



UNIVERSITY OF MALTA
L-Università ta' Malta

RIGHTS AND REMEDIES CONFERENCE 2011

A conference organised by the Jean Monnet Chair funded with support from the European Commission and in collaboration with the Assoċjazzjoni Maltija Għall-Istudji Tad-Dritt Ewropew (AMSDE)

RIGHTS AND REMEDIES IN A LIBERALISED AND COMPETITIVE INTERNAL MARKET

**Corinthia Hotel St George's Bay, St Julians
Thursday 15th September 2011**

This conference is open to the general public but will be of particular interest to the legal profession, academics, consultants, advisors, regulators, public officers, business and industry, non-governmental organisations and students.

Programme

8:00 Registration

8:30 Chairman's introduction

Professor Eugène Buttigieg *Jean Monnet Chair, University of Malta*

Remedies against Anti-Competitive Practices – The Role of Public Enforcers and Private Remedies

8:45 Remedies imposed by public authorities in competition cases

Professor Ian S Forrester *QC Partner, White & Case LLP, Brussels*

9:15 Private antitrust enforcement in the EU: retrospective and prospective

Dr Assimakis Komninos *Commissioner, Hellenic Competition Commission*

**9:45 Recent developments – a major leap boosting the rights and remedies available under
Maltese competition law**

Dr Sylvann Aquilina Zahra *Director General, Office for Competition, Malta Competition and
Consumer Affairs Authority*

10:15 Questions and discussion

10:30 Coffee break

Human Rights Protection and Competition Proceedings

**10:50 Competition enforcement and human rights after the Treaty of Lisbon: the state of play and
the (near) future prospects**

Dr Arianna Andreangeli *Edinburgh Law School, University of Edinburgh*

11:20 Fundamental human rights and competition law: a local perspective

The Hon Mr Justice Silvio Meli *former President of the Commission for Fair Trading*

Protection against Anti-Competitive State Action

**11:50 Private rights versus public powers: is private enforcement a viable means of tackling
competition distortions caused by state action?**

Professor Leigh Hancher *University of Tilburg and Of Counsel, Allen & Overy LLP, Amsterdam*

12:20 Questions and discussion

12:35 Lunch

The Communications Sector – Remedies for a Competitive Market

- 14:00 Reconciling ex post vs. ex ante disciplines and pan-European vs. national interests in electronic communications markets**
Peter Alexiadis Partner, Gibson, Dunn & Crutcher LLP, Brussels
- 14:30 Competition in electronic communications in Malta – learning from the past to regulate the future**
Dr Paul Edgar Micallef Chief Legal Advisor, Malta Communications Authority
- 15:00 Public antitrust enforcement in the communications sector – Malta's experience**
Dr Lisa Abela Senior Case Officer, Office for Competition, Malta Competition and Consumer Affairs Authority

Sports Media Rights – Exclusivity versus Competition versus Consumers

- 15:15 Sports media rights and exclusivity - implications of the ECJ's forthcoming FA Premier League and Murphy judgment**
Aidan Robertson QC Brick Court Chambers, London
- 15:45 Questions and discussion**
- 16:00 Coffee break**

The Energy Sector – Remedies for a Competitive Market

- 16:20 EU energy liberalisation and competition law: national enforcement and law making in an era of cross-national agendas and powers**
Duncan Sinclair Thirty Nine Essex Street Chambers, London
- 16:50 Regulation of resources in Malta: public and private remedies against anti-competitive practices from the sectoral regulator's perspective**
Dr Andre Buttigieg Senior Legal Officer, Malta Resources Authority
- 17:20 Public antitrust enforcement in the energy sector – Malta's experience**
Dr Lisa Abela Senior Case Officer, Office for Competition, Malta Competition and Consumer Affairs Authority
- 17:35 Questions and discussion**
- 17:50 Chairman's closing remarks**

Registration Fee: €50 (standard)
€30 (full-time students)

- Delegates will receive a free copy of the conference book and CD containing all the conference papers that will be published in January 2012.
- Entities and law firms that register more than two paying delegates for the conference will receive a free copy of the 2010 Rights and Remedies Conference book 'Enforcing One's Rights Under EU Law' (published May 2011)

Registration deadline: 12 September 2011

To register visit <http://www.um.edu.mt/laws> or contact Ms Elisa Attard or Mr James Bonnici on 23402534/23403460/23402786 or email jm.conference@um.edu.mt for further information.

