



# FORUM OF INDIAN REGULATORS

Report on Webinar

with

**Dr. Peter Whelan**

Professor of Law & Deputy Director-Centre for  
Criminal Justice Studies, University of Leeds

on

**"Criminalization of Cartels"**

Date: 22nd July 2020

Time: 3:30 – 5:00pm (IST)

Organized by: -

**Forum of Indian Regulators Centre**



Indian Institute of  
Corporate Affairs  
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## **Dr. Peter Whelan**

### **Professor of Law & Deputy Director-Centre for Criminal Justice Studies, University of Leeds**

Professor Peter Whelan is a Professor of Law at the School of Law, University of Leeds, where he is the Deputy Director of the Centre for Criminal Justice Studies. He has a PhD in Law from St John's College, University of Cambridge. A qualified US Attorney-at-Law, Peter is an expert in competition (antitrust) law and criminal law.

Peter has provided oral evidence to the New Zealand Parliament on cartel criminalization. He was recently appointed as an International Expert by the Finnish Competition and Consumer Authority and in that position wrote a report advising the Finnish Ministry of Justice on the desirability of introducing criminal cartel sanctions in Finland. He has provided training in EU competition law to the Romanian judiciary and has delivered a workshop on cartel criminalization at the Competition Tribunal of Chile. He is a Non-Governmental Advisor to the

International Competition Network, which comprises over 130 of the world's competition authorities.

Peter has published widely in prestigious law journals (including Oxford Journal of Legal Studies, Cambridge Law Journal and Modern Law Review). He recently completed a monograph analyzing the inherent challenges of European cartel criminalization, which was published by Oxford University Press as part of their series Oxford Studies in European Law. He is currently writing an academic monograph on parental liability in EU competition law; it will be published in due course by Oxford University Press. To date he has presented his research in over twenty countries.

### **Participant Profile:**

**Participants:** Regulatory officials from FOIR member organizations, Government officials, academicians and others from the field of regulation.

**No. of participants:** 78

### **Participant Categorization:**

FOIR Member officials: 24

Academicians: 18

Law firms, Professionals & Students: 14

Others: 22

## Program Outline:

The School of Competition Law & Market Regulation and Forum of Indian Regulators (FOIR) Centre at Indian Institute of Corporate Affairs (IICA) successfully conducted a webinar with Dr. Peter Whelan, Professor of Law & Deputy Director-Centre for Criminal Justice Studies, University of Leeds on "Criminalization of Cartels" on 22nd July 2020 (Wednesday). The webinar with Dr. Peter Whelan is the ninth webinar of a weekly webinar series organized by the School of Competition Law & Market Regulation to create awareness on various regulatory concepts, issues and International best practices. The webinar series covers a range of topics from the field of regulatory affairs and market regulation and engages speakers from across the globe including academicians, subject experts and Senior regulatory officials. The participants of the webinar include officials from FOIR member organizations, government officials, academicians and others working in the field of regulation.



**Mr. Stephen Gibson**  
Board Member & Interim Chair  
of the UK Government's  
Regulatory Policy Committee



**Ms. Loretta Joseph**  
Fintech Advisor to Mauritius  
Government's Financial  
Services Commission



**Mr. Daniel Trnka**  
Senior Policy Analyst at  
Regulatory Policy Division,  
OECD



**Dr. Thibault Schrepel**  
Faculty Associate, Harvard  
University & Asst. Professor,  
European Economic Law, Utrecht  
University, Netherlands



**Ms. Tierno Centella**  
Deputy Head of Unit  
Cartels, DG Competition,  
European Commission



**Mr. Ariel Ezrachi**  
Slaughter & May Professor of  
Competition Law & Director,  
Centre for Competition Law &  
Policy at University of Oxford



**Mr. Eric Thomson**  
Founder, Envelope  
Economics & Ex-OECD  
Regulatory expert



**Dr. Pradyumna Bhagwat**  
Head of Research-Global  
initiative, Florence School of  
Regulation, Italy

### **Program Flow:**

The webinar was led by Dr. Peter Whelan, Professor of Law & Deputy Director-Centre for Criminal Justice Studies, University of Leeds and moderated by Dr. Abha Yadav, Head, School of Competition law & Market regulation & Director, FOIR Centre.

