



Commission for  
**Communications Regulation**



# **Serving the e•consumer**

**ComReg National Conference 2004**  
Wednesday · 13 October 2004  
Royal Hospital Kilmainham



**Competition &**  
**Consumer Protection**  
**Policies: The Need**  
**for a Hippocratic**  
**Oath**

**Terry Calvani**

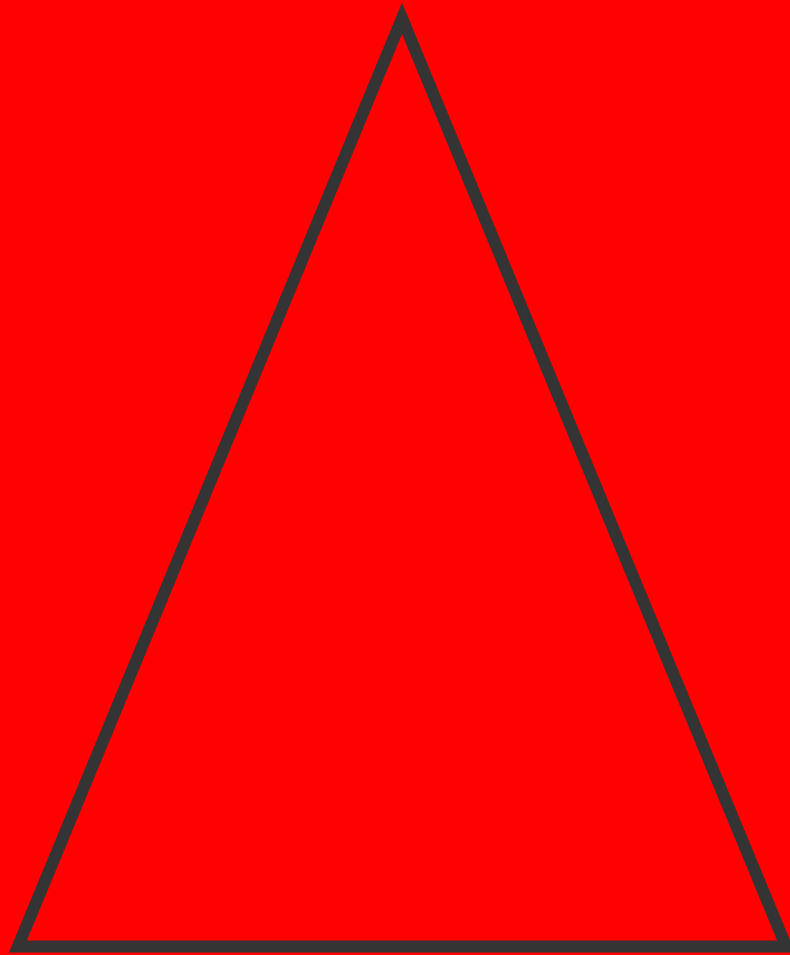
Member of the Competition Authority

& Director of Cartel Division

# TODAY'S AGENDA

1. Competition & Consumer Protection—different sides of coin.
2. Lessons for competition policy.
3. Failures of US consumer protection.
4. The role of economic analysis.

