

MONDAY 10 DECEMBER 2007

Present

Freeman, L (Chairman)
James of Blackheath, L
Walpole, L
Whitty, L

Witness: **Professor Michael Waterson**, Professor of Economics, University of Warwick, examined.

Q11 Chairman: Good afternoon. May I welcome Professor Michael Waterson; thank you very much indeed for coming to help us in our inquiry into the impact of the EU Reform Treaty in relation to Services of General Interest. I know that you would like to make a brief observation to begin with.

Professor Waterson: I should admit to a certain amount of trepidation in this topic. Obviously I am an economist not a lawyer, and to me at least the Treaty looks to be quite a difficult document to follow and the way it is set out I find it quite tricky to work around. I am pleased to see that you are seeing a lawyer later on today so hopefully he will be able to help you where I cannot. I have had some discussion with a colleague of mine, Professor John McEldowney, about aspects of the Treaty and he shares my view that it is quite difficult to understand. In looking at the possible questions that were sent to me I felt that the very general ones I am not particularly competent to judge but the later ones I felt more able to make some comments on. I am very willing to help you in your process and I am just apologising in advance if I am not able to help you a great deal with some of the things.

Chairman: We will see how we get on. Any help that you can provide will be welcome because I think we find the new Treaty in relation to the workings of the Internal Market and

its impact somewhat difficult to understand. I am going to ask Lord Walpole to start the questioning.

Q12 Lord Walpole: This is a general question which you do not want to answer, I suspect, and that is: Does the Reform Treaty and its Protocol strike a clear balance between European involvement and Member State competency on the issue of Services of General Interest?

Professor Waterson: I guess implicitly I would say that my answer has to be that no; it is not straightforward because at least to me it does not seem to be clear. Both are mentioned in ways which do not completely disentangle the respective competencies. To the extent that I am able to answer I would say that it is unclear, there are rather unclear boundaries.

Q13 Chairman: Could I follow that question by asking, with all this ambiguity and lack of clarity, what do you think the impact is likely to be in terms of how states provide or ensure there is provision on Services of Economic and also non-Economic Interest? What are the practical consequences?

Professor Waterson: First of all I should say with Services of non-Economic General Interest I think the position is quite clear and that is that that is left up to the individual states. It where we come to Services of General Economic Interest that matters become more complex. I suppose this is because different nations have different views about the way of life that they pursue. Some nations within the Community take the view that particular services should be provided through a market mechanism, others would be rather antipathetic to that. I would imagine that there is some compromise here. There is, as I understand it, an opportunity to define particular Services of General Economic Interest as being within the competence of the European Union as a whole, but I suspect it will take some time for that to come about.

Q14 Chairman: Could you give us some examples that you think are blindingly obvious of Services of Economic Interest?

Professor Waterson: I would say, for example, that provision of electricity and gas would be examples of Services of General Economic Interest where many – perhaps all – countries would view that as being provided essentially through a market mechanism, controlled in some way by the state rather than being provided by the state itself.

Q15 Chairman: Postal services?

Professor Waterson: Quite possibly, yes, although that may be an example where different states would have different views and where it might take some time for a general view to come about. I suspect that postal services will move towards a market mechanism.

Q16 Lord Whitty: That does leave an awful lot of ambiguity really between what constitutes Services of General Interest and the value between economic and non-economic and it effectively leaves it to the Member States to sort out. You could say that this is a commendable piece of subsidiarity applying but, on the other hand, is it not going to lead to differential activity within each Member State and therefore what is supposed to be a unifying push towards the Single Market being differentially applied. If a Member State decides on one significant sector as being within the definition and another one was out, then the degree to which, for example, market liberalisation is being pursued with pressure from the European Union authorities will differ from state to state because of the state's own interpretation. This seems to me a recipe for confusion rather than a recipe for clarification of what the Single Market means. Governments who are responsible for these individual services or the framework nationally which surrounds them will want to know whether there is a view as to whether that should be classified within a view from Brussels, whether than can be classified

in one box or the other. At the moment we can be vague, but will it not be pretty rapid before we are going to have to make some more definite definitions?