Conference Organiser and Chairman

Eugène Buttigieg is Associate Professor of European and Comparative Law and the holder of the Jean Monnet Chair of EU Law with the theme ‘Rights and Remedies in an Integrated European Market’ at the University of Malta. He holds law degrees from the University of Malta (LL.D.), the University of Exeter, UK (LL.M. with distinction in European Legal Studies) and the University of London, UK (Ph.D. in Competition Law). His main teaching and research areas are the institutions and legal order of the EU, judicial protection and remedies under EU law, EU and comparative competition law, EU and comparative consumer law and EU and international intellectual property law. He has published widely and is the author of, amongst others, *Enforcing one’s Rights under EU Law* (Gutenberg Press 2011), *Competition Law: Safeguarding the Consumer Interest. A Comparative Analysis of US Antitrust Law and EC Competition Law* (Kluwer 2009), Supplement 45 of the *International Encyclopaedia of Laws – Intellectual Property* (Kluwer 2008) and chapters in *Anti-Cartel Enforcement Worldwide* (Cambridge University Press 2009), *Citizenship Policies in the New Europe* (Amsterdam University Press 2007, revised 2nd edn 2009), *Guide to European Company Laws* (Sweet & Maxwell 2008), *Economic Loss Caused by Genetically Modified Crops* (Springer 2008), *Damage Caused by Genetically Modified Organisms* (De Gruyter 2010), *The Modernisation of EU Competition Law Enforcement in the EU* (Cambridge University Press 2004), *Competition Cases from the European Union* (Sweet & Maxwell 2008, 2nd edn 2010) (co-authored) and *Merger Control Worldwide* (Cambridge University Press 2005, revised 2008) (co-authored). He is a member of the EU’s EUDO-Citizenship network of experts and was a board member of the Malta Resources Authority between 2001 and 2009 and a member of Malta’s Copyright Board from 1994 to 2005. He has acted as advisor to various regulatory bodies and government ministries and companies. He is the secretary-general of the Maltese Association for European Law (AMSDE).

Panel of Speakers

Lisa Abela graduated Doctor of Laws from the University of Malta in 1999 and obtained a Masters degree in commercial law in 2004. She commenced her apprenticeship and legal practice in civil litigation and then proceeded to join the Corporate Department of Deloitte (Malta) where she was primarily involved in the restructuring of companies through mergers & divisions under the Companies Act. In 2005 she joined the Consumer and Competition Division as a Legal Officer at the Office for Fair Competition. She is currently Senior Case Officer at the Malta Competition and Consumer Affairs Authority where she is involved in both antitrust and M&A investigations in terms of the Competition Act.

Peter Alexiadis is the founding partner of the Brussels office of the international law firm Gibson, Dunn & Crutcher LLP, and holds postgraduate legal qualifications from the Universities of London, Sydney and Thessaloniki. His practice specialises in all aspects of competition law, communications policy and regulation, and the licensing of intellectual property. He has also been a Visiting Professor and the course coordinator of the King’s College London, LLM course on ‘Competition Law and Regulated Network Industries’ since 2007, having also been a Lecturer at the MBA programme at Strathclyde University in Scotland for a number of years.