**Regulation**



**Competition Policy**

**Consumer Protection**

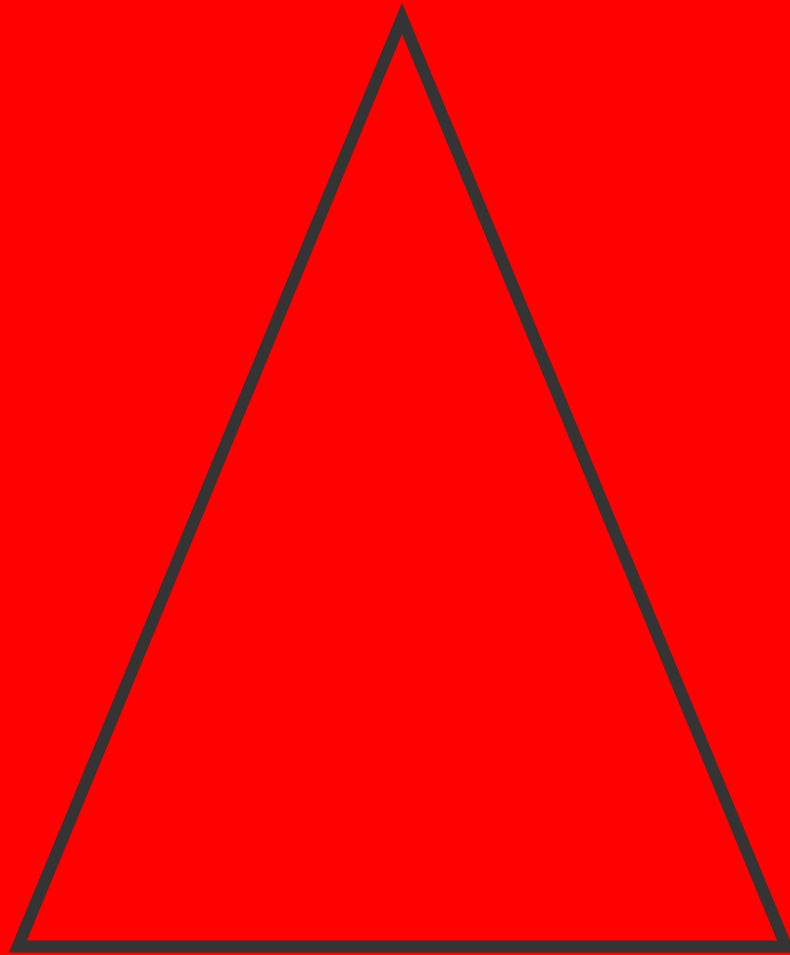


Competition presses producers to offer the most attractive array of price and quality options possible. In competitive industries, the imperative to gain new sales by satisfying consumer needs increases the choices available. In competitive markets, when consumers dislike the offerings of one seller, they can turn to others. This ability to shift expenditures imposes a rigorous discipline on each seller to satisfy consumer preferences.

Competition does more than simply increase choices for consumers, however. It motivates sellers to provide truthful, useful information about their products and drives them to fulfill promises concerning price, quality, and other terms of sale.

Consumers can punish a seller's deceit or failure to fulfill a promise by voting with their feet - and their pocketbooks. This punishment is usually swift for sellers of products purchased frequently whose qualities purchasers can readily evaluate.

**Regulation**



**Competition Policy**

**Consumer Protection**



When

market forces cannot provide

adequate protection, *e.g.*, because some

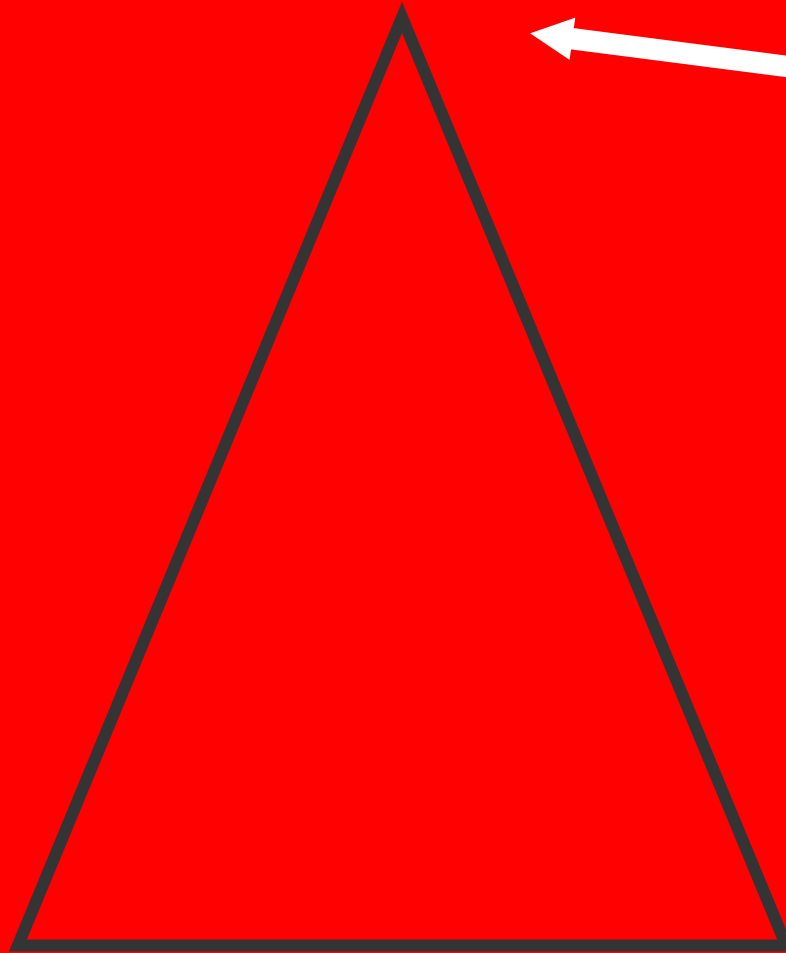
sellers are unconcerned about repeat business

