Lloyd's bylaw does not infringe EU competition law

Society of Lloyd's v Clementson (No 2)

Before Mr Justice Cresswell

[Judgment May 7]

The Lloyd's Central Fund Bylaw neither affected trade between member states nor was it in any event anti-competitive and it did not infringe the competition provisions of article 85 of the EC Treaty.

Mr Justice Cresswell so held in the Commercial Court of the Queen's Bench Division when allowing the application of the Society of Lloyd's under paragraph 10 of Lloyd's Central Fund Bylaw (No 4 of 1986) for the return of sums paid out of central funds to John Stewart Clementson to assist him in meeting his liability in the insurance market.

Article 85 of the EC Treaty provides; "1 The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between member states and which have as their object or effect the prevention, restriction or distortion of competition within the common market. . .

"2 Any agreements or decisions prohibited pursuant to this article shall be automatically void."

Mr Jeremy Lever, QC and Mr Richard Slowe, solicitor, for Mr Clementson; Mr Gordon Pollock, QC, Mr Paul Lasok, QC and Mr Richard Jacobs for Lloyd's.

MR JUSTICE CRESSWELL said that Mr Clementson was a name at Lloyd's. The Central Fund Bylaw empowered Lloyd's to recover from names moneys paid out of the central fund as a civil debt. Lloyd's sued Mr Clementson pursuant to paragraph 10 of the Central Fund Bylaw, as subsequently amended, in respect of sums applied out of the central fund to make good default by the defendant.

Mr Clementson, who was described by Lloyd's as the standard bearer for 2,500 names, contended that the central fund arrangements were void by reason of article 85(2) of the EC Treaty and accordingly Lloyd's claim under the central bylaw must fail.

The conduct of insurance business fell within the scope of article 85. Lloyd's conceded that it was an association of undertakings, the undertakings being the names and the syndicates within Lloyd's.

Lloyd's admitted that its bylaws, its decisions to raise contributions to the central fund and its decisions authorising sums to be withdrawn from the central fund were decisions of an association of undertakings within the meaning of article 85.

His Lordship said that the central fund arrangements, whether considered alone or in combination with the reinsurance provisions, had not had an influence, direct or indirect, actual or potential, on the pattern of trade between member states. If there was an influence it was not appreciable.

Nor did the central fund arrangements, and the reinsurance provisions, have as their object the prevention, restriction or distortion of competition within the common market. Nor did they, in the light of all the relevant facts and the legal and economic context, have as their affect the prevention, restriction or distortion of competition.

If there was an impact on competition it was not appreciable. To the extent that it was necessary to do so, his Lordship held that the rule of reason applied to the central fund arrangements. Lloyd's claim against Mr Clementson succeeded.

Solicitors: S. J. Berwin & Co; Freshfields.