Professor Waterson: Yes, I think so. As I understand it, the Union, can, through the qualified majority voting system, determine that particular services definitely are of general economic interest, so I think it will be natural for that to happen. I think inevitably it is ambiguous at the moment.

Q17 Lord Whitty: The example the Chairman gave of the postal services really are regarded differently in different Member States. Are you saying that that process could resolve that one way or the other?

Professor Waterson: Yes, I think it could do. Given that it is a qualified majority then I think it could do, yes.

Q18 Lord Whitty: In many of the areas the state provides some of the services and the definition does not actually differentiate in terms of ownership, but if we are to move into the box where the normal competitive rules should apply then clearly a state enterprise moving into that or a partially liberalised sector could lead to different outcomes in different economies. There are different patterns here and it is not entirely clear whether everything stems from the definition or whether, once you have the definition, then you can still have a thousand flowers blooming.

Professor Waterson: I think it is interesting here, as a comment on what you have just said, that the word “provide” is used in Protocol 9: “national, regional and local authorities in providing, commissioning and organising Services of General Interest”. I am not clear what the word “provide” means compared with the word “commissioning”. “Provide” implies to me that the public authority does more than just commission but actually, as you say, produces the service itself. Then that seems to me to conflict with Protocol 6 on the Internal

Market and competition of ensuring that competition is not distorted. If the state is providing the service then how is it ensuring that competition is not distorted between it as a provider and someone else? It then depends which of those views prevails; is it Protocol 6 or Protocol 9 which prevails? I do not see any problem about the elements of commissioning and organising services because that is just arranging the way that the market mechanism operates; it is this use of the word “providing” which seems to me potentially to conflict with Protocol 6.

Q19 Lord Whitty: If you take postal services in the UK you could argue that that is largely provided by a state organisation although there are elements of competition at the edges and government policies to push it further. Nevertheless, that is clearly a provider role at the moment and in most states is nearly a hundred per cent provider role. If you take water however, is that a commissioning role?

Professor Waterson: Yes, I would say so.

Q20 Lord Whitty: In the UK it is a private one but it is a private one which is, within any given area, a monopoly one, subject to a very small bit of competition.

Professor Waterson: Yes, but I would put that very much in the commissioning category.

Q21 Lord Whitty: For the consumer the effect of those is roughly similar. You are dealing with something which is a big body maybe owned by the state in one case but appointed or commissioned by the state in another.

Professor Waterson: I would distinguish between a body which always inevitably provides the service and a body which is providing it subject to potential competition or competition for the field. If you think about rail services, for example – I know that transport is not particularly relevant here but we can use it as an example – then at any one time there may be

only one operator but the operator is changed from time to time and so we have commissioning and provision, but not providing in the sense of providing forever. That is why I am slightly surprised at seeing the word “providing” which seems to me necessitates an absence of competition which seems to cause some conflict.

Q22 Chairman: Could I just mention new Article 14? I will just read it out for the benefit of the Committee. This is only dealing with Services of General Economic Interest. What it says is that “Care should be taken that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions”. These principles will be set by the European Parliament and the Council acting by means of regulations in accordance with the ordinary legislative procedures. Can you help us with what these principles are? We can guess at what some of them are, or are we into yet another area of ambiguity?

Professor Waterson: I am afraid it does seem to be somewhat ambiguous. I am sorry not to be able to offer more clarification. I am not able to help a great deal on that.

Q23 Chairman: Clearly the implication is that these principles will be established in due course.

Professor Waterson: Yes.

Chairman: We can only surmise and guess what they might be. Lord James?

Q24 Lord James of Blackheath: There has been a degree of contention in the past concerning the application or Brussels’ attitude towards allegations of state aid. I am concerned as to how far this might be either clarified or improved for further administration in the future. Given the ambiguity of the definitions of the Services of General Interest, what is a Service of General Interest in this context and where will any changes of attitude by

Brussels be taken as to when or when not state aid is provided? As a broad example of a peg on which to hang it, consider perhaps the airline industry which has been a very contentious area in the past.

