

Meeting of the City of London Law Society Competition Law Committee held at 12:45pm on 05 December 2016 at the offices of Cooleys UK LLP, Dashwood. 69 Old Broad Street, London, EC2M 1QS

Attending:

Robert Bell (**Bryan Cave**) Chairman
Alex Potter (**Freshfields**)
Charles Bankes (**Simmons & Simmons**)
Simon Holmes (**King & Wood Mallesons**)
Dorothy Livingston (**Herbert Smith Freehills**)
Ian Giles (**Norton Rose Fulbright**)
Becket McGrath (**Cooleys**)
Philip Wareham (**Chauncy**)
Roman Madej [Notetaking] (**Bryan Cave**)
Antonio Bavasso (**Allen and Overy**)
Samantha Mobley (**Baker & Mckenzie**)
Nigel Parr (**Ashurst**)
Angus Coulter (**Hogan Lovells**)

Apologies:

Nicole Kar (**Linklaters**) Vice-Chairman
Jenine Hulsmann (**Clifford Chance**)
Isabel Taylor (**Slaughter & May**)
Howard Cartlidge (**DWF**)

1. Apologies

As above, and Carl Davies from BEIS .

2. Minutes of last meeting (22 September 2016) and Matters Arising (All)

Circulated and approved.

3. Welcome to Guests: Simon Constantine and Louise Baner, CMA, Matthew Burton, BEIS and Georgina Lake of DEXEU

Robert Bell welcomed the guests who were provided with a draft copy of the draft CLLS Brexit paper discussed at point 4 of the agenda.

4. Report and Discussion on Brexit Implications for Competition Law

Nigel Parr introduced the paper the Committee had produced on Brexit implications for competition law. He then focused on the three key areas of the paper and this was where the discussion with the government departments began. These three areas were merger control, antitrust enforcement and private competition law litigation.

Merger Control

The Committee explained how the cut off point for EU jurisdiction was of great interest to practitioners and how a bright line cut off point was the desired outcome. The Committee explained the value in retaining pre-notification discussions and work. Therefore the point the

case team were allocated was suggested as the suitable cut off point. If that date fell after the date of Brexit, the CMA would instead likely have conduct of the merger. The room also discussed the trickier issue of appeals against Commission decisions, where the decision was made pre-Brexit but the appeal was started after. Also the ongoing monitoring of commitments was discussed and how clarity should be sought as to what extent the EU Commission would continue to do this. The deeper explanation was found in the Committee's paper itself.

The Committee emphasised their desire to look for certainty and to avoid costly time and resources being wasted in any uncertainty. As found in the paper, the Committee also listed some suggested procedural improvements that could take place at the CMA if the CMA were to have an increased workload. Examples of such suggested measures were allowing the early termination of phase 2 proceedings.

The discussion also dwelled on the CMA's resources and the extra 60 or so cases it would have a year as a result of Brexit and ways of managing this, including when new pressures will exist to align CMA, EU and US merger control proceedings simultaneously.

Antitrust

This was talked of as a more troublesome areas as the Commission would continue to have jurisdiction where a UK company has caused harm within the EU. Again the cut off point was of interest with the Committee suggesting the statement of objections to be the most appropriate point. Again thought had been given in the paper and was again discussed in the room how transitional provisions and co-operation between the CMA and Commission would be needed for the monitoring of any commitments.

The Committee were of the strong opinion that the UK should re-apply to join the European Competition Network, even if it was under a new type of associate membership.

Robert Bell asked the CMA and DEXEU whether they had any initial thoughts on these matters but they explained at this stage they were still listening to opinions and assessing their options.

BEIS asked the Committee to improve their paper by adding options that could be pursued if there were no agreement between the UK and EU at time of Brexit.

Private Litigation

The discussion on this area focused on the recommendations in the paper and the desire to maintain the UK's competitive lead in EU competition litigation. There was an appreciation that the UK could not maintain the entirety of its current workload but the emphasis should be on retaining as much as possible. The main issue as the Committee saw it, was negotiating a mechanism where foreign judgments could continue to be enforced through English law.

DEXEU appreciated the Committees arguments in this area and suggested the Committee some how come up with a figure to quantify what the loss of this area to UK PLC would likely be. BEIS added to this discussion by mentioning that 50% of current EU competition litigation was captured by the UK.

The Committee asked DEXEU and the other departments to give their comments on the draft paper by next week. This would allow the Committee to address those comments and create a finished paper before Christmas.

The Committee also decided that, once finished, the paper would be shared more publicly but did not finalise the extent of what that publication would be.

5. Update on response to EU Commission Consultation on review of the EU Merger Regulation

Jenine Hulsmann had circulated a draft of this paper before the meeting. The deadline for submission to the Commission was the 13th of January so the Committee were asked for their comments on this paper before Christmas.

6. AOB

Philip Wareham and Simon Holmes announced new jobs and retirements from full time practice in law respectively. Philip announced his resignation from the Committee. They were thanked for all their years of hard work and input by the Committee.

7. Next Meeting: 2 March 2017, Herbert Smith Freehills LLP, Exchange House, Primrose Street, London EC2A 2EG

The meeting ended at 2:20pm.