

# CRIPPS SEARS & PARTNERS

## Senior Energy Lawyers Networking Luncheon

Friday 9<sup>th</sup> November 2006

Cripps Sears & Partners 7<sup>th</sup> bi-annual Networking Luncheon for Senior lawyers with an interest in the Energy sector was held on *Thursday 9<sup>th</sup> November 2006* at our usual venue of The City of London Club.

The luncheon was attended by representatives of UK and US law firms and energy companies.

***Note:** The Chatham House Rule applies at our lunches. Accordingly this note seeks to summarise briefly the points made during our conversation without attributing them to individual attendees. The note is not exhaustive and does not necessarily reflect the views of Cripps Sears & Partners. Apologies for any omissions or unintentional inaccuracies.*

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### **1. Should John Browne be questioned about the Texas City Refinery ?**

It was agreed that this latest case has had an extraordinarily high profile, especially in light of the fact that there have been many other incidents at the refinery which have already been settled. The press, it was felt, have been responsible for this as they have sought to lay the blame with Lord Browne. Settlement has, to date, been viewed by BP, as the best way of dealing with some cases. It was suggested that this is the main reason for John Browne's indictment at this stage, as a tactic by the plaintiffs' lawyers for attempting to gain higher settlements.

BP's Legal department is obviously keen to avoid this, especially with the trend in the US courts towards increasingly punitive damages. If in fact he

does appear, most attendees agreed that this would represent a failure by his colleagues in BP's Legal department. The point was made that although the refinery was extremely profitable, the decision had been made by the board to cut costs, and if it was reasonable to conclude that safety might be affected as a result, then responsibility could not be removed from the board and ultimately from John Browne. It is a question of duty of care.

Another point made was that as BP is fully insured against such accidents, is it really forced to take responsibility for its own actions?

An interesting point relating to actual safety was also made, that you can't have safety measures being made centrally and then implemented locally, without disastrous consequences. Safety innovation should come from the shop floor.

## **2. Is Waste a viable component of the energy mix?**

It was felt that waste market in the UK as a whole is under utilised as at present as we recycle only 9% of our waste. The major issue however stems from the LA's. Historically they have looked to PFI to finance projects. Many of these projects have proved relatively inefficient as large integrated waste groups have begun to offer a more effective procurement model.

There is also the issue of transportation, with the aim being to reduce waste travelling time and distance. The ideal scenario is to have the waste disposal plant as near to the sources as possible. There can however be significant planning issues, combined with objections from the local community which prevent, if not delay the building of the new plants up to a period of five years.

It was suggested that what was needed was a waste framework directive ensuring that all LA's waste had to go through a process which would make it more efficient. This could enable waste to offer something more

viable to add to the energy mix. It was suggested, that this would be unlikely to receive political support due to the bad perception of waste and that it would take a lot to bring LA's round to viewing waste as a positive thing to add to the energy mix.

### **3. What is the future for the IOC in the light of the demands of institutional investors and the current challenges of resource nationalism and the difficulty of replacing reserves and committing to long- terms investments?**

After some initial discussion regarding the exact meaning of the acronym IOC, the conversation turned to what will happen when oil reserves are completely dry.

The initial question we think was one of what would actually happen to the international oil companies, and in what form, if any, they would operate at this time. In the current market more companies are focusing on their core activities i.e. being a pure marketer or pure explorer. This poses tough questions as to what they could become. One suggestion was that the major companies would have to completely re- focus their activities, perhaps developing into research or even pharmaceutical companies. It was agreed that IOC's are much better at training people than NOC's but not as good at retaining. This may have implications for their inherent skill base.

From a financial perspective it was felt that the IOC's may need to decide to go down the route of offering share buy back schemes. Based on the massive share options offered by the IOC's this may be more effective than paying out further dividends. Another suggestion could be to choose to make a final contribution if an IOC were to cease to trade.

#### **4. Will planning obstacles mean gas supply shortages in the UK ?**

It was suggested that it has become as hard to get planning permission for an offshore terminal as it is to get permission for an onshore gas storage facility. This has not been made any easier by various pressure groups seeking legal aid, sometimes encouraged by firms who can sign legal aid cheques themselves. This is slowing the whole process down with the result that most planning applications now have to go to judicial review first. In spite of this, production is at a high and should sustain the gas needs of the UK at least in the short to medium term.

#### **5. The Stern Report : is the end of the world nigh or does climate changes present a business opportunity ?**

As expected there was some discussion about whether the link between pollution and global warming can actually be proved or whether global warming is a purely cyclical phenomenon. No agreed conclusion was reached here. It was suggested that The Stern Report could even be over optimistic and that by cutting down emissions, all we are involved in doing is deferring the inevitable by a few years. It was proposed that even more drastic action was urgently required.

The important factor is the scale of the carbon footprint left by an individual, organisation or country. It was agreed that we do need to make significant behavioural changes and that it is critical for countries especially the USA, Australia, China and India to sign up to the Kyoto Agreement as soon as possible. Even if they were to sign up now it would still take a substantial amount of time to set up the projects.

Some organisations are already profiting from global warming, and often not the most expected. For example Drax, the largest greenhouse gas producer in the UK, has seen a significant rise in its share price recently.

There are also the potential business opportunities on offer to the likes of Greenpeace and WWF without even mentioning the career protestors. In summary, with the climate change market being estimated to be worth \$500 billion, it was agreed that every cloud has a silver lining as there are significant business opportunities to be presented by climate change, and not just for energy lawyers.

***Many thanks to all those who attended. The next luncheon will be held on Thursday 3<sup>rd</sup> May 2007.***