The program was initiated with a welcome speech by Dr. Abha Yadav. She introduced the speaker Dr. Peter Whelan and threw light on the relevance of the topic in the current scenario. Dr. Yadav further elaborated the format of the webinar to the participants.

Dr. Peter Whelan thanked the School of Competition Law and Market regulation and FOIR Centre, IICA for organizing the webinar on "Criminalization of Cartels" which would enhance knowledge sharing & increase discussions on the topic.

Dr. Peter Whelan's presentation was based on Criminal enforcement of Competition Law where he put across discussion points on the desirability of introducing criminal cartel sanctions and shared recommendations of the jurisdictions considering cartel criminalization.

His presentation was divided into four sections with Introductory remarks, Primary Jurisdiction, Problematic issues & specific recommendations. he covered several topics in his session such as the Cartel activity & the scope for disagreement, Criminal sanctions, Deterrence theory, Primary justification for criminal cartel sanctions, Challenges in Criminal cartelization and recommendations for efficient cartel enforcement.

He explained the Deterrence theory in detail and covered several arguments on the size of a deterrent fine, the deterrence gap, criminal sanctions fulfilling the deterrence gap and summarized the discussion to the below points:



- A fine of 150% of annual turnover is needed to deter an undertaking
- Fine cannot be imposed for practical reasons
- Turn to individual sanctions to fill the deterrence gap.
- Sanctions must be more than mere monetary sanctions otherwise indemnification will occur (i.e. firms will pay fine).
- Custodial sanctions are non-indemnifiable.
- In addition: Custodial sanctions are also more condemnatory and more newsworthy than mere fines (which is important for deterrence)

Dr. Whelan elaborated the problematic issues in cartel enforcement as stated below & referred to his book titled “The Criminalization of European Cartel Enforcement” which talks about the theoretical, legal & practical challenges in Cartel criminalization in detail.

Major problematic issues in cartel enforcement are:

- Efficiency of criminal cartelization in practice
- Protection of administrative leniency program.
- Public attitudes on the acceptability of imprisonment for cartel activity

He also shared with the participants several recommendations for efficient Cartel enforcement in a country.

- Criminal cartel sanctions should be considered by mature competition regimes.
- Care needs to be taken in defining the Offence.
- Practical measures to be adopted.
- Authorities should rely upon methods of reducing the costs of criminalization.

He used diagrammatic representation & case-based approach and covered all the aspects of cartel enforcement. The session was engaging, and energetic participation was seen in the webinar. Questions were taken up from the participants at the end of the session, which led to a healthy discussion.

Dr. Abha Yadav moderated the question-answer round, where a series of questions from participants with respect to Jurisprudence of Cartel enforcement, Sanctions disqualifying directors, Civil & criminal liability, Sanctity of findings in civil offence, Independent directors' criminal liability. etc. were raised by the participants from various regulatory commissions such as the Competition Commission of India (CCI) and other participants working in the field of competition law and market regulation, which were effectively answered by Dr. Peter Whelan. The participants include several senior regulatory officials from across the country such as Mr. G.S Rajamani, Founding member, CERC & FOIR, Mr. R K Choudhary. Member BERC, Mr. Rajinder Kumar, Additional DG, CCI etc.

The participants received great insights on Cartel enforcement & it's related aspects. The speaker and the participants appreciated IICA for organizing the webinar & appreciated the program's content.

The webinar ended with a vote of thanks by Dr. Abha Yadav, Head, School of Competition Law and Market Regulations and Director FOIR Centre (IICA)

**Dr. Peter Whelan, Professor of Law & Deputy Director-Centre for Criminal Justice Studies, University of Leeds addressing the participants during the Webinar**



## Feedback:



**Peter Whelan** • 2nd

Professor of Law, University of Leeds; and Managing Editor, Oxford Competitio...  
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I really enjoyed presenting my work (virtually) today at the Indian Institute of Corporate Affairs. There were lots of insightful questions from the audience, which comprised i.a. officials from the **Competition Commission Of India**. The event was very well organised (by Abha Yadav (Director of the Forum of Indian Regulators (FOIR) Centre) and **TARUN DONADI**) and well attended. I hope to visit them very soon!

Sushama V Dabak

Thank you for a very interesting session

SHUNMUGA SUNDARAKUMAR. G #4

Thank you

Dr Navdeep Singh Suhag, Competition Commission of India

Thanks for such good answer..