



## **ANNUAL LECTURE FEATURE: DR. PHILIP MARSDEN**

**Dr. Philip Marsden was the featured speaker at the Fair Trading Commission's 15<sup>th</sup> Annual Lecture, which was held March 15 at the Accra Beach Hotel, where he explored the topic *Competition Authorities: Keeping Pace with Technology, Commerce and Consumers*. Dr. Marsden is the Deputy Chair of the Enforcement Decision Making Committee of the Bank of England, a Professor of Law and Economics at the College of Europe, Bruges and a case decision maker at the UK's Financial Conduct Authority, the Payment Systems Regulator and the Office of Gas and Electricity Markets.**

### **1. How did your interest/career in competition law begin?**

I was actually working overseas in Tokyo as a commercial lawyer and became fascinated in a dichotomy: US exporters were complaining to their trade authority back home about apparently lax antitrust enforcement in Japan, that allegedly tolerated business practices that kept out American products. The problem was these practices were legal under American law, and the key US business complainant used them all the time to keep foreign imports out of its own market. They had also been deemed efficient by US courts. That irony and hypocrisy fascinated me and worried me when the powerful trade ministries around the world were arguing for changes to competition law.

**2. Your career spans academia , the financial industry, regulation and law. How does each of these roles/areas contribute to the creation of fairer marketplaces?**

I hope it creates a synergy within me and with all my roles of a greater understanding of business practices, of policy motives, of enforcement abilities and failings and new thinking through academe. I try to share all that whenever I can, particularly with new competition authorities.

**3. Your Annual Lecture presentation highlighted a number of challenges that a competition authority may encounter in the execution of its mandate. What are some of the critical challenges, both general and specific to the issue of keeping pace with technology?**

In too many investigations to mention, authorities find evidence of rivals treating each other as friends, and viewing their customers and consumers as their enemies. Such collusion and acting in concert needs to be met firmly by authorities who work on behalf of consumers. Competition authorities need tough fines to punish and deter conduct but also need a range of other tools to surgically reach the bad apples, and I praise efforts to jail miscreants or at the very least ensure that they are disqualified from ever working in the industry again.

[With regard to technology], authorities are always playing catch up with new business activity and bad practices are more prevalent and more elusive to grasp, especially online. I'm arguing for much faster enforcement and even codes of conduct to set out ex ante pro-competitive rules of the road for level playing fields, so that companies can compete on their merits and consumers see more benefits.

**4. Would you say there are critical elements that are found in any well-regulated territory, no matter the size/conditions? If so, what are they?**

Speed of enforcement is key; but so is transparency. If an authority decides to close a case, I strongly argue for that decision to be explained publicly. Also, prioritisation is so important. It can be enticing to start working on massive global deals but if you aren't working for your island consumers every day then political legitimacy can wane. We emphasised this in Jersey and Guernsey [two of the Channel Islands, which are located in the English Channel. These are self-governing British Crown dependencies], where we took staff off international merger reviews unless there was a clear and obvious link to the islands - and instead focused work on the ports and local network operators.

**5. Was this your first time in Barbados? How was the experience?**

It was, and my wife and I loved it. We enjoyed travelling around the island to the many beauty spots, the gardens and caves and meeting so many people, all of who were kind and friendly, but also with a firmness that is admirable.

**6. Final thoughts?**

I would love to visit again and help the Fair Trading Commission, and indeed CARICOM itself, build a strong enforcement network to ensure the tech giants are working for us and not just manipulating us. Free search [engines] and social media are nice, but we need to make sure we are not contributing ourselves, unwittingly, to the development of business activity that forecloses rivals, or exploits our data and reduces choice and quality.