

HOUSE OF LORDS
MINUTES OF EVIDENCE
TAKEN BEFORE
THE SELECT COMMITTEE ON THE EUROPEAN COMMUNITIES
(SUB-COMMITTEE E)
AN EU COMPETITION COURT

WEDNESDAY 6 DECEMBER 2006

DR WILLIAM BISHOP

Evidence heard in Public

Questions 134 - 170

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WEDNESDAY 6 DECEMBER 2006

Present

Bowness, L
Brown of Eaton-under-Heywood, L (Chairman)
Burnett, L
Clinton-Davis, L
Jay of Ewelme, L
Kingsmill, B
Lucas, L
Mance, L
Norton of Louth, L

Memorandum submitted by Dr William Bishop

Examination of Witness

Witness: **Dr William Bishop**, CRA International, examined.

Q134 Chairman: Good afternoon. Have you ever given evidence to one of these committees before?

Dr Bishop: I have indeed, yes, another sub-committee of this Committee.

Q135 Chairman: Then I do not need to tell you very much about our procedures. As you know, we are live on air, you get a copy of the transcript and an opportunity to correct and add to it, as you wish. Thank you very much for coming. I do not suppose you want to make an opening statement, but, if you do, please tell us.

Dr Bishop: I do not, no.

Q136 Chairman: You have had a copy of a number of questions around which we would like to seek your assistance. We are very grateful to you for coming. Could you tell us who CRA International are because we do not know anything else about you.

Dr Bishop: Perhaps a brief opening statement might make some sense then. You are seized with what is principally a legal question and questions about legal institutions bearing on merger controls. I am not a lawyer or at least I do not earn my living as a lawyer. As it happens, long ago and in a different life, I did actually qualify at the English Bar, but I have never earned my living as a lawyer. I ran a consultancy company, an economics consultancy company called Lexicon Limited and most people still know me as the Chairman of Lexicon. Last year, I and the other shareholders sold that company to Charles River Associates and that is what CRA stands for, the Charles River being the river which runs beside Harvard-MIT where it was founded, but in Europe we are still better known under the Lexicon name than under the CRA name.

Q137 Chairman: That is very helpful. Can I also thank you for your admirably succinct, crisp and robust two-page contribution in writing which, for my part, I found very helpful. I think you have also seen the written contributions of others who have responded to our call for evidence. Can we start with the question of whether there is indeed here a need for action. As you know, the CBI's view of this, and it really is their proposal which we are inquiring into, is that, "Mergers and acquisitions are essential for the restructuring of EU industries and the reallocation of resources. If there is a fundamental flaw in the mechanism, this can only damage the effectiveness of competition and EU competitiveness". Now, is that a statement with which you are in agreement?

Dr Bishop: Yes, it is.

Q138 Chairman: Would you agree that the present time it takes to get proceedings through the CFI amounts to a flaw in the mechanism?

Dr Bishop: Yes, I would, although I would put it slightly differently. I think that in merger control what business wants, and is, in my view, entitled to, is its day in court, that is, an

impartial adjudication on whether this merger is against the public interest in some sense. It is that which they sometimes feel they do not get today because the Commission is too close to the prosecutorial side and then, to get their day in court, they need to rely on the appeal procedure and the appeal procedure takes too long. For many years, in the Commission there was no rule of law at all in merger control because the Commission felt that it could destroy any merger simply by prohibiting it because, before the fast-track procedure, it would take three years to do it which was simply crazy in commercial terms for a merger to wait three years. The fast-track procedure eased that somewhat and the several defeats which the Commission suffered in the year 2002 had a traumatic effect on the Commission for the better. The Commission set up devil's advocate panels, it appointed the Chief Economist and it thoroughly improved its own procedures. I should say that that mechanism of defeat in the Court followed by cleaning up their act within the enforcement institution was paralleled exactly in the United States 13 years earlier when the American authorities lost six major cases in a row and they thoroughly overhauled the procedures and basically became more responsible enforcers. Now, that has improved it, but the truth of the matter is that there is more rule of law in merger control today than there was seven or eight years ago, but it could be improved further and, in my view, should be.

Q139 Chairman: We have been told at some point that in fact there have only been ten appeals since 1995 with regard to Commission merger decisions and four have succeeded. From what you have just said and indeed from what we have read in your written contribution, I understand that three of those were in 2002. Was the other one, as a matter of interest, before or after?

Dr Bishop: Let me see. Going through the four, there was *Airtours*, *Tetra Laval*, *Schneider-Le Grand*, and what was the fourth successful appeal, does anyone remember?