Professor Waterson: I can see very much your point. It is certainly clear that Services of General Economic Interest are not defined in the Treaty. However, they are defined in the White Paper on Services of General Interest. There is at least a moderately useful definition of these, the moderate definition being services provided by the big network industries such as transport, postal services, energy and communications. Then unfortunately there is vagueness when it says, "However, the term also extends to any other economic activity subject to public service obligations". There are network aspects to some parts of the airline industry, for example the provision of the air traffic control system, but other aspects I would argue do not necessarily have a network element and so it is there where the vagueness comes in.

Q25 Lord James of Blackheath: The vagueness has been extremely prejudicial to competition interests in the past. At times the manner of the financial support has been quite direct. There have been huge subsidies given to at least two of the major European airlines by their national governments which appear to run completely counter to the spirit of the Treaty as it has stood in the past and which must surely to be in breach in the future, but which have been sanctioned and allowed according to the biggest at winning their arguments to the detriment of the smaller. Is anything going to happen as a result of the Treaty in its new form which is going to bring about any elimination of that unfairness and bring us all back to a standard on which we can trust and understand transparently from the beginning?

Professor Waterson: My understanding is that Commissioner Neelie Kroes is very interested in working hard in this particular area of state aid and sees it very much as a competition issue like you do. I would have thought that in carrying out the activities of ensuring a constant

competitive market that her office will be determined to pursue these things. However, I think, as I see it, the Treaty does not provide any particular comfort in that area.

Q26 Lord James of Blackheath: I am going to push the envelope slightly further if I may on a very sensitive area. I want to try to put it in terms of not the sort of case we are talking about where we have one airline competing with another across its own national boundaries with another. We can all visualise that quite easily. What about the case where there is a one-off industry, a one-off company, almost trading exclusively in an industry within a national boundary. This is an actual case; I am not going to identify it because I do not want to pin us down to discussion on the specific, so I depersonalise it. You have a one-off company trading which is in government ownership and the government wants to sell it. On what basis does Brussels, under the Treaty as it stands and the Treaty as it will emerge, claim the right to intervene to dictate the price at which that one-off company may be disposed of by the government concerned, even though it serves a local national interest so to do? This is an actual case; I will not name it.

Professor Waterson: One of the problems which may arise in this case is what the notion of the market price may be.

Q27 Lord James of Blackheath: Yes, except for the fact that the government has expressed satisfaction with the price but has been overruled by Brussels as to what that price should be because of its perception of the fact that there ought to be competition where there is not in fact competition because it is the only company trading in that field in the country concerned at the time.

Professor Waterson: In a sense if something is offered for sale and it is clear what is offered for sale and yet it only attracts one bid, then that is essentially the market price.

Q28 Lord James of Blackheath: In this case it actually attracted five bids but one was considered acceptable by the government concerned until it was overruled by Brussels to the extent that it was not an acceptable bid, and yet it was the best and only bid that they wanted to take. I think that is interference beyond the level of competition because it serves no competition process.

Professor Waterson: As long as the criteria of the competition were clear I would agree with you. It depends how the criteria of the competition were drawn up.

Q29 Lord James of Blackheath: I think the bad news in your answer to me is that if it was wrong before it is going to be wrong in the future because nothing is going to change.

Professor Waterson: I would say that, yes.

Lord James of Blackheath: I am dismayed. Who should we press buttons with to see whether there can be some re-think?