and reputation or because information asymmetries

make deception difficult to detect, consumer protection

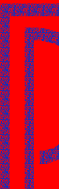
legislation fills in the gaps.

**Regulation**



**Competition Policy**

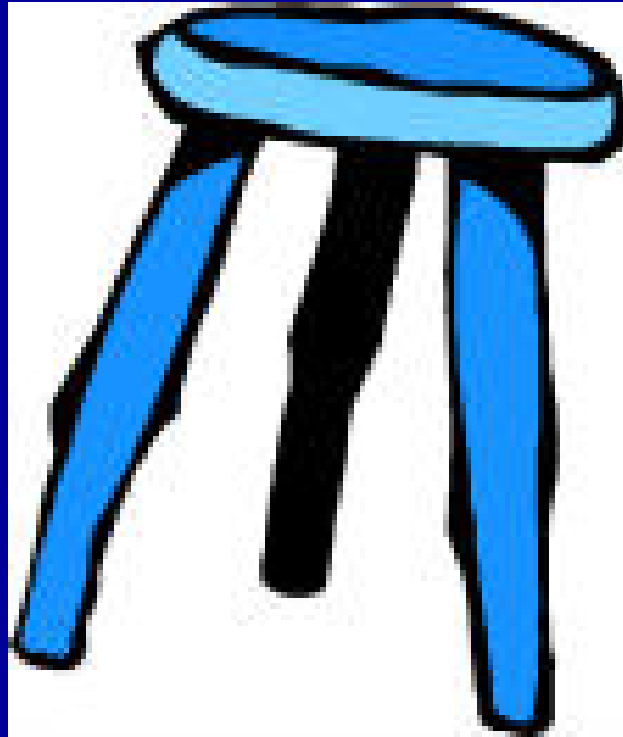
**Consumer Protection**





**Where markets fail to operate and competition policy is unable to provide relief, it may be necessary to use regulation . Markets characterized by natural monopoly (unit costs of service rise if more than one firm provides service), for example, may require regulation in order to simulate market-oriented outcomes.**

**COMPETITION**



**CONSUMER  
PROTECTION**

**REGULATION**

# Antitrust: The consumer's enemy--



***Not a pretty picture!***

Unfortunately, the path of competition has been littered with the debris of cases that turned competition principles on its head and injured consumers in the process.