Q140 Chairman: We are not up to that level of detail.

Dr Bishop: It probably is the Sony/BMG one, and there the Commission decision was overturned in the event for different reasons. Before I forget, there is actually a small error in the evidence given to you the other day. The CBI said that, even of those four which were successful, the mergers were all dead, and they said it twice, but that is not correct. One of them did actually go through which is *Tetra Laval Sidel*. The Sidel company is now the property of Tetra Laval and the procedure was effective there to allow the whole thing to go through.

Q141 Chairman: In *Tetra Laval*, and I am just looking at the helpful table we have got in Peter Roth QC's evidence, I see that process took nine months, so it still went ahead even after a nine-month process by the appeal procedure.

Dr Bishop: Yes, it did, but, remember, that is for a special reason, and you will note that another of those, *Schneider-Le Grand*, was another French case. The capital markets work in different ways around Europe. The Paris Stock Exchange has a rule which requires a bidder to make an unconditional offer for the shares of a public company. As you know, in London that is not so, and every offer is made conditional on anti-trust clearance and lapses when referred to the Monopolies Commission. Therefore, in Paris, whether hostile or friendly, you are taking a very big risk, but you have got to take it and it is not irrelevant that the company concerned, Tetra Laval, was one of the companies of the Rausing family and they were taking a risk which many people running public companies would not take. If it was turned down, they were paying a premium to get these shares and, if the shares fell back to the pre-existing level, they stood to lose €600-700 million for absolutely nothing, but they decided to take the risk and they eventually did succeed and they own the company.

Q142 Chairman: I am not sure if this is within the questions that we had thought of putting to you, but within your statement, paragraph 8 contemplates that you might have some different system of investigation. You say that one of the problems is that the investigator/prosecutor is also the judge/adjudicator. This is within the Commission.

Dr Bishop: Yes.

Q143 Chairman: Yes, actually this is in fact the question that I was going to ask last, but I conveniently put it to you at this stage. From what you say about the three losses prompting the internal reforms of 2002, does that become rather a less acute problem?

Dr Bishop: Well, all of the problems are less acute given that the system is a more responsible system today than it was before 2002. Officials often were quite arrogant and knew that they could simply deny mergers because there was no effective remedy. Now, it is not tremendously effective today because, first, as was pointed out in the papers to you quite correctly, many of these cases are not suitable for fast track. For example, the lawyers for Airtours said that if fast track had been available in 1999 when their deal was turned down, and their deal was First Choice, they could not have availed themselves of it because there were too many issues that had to be canvassed in the appeal, unlike the *Tetra Laval Sidel* and *Schneider-Le Grand* cases where the lawyers took the view and the judge agreed with them that there were relatively few issues and they could be narrowed, so there is that flaw, that not every case is appropriate. In any case, there is no guarantee that the court will rule in seven, eight or nine months, and seven, eight or nine months is probably too long in commercial terms anyway. My own belief is that if Tetra Laval had been a public company raising money on the London Stock Exchange, the deal would never have gone through, it would have lapsed and the whole thing would have gone away.

Q144 Chairman: If some of these cases are simply not apt for the fast-track process, is there any possible way then of accelerating them short of that?

Dr Bishop: I do not think business cares about an appeal. I think business cares about a fair decision and it is that which they do not really trust the Commission to give because the decider is too close to the investigator/policeman process.

Q145 Chairman: So we are back to: a reform too far?

Dr Bishop: That is right, yes. My answer to it is a system more like the American one or indeed in some other jurisdictions in which you completely separate the final decision-maker from the person who assembles the evidence against the merger.

Q146 Chairman: In that scenario, the Commission assemble the case and then, if they still regard it as against the public interest, they present that case to the court and hope to persuade them to that conclusion?

Dr Bishop: That is correct, that is the model and then I do not think appeals would matter very much.

Q147 Lord Jay of Ewelme: That partly answers my question because I also wanted to ask a question about the role of the Commission, but just to be absolutely clear, your model would be that the Commission assembles the evidence and, if the Commission decides that the merger can go ahead, then that should be a decision taken by the Commission, but, if the Commission decides that it should not go ahead, then that would go to the court for a decision?

Dr Bishop: You are asking me a question which I had not in fact focused on at all of what happens in those cases where the Commission says, “We do not wish to challenge here”.

Q148 Lord Jay of Ewelme: Exactly.

