Chair MacLeod called the Council Meeting to order at 2:41 p.m. He welcomed the following Officers, Council Members, staff members and guests:

**Officers/Voting Council Members**

The following Council Members and Officers were present:


**Representatives to the Council**

None
Other Attendees
Leah O. Brannon, James M. Burns, Elyse Dorsey, Ilene Knable Gotts, Susan M. Hutton, Ilunga Kalala, Samantha Knox, Alex Okuliar, Hartmut Schneider and Theodore Voorhees.

Section Staff
Eugenia Jefferson, Margaret Stafford, and Joanne Travis.

The following voting members of Council were not in attendance:
Subrata Bhattacharjee, Jeffrey W. Brennan, Arthur J. Burke, John Roberti, Darrell L. Williams, Valerie C. Williams and Gary Zanfagna.

The following Representatives to the Council were not in attendance:
Victor J. Domen (NAAG Representative), Renata B. Hesse (DOJ Representative), Edith Ramirez (FTC Representative) and Jon S. Tigar (Judicial Representative).

The Section’s Conflicts of Interest Policy was provided to Council Members with the agenda for the meeting posted on the Leadership Portal. The agenda includes links to documents submitted for this meeting. These Minutes are not necessarily in the order of occurrence during the Council Meeting. Due to the limited availability of certain speakers and other schedule changes, Chair MacLeod re-ordered certain portions of the meeting. Where Officers and other invited guests submitted written reports, those reports were accepted by Council and those Officers and guests relied on such written reports without any substantive modification, unless otherwise noted. In addition, where approximate figures were mentioned during the meeting and the relevant written report submitted before the meeting included precise figures, in some instances the more precise figures provided in the written report are included below. Finally, certain material from the written reports submitted for the meeting, whether or not the Officer or guest submitting the report attended or presented at the Meeting, may be included in the
minutes where such inclusion assists the Section in maintaining an accurate record of the meeting.

1. Officer Reports/Updates

A. Chair Report – William MacLeod
   - Welcome. Chair MacLeod welcomed the Officers and Council to the meeting and to The Breakers and Palm Beach.
   - Preview of Meeting. Chair MacLeod noted the focus of this meeting will be on operational matters and on execution of the Section’s plans and strategies.

B. Chair-Elect Report – Jonathan Jacobson
   - Appointments Process. Chair-Elect Jacobson discussed the status of the appointments process and solicited recommendations and input from Council members, particularly with regard to the committees to which they are the Council liaison.
   - Task Forces and Working Groups. Chair-Elect Jacobson also discussed plans for task forces and working groups that may be formed during his chairmanship, including a task force on international divergence on dominance issues. The task force would work to study and produce a report and recommendations addressing where differences can or should be bridged and addressing where and how policy and enforcement changes should be made. Chair-Elect Jacobson also discussed a possible working group to continue the Section’s work on CFIUS issues as they become more important in global merger reviews, and stressed the importance of the Section’s continued leadership in this area.
C. Immediate Past Chair Report – Roxann Henry

- Immediate Past Chair Henry expressed her compliments to Section leadership and staff for the successes achieved during the Section year, and her gratitude for the work of the Council and leadership.

D. Vice Chair Report – Bernard Nigro

- **Upcoming Meetings.** Vice Chair Nigro reported on the status of selecting venues for the 2018 Post-Annual and 2019 Mid-Winter Meetings.

- **Long Range Planning.** Vice Chair Nigro discussed the status of the quinquennial survey instrument that will be circulated as part of the Long Range Planning process. An initial draft of the survey has been prepared and will be circulated to a test audience. The Long Range Planning Committee awaits long range plans from several committees and plans to have all of the plans to be prepared in this cycle ready for Council review and approval by email in short order. The Committee also is looking to ABA-wide trends data to inform the planning process.

E. Committee Officer Report – Deborah Garza

- **Committee Activities Chart**

- Officer Garza introduced the Committee chairs presenting reports.

