

**CITY OF LONDON LAW SOCIETY COMMERCIAL LAW COMMITTEE**  
**(THE “COMMITTEE”)**

**MINUTES** of the Committee meeting held at 1pm on 4 July 2019 at the offices of DLA Piper  
UK LLP, 160 Aldersgate Street, London, EC1A 4HT

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- Present:**
- Mr Oliver Bray, RPC (Chairman)
  - Mr Andrew Crawford, Devonshires
  - Mr Mark Dewar, DLA Piper
  - Mr Richard Marke, Bates Wells Braithwaite (“**RM**”)
  - Mr Rohan Massey, Ropes & Gray (Secretary) (“**RoM**”)
  - Mr Richard Shaw, Berwin Leighton Paisner
  - Mr Andrew Shindler, Locke Lord
  - Mr Stephen Sidkin, Fox Williams
  - Mr Jeremy Sivyler, Bishop & Sewell
  - Mr Anthony Woolich, HFW
- Apologies:**
- Mr Jonathan Davey, Addleshaw Goddard
  - Mr Kevin Hart, City of London Law Society
  - Mr Tom Purton, Travers Smith
  - Mr Duncan Reid-Thomas, Baker & McKenzie
- In attendance:**
- Mr Michael Maccabe, Ropes & Gray (Minutes)
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1. **Minutes of last meeting**
  - 1.1 It was reported that the minutes of the last meeting had been prepared.
2. **Apologies**
  - 2.1 Apologies from the individuals identified above had been received.
3. **Recruitment Plans for the Committee**
  - 3.1 OB thanked KH for preparing the list of potential Committee members, and confirmed that he had tried to contact as many as he could in the time since the previous meeting. Three individuals had indicated an interest. OB would follow up with these individuals by email.
  - 3.2 It was agreed that an informal social event should be organised in advance of the next Committee meeting to welcome new members.

- 3.3 *RoM to call one candidate.*
- 3.4 OB raised the question of whether any more individuals should be invited to join the Committee, and if so how many.
- 3.5 JS and RM were of that view that the Committee should look to invite more individuals and increase diversity.
- 3.6 RoM concurred with JS and RM, noting that the membership of the Committee is capped at 20 individuals.

#### 4. **Feedback on Adidas Seminar**

- 4.1 OB took the opportunity to formally thank AW and JD for organising the Adidas event. The event was encouraging given the number of young lawyers in attendance and the opportunity for them to network. It was agreed that the Committee should organise more events in the future.
- 4.2 Members considered the messages delivered by the Adidas legal team, as follows:
- (a) MD noted that that less complex work would no longer be sent to external counsel, and only high level, sector focussed work would make it to private practice.
  - (b) RM noted that this aligned with his experience in the sports marketing sector, where there has been a shift away from outsourcing except for the most complex work.
  - (c) AW considered the risks for junior lawyers who would not get such a well-rounded training experience.
  - (d) RM said this would depend on the size of the clients, where SMEs would be more likely to outsource work, but larger companies might provide fewer opportunities for development.
  - (e) OB commented that work would increasingly come for specialist areas, such as data and branding. OB also noted that the Adidas presentation revealed the increased role of procurement teams, at the expense of legal.
  - (f) RoM agreed that procurement processes are expanding, but they often ask the wrong questions, particularly at the RFP stage.
- 4.3 With regard to panellists for future Committee events, MD remarked that DLA Piper has senior lawyers involved in equal opportunities work.
- 4.4 OB proposed that future panellists should not be confined to clients; regulators would also provide an interesting perspective. OB mentioned that he had a contact at the Competition and Markets Authority (Jason Freeman) and at the Advertising Standards Authority (Guy Parker).
- 4.5 *KH to enquire about including a review of the Adidas event in the City Solicitor.*
- #### 5. **Matters Arising**
- 5.1 SS confirmed that the paper for the Brexit Law Committee had been sent, but noted the passage of time and developments on Brexit.