Dr Bishop: Perhaps I suppose you had in mind that someone else might wish to challenge, say, a competitor or the employees or someone like that. The way that most of these systems work is that it is either the authorities who challenge or no one, so American practice is sometimes criticised on the grounds that people with a genuine interest, say, a consumers' association or something, cannot challenge. In practice, challengers in Europe are far more often people with an interest which has nothing much to do with the public interest and they might conceivably be right, but that is not what drives their challenge.

Q149 Lord Jay of Ewelme: You mean they are resisting a hostile takeover?

Dr Bishop: For example, or a trade union trying to extract something out of the company or I believe we had a case, did we not, in which a tribe with some sort of legal personality in Africa mounted some sort of case because of mining interests of some party to a merger, or I seem to think that was the case. There are all kinds of stakeholders or people who claim to be stakeholders who have an interest and there is a largish number of appeals. Most of the appeals that you see are pieces of theatre in which one of these stakeholders is getting some headlines by challenging and they are not effective appeals. If somebody in this Committee looked at the statistics, they would think, "Oh, there are quite a lot of appeals really", and in raw numbers there are, but they are not actually effective appeals by the person who has been stopped from doing something and they are often appeals by someone with a quite different interest.

Q150 Chairman: Just as a supplement to Lord Jay's question, if at stage one of the Commission's investigation they do not think there is a case, so to speak, to pursue, so a sort of summary refusal to take steps against the merger, presumably nobody has got any right to challenge that, have they?

Dr Bishop: You might think so, but in fact a judgment of the Court of First Instance itself not more than a couple of months ago decided to the contrary.

Q151 Chairman: Decided there was a right to challenge a refusal to carry it to the second stage?

Dr Bishop: Yes, this was the music case which I was trying to remember, and it might be Sony/BMG. The facts were roughly these: that the Commission had been working itself up to a statement of objections and to a potential prohibition of this merger of two recording companies, and the new procedures of devil's advocate panels and the Chief Economist taking a view and all that was put into operation and the judgment was then made by the Commission hierarchy that they did not have a sufficient case against this merger to justify proceeding against it. Somebody with an interest, I cannot now remember who it was, whether it was a competitor, whether it was a trade union representing employees who might lose their jobs, but somebody with an interest challenged and succeeded on the ground that the Commission had failed to give adequate reasons for its decision not to proceed. This is generally interpreted as the Commission being required to give as cogent reasons not to proceed as it would have to give if it proceeded. This has caused considerable disquiet at the Commission for reasons I entirely understand, that they can be in a position in which, whatever they do, they can be challenged because they do not have the safe harbour of saying, "We don't know enough to proceed to a prohibition", as that is no longer enough and you have to have, as it were, a reason to do so. I should say, I am an economist, as I said at the beginning, and I am straying here into talking about major legal precedents, so please take everything I have said with a large grain of salt as I am not an expert in these matters and you may want to consult someone who really knows all this in detail.

Q152 Baroness Kingsmill: Are you familiar with the procedures of the UK Competition Commission?

Dr Bishop: Yes.

Q153 Baroness Kingsmill: It seems to me, and I wonder if you agree with me, that the process appears to be quite speedy here when you have fixed time limits within which decisions have to be taken.

Dr Bishop: Yes, I think that is true, I think it is quite speedy. I see in the papers here that most of the difficulty seems to stem from two sources and mainly it is translation where working in several languages seems to be the difficulty which adds several months to the European timetable.

Q154 Baroness Kingsmill: Also it seems to me that you get over your objection that you give in your testimony about the prosecutorial aspect of the whole thing in the sense that you have an investigative sort of role as opposed to a prosecutorial sort of role.

Dr Bishop: Yes, I see why you say that and I think there is probably more satisfaction with the Competition Commission than there is with the European Commission on the whole, certainly more in the late 1990s when the European Commission was, rightly, so severely criticised. I would go one step further in the UK and I would have the OFT be somewhat larger and the CC a little smaller. The OFT would do more investigation and would put together a statement of objections and that would be the accusation which had to be answered before the CC and the CC would be a neutral decider.

Q155 Baroness Kingsmill: And then the CAT, which is what we are talking about, and the appeal aspect of that?

Dr Bishop: I am not sure you would need the CAT for that job in what I am imagining, but, no matter how impartial a decider is, he can still get things wrong.

Q156 Baroness Kingsmill: But the point I am really getting to in relation to the CBI's proposal is that you can skin the cat, if you like, in a different kind of way by having an investigative process subject to strict time guidelines and that would cover, would it, or would you agree that it would cover, the point of speed and certainty that the commercial interests would require?