Committee Reports

- **Intellectual Property** – Co-Chairs Hartmut Schneider and Alexander Okuliar presented the Committee report.
  
  o The committee submitted a [written report](#).

  o Co-Chair Schneider reported that the Committee’s membership has increased from 670 to 693 members over the past year. Committee leadership (including the YLRs) comes from law firms, in-house law
departments, academia and government, providing wide viewpoint diversity.

- The Committee is highly engaged and is experiencing a successful year. Its newsletter, *Public Domain*, was relaunched several years ago and is published quarterly and contain news, thought pieces and debates. One issue centered on the FTC study of patent assertion entities and the Committee will sponsor a student writing contest.

- The co-chairs reported noticeable differences of opinion on substantive matters that complicate viewpoint diversity and balance.

- Council discussed the issue of managing viewpoint diversity, particularly within the larger ABA.

- Responsible Council Member Musgrove complimented the Committee on its work.

- **Legislation**—Chair Jim Burns presented the Committee report.
  - The committee submitted a [written report](#).
  - Chair Burns discussed the history of the Committee and development over the three years it has functioned as a substantive committee. He recounted a prior chair’s initiative to involve law students to increase the Committee’s output. Currently 20 law students track state competition and consumer protection legislative developments. This effort supplements the Committee’s monitoring of federal legislative developments.
  - Chair Burns described how an additional vice chair would assist the Committee’s growth and activities.
  - Responsible Council Member Hutnik complimented the Committee for its hard work and seconded the suggestion of an additional vice chair.
The co-chairs then invited a discussion of potential changes to the Committee’s charter, with additional focus on consumer protection topics, the convergence of digital platforms and communication and study of the structural changes and concentration in media industries.

F. Consumer Protection Officer Report – Kevin O’Connor

- Officer O’Connor submitted a written report.
- Spring Meeting Programming. Officer O’Connor reported that the Section’s four principal consumer protection-focused committees submitted 18 Spring Meeting program proposals resulting in a strong consumer protection track of 12 programs.
- Consumer Protection Conference. Officer O’Connor previewed the upcoming Consumer Protection Conference in Atlanta and the marketing efforts underway to ensure strong attendance. Chair MacLeod note that the new location and expected audience presents a tremendous opportunity to energize the Section’s consumer protection activities and presence.
- International Focus. Officer O’Connor described the focus on contacts and collaboration with international consumer protection enforcers and practitioners, and described the challenge of connecting with international consumer protection enforcers given that their presence among governmental agencies is more diffuse than is the case with competition enforcers. Several international enforcers will be invited to the Spring Meeting, and the consumer protection committees are preparing a Section reserves proposal to formalize and expand that effort.

G. Delegates Report.

- Delegates Cernak and Zanfagna submitted a summary of House of Delegates resolutions that will be before the House at is 2017 Midyear Meeting. Delegate Cernak previewed the resolutions and issues before the House of
Delegates meeting, including the resolution recognizing the International Association of Privacy Professionals as a specialty certification body and the Section of Intellectual Property’s proposal that the ABA advocate for the adoption of a specific standard for evaluating claims of nominative fair use as a matter of trademark law. Chair MacLeod noted that the IAPP is one sense is a competitor of the Section and discussed the implications of the ABA recognizing it as a certifying body.

H. Finance Officer Report – Anthony Chavez

- Finance Officer Chavez submitted a written report.
- **Section Revenues and Financial Position.** Officer Chavez reported that revenues and expenses for fiscal year 2016 were below budget, with most of the variances attributable to decreased publications revenue and costs. Officer Chavez will be discussing trends with the Publications Officer and leadership. Officer Chavez submitted a budget update. Operating results for the current year are on-track both for revenues and expenses. The Section’s long-term investments stand at approximately $12.6 million in Section reserves, an increase of approximately $400,000 from the time of the last Council meeting.
- **Reserve Proposals.** Officer Chavez reminded officers and Council that Reserves Project proposals were due on December 2nd but the deadline has been extended to permit additional requests.
- **Ongoing Projects.** Council discussed various current projects, including the Steiger Fellowships and the evaluation of the value and cost of the program.