*Fresh Milk—on sale now!*

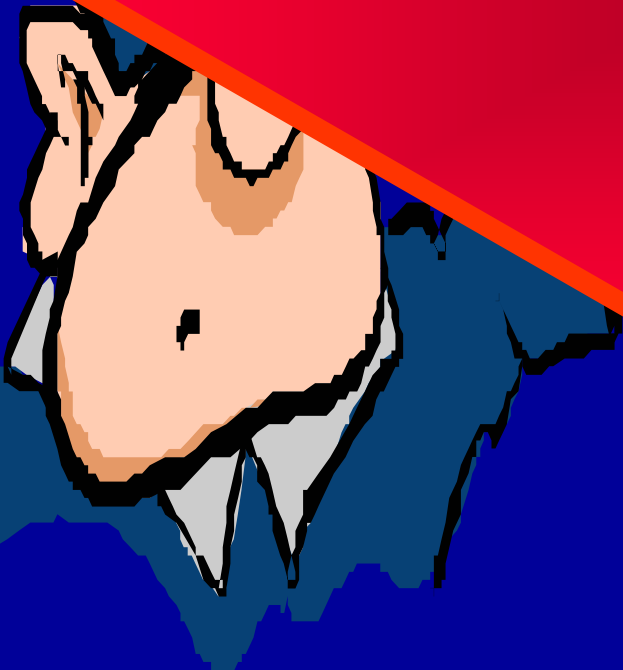


ONLY  
€ 0.60

**SHAMROCK MILK CO.**

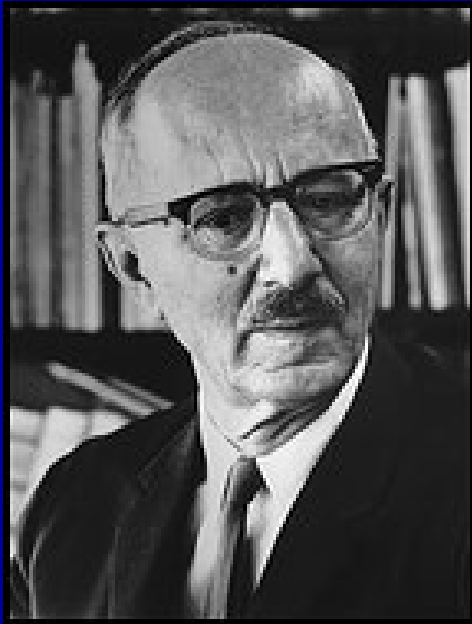
Co. Galway

- è Although there may be
- è cases of predatory pricing, many if not most allegations involve competitors who dislike really tough competition—which benefits consumers.



...ory  
... illegal  
... and.

# Economics informs competition policy.



Prof. Aaron Director  
1901-2004

- ü During the last generation, competition law has moved from a “wooden” rules based system to one predicated on applied micro economics. This is a result of work within the academy where teachers influenced students who ultimately occupied positions to influence law & policy.

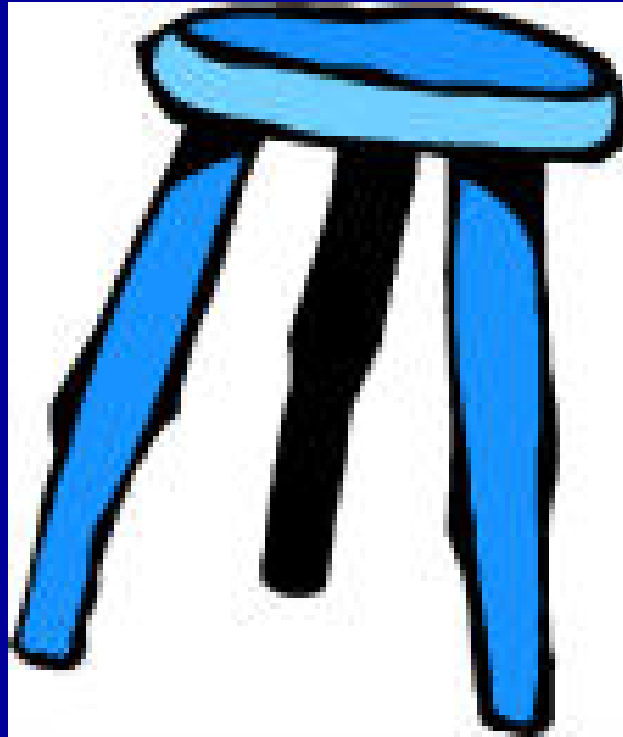
# Role of Economics



**Mario Monti**  
*formerly*  
Commissioner  
Competition Directorate

- ü For a time, European competition policy suffered for want of sound economic analysis.
- ü Today, as a result of changes implemented by Commissioner Monti, economics plays an important role in the development and implementation of competition policy.