Mr Alexiadis has acted as external counsel in some of the largest mergers in the TMT sector (*e.g.*, *Vodafone/Airtouch*, *MCI/Sprint*, *Epson/Sanyo*, *Seagate/Maxtor*, *Vivendi/Activision*, *Carlyle/Commscope*) and has represented a range of clients on abuse of dominance actions in network industries (most recently acting as counsel to Netia in the Decision of the Commission vs. Telekomunikacja Polska, and representing Si.mobil in its pending appeal to the General Court against the Commission’s Decision under Article 102 TFEU). He also has experience in the application of State aids schemes in relation to network sectors, especially as regards broadband deployment policies, digital switchover incentives, data centre investments, and energy compensation schemes.

He is well known for a number of landmark regulatory studies which he has conducted over the years for the European Commission on convergence and the current EU Regulatory Framework for electronic communications, and his involvement in market reviews in the communications sector across a range of jurisdictions in Europe, Africa, Asia and the Middle East, especially for National Regulatory Authorities. He has also acted as an external legal consultant to the European Commission’s Telecoms, Media & IT

Unit at DG Competition for a period of three years. He was one of a handful of European legal experts invited to speak at the joint hearings in May 2002 of the FTC and DoJ on the interface between antitrust and intellectual property.

Mr Alexiadis publishes and speaks widely on the interaction of competition law and competition policy, having been the EU Affairs correspondent for the *European Intellectual Property Review* and the *Utilities Law Review* for many years. He has consistently been listed as a leading international practitioner by peer review publications in competition law and communications law (e.g., *Chambers*, *Global Counsel*, *Who's Who*, *European Legal Experts*, *Legal 500*), and was named as one of The American Lawyer's "Star Laterals of the Year" for 2003 when joining Gibson Dunn.

Arianna Andreangeli (Laurea in Giurisprudenza, Rome LUISS; LLM, University College, Dublin, PhD, University of Birmingham) is Lecturer in Competition Law at Edinburgh Law School, University of Edinburgh. Dr Andreangeli's research interests lie in the area of EU and domestic competition law, both substantive and procedural. Her monograph *EU Competition Enforcement and Human Rights*, published by E Elgar in 2008, explored the interplay between the effective application of the antitrust rules in the EU with the rights of due process enjoyed by the investigated parties. She is especially interested in exploring how the competition rules can be effectively applied so as to safeguard genuine rivalry in the market while safeguarding the concerned actors' economic freedom and incentive to innovate and invest. Her work on the application of Article 102 TFEU to the IT industry was published in the *European Law Review* ((2009) 34(4) 586) and in the *Common Market Law Review* ((2008) 44(3) 863).

Sylvann Aquilina Zahra graduated as Doctor of Laws from the University of Malta in 1995. In 1996 she was awarded a Magister Juris Degree (First Class) from the University of Oxford in European and Comparative Law. Dr Aquilina Zahra was in May of this year appointed Director General of the Office for Competition within the Malta Competition and Consumer Affairs Authority. Prior to this she was senior legal counsel within the Parliamentary Secretariat for Consumers, Fair Competition, Local Councils and Public Dialogue within the Office of the Prime Minister focusing particularly on competition and consumer policy. She has previously worked within the Consumer and Competition Department, the European Commission's Directorate General for Competition and the Office of the Attorney General. She is also a visiting lecturer at the University of Malta.

André Buttigieg is currently Senior Legal Officer at the Malta Resources Authority, a role which requires active involvement in issues regarding the liberalisation of the Maltese energy market, the fulfilment of fair competitive practices and the transposition and implementation of the Third Energy package in Malta.

