

CLPINZ Director's report 2017

In 2016, the 27th Annual Workshop of the Competition Law and Policy Institute of New Zealand attracted the largest attendance we have had for a while. We are sure that our distinguished keynote speaker, Dr Jorge Padilla from Compass Lexecon, had something to do with that! Dr Padilla delivered a great talk that first took us back to basics by defining the types of actions that should and should not be addressed by competition policy and then suggested the use of an error-cost framework for designing a legal framework that minimises the cost of type 1 and type 2 errors given the specific behaviour. This was a highly relevant talk for the Section 36 review and provided new insights for policy debate. Jack Hodder QC provided astute commentary.

Session 2 gave us a nicely-balanced panel discussion on what New Zealand's Section 36 should look like, including representation from business (Chris Bowden, Air NZ), academia/Australia (Rhonda Smith, University of Melbourne) and regulator (Lilla Csorgo, Commerce Commission). Whether we should have an effects test or a purpose test and whether the Counterfactual test has outlived its best-before date were hotly debated topics.

Day 1 finished with a session on vertical price fixing comprising speaker Stephen Ridgeway from King & Wood Mallesons and commentator Phillip Williams from Frontier Economics. Stephen discussed the complex nature of the Flight Centre case, where Flight Centre is both in a vertical and in a horizontal relationship with airlines and where the agency status of Flight Centre also plays a potentially important role.

After the workshop dinner at Trade Kitchen where the mood was merry, we started bright and early on Day 2 with an eye-opening talk by Professor Caron Beaton-Wells from the University of Melbourne that challenged our thinking about leniency. Leo Farmer from Meredith Connell delivered some on-point comments.

We then had a session with High Court judges Justice Denis Clifford and Justice Jillian Mallon, who reflected on the competition law cases they had been involved in. Justice Mallon gave us insights on how judges set pecuniary penalties and raised some interesting thoughts about potential procedural applications. Justice Clifford had some of us laughing out loud talking about his experiences with input methodologies. His request for lawyers to put arguments in context and to start from the beginning rather than the 9th mile resonated with me personally! Both judges also gave good advice for economic experts: keep it simple, do not use economic jargon or assume that the judge remembers the arguments made in the previous case.

In session 6 we had an impressive panel that included Katie Rusbatch from the Commerce Commission, John Palmer from Todd Energy and Kieran Murray from Sapere Research Group discussing the new collaborative activities exemption proposal.

After lunch we had another impressive panel with Vanessa Oakley from Chorus, Michael Wigley from Wigley & Company and Chris Abbot from Vodafone discussing the Telecommunications Review. The chair, Ben Gerritsen from First Gas Wellington, did his best to find some disagreement points amongst the panellists. There was probably more consensus than disagreement, though, with the panel mostly agreeing that the legal framework needs to be simplified and that incentives to invest must remain strong.

Last but not least, session 8 speaker Ben Hamlin from the Commerce Commission discussed the origin of, and the economic rationale for, our recent unfair contract terms (UCT) legislation and how ACCC and the Commerce Commission have sought to implement their UCT legislation. Oliver Meech

provided some excellent commentary. The session was an excellent reminder of the practical importance of the new UCT law and of the considerable guidance material already available from the Commission.

I would like to thank all our speakers, panellists, commentators and session chairs for contributing to the success of our 27th Annual Workshop. I would also like to thank Chapman Tripp 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 John Land, Alan Lear, Troy Pilkington, Neil Anderson, Glenn Shewan, Oliver Meech, Anna Ryan and Donal Curtin, who are currently on the board, as well as Simon Peart, who again offered great assistance to our team. Also, on behalf of the Board, I would like to express our deepest gratitude to John Land for the work he has done for the Institute as the Immediate Past Director.

This past year has been a year of some big changes for CLPINZ. Our long-serving secretary Val Browning retired after 14 years with us. I would like to take this opportunity to thank Val for her loyal service to our institute. She has worked hard in front and behind the scenes to make sure that our workshops run smoothly and has been a much-appreciated source of institutional knowledge having had a much longer tenure with the institute than any of us on the Advisory Board.

In 2017 we started our new relationship with Conference Innovators (CI), a Christchurch-based conference organiser. Our secretariat Charlotte Sloane has been a valued addition to our team. With CI, we have the personal relationship with Charlotte but also have enlisted a team of specialists that can help us across all our needs going forward, such as financial services and digital marketing. Look out for our new website development before the 2018 workshop!

We also moved this year from having a Board meeting via a 2-way video conference facility between Auckland and Wellington, with me travelling to Wellington to attend meetings, to 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 two Christchurch-based board members have certainly enjoyed the brand-new Christchurch premises of Chapman Trip in the new PwC building!

For our 2017 workshop we are trialling a 1-day format, which may become the new norm for the years when the Commerce Commission Conference is being held. Our workshop will be held at the offices of Simpson Grierson at the Lumley Centre, and we look forward to an exciting programme, including a keynote speech on the competition and regulatory issues arising from big data delivered by Tim Cowen from Preiskel & Co.

Laura Meriluoto
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