Dr Bishop: It would cover most of it. Let me say, every system starts out with strict guidelines in the interests of commercial certainty and the like and time and the imperatives of people trying to make the right decision leads to a chipping away of that. If you look at the history of *The Hearst Trust*(?) in the United States, it was going to have very strict timetables so that no merger would be delayed more than a couple of months. Well, that is just not the way it worked out. There were all kinds of ways which the authorities, the FTC and the Justice Department found to say, "Your compliance with the second request on *The Hearst Trust* was not complete". Exactly the same happened with the Commission and some people around the table may remember, when the Merger Control Regulations were being negotiated in 1988/89 and when they came into force in 1990, that there were to be absolutely strict guarantees to business that this would not drag on and on, but, as was rightly pointed out in some of the evidence to you, cases like *Oracle PeopleSoft* were 16 months. Now, how did that happen?

Q157 Baroness Kingsmill: Could it be because the lawyers were let loose and not the economists?

Dr Bishop: It is partly because the officials encourage people to come and have pre-merger notification and discussions and it is a brave lawyer or banker who says to the authorities,

“Oh no, I’m not going to discuss it with you. I am going to bung in an application and insist that you operate by the timetables”. Well, that is just not a way of getting along with the guy who has power over your transaction, so with every system, including in the UK because we have extensions of time and in your time at the CC you will have seen several cases being extended, with all the goodwill in the world, you will not prevent the people operating the system, when the attention is no longer focused on this, finding some way or other to extend the period. It is not necessarily a bad thing because there is a trade-off between speed and accuracy and, whether good or bad, it is inevitable, in my view.

Q158 Lord Bowness: I would like to clarify this in my own mind, a very small point. You talked about the cases where they decided not to proceed and you said the decision was taken by the “Commission’s hierarchy”, and please do not think I am picking you up on that. Presumably it went to the College of Commissioners or does it not go to the College of Commissioners, just so we can be quite clear? It is not a decision made by an official in the hierarchy of the bureaucracy, is it, perhaps it is, or is it made by the College?

Dr Bishop: A decision not to proceed to prohibition, is it made by the College, I do not know the answer to that and you may well be right, that it is not made by the College.

Q159 Lord Clinton-Davis: It is not. Having been a Commissioner myself, it is not made by the College.

Dr Bishop: The College is itself rather a theoretical institution nowadays, though I am not sure about in Lord Clinton-Davis’s day. Formerly, the Competition Commissioner would bring a proposal and he might have to modify it and once or twice he even lost, but that has not happened in years. Today, they defer to the Commissioner. During Monti’s time, the rest of the College just did what he wanted and they rubberstamped his decisions, whereas, if I remember back to one of my first merger cases which was a steel merger, the merger went

through when the Commissioner, a Dutch chap, proposed that it be prohibited and the vote was six to six in the College of Commissioners and the President, Delors, declined to exercise his casting vote in favour of it, so, on the six-six tied motion, the motion to prohibit failed and the merger went through, and that is going through by the skin of your teeth, but nothing like that has happened in the last eight to ten years.

Q160 Lord Clinton-Davis: Thinking back, it might have been taken at a point by the Commission.

Dr Bishop: Yes.

Q161 Lord Clinton-Davis: So formerly the Commissioners would have approved or rejected the idea, but essentially it is done by the civil servants.

Dr Bishop: Yes, I think that is right, that in effect it is the civil servants. Commissioner Monti was careful to maintain an interest in difficult cases so that he would not get caught up in the feeling, “Oh, it’s gone too far. I don’t agree with this, but I’ve got to do it because I need to back my staff”. He was very good, I think, at that. The earlier one, it was Carel Van Miert who was the Commissioner in the earlier incident to do with seamless stainless steel tubes.

Q162 Lord Burnett: Delay is one of the major problems in this matter. You were, in your report, more anxious to say that you favour a more adversarial system. Taking up the point which Baroness Kingsmill made when she said, “What about the investigative role with strict time limits?”, you gave other reasons why you thought that the adversarial role was better, in other words, the investigator and the confusion between his role not quite as judge, but in that role. Would you just like to elaborate a little bit further on that and say which system you would favour and whether you think that that would find favour with the Commission.

