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Standing Up for Convergence and Relevance in Antitrust

Liber Amicorum Volume II

Foreword by Philip Marsden

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Foreword

PHILIP MARSDEN*

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I didn't meet Fred Jenny on a plane. That may seem, odd. If we redeemed our combined air miles, we might make some airlines fail or at least flail. No, while we were on the same short hop, we didn't speak. The flight was from a conference at the European University Institute to an OECD Competition Committee meeting. Another Philip has written in *liber amicorum* Volume I about how well headmaster Jenny chaired such grand affairs. My first brush with Fred was more up close and personal. We shared the same row. Fred had commandeered the empty chair between us with a giant pile of papers he was methodically reading, marking up or discarding. I was a young competition official, and desperate to catch his eye. I had written the speech my head of agency had just delivered in Fiesole, and had also written the country paper that would be discussed the next day in Paris. Fred was a giant of competition law, economics, institutions and policy already – and this was in the early 1990s. I would have loved to have had a minute's chat about the issues I had poured my heart into in the papers – a proposal for a network of competition authorities, and an assessment of the relevance of the concept of non-discrimination in antitrust law enforcement. I didn't want to distract the great man, though, and as it was I had my hands full with my then one-year-old daughter, squirming on my lap. And then the unthinkable happened. She went very quiet and a bit pale – never a good sign with the motion sick – and after that, the deluge. It could land either on the papers of Judge Frédéric Jenny, or me. I ensured that my suit took the brunt of the explosion. Apologising profusely, I headed to the bathroom, even half-climbing over the seat back so no debris would land on Fred. Getting back to our row just before we landed, Fred gave me a quick look (I like to think) of curiosity rather than disdain, for the seat beside him was now free of papers, and I could buckle up my little one – now sweetly shattered – and pray that some force would suck me out of the aircraft and into oblivion. The OECD meeting the next day went well – as far as I could tell – Fred had, of course, read every

* Professor Philip Marsden has worked on trade, competition, financial services and digital issues, as a government official, academic and practitioner. He has benefited from Fred's expertise in all of these areas for his entire career. Long may both continue !

paper and had pointed comments for everyone, which also served to move the debate on. At an interminable reception in the evening, I was heading for the door when Fred was suddenly before me. I expected to be blanked entirely, if recognised at all, but without even breaking stride, he gave a mischievous smile and said, “Leaving so soon ? I hope she is feeling better.” Sweet. Professional. To the point.

That trip was my first introduction to Fred, but also to one of the grand institutions of competition policy. Over the years our paths crossed more and more, and we started sparring – primarily in articles. I was very fired up about a couple of issues – mainly trade-and-competition – related – but these were only a tiny part of Fred’s vast repertoire. I was thus amazed when he bothered to counter some of my arguments in one of his papers, mentioning me by name (the honour !). I learned a lot from his critique – though we likely still disagree. Me with less sound and fury, signifying nothing anyway – and he with that precise, cool intellect, busy then as the great chair of the Trade and Competition Working Group at the WTO. I invited him to give a dinner speech at a grand transatlantic antitrust conference I used to chair in London. His speech was inspiring and intellectual, and as international as ever. He had a sentence or two in there dismantling some of his host Marsden’s reasoning and rhetoric. Stiff upper lips dropped, mildly aghast, but I couldn’t have been happier. If my arguments were of no value, or weren’t in danger of having some impact, they wouldn’t have drawn any fire. Not least from Fred, who didn’t suffer fools or trifles. Later the same year we found ourselves at a conference in a developing country – if there is a third volume of this *liber amicorum* it should be devoted solely to Fred’s contribution to those economies – and debated our little hot topic directly. I was in intellectual heaven, and because I knew this was one of millions of issues Fred could discuss, and was all the more grateful for the care and focus with which he cared to address my points. Later on he invited me to join a group he was leading to a little jeweller he knew (of course he did – Fred always knows the best restaurant, club or point of interest), where we negotiated some amazing deals for our loved ones. Fred, as ever : global impact, local knowledge.

My final vignette for this foreword comes from the six years that Fred and I sat on the board of the UK competition authority. The OFT was incredibly lucky to have such an expert. He’d arrive in the morning, impeccably dressed and fully read-in (I imagine an empty seat next to him on the Eurostar piled with a rapidly shrinking pile of papers), engage indefatigably in the strategic agenda of the authority, and then depart, usually for a long flight around the curve of the Earth, to his next engagement – often in a developing country just starting out on the road of competition policy. Fred has helped so many such economies immensely. But his value to the UK was strong too. The OFT may have been a sophisticated agency, with an advanced and well-developed regime, but it wasn’t having the kind of impact it should have had, not least being plagued by an institutional fear of losses on appeal. The government had decided that one

solution would be to merge the OFT with the Competition Commission. The chance to craft a new regime, not from a standing start but from a position of experience and with the resources to do so, inspired us all. Fred brought invaluable expertise to our many board discussions on this issue. Not all were fans of the proposal, but we were all keen to make sure that this one of Her Majesty's Government's decennial paroxysms of change to the competition regime actually was worth more than all the bother. On some points we agreed with Fred, on others we disagreed, in the nature of robust debate about matters of import. On every issue though, Fred's care and insight were invaluable. The Competition and Market Authority's current and growing success as an institution shows that Fred's contribution to those discussions is still paying dividends. Not a lot of people know that – more should.

This *liber amicorum* Volume II in honour of Fred Jenny addresses a range of issues dear to Fred's heart, whether on trade and competition, institution-building, or the new issues of online markets and theories of harm. Fred could get through it on a short flight, I'm sure. The rest of us will have to take longer to savour the pearls of wisdom it contains. It will be of all the more lasting impact for that, as will Fred. He is a great man, academic, judge and official, and I'm honoured simply to be someone he has tolerated, educated and debated. Long may that continue and spread around the world – not only through this book of friends – but also through Fred's important, intellectual and international contributions.

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Liber Amicorum

Volume II

Dr. Frédéric Jenny is the Renaissance man of competition policy. As an economist, scholar, judge and enforcer, he has helped transform the landscape of global competition enforcement. This second volume containing 19 new articles, addresses a range of issues to which Frédéric has made important intellectual and international contributions, including trade and competition, institution-building, and the new issues of online markets and theories of harm.

Concurrences

Antitrust Publications & Events



180 € - 230 \$ - 160 £