

Council of the Competition Commission

**Minutes of the 88th meeting held in Hearing Room 5
Monday 18 October 2010**

Present:

Council Members

Peter Freeman CBE, QC (Chairman)
Laura Carstensen
Peter Davis
Grey Denham
Diana Guy
Dame Patricia Hodgson
David Saunders

In attendance

Carole Begent (in part 6)
Tony Gooch (part 8)
Rebecca Lawrence
Rachel Merelie
Roland Green
Chloe MacEwen
Gail Scott

The Conflicts Review Group (part 8)

Dr Brian Woods-Scawen
Dame Barbara Mills

Apologies from: Lesley Watkins and Sir Francis Jacobs

1. Minutes from the meeting on 6 September 2010 (Item 1)

1.1. The minutes from the last meeting were approved.

2. Chairman's Report (Item 2)

- 2.1. The Chairman reported to Council that the Public Bodies Bill had been announced. Vince Cable, the Business Secretary, had issued a statement confirming that there would be consultation on a review of the competition regime and that he was minded to merge the CC with the OFT. The consultation document was expected to be published in February 2011.
- 2.2. The Conflicts Policy Review Report would be discussed later in the meeting; the review group would be reporting back on their recommendations to change the way the CC carries out its conflicts procedures.
- 2.3. The PPI remittal decision had been published in October; the Carphone Warehouse and Cable and Wireless decisions had been published in August. There was currently no new litigation involving the CC.
- 2.4. Cabinet Office and OCPA had agreed that the CC could run a limited recruitment process to recruit two new Deputy Chairmen in the autumn and an interim Chairman next spring. The appointments would be for two years and would cover the transition

to the new authority. The recruitment would be limited to existing Commission members.

3. Chief Executive's Report (Item 3)

- 3.1. The Chief Executive presented his written report to the Council.
- 3.2. The CC was in discussion with potential tenants to rent space on the 6th and 7th floors. The CC expected to complete the financial year within budget once the space was rented.
- 3.3. The Comprehensive Spending Review outcome would be announced shortly; BIS was expected to receive further significant cuts to its budget. It was not clear at this stage how these cuts would impact on the CC.
- 3.4. New inquiry work was moving into a relatively quiet period, and there were no obvious new referrals in the short term. However there was substantial work on reviews of undertakings and continuing inquiries. Ofcom had indicated that some of its decisions could result in referrals during 2011.
- 3.5. The Chairman and Chief Executive had met with Edward Davey, the BIS Minister responsible for competition, to discuss the review of the competition regime. It was agreed that Edward Davey should be invited to come and talk to staff about the Government's objectives for the possible changes to the regime.
- 3.6. The two new OFT Executive Directors, Clive Maxwell and Robert Laslett, had been invited to visit the CC in November.
- 3.7. Department for Transport and DCMS officials would be meeting CC staff to discuss the CC's work on the Buses market investigation and Contract Rights Renewal.
- 3.8. The priority for the next few months would be to ensure that the consultation process produces the best outcome for an improved competition regime.
- 3.9. The Chairman and John Fingleton had been invited to appear before the Treasury Select Committee to discuss whether a CC/ OFT merger would have any impact on work on the banking sector.

4. Review of Council risk register (Item 4)

- 4.1. The updated Council Risk Register was presented for discussion. A new risk had been added to highlight the need to maintain staff morale during times of financial stringency and change.
- 4.2. The lack of suitable new referrals was noted.

5. Corporate Governance Review (Item 5)

- 5.1. Grey Denham explained the changes to the corporate governance documents that had been made since the last Council meeting.
- 5.2. Council approved the documents subject to further minor amendments. All the documents would be published on the website once the changes had been made.

6. International work (Item 6)

- 6.1. Carole Begent presented the report on international work. There had been a number of speaking engagements and visits to the CC supported by the FCO and others. One of the main debates amongst international competition authorities had been about the best way to provide “due process” in competition enforcement. There had been a lot of interest in the OFT/CC merger guidelines and in certain CC inquiries such as Groceries and Pay TV.

7. Update on BAA judgment (Item 7)

- 7.1. The CC had received the BAA verdict. The Court of Appeal had found in favour of the CC and reinstated the CC’s final report and remedies. The CC had been awarded all its costs and leave to appeal had been denied. BAA would have 28 days to seek leave to appeal directly to the Supreme Court; it was thought that the Court would then take about 3 months to reach a decision on whether to grant leave.
- 7.2. Despite the appeal reaching a successful outcome for the CC, it was agreed that the conflicts procedure needed to be thorough and well documented, and conflicts that occur during an inquiry would need to be fully captured and reacted to as quickly as possible. The Conflicts Policy Review Report provided a good basis to ensure these improvements were made.

8. Conflicts Policy Review (Item 8)

- 8.1. The Chairman welcomed the Conflicts Policy Review Group to the meeting, and thanked them for conducting the review. Apologies were received from Sir Francis Jacobs.
- 8.2. The review had been lead by Dr Brian Woods-Scawen who introduced the report. The group had concluded that there should be greater clarity in the conflicts process and that a strong conflicts policy would reinforce the CC’s core values as well as give weight to its decisions on conflicts. The BAA challenge had reinforced the group’s findings.
- 8.3. The group recommended that there should be a clear audit trail, from recording the conflicts to making the decision. There should also be clear accountabilities and roles of responsibility in the decision making process. The conflicts policy should be combined into one document and all the conflicts checks, recommendations and decisions should be well documented, particularly around the appointment of the group. This would ensure that the CC was in a good place if challenged.
- 8.4. Dr Woods-Scawen pointed out that this should not be a bureaucratic process, but a robust working through of its decisions.
- 8.5. In order for the conflicts policy to be effective there would need to be agreement and leadership from Council, the Chairman, the Chief Executive and the Compliance Officer.
- 8.6. Council commented that it was a very helpful policy and would give the CC a useful framework to work from. The rules were quite straightforward; the difficulty would be in applying the aspects of judgment. Capturing the initial disclosures was a very

important aspect requiring a rigorous process to be in place at the start of the inquiry. The challenge remained in capturing changes during an inquiry.

- 8.7. In order to improve the Register of Interest and ensure the information gathered was more complete, members would need guidelines about the information required which would ensure consistency in the disclosures made across the membership.
- 8.8. The recommendations suggested that the Inquiry Chair should have greater responsibility for conflicts and be more fully engaged in the conflicts discussions, as well as participate in the regular checks on conflicts throughout the inquiry. These new responsibilities would need clarifying.
- 8.9. Members would need to be aware of their responsibilities in the new process and how to keep the CC informed of any changes. Members would receive a presentation on the conflicts review at the next members' seminar in November.
- 8.10. In conclusion Council welcomed the recommendations and were grateful for the work of the Review Group. Council would consider its formal response to the Conflicts Review Group at its next meeting and were committed to publishing the report once its response had been finalised.

9. Any other business

- 9.1. The Audit Committee meeting minutes were noted by Council.
- 9.2. There was no other business.