Dr Bishop: No, the Commission would hate it. The Commission loves the power that is inherent in mergers and also people tend to be quite committed to the European project and they see competition law as the greatest success story of the European Union, that there is this body of law which is applied all over Europe and which is copied in the Member States, a tremendous success story. They do not want to see a world in which the Commission becomes less important. I know again it is a legal question, but I understand that it would require a Treaty amendment to change the Commission from the decider who is reviewed by the courts to the accuser/proposer who then hears what the courts decide, whether in his favour or not, which is what I was imagining. I defer to the very distinguished legal experts who have given evidence to you on what is practically possible legally. I wrote out my little bit of evidence to you going by the light of nature and I deliberately did not consult the questions of what might or might not be legally possible under the Treaty and institutionally possible with the courts. I am aware, as everyone is, that in practice there may be insuperable obstacles to what otherwise look like sensible changes.

Q163 Chairman: In non-merger competition cases, according to Temple Lang and Mr O'Donoghue, the Commission is extremely slow, and it is the Commission, not the CFI, which needs reorganisation. Is that again something you would subscribe to?

Dr Bishop: Yes, that is still true. It is not as bad as it used to be, but it is still true. Remember, some of these are not of great importance, and let us take a typical case. The Commission has inquired in several different ways into the operation of Visa and Mastercard and other patent card systems. Now, this is a major matter of public interest, we are talking about billions and billions every year, and it is a complicated question as to whether there is anything anti-competitive going on or not and I do not see that there is any imperative in speed. I do not see that it matters at all. I think the right answer matters much more than getting a quick answer. It is quite unlike mergers. Now, there is only one area I can think of

where it actually matters a bit and that is where a company is accused of behaving anti-competitively, a dominant company has been accused of behaving anti-competitively, and there are smaller rivals who truly are entitled to better treatment from this dominant company. There, justice delayed is justice denied, that old saying is perhaps as true as it is in mergers, but it is hard, however, to sort those particular cases out. For example, in the Microsoft wars, and I should declare an interest in that I worked against Microsoft on various matters for five or six years, it is the Commission's case that, if Microsoft had honoured legal obligations, companies such as Real Networks, who make a media player, it is called, for playing music on your computer, might have been able to avoid the near destruction which they have suffered as Microsoft has come to dominate the media player market. Now, Microsoft hotly denies all this, and I am not saying the Commission is correct, but that is the type of case in which time may matter in a way where it is somewhat analogous to the way it does in mergers, but there is no doubt that, generally speaking, it simply does not matter very much.

Q164 Chairman: We might come back to that, but can we go back to questions, on which you can offer us unique help, of composition. What qualifications should competition judges have and, in particular, do they need to be lawyers if the court's jurisdiction is limited, as at present, to reviewing the decision to revising fine levels? Are lawyers the right people or, otherwise, what?

Dr Bishop: Well, the obvious ones are economists, but then perhaps I would say that, would I not? There are others, business strategy analysts of one sort or another or financial analysts, in particular, would have a relevant skill and people do need to understand accounts, so accountants are certainly relevant too. The principal one is economists and that is actually for an objective reason, not just what I do, but, if you look at the history of anti-trust internationally, you will find that in all the leading jurisdictions of the world, in fact in all the jurisdictions of the world, the trend over the last 40 years has been for more and more

economics to come into it and for reforms to be made to what were rather formalistic legal systems in the direction of more economically thought-out ideas. That is reflected if you just take a look at the UK institutions. We have got John Fingleton, the operational head of the OFT today, he is an economist by training and his predecessor was John Vickers and, when Baroness Kingsmill was at the Commission, I think for most of your time there, it would have been another economist.

Q165 Baroness Kingsmill: Yes, I was the only lawyer.

Dr Bishop: That is paralleled in systems all over the world, more and more economists all the time. Now, it remains a system embedded in a legal structure. One way of looking at it is to look at the expenditure of private parties on professional services in preparing cases and fighting cases. There are no exact figures, but whenever I have sat down with friends and tried to quantify this, we come up with about the same answer, that in the United States and in Britain plus Brussels, not necessarily the Member States of the European Union, nowadays they spend about 85 per cent to 90 per cent or so of what they spend on legal services and 10 to 15 per cent on economic services, some of which may be provided by accounting firms, but it is basically doing economics. Whichever way you look at it, it is just more economics everywhere and everything in Europe, starting in 1997 with the Market Definition Notice, then through the changes on vertical practices and the horizontal merger guidelines, all of that has been heavily economics-influenced, so it is actually natural to have economists on these things. I think I mentioned Fred Jenny in my written evidence. Actually, just as a suggestion, I am sure Fred would be delighted to come along and he is in a unique position. He was a member for many years of the Conseil de la Concurrence, the rough equivalent of the Competition Commission here, and he was then Vice President of the Conseil de la Concurrence and he is now a member of the French Supreme Court, an economist with no legal training. I am sure he would be delighted to come to London to give you evidence.