Ian Forrester QC practises European law with lawyers from 8 jurisdictions in the Brussels office of White & Case. He has practised as an advocate in Scotland and as a barrister before the English courts. He has participated in many competition cases before the European Courts, the European Commission and national competition agencies. He represented the European Commission before the European Courts in the *Magill* case about refusals to license by dominant companies, UEFA in the *Bosman* case about professional football, Microsoft in its cases before the CFI, and NDC in the *IMS* case. He specialises in the fields of competition, trade, sport, broadcasting and pharmaceutical regulation, having acted in contentious proceedings for Du Pont, Canon, Microsoft, Toyota, GlaxoSmithKline, Pfizer and other leading companies. He has lectured on EC legal and policy topics to academic and private bodies in many countries, and has published extensively on these themes. His numerous articles on competition law include an annual survey of EC competition law developments in the *Oxford Yearbook of European Law*, 1981 to date. Professor Forrester has also published papers on trade issues on topics from anti-dumping to WTO, and industry-focused articles on pharmaceuticals. He was appointed Queen's Counsel in 1988, and Visiting Professor (1991) then Honorary Professor and Honorary Doctor of Laws (2009) at Glasgow University. He has served as an arbitrator under the rules of the International Chamber of Commerce and the International Centre for Settlement of Investment Disputes. He is a Trustee of the European Union Baroque Orchestra, and an Elder of St. Andrew's Church of Scotland in Brussels.

Professor Forrester was admitted to the Faculty of Advocates (the Scottish Bar) in 1972, the New York State Bar in 1977, and the English Bar in 1996. He is the head of White & Case's worldwide pro bono practice.

Leigh Hancher is Professor of European Law at Tilburg University, the Netherlands and Of Counsel, Allen & Overy, Amsterdam. She holds an LL.B. (Hons) from the University of Glasgow, an M.A. from the University of Sheffield and a Ph.D. from the University of Leiden. Leigh Hancher has worked both as a legal advisor and as an academic for many years. She has published widely on many aspects of EU competition and state aid law. She is also Director of the European Law and Energy Policy Programme at the Florence School of Regulation, EUI, Florence.

Assimakis Komninios is a Commissioner and Member of the Board of the Hellenic Competition Commission. Previously, he was a practitioner with an international law firm in Brussels and with law firms in Athens and Edinburgh. He has been involved in various landmark cases before the European Court of Justice and the EU General Court, including *Syfait*, *GlaxoSmithKline*, *Lélos*, and *Microsoft*. He graduated with honours from Athens Law School and holds a LL.M. degree from the University of Cambridge, a second LL.M. degree from New York University, and a Ph.D. from the European University Institute. He is a visiting professor at *IREA - Université Paul Cézanne Aix - Marseille III* and a visiting fellow of the Centre for Law and Governance in Europe at University College London (UCL). Assimakis Komninios is the author of *EC Private Antitrust Enforcement - Decentralised Application of EC Competition Law by National Courts* (Hart Publishing, 2008) and a co-author of the 2009 Study on *Quantifying Antitrust Damages: Towards Non-binding Guidance for Courts*, which was prepared for the European Commission. He has also edited and written a number of books, articles and contributions in the broad area of EU competition law.

Silvio Meli obtained his Doctorate in Law from the University of Malta. Earlier he read Economics, Sociology, Philosophy and History of Mediterranean Civilisation, successfully obtaining his B.A. (General) (Part I) with distinction. He furthered his studies at the Faculty of Theology, Malta, where he read Philosophy and Theology, and at the Ecclesiastical Tribunal of Malta where he read Canonical Marriage Jurisprudence and Procedure. He successfully followed a post-university course in Jurisprudence and Human Rights organized by the University of Luton in Strasbourg, France. He also obtained his Postgraduate Diploma in European Community Competition Law and his Postgraduate Diploma in European Community Law from King's College, University of London, London, England.

He has a wide forensic experience. He served as Senior Counsel for the Republic and was appointed to the office of Magistrate in 1990. In the Magistrates' Courts he presided over Courts of both Civil and Criminal Jurisdiction. He was the Senior Magistrate. He is now a Judge of the Superior Courts.

He has served as President of the Juvenile Court, and was the President of the Commission for Fair Trading from its inception. He has presided over several Boards of Inquiry and National Commissions which included that establishing the ideological and administrative basis for the eventual establishment of Local Councils in Malta and that establishing a national policy and unitary structure for the recovery and rehabilitation of those who abuse of addictive substances. He was a member of the Commission for the Administration of Justice for over thirteen years and was Deputy-Chairman of the Judicial Studies Committee. Furthermore, he is a member of the International Association of Youth and Family Judges and Magistrates; has been elected to the Competition Law Forum of the British Institute of International and Comparative Law; of the International Competition Network, and of the European Association of Competition Law Judges, of which he is also a Member of the Executive Board. He is also a Committee Member of the Augustinian Institute of Malta.