**COMPETITION**



**CONSUMER  
PROTECTION**

**REGULATION**



# Consumer Protection



- Unfortunately, we are going to find a lot of trash in our review of the consumer protection too.

*Again, not a pretty picture!*

# CLAIROL HAIR DYE

ü In re Clairol, Inc., 33  
F.T.C. 1450 (1941),  
*modified and aff'd sub*  
*nom.*, Geb. v. FTC, 144  
F.2d 580 (2nd Cir.



# **EUELL GIBBONS**

ü In re General Foods Corp., 88 F.T.C. 831 (1975).



# GERITOL

ü Address of FTC B.C.P.  
Dep. Dir. Tracy  
Westin, *“Malfunction  
in the Marketplace,  
Amer. Marketing  
Assoc., Chicago, Aug.  
7, 1978.*



# **AUTOMATIC SEWING MACHINE RULE**

ü **Misuse of “Automatic”  
or Terms of Similar  
Import As Descriptive  
of Household Electric  
Sewing Machines, 16  
C.F.R. § 401.**



Washington Post

**FTC NATIONAL NANNY**

EXTRA

EXTRA





“the most credulous,  
gullible and  
unsuspecting”

**In re New York Jewelry**



“advertising clear enough so that, in the words of the Prophet Isaiah, ‘wayfaring men, though fools, shall not err therein’”

**In re Charles of the Ritz Distribs. Co.**



**WARNING!**

**These rolls may  
not necessarily be  
imported from  
Denmark!**



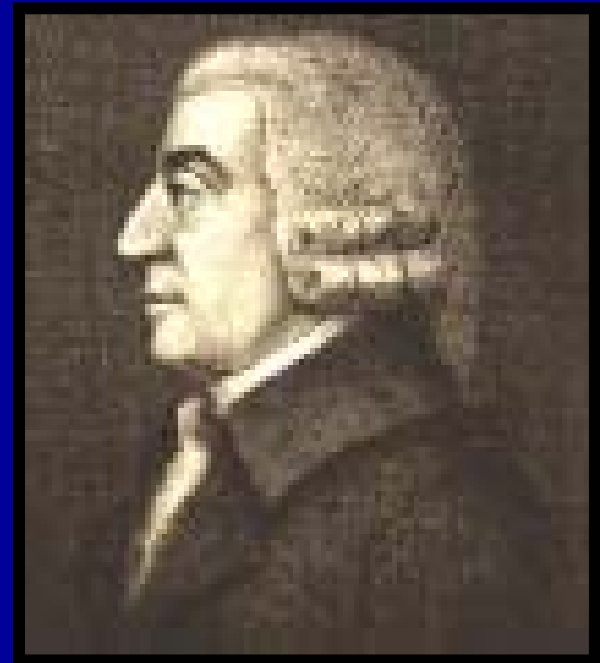


Much of the consumer protection agenda of the FTC was silly. Economics played no role in regulatory review or in case selection.