Q30 Chairman: Can I suggest that our trip to Brussels on Thursday might generate some heat and I think we might get some light. If I may I will just try to sum up because we are coming to the end of this particular session. This has been very helpful because you have confirmed what I think the Committee was already beginning to feel, that in this issue – Services of General Interest, both economic and non-economic – there are a great number of ambiguities and what the Treaty does not say is probably more significant than what it does say. You have outlined five and for the record and perhaps for the Committee's benefit, you pointed out that there is not perhaps a clear difference between Services of General non-Economic and Economic Interest. We know that there is not great clarity about how the shared responsibility between Member States and the organs of the European Union will operate, who shares responsibility. Thirdly, we have dealt with the principles of regulation of Services of General Economic Interest and they are to be set but we do not know precisely

what they are. Lord James has dealt with the key issues of state aid and competition and whether the Treaty makes any difference to what is an unacceptable state of affairs in certain sectors of the European economy. Finally, although we have not dealt with it, perhaps you might end with any comment on the perverse effects of those countries that are already liberalised or planning to liberalise and seeing perhaps the exercise of legitimate responsibilities of the European Union in terms of Services of General Economic Interest. They might step back from liberalisation perversely rather than going ahead.

Professor Waterson: Yes, although in that last area it seems to me that countries – I suppose the UK is an obvious example here – in liberalising activities have done so on a sort of ‘go-it-alone’ basis and therefore by and large have done it on the basis of it being in the interests of that nation as well as, possibly, in the interests of the Community. If it was in the interests of the nation at that time then for the most part I would say it would be unlikely that this coming within the purview of Brussels would necessarily be a bad thing.

Q31 Chairman: You have helped shine a few lights in dense fog.

Professor Waterson: There is one other thing I could perhaps say. There is one other piece of material from Brussels which may assist a little but, on the other hand, I suspect it does not have any legal force, that is the Handbook on the Implementation of the Services Directive which contains a definition of a service from which, of course, the definition of a Service of General Economic interest is drawn. Given that it is a handbook it is obviously an interpretation of the law rather than the law itself.

Q32 Chairman: I think we are aware of it. We will refer that to our special advisor to advise us in due course on that specific issue. I must say I was none the wiser with the handbook but perhaps I have read it incorrectly.

Professor Waterson: There was one particular element that helped me and it relates to case law: “The essential characteristic of remuneration lies in the fact that it constitutes consideration for the service in question. Whether the remuneration is provided for by the recipient of the service or by a third party is not relevant”. It then goes onto a “However” but that is, I think, of some assistance in defining the nature of a service and in particular the nature of a Service of General Economic Interest.

Chairman: Thank you very much. That concludes that part of the evidence session. We will be sending you a draft of the session; please correct it and help clarify any issues that remain outstanding. Thank you very much.

Witness: **Mr Kevin Mooney**, Partner, Simmons & Simmons, examined.

Q33 Chairman: May I welcome to the second part of our evidence session Mr Kevin Mooney who is a Senior Partner with Simmons & Simmons, and an expert in this field. Rather than go straight into questions Mr Mooney is going to help the Committee because I think some of us are not wholly up to date on what the present position is on how you register intellectual property in Europe and how you protect it, what the shortcomings are and in general terms what the new Treaty foreshadows in terms of improvement.

Mr Mooney: I am afraid that there are a variety of different intellectual property rights and inevitably the means of obtaining those rights and enforcing them differs significantly. Probably the most important intellectual property right and I think most relevant for our discussion this evening is the patent monopoly. At the moment the means of obtaining a patent are quite complicated. There are in fact two options. A company who makes an invention can apply to a national patent office and obtain a national patent. That is a national right which is enforced through the national courts. Alternatively there is a convention called the European Patent Convention, of which most European states are now members, with one or two exceptions. The inventor, rather than applying to each Member State's patent office can apply centrally to the European Patent Office in Munich. He prosecutes – that means he argues for the grant of the patent – in Munich and if he is successful he then designates which Member States of the European Patent Convention he wishes his patent to have effect in. The patent is treated as an individual national patent in each of the designated Member States. Whichever route you follow – the national patent offices or the European Patent Office – you end up with a national right which has to be enforced nationally in each and every country. That is the patent monopoly. It is different with a trade mark because there now exists within the Community a Community trade mark and it is possible to apply to the Office for the Harmonisation of the Internal Market (which is effectively a Community trade mark office in

Spain) for a Community trade mark right. Alternatively, you can get national trade marks. The most important thing is that there is no Community patent right existing at the moment, although they have been trying to create one for 30 years now. I am happy to amplify on that; there are other intellectual property rights but those are the two most important ones.

