

Women & Antitrust Voices from the Field

Vol. I | Curation & Foreword by Evelina Kurgonaite

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Siún O’Keefe is Manager of the Academy at the Netherlands ACM. ACM’s Academy organises training courses for ACM’s employees, and advises the Board on learning and development. From 2013 to 2018, Siún was Senior Strategy Adviser at ACM. She coordinated ACM’s international network, and advised on corporate strategy, speeches and communications. From 2008 to 2013, Siún was Senior International Adviser at the Netherlands Competition Authority (NMa). From 2003 to 2008, she worked as case handler at the authority. In 2003, she worked as interim référendaire at the European General Court. An Irish lawyer, Siún lectured European and Competition law from 1993 to 2002 at the Universities of Limerick in Ireland and Nijmegen in the Netherlands. She studied Law at University College Cork, College of Europe, Bruges, and King’s Inns, Dublin.



Claudia Koken is the founder of C-law Competition Lawyers, a boutique law firm in competition law based in Amsterdam. With some 20 years of experience Claudia worked as an associate and partner specialising in competition law at Baker McKenzie, Norton Rose Fulbright (Amsterdam and Brussels) and Dutch law firms. Claudia started her career in 1998 at the Netherlands ACM. She features in Chambers Europe, The Netherlands as a leading individual in EC competition law. She is also a guest lecturer in competition law at Tilburg University. Claudia is co-founder of W@CompetitionNL.

How did you get involved in W@Competition?

In February 2017, I was invited by the intrepid Evelina Kurgonaite to speak at the Inaugural Conference of W@Competition in Brussels, on “The E-Commerce riddle”. As a multifunctional authority, the Netherlands Authority for Consumers and Markets (ACM) was, at that time, keen to underline the links between consumer protection and competition when it comes to dealing with digital platforms. We were conducting a study on online advertising from a competition perspective, and had also fined a number of online stores for breaching consumer rules. Two years on, ACM continues to combine its enforcement efforts in competition, sector regulation and consumer law in the digital world. We have an investigation running on Apple’s App Store and are working on improving terms and conditions in the contracts used by online platforms, while also running consumer awareness campaigns targeting fraudulent online stores.

I found the W@ conference format unique and very appealing. I had already joined a smaller networking group, “Women and Competition”, run by an ACM colleague, Anke Prompers. In June 2017, I spoke at a W@ symposium on the Commission’s final report on the e-commerce sector enquiry. This led to my writing a chapter with a colleague, Bart Noé, in *Digital Markets in the EU*, a University of Nijmegen publication. That probably wouldn’t have happened without the impetus provided by W@.

I think W@ is an excellent initiative. I have been involved in conference organisation for many years through my work at the former NMa,¹ the ACM and the International Competition Network. We have so often had problems finding female speakers. It is hard to believe that it should be so difficult, in this day and age, and that change should creep so excruciatingly slowly. It’s marvellous to have had Margarethe Vestager as Competition Commissioner, and as even the OECD is putting gender

¹ Precursor to the ACM.

and competition on the agenda, it seems like a good moment to advance the issue. Now, I am working on launching W@CompetitionNL in the Netherlands together with co-founder Claudia Koken. I know that conference organisers and recruiters are already making use of this platform of information on female competition professionals.

Why do you think it is so important to work on improving the visibility of women in competition?

When I first started lecturing in Ireland, in 1993, we were proud to have equal numbers of men and women studying law, but then saddened to see that when it came to professional success, the women appeared to have so much difficulty in advancing their careers. This waste of talent can only be to the disadvantage of the decisions made by competition professionals, which have a considerable influence on the shape of economic development. I firmly believe there are solutions to these difficulties.

We need to ensure that there are women at the table when project leaders for important cases are being chosen, or we will never get diversity. We need to make sure that the timing of our in-company courses does not exclude employees with family commitments – scrap the 8 o'clock breakfast meetings and the late dinners. Bonding can also be done over coffee, and lunches are easily organised. Ensure that when you advertise for a chief economist, you refrain from adding a long list of “essential requirements” – experience tells us that the women will disqualify themselves from applying, and the men will overlook the criteria they don't meet and apply anyway. Ensure that we have sufficient role models within our organisations, so that people are brave enough to be seen to employ childminders and cleaners to conduct domestic tasks, rather than somehow pretend to do it all themselves. Ensure that we put women professionals forward as speakers in panels, and provide them with the support in their preparation, that they may not seek as easily and

automatically as their male counterparts. The tone at the top is crucial. I have seen very often, that once the head of the organisation insisted that a female speaker/candidate be found before proceeding, this was successful. W@ can help, but support from the top is still necessary.

Since 1 September 2018 Martijn Snoep has been the chairman of ACM: a former De Brauw partner and a highly experienced competition lawyer with over 25 years of private practice experience. What can you say about his influence in day-to-day practice at the ACM? Any specific changes in policy?