- 5.2 *KH to seek an update from the Brexit Law Committee on the status of the paper.*
- 5.3 Members considered whether a further report should be published by a subcommittee of the Committee, focussed on Brexit, given the likelihood of the UK leaving the EU at the end of October:
- (a) OB noted that a report was a good idea, particularly if no other committee was taking the initiative, but it should be a commercial law-focussed document.
  - (b) MD noted the difficulties in writing such a paper, given the uncertainties of the Brexit process.
  - (c) RM commented that the only certainty is no deal.
  - (d) RoM added that any negotiated deal would come with a transition period, so it would make sense to include that point in the report.
  - (e) SS noted that the next meeting of the Committee was proposed for 30 September 2019, but that key determinations by Parliament were slated for around 7 October.
  - (f) It was agreed the Brexit subcommittee should meet on 16 October at 1pm at the offices of Fox Williams LLP, and that, given the importance of the subject matter, all Committee members were invited to attend.
  - (g) MD noted issues around making a report available and widely circulated.
- 5.4 OB proposed that the Committee needed to work harder on engagement more generally, particularly online (e.g., through a LinkedIn page).
- 5.5 *RoM to talk to KH about LinkedIn page for the Committee.*

## 6. **Interesting Cases and/or Practice Points**

- 6.1 SS discussed two cases:
- (a) *Computer Associates v The Software Incubator* – the Supreme Court referred two questions to the CJEU: (1) is software a good or a service; and (2) if software is a good, does a licence of software amount to a sale of goods. The case is with the CJEU, and a decision is expected on 31 October 2019.
  - (b) *Green Deal Marketing v Economy Energy* – the case involved a terminated agent in the domestic energy retail market. The agent claimed that it was entitled to compensation as a commercial agent; Economy Energy argued it was not a commercial agent for the purpose of the regulations. The Court ruled in favour of Green Deal Marketing. Interesting points relate to: (a) judicial analysis on valuation of agency and compensation; (b) the fact that electricity is deemed a good under the regulations; and (c) that intermediaries persuading customers to switch suppliers will be caught by the regulations.
- 6.2 AC noted that in March 2019 the Charity Commission published guidance for charities with a trading entity within its group.
- 6.3 OB mentioned that the Competition and Markets Authority had launched its Digital Marketing Strategy.

- 6.4 RoM noted that the Information Commissioner's Office had recently published an updated paper on adtech, as well further guidance on the use of cookies. The point being driven home by the ICO is the websites should not place cookies before users have given an active indication of acceptance, save in the case of essential cookies. This could be a future area of enforcement.
- 6.5 OB also noted that the Interactive Advertising Bureau (the adtech industry body) had published the second version of its "GDPR Transparency and Consent Framework", which aimed to improve respect in marketing and transparency, and required consent from users. It is possible that the Framework could be referenced in contracts to reach a standard of compliance.
- 6.6 MD discussed two cases:
- (a) *Staechelin v ACLBDD Holdings Ltd* – where the Court of Appeal found that where an art agent had not disclosed a previous higher bid on a painting, the agent had not acted dishonestly and should be paid commission; and
  - (b) *Times Travel v Pakistan International Airlines* – where Times Travel was offered a contract with PIA on the condition that it waived entitlement to commission owed under a previous contract. The Court found that PIA had exerted economic duress, as there was: (i) illegitimate pressure, (ii) which induced Times Travel to enter into the contract, and (iii) the effect of the pressure was to leave Times Travel with a lack of practical choice.
- 6.7 OB noted that the EU had adopted a new Directive relating to paid-for digital content. There is also a proposed Regulation on EU platform-to-business trading practices, aimed at promoting smaller platforms, which is going to the European Parliament for approval in 2020. Finally, it was noted that the CMA is investigating auto-renewal terms in online gaming.

## 7. **AOB**

### 7.1 **Next meeting**

On 26 September 2019 at 1pm at the offices of Travers Smith LLP, 10 Snow Hill London EC1A 2AL - Hosted by Tom Purton.