Q34 Chairman: If there has been a breach what is open, for example, to a British company that sees that two or three European companies are breaching a patent or exploiting it without permission?

Mr Mooney: The company must enforce its national right in each of those states through the national courts of that state which is obviously expensive, time consuming and some would say unnecessary.

Q35 Chairman: For the benefit of the Committee, what does the Treaty do in your judgment and what does the Treaty not do?

Mr Mooney: At the moment the Commission under the Portuguese Presidency are working very hard to try to make progress on establishing two things, firstly a central community patent court in which it would be possible to enforce this bundle of patents from Munich in one place; a central patent court in Europe. The Commission, also working with the current Presidency, has now decided to have another go at the creation of the Community patent right. Those are two things that are being actively pursued at the moment. In the past it has failed largely because of language arrangements, which we will talk about in a moment. The current proposal to amend the Treaty will not, I think, have a significant effect on the success or failure of these efforts and I can explain that if you would like me to.

Q36 Chairman: Yes, please do so; that would be very helpful.

Mr Mooney: Up to now the legal basis for creating new Community rights has required unanimity. The new article, Article 97a, provides for the ordinary legislative procedure in most cases, in other words qualified majority voting. However, as an exception to that the language arrangements – if there are language arrangements – must be passed by unanimity in the Council. The key to both the Community patent and this centralised European court jurisdiction are language arrangements. I am happy to amplify on that if you would like. In effect unanimity will still be required to get the Community patent right through.

Q37 Chairman: That looks like a major stumbling block in terms of making any progress.

Mr Mooney: Yes, except that the language arrangements which were recently considered by the Community were effectively blocked by a number of countries and it seems to me that even under qualified voting there is at present a blocking majority for what most people want to do.

Q38 Chairman: Is there any precedent, certainly in commercial law in Europe, if there is a consensus of, say, a majority of states agreeing to the establishment of this patent court and therefore the language provision supporting it simply going ahead with that small group? That is antipathetic to the history and tradition of the operation of the European Union.

Mr Mooney: There is a procedure called enhanced cooperation and at one time a number of Member States did suggest that it would be possible to take advantage of this procedure (which I am sure Mr Bretz knows better than I) so that a number of likeminded Member States who wanted to set up this centralised court under a three language regime – English, French and German – could go ahead. Unfortunately that was lost as a result of two things. Firstly, the Community legal advisors said that a patent court is an area of mixed competence and the Commission and Community must be involved. Secondly, France, Portugal, Spain and Luxembourg said that they would not agree to a three language regime. For the regime,

which a number of countries wished to pursue with a limited language regime, there was a blocking majority.

Q39 Chairman: In your judgment, if there was to be the chance of unanimity, what is the minimum number of languages that we might be able to get away with?

Mr Mooney: The current Community proposal entitles each Member State of the Community to have a chamber of this court on its own territory and therefore if that happens – to the extent that that happens – the language of that court will inevitably be the national language. The proposal also provides for regional chambers where two or more countries can get together, so to speak, in which case it is for those countries to decide which language will be the language of that regional court. The answer is that we do not know. It is conceivable but unlikely that every Member State will want to have a chamber of this court on its territory in which case we should have all the languages, but the Commission has provided an economic incentive for them not to do that. If they want to set up their own court with their own language then they pay for it. If, on the other hand, a regional court is set up, then the Commission will contribute towards the cost of the court. At the moment it is difficult to say how many languages this court will operate in, certainly 22, 23, 24 official languages would be unfortunate.

Q40 Chairman: The Committee has yet to consider its observations but I think the Committee would appreciate your comment on one possible observation which is that not much progress is going to be made unless we move to QMV.