There are some issues on which Martijn has strong views. He has spoken in the press on his views in relation to the application of competition law to the self-employed – he sees a danger of over-enforcement there, which may have contributed to harmful competition in labour standards and the rise of the working poor. Also, he believes it important that we do not overlook smaller transgressions when deciding which investigations to prioritise. Sometimes what competition specialists see as a small transgression, is a major issue in the public perception. To retain public trust, we need to be mindful of such mismatches. He also sees a danger of under-enforcement in the application of competition law to vertical price-fixing. In cases where the effect on inter-brand competition may appear to be limited, intra-brand or retail competition may be affected. That can have a significant negative effect on consumers and, as such, falls within our mandate. In short he is a proponent of what he calls “impactful enforcement”.

Martijn is very supportive of attempts to improve diversity of all kinds within ACM, as was his predecessor. At ACM, we have a “pink network” of LGBT colleagues who run a social network. We are running courses to promote diversity, for example, we had a workshop on autism last year; we are actively hiring people with disabilities and are currently participating in a course to further unbiased screening in the recruitment

of new employees. ACM has women at board level and at management level. So I find things are easier now than they were in my earlier years working in the Netherlands.

Do you see a cultural difference in how competition problems are approached in the different jurisdictions?

I found it strange adjusting to a civil law system, when I first came to live in the Netherlands. I had studied law at University College, Cork, received a masters in EU Law in Bruges, and was called to the Irish bar in 1996. I lectured in European and competition law from 1993 to 2002 at the Universities of Limerick in Ireland and Nijmegen in the Netherlands. EU law applies in both jurisdictions, and competition law rules are fairly standard. There are differences in how the law is implemented. The Dutch authority is free to conduct on-site inspections of undertakings without a warrant, and can impose fines directly on companies and on individuals, while the Irish authority cannot. I think public enforcement is more challenging in Ireland.

On the other hand, the Irish authority is very good at working behind the scenes, and facilitating changes in government policy so as to refrain from market distortions in the first place, which has led to liberal commercial trading rules in Ireland over the years. In many ways, the Dutch have a more formal, structured system than the Irish. Many pharmacies are closed in the Netherlands on Saturdays. Primary schools are closed half-days on Wednesdays. The Irish workforce is arguably more flexible, with more service-directed policies. Of course, in Ireland, where there is an island economy, with a smaller population, it is probably easier to build a dominant position and to abuse it, than it is in the Netherlands.

However, as authorities, we struggle with many similar dilemmas. We are both dealing with complicated market changes in sectors such as health and energy, both dealing with the revolutionary changes brought by online

trading. It can be difficult in both jurisdictions to convince the court of the severity of an infringement. Both the Irish and the Dutch authorities have to contend with a demanding judiciary, strict on the rule of law. The European Commission's Director General of Competition Johannes Laitenberger spoke recently of the need for a focus on "evidence-based antitrust". This approach has arguably been visible for some time in the Dutch courts, where there has been an emphasis on demanding empirical studies, a thorough investigation and a determination based on facts and data. Demanding standards are not bad for an authority – as Judge Collins of the General Court likes to remind us, "he who asserts must prove". However, it means the employees of the authority have to develop a very high standard of detection and analytical skills if they are to be successful enforcers. This demands that we are a step ahead of the game when modelling our courses. So I am learning a lot in my new job.

Diversity and inclusion are important subjects for the ACM as authority. As stated in the ACM's Annual Report 2018, the ACM helps us to broadly detect problems in the market, to understand them and subsequently chose the best solution. It's important for ACM that all employees feel "at home", regardless of background and gender. As an employee with a foreign background and law training outside the Netherlands, what you can say about your first years of working in the Netherlands, and at the ACM? Was it easy to adapt to the Dutch ways of working? Any particular differences? How is that after so many years of working and living in the Netherlands?

I have been very lucky with my colleagues in the Netherlands. In most European countries, it would not be possible for a non-national to work within the Competition Authority. Following a brief period as interim référendaire at the European General Court, I started as a case handler at the Netherlands Competition Authority (NMa) in 2003, just in time to witness the modernisation of competition law enforcement, with the introduction of Regulation 1/2003, which coincided with the Dutch

Construction Cartel investigations. Then from 2008 to 2013, I coordinated the authority's international network, which gave me extensive experience of working with other competition authorities within the ICN and ECN. A few other authorities have foreigners working within their ranks, but not many. The advantage of the ICN is that it allows authorities to benefit from each other's experience, both in case work and in the development of legislation.