FTC Building

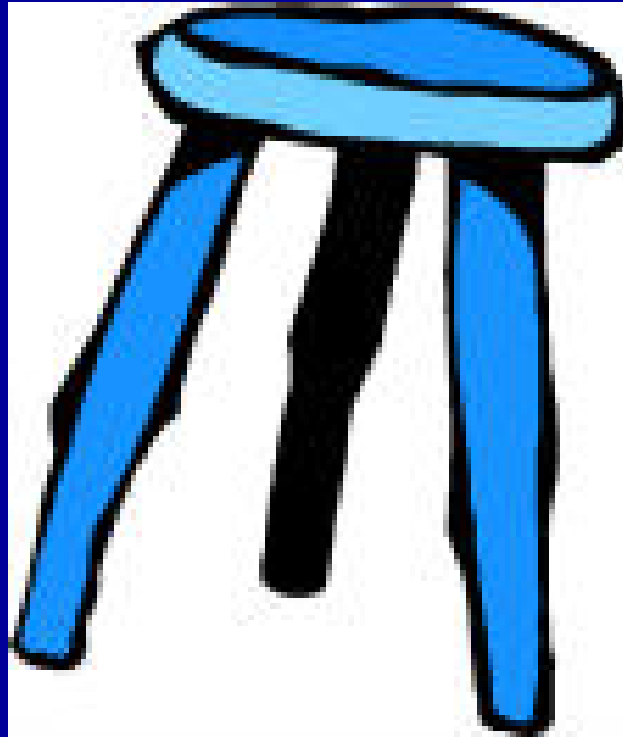
# A Role for the Dismal Science

- ü In the early 1980's the FTC began to employ economics in its enforcement of US consumer protection law.
- ü As a result, the quality of consumer protection enforcement became much better.



Adam Smith  
1723-1790

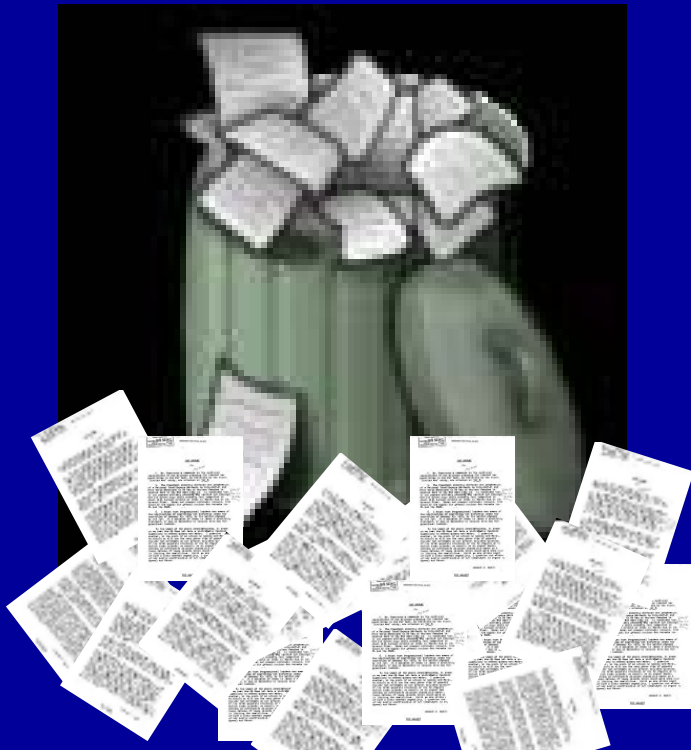
**COMPETITION**



**CONSUMER  
PROTECTION**

**REGULATION**

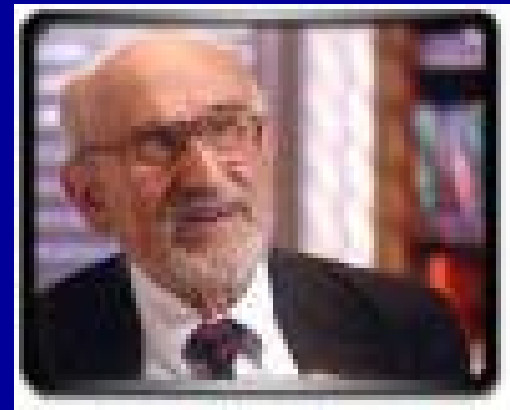
# Regulation



- Unfortunately, here again, we will see a lot of trash.

# U.S. Airline Regulation was a prime example of misguided regulation!

- Fares declined by 30%.
- Savings in the billions.
- Vast majority of passengers travel on discounted tickets.
- Opened air travel to people who could not previously afford the mode of transport.
- Increased capacity.



Dean Alfred Kahn  
Professor of Economics  
&  
Dean of College of Arts & Sciences  
*Father of Airline Deregulation*

# We demand--

- ü Better meals,
- ü Larger seats,
- ü Transferability of tickets,
- ü No overselling,
- ü Less crowding,
- ü Free cocktails,
- ü Nicer lounges,
- ü Compensation for delays,
- ü Etc.,
- ü Etc.



# Consumer attitudes about air travel--



But when given a choice, what consumers demonstrate over and over again is that they value **cheap fares**.