Mr Mooney: Given that there is a blocking majority already for a limited language regime, I frankly do not think it matters whether unanimity is required or qualified majority voting. I was chairing a meeting last week and the Commission official responsible for this project was one of my speakers and I did ask the question whether she thought that Article 97a,

introducing qualified voting, would assist her and she said it would not. She would need unanimity to get this through.

Q41 Lord James of Blackheath: I need to declare an interest before I can ask a question and that is that I am currently chairman of a rapidly expanding medical device company, working closely in conjunction with an American research university and therefore hugely dependent upon the integrity of the patents that we can achieve for Europe. In this company at the present moment we are suffering hugely from attacks upon our patents from one particular Member State, and in every case we always win. We are rather in the equivalent of playing a football match where the individual would have had so many yellow cards by now that he would have been suspended for at least the rest of this season, yet there is no such process of discipline applying anywhere throughout the European structure. They get no slap on the wrist and they do not get any national control put upon them to behave better in the future. It is costing us a fortune. We are winning but I would like to think that there is going to be a better system of patent control applied to Europe as an entity that we can all trade with greater confidence.

Mr Mooney: I think we would all welcome that. The advantage of the centralised court would be that you could obtain an injunction for infringement of your patent which would automatically apply throughout the Member States of the Europe Patent Convention, which is most of Europe. The advantage of a Community patent, when it eventually comes, is that it is a unitary right which will apply for the whole of the Community and, therefore, if you get an injunction against your troublesome company again it will apply for the whole of the territory of the Community. That is something which I think the vast majority of companies would welcome; not all, there are some very strange exceptions.

Q42 Lord James of Blackheath: I can assure you we will be on the doorstep the day they open for business.

Mr Mooney: I must say that not all major industrial companies necessarily see it the same way.

Q43 Lord James of Blackheath: It is probably because we are device rather than pharmaceutical that I take the view that I do and I think there is a big distinction there.

Mr Mooney: Yes, I do not want to be cynical but I think the pharmaceutical industry enjoys the current anarchy; there are a lot of benefits to it.

Lord James of Blackheath: Sadly I have to agree with that, but thank you for the encouraging direction we may go into, and God speed the day.

Q44 Lord Whitty: Most of this has been about protecting the patent of a supplier and making sure that we move to a more common definition of the patent and if we are moving to a Single Market that makes sense. However, ultimately the Single Market is for the benefit of the consumer and it is not clear to me in which direction customer protection is going overall. If I take the music sector, clearly there are current arguments about the degree to which you can download music without infringing copyright. The same thing applies in certain areas of patents, not so obviously to the individual consumer. Is the general feeling that as we move, albeit in a stuttering way, to a European definition of patents, copyright and trademarks that that will be more protective or less protective, even in crude terms like the number of years this lasts? In other words, is there going to be a Single Market because it is standardised or is there going to be a Single Market because it is in one sense liberalised?

Mr Mooney: There is an enormous amount of harmonisation that already exists. Let me just concentrate on patents again because that is my field. Under this European Patent Convention I mentioned, patent law throughout Europe was harmonised. What was not harmonised are

the court systems and the traditions of those courts. What happens is that you have the same patent effectively being enforced in some countries but not being enforced in others because the court receives different evidence. For example in England you get discovery and disclosure and you get lots of cross-examination; in other countries you do not. We have the rather absurd situation where you have the same patent, you have the same substantive law but you have different outcomes in different courts. That is, with respect, a nonsense given that we are supposed to have an operating single internal market and that is why these two twin exercises of first of all getting a centralised court system and then a Community patent is so important. If you go back to the Lisbon summit in 2000 where they rather grandly said that they wanted Europe to be the biggest knowledge-based economy in the world, number one and number two priority was to have a Community patent and a Community patent enforcement system.