Alternatively, Anne Pierot, who was a professor of economics in Paris at the Sorbonne, she is a member of the Conseil de la Concurrence at the moment, but she would not have the length of perspective that Fred has.

Q166 Chairman: We had thought of that, but do you understand that it would need a Treaty change to be able to put on to a judicial panel a non-lawyer?

Dr Bishop: They do not seem to have any trouble in Paris.

Q167 Chairman: I do not know whether they have the same rules. I simply do not know whether this matter has ever been considered or decided, but I just notice that, certainly under Article 225A which provides for the creation of judicial panels, on the face of it, it looks as if it requires lawyers.

Dr Bishop: That may be. I have just one comment. I was not very impressed by some of the arguments that other people put to you, saying, “Oh well, the judges can always call expert witnesses”. That is a different role and it is quite different. I remember a conversation with Frederic Jenny in which he said, and this was some years ago now, maybe even ten years ago, “My role is a sort of a continuing education role here. I am constantly talking to my fellow members of the Conseil, all of them lawyers, about what they might read on this or that or the economics, whether it is verticals or cartels or mergers or whatever”, and it is really quite different having someone come in simply for one case and disappear again, quite different from having someone at the table with an office down the corridor, day after day, week after week, year after year. It is quite different.

Q168 Chairman: Would it be a sort of halfway house to have assistant *rapporteurs* or some appointment of that character?

Dr Bishop: Yes, that could work. I think it is always better if the person concerned has a vote and has to be accommodated. In human institutions, the formal power matters, I think.

Q169 Chairman: The question, as we put it, is: if the jurisdiction is limited, as at present, to reviewing the decision, and it depends perhaps how tight a review process that is and to what extent it is permissible to reopen or review the facts, to what extent are facts reviewed and to what extent is there really live scope for views of an economist as a judge rather than a lawyer?

Dr Bishop: It is not really on the facts that he would make a contribution, no, it is about how you think about these things, how you think about the claim that a certain bundling of the offer of a supply of a firm is anti-competitive for whatever reason. An economist will tend to have, and should have, well-developed views about the theory and perhaps the evidence too, but mainly the theory of how you think about that problem. As for the more general question of review of the facts by the court, we are still in this uncertain world and formally what goes on at the CFI is judicial review. Anyone who lived through the *Airtours* case and the *Tetra Laval* case, and I and my colleagues went through those, would not see any difference between a court that has, as the German courts theoretically have, plenary power and are not simply reviewers and what happens at the CFI, and that was then confirmed when the *Tetra Laval* case went to the European Court of Justice and the (?) approach was in fact confirmed. That involved very close analysis of the facts so that this idea that it is only a review certainly does not describe what really happened in that case. Still, the theory is that it is only a review and some future court could spring up and they could say, "Well, there is not much evidence here, but the Commission has a margin of appreciation, so we will not interfere with what they have decided". If the court wanted to have a quieter period, it could find ways of doing so.

Chairman: Dr Bishop, I think, alas, we seem to have run out of your time and we have another witness, as you know, we are going to hear from today, Sir Christopher Bellamy, so unless any member of the Committee has a question they feel impelled to ask you or you have something perhaps arising out of the other questions you were asked to consider in advance which you feel we frankly ought not to leave this committee room without, is there is anything on either of those bases?

Q170 Baroness Kingsmill: I just wondered, Dr Bishop, how many lawyers you come across who understand economics and vice versa?

Dr Bishop: It is a minority and it is also true the other way round. If you take a simple word like the word “contract”, to anyone with legal training, that conjures up a large, complex world. To an economist, it is like the man on the Clapham omnibus with no legal training, he thinks it is a piece of paper; he has no complex views of it. Nevertheless, where competition cases are concerned, the formal legal structure in the interesting, difficult cases is not very informative and is not really decisive. There are a large number of routine cases which look at the procedures, but the more difficult the case, the more economics comes into it and then it becomes decisive. It is that, I think, that tribunals would be lacking if they did not have important economics support and I think that is basically the public policy here in the UK, and rightly so, in the staffing of our institutions over the last decade.

Chairman: It remains then, Dr Bishop, for me to thank you again for coming. You have been an enormous help to us and we really are most grateful.

