

## **CLPINZ Director's report 2018**

In October 2017, we held the 28<sup>th</sup> Annual Workshop of the Competition Law and Policy Institute of New Zealand in Auckland at the premises of Simpson Grierson, where we trialled a one-day format. Our distinguished keynote speaker, Tim Cowen talked about competition law enforcement in the tech and telecom sectors, focusing on how big data is assessed as a competition issue in the EU. There is no doubt that accumulation of data can lead to a concentration of markets when the holders of data have unique access to the data that gives them ability to better discriminate and cater offerings. The fact that this is not always bad, as consumers may value the customised services, contributes to the complexity of the issue. However, as Tim pointed out, the reduced incentives for innovation as market concentration increases is a major concern. Dr Richard Meade's discussion provided a clear summary of the main points as well as offered some simple economic ideas to structure one's thinking around the topic.

In the second session, Lucy Cooper from Chapman Tripp, Troy Pilkington from Russell McVeagh and Glenn Shewan from Bell Gully provided their thoughts of the recent merger cases Z-Energy / Caltex and Vodafone / Sky as well as about the Commerce Commission's merger clearance process in general. The panellists had all been involved in the recent high-profile cases and not always on the same side, which made this session interesting! The session was capably chaired by James Mellsoy from NERA Economic Consulting who led the discussion by posing questions to the panellists.

The third session, chaired by Anna Ryan from Lane Neave, looked at "unfinished business" in competition law and policy. The session started by Murray Sherwin from the New Zealand Productivity Commission providing thoughts about the link between competition and productivity and the "laggardly economic performance" of New Zealand, explained to at least some extent by the lack of competition. Murray also highlighted the challenges posed by the increased concentration in the digital economy, tying this talk nicely to our keynote speech. Our second speaker, Wayne Leach from King & Wood Mallesons at Sydney, explored the boundaries of collusion, discussing concerted practices laws aiming to bridge the gap between what fits in the legal definition of collusion, i.e. involving "understanding", and what is currently outside of the legislation being less than an understanding but still leading to lessening of competition.

The fourth session included a panel discussion on the Fair Trading Act and the Credit Contracts and Consumer Finance Act. Anna Rawlings from the Commerce Commission discussed the process the Commission follows to deal with the large number of complaints they receive. Anne Callinan from Simpson Grierson discussed cases under the Fair Trading Act where the emphasis has been on food products as well as country of origin claims. Oliver Meech from Minter Ellison Rudd Watts discussed cases under the Credit Contracts and Consumer Finance Act. The session was chaired by James Craig from Simpson Grierson.

The fifth and last session of the day, chaired by John Land from Bankside Chambers, included thought-provoking presentations from Alex Sundakov from Castalia and Oliver Vincent from Powerco. Alex talked about the challenges of introducing new technologies, such as energy storage, in the electricity network where we have clearly separated monopoly and competitive segments but where emerging technologies may blur the boundary. The energy storage, in particular, straddles the monopoly distribution and the competitive retail networks. Oliver discussed the proposal of Powerco to invest on a trial basis in energy storage to fully understand how the market might adopt and use the new technology.

The AGM followed the last session, where the roles of the Director, the secretariat and the Advisory Board were up for election. All the sitting members of the board were re-elected, and we are also

happy to welcome Simon Peart from Chapman Tripp and Alicia Murray from DLA Piper on the board. I was re-elected as the Director after one year in the role, and my duties will finish at the AGM of the 30<sup>th</sup> anniversary workshop of the Institute to be held in 2019.

The Workshop Dinner was held at the fabulous Harbourside Ocean Bar Grill, where the free-flowing wine may have contributed to the lively atmosphere! Our after dinner speaker was Honorable Justice Fogarty QC, recently retired from the High Court, who shared his views on how judges make decisions, and memories of some of his competition cases, *Clear v Telecom* and *Fisher & Paykel*. His former opposing counsel in *Clear v Telecom*, Jim Farmer QC, provided an impromptu reply. A very special moment indeed!



I would like to thank all our speakers, panellists, commentators and session chairs for contributing to the success of our 28<sup>th</sup> Annual Workshop. I would also like to thank Simpson Grierson for hosting our workshop at their premises, helping us keep down the registration fee.

As you may be aware, our institute and workshop are run by the volunteer effort of an incredibly talented advisory board. Many thanks to James Craig, John Land, Alan Lear, Troy Pilkington, Neil Anderson, Glenn Shewan, Oliver Meech, Anna Ryan, Donal Curtin, Simon Peart and Alicia Murray for their contribution towards the institute and for making this year's workshop a success.

Before the 2017 workshop we started the transitioning our secretarial services to Conference Innovators (CI), a Christchurch-based conference organising company, and this transitioning is now almost complete. With CI, we have a personal secretariat, Charlotte Emery (nee Sloane), but we also have access to a team of finance and digital marketing specialists. It has been a joy to work with Charlotte over the past year and a bit and we look forward to many more years of her service to the institute. She is that person who appears to have the sixth sense to always know what we need to do next! Now that we have all but completed the transitioning, we will start the work of redesigning our website to make it more modern and user-friendly. Our aim is to launch this new website before we open up registrations for our 30<sup>th</sup> anniversary workshop.

We are a not-for profit organisation but have to ensure that our institute is financially viable to keep going. Our financials show that we made a small loss in the 2017-2018 financial year. This was to be expected due to the Commerce Commission Conference being held that year, our workshop being held in Auckland where the attendance is always a bit less than in Wellington, the workshop being only one day in length giving us less registration revenue and the extra costs of transitioning our secretarial services. This financial year we are forecasting a profit, which should offset any losses we may incur next year, when we again go head to head with the Commerce Commission Conference and thus expect fewer registrations. We do appreciate the support of the Competition Law and Policy community that has enabled us to continue having annual workshops.

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 2018 workshop will be held at the offices of Chapman Tripp in Auckland. We look forward to an exciting programme, including a keynote speech by Professor Joseph Harrington from the Wharton School, University of Pennsylvania. Professor Harrington's talk, titled 'Collusion without the Smoke-Filled Room: From Public Statements by Wetware to Algorithmic Pricing by Software', will discuss some modern methods for collusion that our regulators need to be aware of when combatting cartels and collusion.

It has been another great year for the institute. We thank you for your contribution to the success of the institute this year and look forward to bringing you something special in our anniversary year in 2019!

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