I. International Officer Report – Fiona Schaeffer

- **Section Comments.** Officer Schaeffer commented on the continuing production and submission of Section comments, which are summarized in the report of the
Secretary and Communications Officer, as well as those now being prepared and under consideration.

- **Other Projects.** Officer Schaeffer discussed other International Task Force projects, including a review of approaches to penalties and remedies in multi-jurisdictional civil and criminal proceedings and the possibility of the imposition of overlapping or duplicative remedies; and a study of public interest factors in competition decisions.

- **Industrial Policy.** Officer Schaeffer discussed potential reactions in international competition policy and practice in light of the new administration’s statements on industrial policy.

J. **Program Officer Report – Brian Henry**

- Officer Henry submitted a written report.

- **Upcoming Programs.** Officer Henry previewed a full schedule of upcoming programs, including the Consumer Protection Conference, the Spring Meeting and the Global Private Litigation Conference. Officer Henry stated that there already are over 250 registrations for the Spring Meeting even at this early date.

- **Global Seminar Series.** Officer Henry reported that the Program Committee is evaluating proposals for future installments of the Global Seminar Series.

- **Marketing.** Officer Henry solicited ideas for more effectively marketing of Section programs.

- **Upcoming Programs.** Chair MacLeod discussed experiments in Section programming, and discussed the speaker for the Thursday night dinner at the Spring Meeting.

K. **Publications Officer Report – Jonathan Gleklen**

- Officer Gleklen submitted a written report.

- **Publication Finances.** Officer Gleklen discussed the financial performance for Section publications in the first several months of the Section year.
• **Antitrust Law Developments.** Officer Gleklen reported that the 8th edition of Antitrust Law Developments has gone through Council review, and requested a motion that Council approve publication of ALD 8. Chair-Elect Jacobson moved approval of publication of the 8th edition of Antitrust Law Developments and Secretary and Communications Officer Zych seconded the motion. Council unanimously approved the motion. Officer Gleklen reported that copy edits are scheduled to go to ABA publishing on January 11th.

• **CPLD.** Officer Gleklen and Council discussed sales and marketing of the 2nd edition of Consumer Protection Law Developments and what can be done to increase sales.

• **Publication Trends.** Council discussed trends in Section publications, particularly with regard to revenues and net proceeds.

• **Periodicals Update.** Officer Gleklen referred to his written report for a summary of the state of Section periodicals.

L. **Secretary and Communications Officer Report – Thomas Zych**

• Officer Zych submitted a [written report](#).

• **Officer Zych moved the approval of the Minutes of the Fall Council Meeting.** The motion was seconded and the Minutes were approved by Council unanimously.

• **Content Committee Activities.** Officer Zych discussed the strategic and tactical projects underway through the Content Committee. The Committee is working on its first set of priorities identified in the report of the Long Range Planning Committee on Section Content.

• **E-Book Project.** Officer Zych reported that the Content Committee is completing the Request for Proposal for the electronic publication of select Section books and anticipates distribution of the RFP well prior to the Spring Meeting.
• **Young Lawyer Involvement.** Officer Zych also reported that the Content Committee continues to work on a plan to match younger lawyers with program session chairs to assist in the production and collection of written materials, in part addressing what may be a reason invited speakers decline invitations as well as the concern about individual panels meeting written material requirements.

• **Connect Update.** The Content Committee continues to work with Higher Logic to redesign the landing page of the Connect site, permitting greater customization tied to a user’s preferences and Section participation, the adoption of an easier-to-use URL to get to the landing page to make access more intuitive and to add news feeds to the site to increase its value. The Content Committee plans to have the revised site ready for the Spring Meeting.

• **Content Best Practices.** Officer Zych discussed the Content Committee’s work on a set of Section content best practices to memorialize lessons learned and collect best practices in developing and disseminating Section content.