He was also deeply involved in the drafting of Council of Europe International Civil and Criminal Law Conventions concerning corruption which were eventually adopted by Member States. He is visiting lecturer and examiner in Philosophy of Law at the Faculty of Laws at the University of Malta and at the South Texas University, United States.

He is the author of many articles on various legal and philosophical topics published both locally and abroad. He has written a book *Judgements of the Malta Commission of Fair Trading* on Maltese fair competition law and co-authored *Competition Cases from the European Union* edited by Ioannis Kokkoris and published by Sweet & Maxwell, now in its Second Edition. He is also a contributor to the *Antitrust Encyclopaedia*, an on-line encyclopaedia on competition law.

Paul Edgar Micallef graduated from the University of Malta as doctor of laws in 1984. Subsequently he undertook a comparative study of small claims procedure at the University of Birmingham where he read for a M.Jur. degree. He has worked as legal adviser with different public regulatory bodies including the former Consumer Affairs Department [1992-96] and the Planning Authority [today MEPA] [1996-2001]. He currently holds the post of Chief Legal Adviser with the Malta Communications Authority. In the course of his career has been involved in the drafting of laws on electronic communications, postal services, consumer protection and travel.

Aidan Robertson QC practises English and EU law at Brick Court Chambers in London. He has extensive experience of all aspects of EU and Competition Law. He has appeared in numerous cases in the English Courts and in the ECJ and General Court at EU level. He is currently acting in the leading EU media rights cases of *FA Premier League -v- QC Leisure* and *Murphy -v- Media Protection Services* concerning broadcast rights to English Premier League football matches, in which judgment is due to be handed down by the ECJ on 4th October 2011. He also acts in a wide variety of other EU law matters involving areas as diverse as agriculture and tax.

He is co-editor of Vaughan & Robertson's *Law of the European Union* and a contributor to *Competition litigation: UK practice and procedure* (2010) both published by OUP. He teaches the postgraduate competition law course at Oxford University, where he is a visiting lecturer, having formerly been a full-time university lecturer and fellow of Wadham College prior to taking up full time practice at the English Bar. His full CV is available at the Brick Chambers website www.brickcourt.co.uk.

During the conference, Aidan Robertson QC, who is part of the team of counsel representing the FA Premier League in Joined Cases C-403/08 & C-429/08 *FA Premier League* and *Murphy* (Opinion of AG Kokott delivered on 3 February 2011), will consider the likely implications for licensors, licensees and consumers of sports media rights, in particular whether exclusivity will continue to be permitted, as well as the wider impact on EU free movement and competition law. He will also look at forthcoming developments in wholesale supply obligations imposed at national level in the UK on media rights suppliers.

Duncan Sinclair M.A., LL.M (Cantab) was recently listed in The Lawyer's "Hot 100" across the UK legal profession, and has been a Barrister specialising in EC/competition law and sectoral regulation/liberalisation for some 16 years.

For over 5 years, Mr Sinclair was a co-head of legal and head of competition law at OFGEM, the UK energy regulator and competition authority. He now represents clients in various fora, including before the Courts, the Competition Commission and sectoral regulators. He is widely published on competition law and energy issues in particular (for example the *Butterworths Competition Law Encyclopedia* - editor/chapter author on energy).

Recent work includes a High Court damages claim for tort (energy generation failure); a High Court stand-alone damages claim based on abuse of dominance; intervening in a follow-on damages claim on behalf of a competition authority; advising venture capitalists on energy regulatory issues, and advising regulatory authorities on the implementation of the Third Package of EU liberalisation legislation.