

**THE CITY OF LONDON LAW SOCIETY
COMPETITION LAW COMMITTEE**

**Minutes of the meeting at 12.30pm on 1 March 2012
at Hill Dickinson LLP, Irongate House, 22-30 Dukes Place, London EC3A
7HX**

Attending :

Robert Bell (Chair) (RSB)
Howard Cartlidge (HC)
Jenine Hulsmann
Dorothy Livingston (DL)
Becket McGrath
Samantha Mobley (SM)
Philip Wareham (PW)
Paul Henty (Secretary)

Also Present :

Nicoletta Muzio (Lehman Communications) (NM)
Robert Leeder (Law Society)

Apologies :

Alex Potter
Margaret Moore

1. Apologies

Apologies had been received from Alex Potter and Margaret Moore.

2. Welcome to guests

RSB welcomed Nicoletta Muzio, Account Director at Lehman Communications, as well as Robert Leeder, Policy and Committees Coordinator of the City of London Law Society.

3. Approval of minutes of previous meeting

The minutes of the last meeting were duly approved.

4. Government response to BIS Consultation on Reforming UK Competition Regime

RSB reported that the original intention had been for Jane Swift to attend the day's meeting in order to discuss the reforms. However, as these had not been released to date, she was not in attendance.

RSB had, however, spoken to Jane Swift, who had indicated that the Government's response will be released between 8 and 15 March. If the

Government elects to release the reforms on the same day as it also issues its response on the Consultation in relation to Consumer Policy, both Government Responses will be released nearer to the 15th.

Following discussion with NM, it was resolved that the Committee should prepare a short paper distilling its views on the proposals, as contained in its own response paper. This should be written in accessible language, which can easily be picked up by the Press. In addition, it was agreed NM will approach in advance a number of suitable publications in advance, to prepare them for input from the Committee.

RSB will, to this end, send her a short email setting out in bullet points the Committee's principal thoughts on the reforms to enable her to approach suitable publications. It was agreed that these should be publications with a wide, public readership, rather than aimed at the legal profession. These could include the FT, the Times and the BBC.

RSB also confirmed that once the proposals have been released, Jane Swift will attend the Committee for a special, one-off meeting where these will be discussed in more detail.

5. BIS initiative on Private Enforcement of Competition Law

RSB has a meeting scheduled with Ian Mansfield of BIS to discuss this initiative. This will precede the opening of a formal consultation, around seven days thereafter. It was recalled that the CLLS had previously formed a working party composed of Nigel Parr, RSB, Becket McGrath, Kim Dietzel, and Michael Rowe (who was now on sabbatical) to review earlier proposals. This Working Group will need to be recalled in order to input into the forthcoming consultation.

6. Consultation on draft guidelines for penalties

RSB thanked SM for her work on this paper.

SM reported that following the Committee's submission of its response to this consultation, she had not received feedback on this so far.

SM had, however, discussed with Professor Richard Whish the recidivism aspects of the proposal. In particular, he had raised the issue over whether prior infringements committed before a certain backstop period should not be considered as recidivism. Prof. Whish argued that the Committee may consider advocating that a backstop period may be appropriate depending on the circumstances of the business in question. For example, this may be appropriate where the managers of the business are different from those who were *in situ* when the earlier offence was committed. DL advocated a "bright line" backstop date, on the basis that this was easier to administer and was

better than nothing and that there should be no finding of recidivism where the earlier infringement was of a technical, rather than flagrant nature.

7. Joint CLLS IP and Competition Committees' Response to Reform of the Technology Transfer Block Exemption

RSB thanked PW and HC for their work on this paper.

The Committee had worked together with the CLLS IP Committee on this issue. The IP Committee's involvement had been led by Joel Smith. HC and PW had worked to ensure that the paper had more of a competition law focus. PW commented that the approach had been to argue in favour of the retention of the Block Exemption, even though the Commission would prefer its repeal, leaving only the associated Guidelines. DL commented that the TTBER is important for small businesses, as it gives them the requisite legal certainty to secure external bank funding. Discussions highlighted, however, that technology transfer is a relatively less significant competition law issue than standardisation agreements or IP settlement agreements.

PW is to follow up on this issue with a meeting with Steve Preece at the Office of Fair Trading.

8. AOB

8.1 State aid

There had been rumours that the Commission was planning far-reaching changes to the State aid regime. Although this had also been rumoured last year, the Commission produced only reforms to State aid regime involving Services of General Economic Interest. It was agreed that PEH would report to the Committee on the Commission's proposed reforms in this area.

RSB also reported that Conor Quigley of Serle Court Chambers had been invited to attend the next Committee meeting in order to address issues in State aid.

8.2 Compass Lexicon ("CL")

SM raised that she had recently been contacted by CL, who are a consultancy firm with a specialism in antitrust. CL have skills in the science of framing questions fairly in a way which does not influence responses. SM considers this to be relevant to the Committee's work, as competition law regulators will frequently pose questions which are leading. This occurs particularly in the context of requests for information or questions posed of parties to mergers. SM asked if it would be useful for CL to attend the next Committee meeting to explain to members the principles which Commission regulators' questions ought to observe in order to be framed fairly. The

Committee agreed this would be useful. SM is to organise the attendance of a CL representative at the next Committee meeting.

9. Next meeting

- 9.1 RSB reported that the next Committee meeting would be held on 14th June at Edwards Wildman. Becket McGrath has kindly agreed to host. RSB asked for Members to volunteer a venue for future meetings.
- 9.2 RSB also reminded members that an extraordinary meeting of the Committee would be convened once the Government had released its response to the Competition Law Regime consultation, where Jane Swift would discuss the Government's position (see Item 4).