• **Council Actions.** The written report of Officer Zych included a summary of all action items taken by Council between the Fall Council Meeting and March 15, 2017.

• The Membership and Diversity Committee submitted a written report.

2. **Reports - Council Liaisons/Special Guests**
   
   A. **Commission on Women In the Profession (Written Report Only)**
   
   B. **Commission on Racial and Ethnic Diversity in the Profession – (Written Report Only)**
   
   C. **Canadian Bar Association** – Susan Hutton, Chair of the Competition Law Section of the Canadian Bar Association, thanked the Council and Officers for the invitation to attend the meeting and for the opportunity to observe the work of our Section. Chair Hutton emphasized the close working relationships between the Sections, including the presence of fifteen Canadian competition practitioners in ABA Antitrust Section leadership, growing joint programming and Former Chair Henry’s presentation to the CBA Competition Law Section’s Spring
Chair Hutton described the CBA’s outreach to international enforcers and practitioners, including its hosting of a delegation from Vietnam in the past year. Chair Hutton reported that the section has over 1,000 members and twelve committees, and had presented over 40 CLE roundtables, conferences and networking events, four of these being in conjunction with the ABA Antitrust Section. The section also regularly prepares and submits comments to pending legislation, and published a journal in both printed and digital formats. Chair Hutton invited Section members and leadership to attend the section’s one-day Spring Conference in Toronto. Finally, Chair Hutton reported that the Canadian Competition Bureau will host an ICN conference in Toronto this fall. Council member Musgrove commended the strong relationship between the two sections and the growth in the CBA’s competition efforts, engagement and output.

D. **ABA Board of Governors.** Former Chair Ilene Gotts reported that ABA President Klein will be speaking to the leadership the following day. Former Chair Gotts also discussed the status and scope of the Association’s project to substantially redesign the ABA website architecture and content and that the project is on track and on budget. Former Chair Gotts also described the financial condition of the ABA and the spending of operational reserves. Former Chair Gotts described plans for the 2017 ABA Annual Meeting in New York and the innovative use of new formats, programming tracks and pricing options.

E. **Presidential Transition Task Force.** Former Chair Ted Voorhees and Leah Brannon updated the Council on the progress of the Presidential Transition Task Force Report. Former Chair Voorhees reported that the treatment of intellectual property issues required the most discussion internally and also have been the subject of substantial discussions with the Section of Intellectual Property Law, which were ongoing at the time of the meeting; the effort will be to work through the issues raised by the Section of Intellectual Property Law without
undoing the careful work of the Task Force in reaching its own consensus. Chair MacLeod reminded Council that the quadrennial transition task force is an opportunity for the Section to demonstrate its thought leadership on competition and consumer protection policy, and that the Task Force report represents the input and perspectives of a very wide variety of viewpoints. Chair MacLeod described the report as the product of rich discussion and debate and careful deliberation, and was developed in the midst of an external environment of intense political debate and polarization and an election cycle in which antitrust policy was debated by the candidates. Chair MacLeod commended the Task Force for its work free of political or ideological divisions.

3. **Section Director Report – Joanne Travis.**

- Section Director Travis submitted a [written report](#).
- Director Travis introduced Eugenia Jefferson.
- Director Travis discussed the development of a Section marketing plan, a [draft](#) of which was provided to Council in the meeting materials. Director Travis discussed the need to bring in marketing expertise to assist in developing and implementing new marketing strategies; Council discussed options for obtaining such expertise. Council member Musgrove suggested increased marketing to foreign associates. Chair MacLeod expressed the opinion that the Section likely will need to go outside of the ABA to locate appropriate marketing assistance.

Chair MacLeod adjourned the Council meeting at 4:59 p.m.
JOINT COMMENTS OF THE AMERICAN BAR ASSOCIATION’S SECTION OF ANTITRUST LAW AND SECTION OF INTERNATIONAL LAW ON CADE’S DRAFT RESOLUTION ON ACCESS TO DOCUMENTS AND LEGISLATIVE PROPOSALS ON CIVIL ASPECTS OF ANTITRUST DAMAGE ACTIONS

- Submitted for review and approval on January 13, 2017 by International Officer Fiona Schaefer.

