

Peter Freeman, Chairman, Competition Commission
Speech at the Competition Commission's 60th Anniversary
27 November 2008

My Lords,
My Ladies,
Honoured Guests,
Ladies and Gentlemen

Welcome to the Competition Commission's 60th Anniversary Dinner.

Can I first thank Bill Kovacic (Chairman of the US FTC), Philip Lowe (Director General of Competition) and Bruno Lassere (Président of the Conseil de la Concurrence) for their excellent and highly pertinent remarks earlier in the evening.

Can I also thank the Secretary of State and his Department for hosting this Dinner and making Lancaster House available to us. May I also thank all those—and there are many both at the CC and on the Lancaster House staff—who have worked so hard to organize things tonight.

May I also extend—or repeat my extension of—a warm welcome, on behalf of the Commission, to all of our friends and guests who are here tonight. Can I particularly mention that we have no fewer than four former Chairmen of the Commission present—Sir Sydney Lipworth, Sir Graeme Odgers, Sir Derek Morris, and we are particularly honoured to see the longest serving of all, Sir Godfray Le Quesne.

I am so glad to see you all. And can I remind you this is a birthday. Whilst the Commission does not award gifts or prizes, particularly not to those who appear before it, this is nevertheless a celebration and I hope you are all having a great time.

It is my very pleasant task to introduce the Secretary of State Lord Mandelson. He is our host; he is also our principal Guest. He is no stranger to the world of competition, or indeed to this present position, having occupied it in 1998. His connections with the Commission go back much further. Indeed his grandfather, Herbert Morrison, later Lord Morrison of Lambeth, was, 60 years ago, Lord President of the Council. Herbert Morrison had earlier announced in July 1946 that it was the Government's intention to introduce legislation to inquire into the effect of monopolies and restrictive practices and to take appropriate action. The President of the Board of Trade, then a certain Harold Wilson, later Lord Wilson of Rievaulx, was engaged in the establishment of the Monopolies and Restrictive Practices Commission and the search for suitable chairs and members (a task which recurs from time to time). The Act itself (The Monopolies and Restrictive Practices (Inquiry and Control) Act) was a fairly modest affair. I have a copy of it here—all 22 sections, establishing a Commission to report on matters referred to it by the Board of Trade. And the Commission itself, under its first Chairman, Sir Archibald Carter, late of the India Office, was also a modest affair—reflecting the modesty of its powers. But from that original body grew not only the present Competition Commission but also, through various legislative routes, and detours, the OFT, and arguably, the CAT. (It is always wise to say 'arguably' in the presence of the CAT President).

The original Commission's role was to assess whether monopolies or agreements were 'in the public interest'. The Bill's sponsors declined to define this. Herbert Morrison said (22 April 1948, 2nd Reading) 'We thought it right that the Commission must be the judge

of the public interest'. Harold Wilson said 'We have tried our best to work out such a definition and failed'.

That legal benchmark has largely been superseded—we are essentially a competition authority now and firmly anchored in the European Competition system—but there are still some important traces of that 1948 model around and visible.

First—impartiality. Harold Wilson said in the 2nd Reading debate in Parliament 'I can certainly, and most willingly, give this House a pledge that the Commission will be impartial'. I hope his successor would feel able to say the same.

Second—judgment. Herbert Morrison said 'We want to leave them free to come to a conscientious judgment (as to what they conceive the public interest to be)'. Well, nowadays we judge against more specific criteria—SLCs and AECs, but it is still very much a matter of conscientious judgment.

Third—the members. Ten in 1948, some 45 now, with inquiry groups and deputy chairmen. And certainly not selected in quite the same way as those in 1948 when personal recommendation (and non-recommendation) were the norm. The basic requirement, (as set out in a memo of 11 October 1948 (RRD McIntosh) was 'people who can see one jump ahead'. I hope nowadays we can manage a few more jumps than one. And then there was gender. Harold Wilson promised, (as reported in a note of 27th July 1948) from RC Bryant to Sir James Helmore (Permanent Secretary at the Board of Trade) to 'consider a capable woman who shopped at the Co-op but was not in politics'. I am not sure similar criteria are still applied today.

But there is a more serious side to all this. The 1948 Commission was set up at a time of great economic difficulty in the aftermath of the controlled economy of World War II. It was, in Harold Wilson's words (letter 18 August 1948 to Sir Stafford Cripps) all about 'a new drive in productivity'. As the February 1947 Economic Survey (Cmd 7046 para 141) had said 'There is now no place for industrial arrangements which restrict production, prices or employment'. A Board of Trade memorandum (to the Committee on the Distribution of Building Materials) said 'The economic circumstances which gave rise to most restrictive agreements have gone. These agreements grew up as a means of protecting those engaged in industry from the effects of a shortage of work and of empty order books' (1948).

The Board of Trade also emphasized that 'The Government does not ... adopt an attitude of sweeping hostility to all monopolies and restrictive agreements, which may possess good as well as bad features ... It considers it better to judge each particular case on its merits...'. Things have moved on a little since then.

It doesn't take a genius to draw a parallel with present economic circumstances. I am sure we would all agree that independent and well-based institutions are still needed to make proper judgments in any particular case. That requirement continues. But even in the present difficulties, this is not the time for jettisoning the hard won benefits of a clear, widely supported competition policy, which has worked so effectively over the past decade, in favour of monopolies, cartels and restrictions on production. Flexible and pragmatic in application we may be, but the main principles of competition cannot be compromised without grave risk to economic wellbeing and the wellbeing of consumers.

I am sure such gloomy notions are a long way away from our celebratory thoughts tonight. Secretary of State, we are delighted that you are back in your old department—albeit with a few changes, not least in its name, and we look forward to hearing you.