have resulted from the existing, highly fragmented system.

In Session 4, our final session for the day, Australia's News Media Bargaining Code was placed under the microscope in what proved to be a lively panel discussion featuring:

- Wayne Leach, Head of Competition at King & Wood Mallesons and external Australian competition counsel for Facebook
- Patrick Crewdson, Editor in Chief at Stuff
- Allison Whitney, General Counsel at NZME

Glenn Shewan from Bell Gully chaired that final session.

Last on the agenda for Friday, and undoubtedly the jewel in the crown of the workshop programme, was the 2021 AGM. A new Board was voted in for a 2-year term and we farewelled longstanding contributor to the CLPINZ Board, Simon Peart.

After the AGM, workshop attendees relocated to Dockside Restaurant and Bar where they enjoyed the workshop dinner and after-dinner speech delivered by Todd McClay, MP for Rotorua and National spokesperson on Commerce and Consumer Affairs.

Saturday morning commenced with Session 5, a very topical session on antitrust and sustainability, chaired by Alicia Murray of DLA Piper. Our speaker for this session was Jordan Ellison, Partner at Slaughter and May who joined us virtually from Brussels, and our commentator was Reuben Irvine, Principle Economist at the Commerce Commission.

Our final session for the workshop, Session 6, centred on another topical issue, specifically the consumer data right and open banking. Our speakers for the last session were Rosannah Healey, Partner at

Allens in Australia, and Josh Daniell, Chief Executive Officer at Akahu, New Zealand's open finance platform. That session was chaired by Donal Curtin, Managing Director at Economics New Zealand Limited.

Thank yous

The seamless delivery of CLPINZ 2021 hybrid workshop was a credit to Charlotte Emery and her team at Conference Innovators, to whom I extend my sincere thanks for their organisation, support and careful attention to every detail.

A very big thank you also to the CLPINZ Board for all of their effort in planning and delivering the 2021 workshop, and to all of the 2021 workshop speakers.

Looking to the 2022 workshop

At the time of writing, the CLPINZ Board is very much looking forward to seeing everyone at the CLPINZ 33rd workshop, which is being held at Simpson Grierson in Auckland on Friday 22 and Saturday 23 September 2022. Due to the success of last years "hybrid" model, we are once again offering conference delegates the option of attending virtually or in person.

The keynote speaker for this year's workshop is Professor Fiona Scott Morton, the Theodore Nierenberg Professor of Economics at the Yale School of Management. Fiona will be speaking on the topic of misuse of market power prosecutions, with Ben Hamlin, barrister, commentating on the session.

Other sessions will cover a range of interesting and topical issues including the collaborative activity exemption, market studies, the extension of the unfair contract terms regime to small business contracts, and whether behavioural remedies should be permitted in merger cases.

Finally, my sincere thanks to the current Board for all of their work over the past year to bring the 2022 workshop programme together: Laura Meriluoto, John Land, Alan Lear, Donal Curtin, Glenn Shewan, James Craig, Troy Pilkington, Alicia Murray, William Taylor, Chris Noonan, Bradley Aburn, Jennifer Hambleton, Hayden Green, Ben Hamlin and Jessica White.