I was very pleased to be part of the strategy team at the time of the establishment of ACM in 2013. While in this role, I advised on corporate strategy, speeches and communications within the ACM. I'm very proud of the success of the multifunctional authority in the Netherlands. When it comes to joined-up thinking, we have, I feel, proven the synergies in combining energy, telecommunication and transport regulation with consumer protection and competition enforcement, in a way that not many states could have achieved. There are cultural differences, of course, between the different disciplines, but the trick is to find the richness in the differences, rather than seek some kind of cultural superiority. That thinking applies to different disciplines and areas of expertise, but it applies equally to different nationalities and different abilities. We have a natural tendency to seek out those with whom we agree and who share our interests, but if we just dare to think outside the box, we see that diversity is enriching.

Since March 2018, you have been Manager of the Academy at ACM. A new role, compared with your previous tasks and responsibilities at ACM. What do you like about your new role?

The ACM Academy is a unit responsible for organising training and educational courses for ACM's employees, and advises the board on learning and development. My new role allows me the opportunity to use my knowledge of the organisation to help improve its performance. The Academy is working to change courses, to suit the employees. For

example, we are trying to move away from a rigid scale classification, whereby only employees on a particular scale have access to a particular course, so that also promising employees on a lower scale may be allowed to develop their talents – you can grow grey waiting for a civil service scale to change! Similarly, we are trying to alter the build of some courses, so that they allow people with family commitments, caring for small children or elderly parents to participate. This means not organising courses that extend too long into the evening hours. It means facilitating working at home and dialling-in to meetings.

In 2004, when the enforcement of competition law was modernised, many speculated that enforcement would become more challenging – authorities would no longer have access to a range of “notified” agreements from which they could work-up leads. However, the authorities followed with leniency programmes and sharpened on-site inspection tools. Again today, with the growth of private enforcement of competition law, we hear commentators asserting that leniency will decline and that public enforcement will be threatened. Again, as authorities we will have to retrain our employees, to educate them in *ex officio* enforcement, including digital search and analysis, to hone their detection skills in a world of big data and sophisticated algorithms. Training and education are central to such change management and it is very satisfying to be playing a part in engineering these changes.

It must be great to coach and help colleagues in their career paths, development and making the right choices in work – life balance. You have four (young) children. Do you see any overlap between managing a big family such as your own and managing the ACM Academy? Does it help you in any way? How is your work – life balance? How do you manage it all?

I feel there are many professionals active in competition who firmly believe that they owe their position solely to merit, and are unaware of

the privilege they enjoy, be that due to their background or their gender or their native language. At the end of the day, everyone has advantages as well as talents. It is great to be in a position to assist colleagues in developing those talents. I don't believe in right or wrong choices when it comes to work – life balance, that's something everyone has to figure out for themselves. As for combining domestic and professional tasks, I think it is important to be selective in who you work for, and in who works for you. I have an excellent team at work, and another excellent team at home: plus a resilient husband and four capable, independent children who bring themselves up more or less. They show me no mercy, and when recently, I bemoaned the complexity of my life, I got the brilliant response – “just manage it, Mum!”. I hope that in launching W@Competition in the Netherlands, Claudia and I, with our top team and board, will be able to help people to manage, and to make full use of, their talents as competition professionals.

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In this first volume of Women & Antitrust, leading competition professionals from around the world present reflections and forecasts on topical issues in antitrust and competition law and policy. Nestled among the exchanges are insights into the professional paths of the women interviewed. Through personal anecdotes, they share perspectives on their chosen roles, if and how gender has informed their career choices, and offer advice to young practitioners interested in joining this field.

This volume has been published in cooperation with W@Competition. A second volume will be published in cooperation with Women's Competition Network (WCN).

With contributions by: Academy of the Netherlands Authority for Consumers & Markets; AILI Consulting; AlixPartners; Allianz; Ashurst; Baker McKenzie; BHP Billiton; Bowmans; Brazilian Administrative Council for Economic Defense; Chiomenti; C-Law; Cobalt Legal; Competition & Consumer Commission of Singapore; CS Associados; Cuatrecasas; Danish Competition and Consumer Authority; DG COMP; Freshfields Bruckhaus Deringer; Gattai, Minoli, Agostinelli & Partners; Gilbert + Tobin; Google; Hannes Snellman; Hogan Lovells; HSBC; Infonavit; King & Wood Mallesons; McDermott Will & Emery; Mexican Federal Economic Competition Commission; New South Wales Department of Customer Services; Nortons Inc; O2 Telefónica UK; Oxera; Renmin University; RBB Economics; Siemens; Spanish National Markets and Competition Commission; Sullivan & Cromwell; Swedish Competition Authority; Tauil & Chequer, associated with Mayer Brown; thyssenkrupp; UK Competition and Markets Authority; United Nations Conference on Trade and Development; University of East Anglia; US Department of Justice; W@; ZX Ventures.

35 € - 40 \$ - 30 £

Concurrences
Antitrust Publications & Events

