

New UK Chief Must Balance Biz Needs With Brexit Goals

By **Melissa Lipman**

Law360, London (July 12, 2016, 5:40 PM ET) -- Theresa May will take over as British prime minister Wednesday and begin setting the stage for marathon talks with the European Union, as the U.K. strives to exit the bloc without Britain's banks and other services sectors losing crucial access to EU markets.

In the months ahead, Home Secretary May will seek a trade-off between retaining access to Europe's single market without having to give in to likely EU conditions that the U.K. continue to allow European citizens the right to travel and work in Britain. May's problem is that limiting immigration from the rest of Europe had been a central plank of the campaign for the U.K. to leave the EU, or Brexit.

May found herself the last candidate standing Monday to replace David Cameron atop the Conservative Party after rivals failed to gather enough support from their fellow lawmakers.

Though May campaigned alongside Cameron to keep the U.K. in the EU, she has explicitly rejected the suggestion that the country might somehow avoid the process with a second vote. Brexit means Brexit, May reiterated in a speech Monday. In the same speech, May also called for a tougher approach to big business, including cracking down on everything from tax evasion to executive compensation.

While her proposals may sound surprising, in some ways they are in line with the way the Conservative Party has sought to portray itself in recent years and indicate that May's government is unlikely to try to toss off EU regulations wholesale, attorneys say.

"She's a fairly classic tow-the-party-line type of person," said Squire Patton Boggs LLP partner Paul Anderson. "They've all been saying that for the last few years, and it's a bit of a point of direction to her own party as much as anything."

Perhaps the toughest challenge May will have to navigate in her new role is trying to secure access to the EU's single market for trade in goods and services for U.K. businesses — something that is key for the country's major financial services industry, centered in London.

The biggest issue, and the one that may be the toughest for May's government to achieve, is "passporting." That system lets businesses regulated in one EU nation easily do business in another without having to clear the same regulatory hurdles again, which is key for banks, insurers and other financial services players.

No other non-EU country has full passporting rights for its services industries. And for the U.K. to get

that elusive access, May's government would almost certainly have to agree to continue letting EU citizens move and work freely across U.K. borders. But concerns about immigration into the U.K. were one of the biggest issues for those who advocated leaving the EU, and May herself had given a speech in October calling for controlled rather than mass immigration.

"It is tricky to reconcile the two, and she has a reputation that would be more hard-line. She never achieved the constant reduction in immigration they all hoped for," Anderson said. "I wonder whether the pragmatic side of her would come through so benefits to economy would trump the immigration concerns."

In her speech Monday, which was prepared as a way of launching what was originally expected to be a much longer campaign to lead the Conservative Party, May also vowed to change how big business is overseen, saying large companies are supposed to face governance from nonexecutive directors with broader, long-term interests. The incoming prime minister said the government needed to get "tough on irresponsible behavior in big business."

For example, she called to make shareholder votes on corporate executive pay binding rather than advisory and to increase transparency on compensation. In her time as a member of Parliament, however, May has also consistently either voted against, or missed votes on, proposals related to taxing banker bonuses, according to U.K.-based nonprofit TheyWorkForYou.

It's unclear whether May's speech really means that her government will look to get tougher on big business over the long term, according to Davis Polk & Wardwell LLP's Michael Sholem, but it's possible her call for stricter oversight is a way of minimizing any hopes among the pro-Brexit camp that leaving the EU would amount to a wholesale rollback of European rules and regulations.

"Based on that speech and her previous pronouncements, I don't think we're going to see a tremendous bonfire of financial regulation and red tape resulting from her premiership," Sholem said.

And even though May didn't direct her comments about executive pay specifically at the financial services sector, Sholem suggested that the speech might indicate that the U.K. was less likely to try to pull out of EU bonus cap rules in the bloc's capital requirements directive.

May also tackled some issues that have been high on the EU agenda recently, including tax avoidance. May specifically named three companies — Amazon.com Inc., Google Inc. and Starbucks Corp. — that have gotten wrapped up in European Commission competition investigations into special tax deals some governments have offered major companies.

And the incoming prime minister vowed to crack down on tax avoidance among both big companies and individuals.

May also said the government should be ready to "use — and reform — competition law so that markets work better for people."

"If there is evidence that the big utility firms and the retail banks are abusing their roles in highly consolidated markets, we shouldn't just complain about it. We shouldn't say, 'It's too difficult.' We should do something about it," May said.

May's remarks were open-ended enough that they could be seen either as a boost for the country's

antitrust watchdog to continue robust enforcement or as a sign of political interference to come in U.K. competition law, according to Cooley LLP's Becket McGrath.

"While in many ways this would represent a clear shift away from current government policy, there are interesting parallels with policies floated by the previous Liberal Democrat secretary of state for business in the coalition government, Vince Cable," McGrath said.

One reform May could have in mind is reintroducing a public interest test in the country's merger regime, according to McGrath.

That kind of public interest test is something that ministers from the Liberal Democrat Party had unsuccessfully advocated when they formed a coalition government with the Conservatives before the 2015 election.

"This proposal was ultimately dropped, possibly due to the difficulty of deciding where to draw the line in practice and the risk of being drawn into protectionist arguments that could deter foreign investment," McGrath said.

In her speech, May did explicitly highlight the acquisitions of major U.K. companies like Cadbury and AstraZeneca PLC by multinationals, pointing out that workers as well as "transient shareholders" have a stake in those kind of deals.

So far at least, Sholem said, May doesn't look to be offering the same kind of fundamental change to the approach the Conservative Party might have shown had more hard-line pro-Brexit politicians like Andrea Leadsom and Michael Gove, May's last two challengers, prevailed.

While companies shouldn't be waiting around to see exactly what deal May's government comes up with, they should be watching who ends up in the incoming prime minister's cabinet and particularly who lands the task of running Brexit talks with the EU, according to Sholem.

"The interesting thing for financial services firms is how open that 'Brexit department' is going to be to overtures from the financial services industry and the need to maintain passporting rights, the need to have certainty on which EU financial services directives are going to be implemented in the next couple years," Sholem said.

--Editing by Katherine Rautenberg and Edrienne Su.