# Keynes Lecture of the British Academy



John Vickers  
Chairman U.K. OFT

## Economics for Consumer Policy

### Introduction

Consumer policy and competition policy are logically and institutionally intertwined. But while economics has had immense influence on competition policy, it has had much less to do with consumer policy. So whatever else may be said of consumer policymakers, they are not, in Keynes's famous phrase, 'slaves of some defunct economist.' Indeed economics would seem at times not to be a very effectively employed servant to consumer policy.

My plan is first to outline some of the main elements of UK consumer law and policy, and to note some underlying themes. Then I will discuss some complementarities and potential tensions between consumer policy and competition policy. Next I will take a step back to ask why public policy towards consumer and competition policy. Next I will take a step back to ask why public policy towards consumer contracts—and business dealing with consumer generally—need go beyond the provision of means to ensure that contracts are honoured. Why should the state impinge on freedom of contract? What is wrong with caveat emptor? The economics of information has helped to answer some such questions, and I will note some of the formative contributions in that area. Then I will attempt to show how the

# Reg. on Compensation for Denied Boarding, Cancellation, & Long Delay of Flights

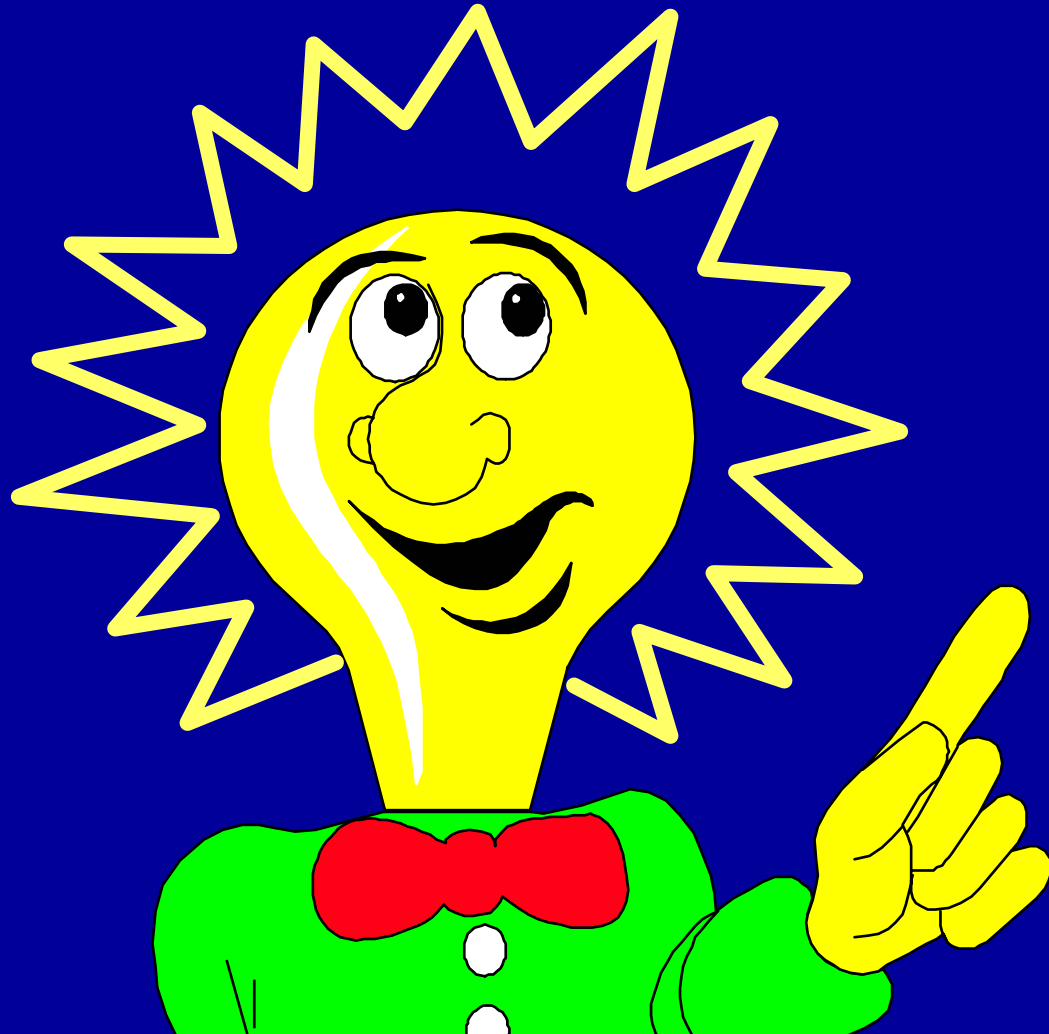


*The Beydel Building  
Brussels*

ü Regulation forces airlines to pay for accommodations, meals, drinks, taxis, telephone calls, faxes and emails whether or not the airline is at fault.

ü Essentially makes the airline an insurer (for weather and air traffic control).