Q45 Lord Whitty: The Lisbon objective in that context is to ensure the maximum investment and innovation really so there is a real return on innovation. Innovation is of some benefit for the individual citizen but there is a balance between protecting and getting return on the innovation and getting competition less restricted by the fact that there is a patent. I can only give the example of what is the likely destination of the protection period because if it remains at pretty near to whatever it is then clearly it is helpful for the individual consumer to have commonality but they would probably prefer that it was only 15 years and some other company could actually provide an alternative which might be cheaper in the short term. There are conflicting objectives is really what I am saying. There are conflicting objectives of making sure that we are driving through innovation through a return on innovation but also making sure that we are driving a Single Market through competition so that the patent system which is frozen at a common level is not so protective that it does not allow for related competition.

Mr Mooney: I entirely agree with you. I give a lecture every year to postgraduates at Bristol University and I start with a balance sheet. On the left are the good things about the monopoly and on the right the bad things about the monopoly and then we discuss how best to achieve the good things on the left and how best to avoid the bad things on the right. One of the critical things on the right is a limited life and there must be a limited life to enable the innovator to recover his investment but not long enough to distort competition. That is absolutely right. This debate goes on and on and on. Currently it is 20 years for a patent or if you happen to be in the pharmaceutical industry you can add bits and pieces to it. With copyright, we have had the debate whether it should be life plus 50 or life plus 70. These are debates that society has to continue to have.

Q46 Lord James of Blackheath: Can I just add a point to Lord Whitty's excellent exposition of the problem there, and that is that there is a world of difference between the breach of an existing patent and the process by which a new patent is applied for which is intended to leapfrog past the patent which has been broken and carry the technology forward. It would be a hugely important gain if whatever court process was established within Europe could define the difference between those two clearly and have a better system for disciplinary control on patent breach which is what is missing at the moment.

Mr Mooney: Unfortunately the two mechanisms you mention are quite different. Enforcement will be through the courts; the process of granting patents will remain with effectively the European Patent Office which is quite separate from the court system. The length of time it takes for patents to grant is a matter which is the subject of a convention and it is something which the Community has nothing to do with frankly.

Q47 Lord James of Blackheath: You will appreciate that the speed with which the process of granting the new patent can proceed is often curtailing the remedy to the breach of the patent in the first place and that is where the problem stems.

Mr Mooney: I could not agree with you more. I use the word advisedly, it is a scandal how long it takes sometimes for oppositions to patents in the European Patent Office to be fully resolved.

Q48 Lord James of Blackheath: I am glad you used the word “scandal” and not I, and I would only ask whether you can offer any indication as to how we should redress this scandal.

Mr Mooney: Yes, I can. We had a meeting in Venice a few weeks ago with all of the major judges in Europe and one of the people who came to speak to us was Alison Brimelow, a very formidable, very intelligent English lady who is now President of the European Patent Office. She was presented with a number of complaints about the time, and the bureaucracy, that it was taking for patents to be granted. She has promised to go away and do something about it.

Q49 Chairman: I think I am right in saying that the new Treaty refers to European Union intellectual property rights whereas if you look at previous treaties I think I am right in saying that the reference is to industrial. Could you indicate why there has been this change and is there any significance?

Mr Mooney: Industry property rights is merely the rather old fashioned name for intellectual property rights. When I was a young lawyer I recollect that one of my partners in Simmons & Simmons was invited to chair the Industrial Property Committee for the City of London Solicitors Company. He said, “That’s fine, that is right up my street because I am a conveyancer”. What he did not realise was that he was going into an area that was probably misnamed.

Chairman: This has been very helpful. Just in conclusion, although we have not followed the script in terms of questions we have had, I think, a much more interesting and productive exchange.

Lord Walpole: We have learned a lot.

Q50 Chairman: Is there anything else that you would like to add for the record that we have not covered?

Mr Mooney: No. You are absolutely right, the new legal basis, Article 97a, refers to new Community rights. I have spoken about the Community patent because frankly that is the only one that is in prospect and I do not think that the changes will affect whether or not that comes into existence. God willing it will, but I do not think that the current proposals will affect it one way or the other. What other rights the Commission has up its sleeve for the future I simply do not know and therefore it is very difficult to say whether these changes will affect matters one way or the other.

Chairman: Thank you very much indeed. That brings this particular session to a close.