

Minutes of the QCA Legal Expert Group

**QUOTED
COMPANIES
ALLIANCE**

Held on: Tuesday 13 March 2018

Venue: Charles Russell Speechlys LLP, 5 Fleet Place, London, EC4M 7RD

Present:

Mark Taylor (Chair)	Dorsey & Whitney	MT
Danette Antao	Hogan Lovells International LLP	DA
Paul Arathoon	Charles Russell Speechlys LLP	PA
Andrew Chadwick	Clyde & Co LLP	AC
Philippa Chatterton	CMS	PC
Paul Cliff	Gateley LLP	PCI
Simon Cox	Norton Rose Fulbright LLP	SC
Murdoch Currie	Bates Wells Braithwaite LLP	MC
Stephen Hamilton	Hills and Reeve LLP	SH
Sarah Hassan	Practical Law Company Limited	Sha
David Hicks	Charles Russell Speechlys LLP	DH
Nicholas Jennings	Locke Lord LLP	NJ
Martin Kay	Blake Morgan	MK
Julie Keefe	Norton Rose Fulbright LLP	JK
Nicola Mallett	Lewis Silkin	NM
Nicholas McVeigh	Mishcon De Reya	NMc
Jaspal Sekhon	Hill Dickinson LLP	JS
Jane Wang	Fasken LLP	JW
Tim Ward	Quoted Companies Alliance	TW
Anthony Robinson	Quoted Companies Alliance	AR
Callum Anderson (minutes)	Quoted Companies Alliance	CA

In attendance:

Sarah Aitchison	Competition and Markets Authority	SA
Michael Higgins	Ebiquity plc	MH

1. WELCOME TO SARAH AITCHISON, COMPETITION AND MARKETS AUTHORITY (CMA)

MT welcomed SA to the meeting.

SA briefly summarised the role and the remit of the CMA. She noted that the CMA had been formed out of the functions of the Office for Fair Trading and the Competition Commission. She emphasised that the CMA was keen to engage more directly with small and mid-size companies on competition law issues.

SA noted that competition law developments could be grouped into four main areas:

- i. Online and digital – resale price maintenance cases;
- ii. Director disqualification;

- iii. Information exchange; and
- iv. The pharmaceutical sector

SA presented recent cases handled by the CMA in each of the areas stated above (see circulated handout for more details).

SA explained that there were two primary consequences of breaking competition law; these could take the form of civil enforcement (e.g. fines on businesses of up to 10% of turnover or director disqualification for up to 15 years), or criminal enforcement (e.g. up to five years in prison, unlimited fines or director disqualification of up to 15 years). She did however note that companies and/or directors which acknowledged their wrongdoing ahead of a launch of an investigation would benefit from leniency in the form of significantly reduced fines, or director protection. She noted that this incentive plays a crucial role in cases regarding cartels.

SA and the Expert Group exchanged views regarding the ability of companies to share information in the event of a potential merger. SA stressed that any such sharing of information must be done within restrictions of the existing legal framework.

SA reiterated the CMA's willingness to engage with smaller companies on competition law issues and highlighted the number of resources available to companies and directors which would allow them to fully understand their responsibilities.

SA explained that all proceeds resulting from fines imposed by the CMA went directly to HM Treasury.

SA left the meeting.

2. APOLOGIES

Apologies were received from Daniel Bellau, Ashmi Bhagani, Nicholas Narraway, Kieran Rayani and David Willbe.

3. MINUTES OF LAST MEETING (16 January 2018)

The minutes were approved.

4. ISSUES FOR DISCUSSION

	ITEM	ACTION
a)	<p>Market Abuse Regulation (MAR)</p> <p>CA explained that the FCA's primary market oversight team would be attending the Expert Group meeting in July 2018 to discuss MAR implementation.</p> <p>To facilitate a productive session, CA asked Expert Group members to</p>	<p>CA to request Expert Group members submit short case studies on challenges faced with respect to MAR via email.</p>

	<p>consider incidences where their small and mid-size quoted company clients were confronted with challenges regarding delayed disclosure of inside information, the interaction between the AIM Rules and MAR with respect to price sensitive information, and any other issues faced.</p> <p>MT raised the situation where a director and his or her board agree in principle that the director should step down and there is an intervening period of discussion with a view to fixing a date and settling terms for the departure prior to the delivery of a resignation notice (which is notifiable under the AIM Rules in any event).</p> <p>In such a case, for the purposes of MAR, MT noted that a view needs to be taken as to whether the agreement in principle is itself price sensitive, such that deferral of the disclosure pending the setting of a date and delivery of a resignation letter falls within the deferred disclosure regime or whether, in the absence of a date and key terms, the agreement would be insufficiently precise, and/or unlikely to have a significant effect on pricing, until such time as a date (and, possibly, the principal terms for the departure) have been agreed upon.</p> <p>In discussion it was postulated that this was a matter of degree and depended upon the particular circumstances of the company, including the extent to which an agreement could be said to have been reached and the importance of the director to the operations of the company, these being relevant factors in determining whether investors would be likely to use this information as part of the basis for any investment decision.</p> <p>CA explained that the QCA would then produce a series of case studies, which would then be circulated to the FCA ahead of the July 2018 Expert Group meeting.</p>	<p>ALL to send their case studies.</p>
<p>b)</p>	<p>Brexit</p> <p>TW noted that the QCA would be meeting with the Department for Exiting the European Union (DExEU) later in March 2018 and would report back at the next meeting.</p>	<p>None.</p>
<p>c)</p>	<p>Introducing Anthony Robinson</p> <p>AR introduced himself as the Quoted Companies Alliance's new head of policy and communications.</p>	<p>None.</p>

5. COMMUNICATIONS AND FUTURE MEETINGS

	ITEM	ACTION
a)	<p>Policy Update (January 2018)</p> <p>TW noted that corporate governance was the QCA's principal work streams in 2018. He noted that London Stock Exchange had confirmed its changes to AIM Rule 26 and that the QCA would be publishing an updated QCA Corporate Governance Code in April 2018.</p> <p>TW added that the QCA had also responded to the FRC's consultation on its proposed revisions to the UK Corporate Governance Code and had stressed its opposition to the proposals to remove the exemptions for sub FTSE-350 companies regarding the requirements for non-executive directors, annual elections and board evaluations.</p>	None.
b)	<p>Guest invitations to future meetings</p> <p>MT suggested that Charles Marquand of 4 Stone Buildings, Lincoln's Inn be invited to attend to discuss the various models that may form the basis for the operation of financial services into and out of the UK following Brexit.</p>	MT and CA to liaise with Charles Marquand regarding attending an Expert Group meeting.

6. ANY OTHER BUSINESS

MT thanked those who had contributed to the European Commission's consultation on building a proportionate regulatory environment to SME listings – particularly DA, NMc, NM and DW who had produced the initial drafts.

7. NEXT MEETINGS

Tuesday 17 April 2018, 9.00am – 10.30am, with Charles Marquand of 4 Stone Buildings as guest, to discuss the various models that may form the basis for the operation of financial services into and out of the UK following Brexit (Venue: Norton Rose Fulbright LLP, 3 More London, Riverside, London, SE1 2AQ).

Tuesday 15 May 2018, 9.00am – 10.30am, with Tony Pullinger of the Takeover Panel, as the guest (Venue: Clyde & Co LLP, St Botolph Building, 138 Houndsditch, London, EC3A 7AR).