**But—insurance costs money, and passengers will pay whether they want it or not.**



# Cost of a Cancelled Flight to Ryanair

COMPENSATION	UNIT	COST
Compensation	€	250
Hotel (single)		155
Transport	€	10
Meals/drink	€	30
Tele	€	5
<b>TOTAL</b>	€	<b>450</b>
Avg. fare	€	40
Rev. from avg flight (165 passengers)	€	6,600
Cost per flight		€74,250

**Recipe for increased fares—guaranteed!**

# Reg. on Compensation for Denied Boarding, Cancellation, & Long Delay of Flights



Court of Justice  
Luxembourg

- ü Fortunately, the British High Court has certified the matter for review in the Court of Justice in Luxembourg.
- ü Unfortunately for consumers, stupidity by governments is not illegal and the appeal may not succeed.

# Consumer Organisation Proposals

Propose to fix far... te asymmetrical  
contract... at... n.

“Vv  
conce  
the re

**Both of these  
proposals will  
guarantee higher  
ticket prices.**

that when

Propri

ets.

“The current practice is not acceptable since the  
transfer of tickets is not allowed.”

# What is the lesson?

CAN I PROTECT YOU?

ü WITH FRIENDS LIKE THIS—CONSUMERS DON'T NEED ENEMIES!



# HIPPOCRATES

460-370 BC

Perhaps consumer protection officials ought read Hippocrates and have to subscribe to an oath with such terms.

ere.

”

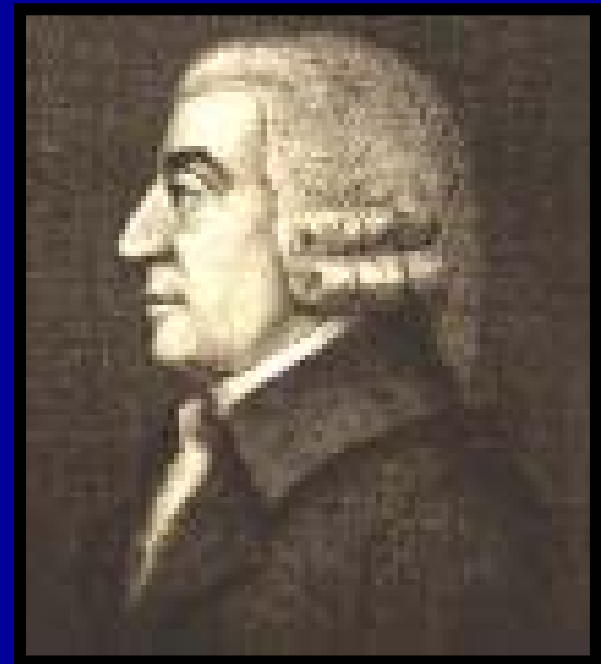
Sect. IX

(Hippocratic Oath)



# A Role for the Dismal Science?

- ü The cure for sloppy competition policy was the interjection of sound micro economic analysis.
- ü That too is the cure for sloppy consumer protection.
- ü As Monti brought economics to competition, his colleagues must do likewise with consumer protection.



Adam Smith  
1723-1790

**Thank you. Have a nice day!**