- Voting via electronic mail was completed on January 17, 2017.

- The Comments were approved by Council on January 17, 2017 with no votes in opposition.

- Upon approval by Council, the comments were submitted and declared in accordance with the ABA’s Blanket Authority Procedure.

- Final comments were submitted to the Conselho Administrativo de Defesa Economica on January 31, 2017.

- The working group was led by Amadeu Ribeiro and included Brendan Coffman, Sandy Pastroff, Randall Hofley, Mariana Tavares, Barbara Rosenberg, Frederico Donas and Frederico Martins as well as Stacey Anne Mahoney from the Section of International Law.

JOINT COMMENTS OF THE SECTIONS OF ANTITRUST AND INTERNATIONAL LAW ON THE GERMAN CARTEL OFFICE DRAFT GUIDANCE NOTE ON THE PROHIBITION OF VERTICAL PRICE FIXING IN THE BRICK-AND-MORTAR FOOD RETAIL SECTOR

- Submitted for review and approval on February 22, 2017 by International Officer Fiona Schaefer.

- Officer Schaeffer circulated a revised draft on February 24, 2017.

- Voting via electronic mail was completed on February 24, 2017.

- The comments were approved by Council on February 24, 2017 with no votes in opposition.
• Upon approval by Council, the comments were submitted and declared in accordance with the ABA’s Blanket Authority Procedure.

• Final comments were submitted to the German Federal Cartel Office on March 9, 2017.

• The drafting group was led by Christina Hummer and included Michael Lindsay, Philipp Giradet, Rahul Saha, Thomas Lübbig, Maria Dreher and Benjamin Wastler.

COMMENTS OF THE AMERICAN BAR ASSOCIATION SECTIONS OF ANTITRUST LAW, INTELLECTUAL PROPERTY LAW, INTERNATIONAL LAW, AND SCIENCE & TECHNOLOGY LAW ON THE DRAFT ANTI-UNFAIR COMPETITION LAW OF THE PEOPLE’S REPUBLIC OF CHINA

• Submitted for review and approval on March 17, 2017 by International Officer Fiona Schaefer.

• Voting via electronic mail was completed on March 20, 2017.

• The comments were approved by Council on March 20, 2017 with no votes in opposition.

• The working group was led by Steve Harris, Emilio Varanini and Amy Mudge.

PUBLICATIONS

APPROVAL OF THE PUBLICATION OF THE CARTEL LAW BASICS FOR EXECUTIVES

• On January 24, 2017 Publications Officer Jonathan Gleklen circulated for Council review and approval a proposal for publication of Cartel Law Basics for Executives. The work previously was presented and discussed as a “flip book” publication intended for use by non-lawyer executives and managers.

• Voting was conducted by electronic mail.

• The proposal was approved by Council on January 31, 2017 with no votes in opposition.

• The publication project was chaired by Joseph Murphy, and Mary Strimel, Doug Tween, and Joe Gormley provided principal assistance.
APPROVAL OF THE PUBLICATION OF THE TRANSATLANTIC PRICING: FREQUENTLY ASKED QUESTIONS HANDBOOK


- Voting was conducted by electronic mail.

- The proposal was approved by Council on February 15 with no votes in opposition.

APPROVAL OF THE PROPOSAL TO PUBLISH INTERNATIONAL INVESTIGATIONS AND MERGER REVIEWS -- A HANDBOOK FOR ANTITRUST COUNSEL


- The proposed handbook is a successor to the International Antitrust Cooperation Handbook, published in 2004.

- Voting was conducted by electronic mail.

- The proposal was approved on March 8, 2017 with no votes in opposition.

- The publication project will be chaired by Tom Collin, and the editorial board includes Ilene Gotts, Ann O'Brien, Krisztian Katona, Amadeu Ribiero, Paul Lugard, and Mark Whitener.