
**UK COMPETITION DISPUTES
WINTER NEWSLETTER 2022**



The last 12 months have been important for the development of private enforcement actions for breaches of competition law, including in relation to consumer redress and collective proceedings. Claimants continue to push boundaries and find innovative ways of pursuing perpetrators of unlawful behaviour in the courts, both in the UK and abroad, while dealing with the changing competition law landscape due to Brexit.

We take a look at some of these developments in our Winter newsletter.

Collective opt-out proceedings

In the first five and a half years since the introduction of the Consumer Rights Act 2015 and the advent of opt-out collective redress, not a single opt-out claim was certified. In 2021, however, three opt-out collective proceedings were certified by the Competition Appeal Tribunal.

First, the CAT authorised Mr Merricks to act as the class representative of over 46 million consumers in his multi-billion pound claim against Mastercard stemming from the imposition of interchange fees¹. Second, the CAT authorised Mr le Patourel to act on behalf of millions of landline telephone users whom Mr Le Patourel alleges have been victims of BT's abuse of dominance². Third, the CAT authorised Mr Gutmann to act as the class representative on behalf of millions of rail passengers in his claims against two train-operating companies for alleged abuse of dominance³.

Alongside these certification decisions, the past year saw seven new opt-out collective claims filed, including a number against major tech companies. Claims were filed on behalf of 19.6 million eligible UK iPhone and iPad users against Apple; on behalf 19.5 million eligible UK users of smartphones and tablets running on Google's Android operating system; and against Qualcomm, Inc. on behalf of a class of around 29 million UK consumers. For an in-depth analysis and an extensive look at the collectives landscape, [please click](#).

¹ 1266/7/7/16 *Walter Hugh Merricks CBE v Mastercard Incorporated and Others*

² 1381/7/7/21 *Le Patourel v BT Group Plc and British Telecommunications Plc*

³ 1304/7/7/19 *Gutmann v First MTR South Western Trains Limited and Another* and 1305/7/7/19 *Justin Gutmann v London & South Eastern Railway Limited*

Power Cables cartel

Away from the collective claims arena, Hausfeld has been representing, among other parties, the developer of the Greater Gabbard Offshore Wind Farm alongside one of its shareholders, SSE plc, in their multi-million damages claim against Prysmian. Prysmian is a worldwide cable manufacturer and was sanctioned in 2014 by the European Commission for its involvement in the Power Cables cartel.

The claim progressed swiftly in 2021 and is currently in the expert evidence phase, with trial scheduled to begin in June 2022. The Greater Gabbard claim will be only the second claim against the Power Cables cartellists to go to trial, following the seminal *Britned v ABB* trial in 2019.

The Greater Gabbard case raises unique and complex questions surrounding the regulatory regime for offshore transmission networks which will be tried for the first time in the UK courts, and for that reason it has earned a well-deserved place in *The Lawyer's* list of Top 20 Cases for 2022.

Trucks cartel in the UK and abroad

Hausfeld represents 13 corporates (involving over 500 claimants) in their claim before the UK's Competition Appeal Tribunal for damages resulting from the Trucks cartel.

2021 saw significant progress being made to bring the proceedings to a head, with trial being listed for 2024. The Tribunal was also required to deal with the real procedural issues created by the complexities of the claim. This was due to:

(i) the breadth of the pan European-cartel, which involved six defendants and spanned a 14-year period (the Tribunal expressly acknowledging the unprecedented volume of disclosure); and

(ii) the size/nature of the Claimant group.

A further case management conference will take place in March 2022 to address these issues further.

Hausfeld also represents more than 4,500 companies from 37 countries before the Dutch courts, seeking damages resulting from the Trucks cartel. Hausfeld's Dutch claims have the support of various trade associations, insurers, and professional organisations.

In 2021, our clients made significant progress in several proceedings before the Amsterdam Court whilst also filing additional writs of summons shortly before the five-year anniversary of the European Commission's infringement decision.

Notably, on 12 May 2021, Hausfeld's clients secured a major victory as the Amsterdam Court rejected the truck manufacturers' arguments that the claimants did not suffer any damages and the claims should be struck out. Even though this judgment is given in the proceedings for the "first wave" of claimants, it will be of significance for all our clients.

A further hearing will take place in March 2022 to discuss topics such as the validity of the assignments and the law applicable to the claims.

Auto Parts cartels

The last year saw a significantly higher number of new and ongoing claims brought by multiple (mostly foreign-headquartered) car manufacturers against many global suppliers, who they allege overcharged them on automotive parts. Whilst the European Commission's long series of cartel decisions in the automotive sector – there have been 13 in total – appears to have now come to a halt, many damages claims arising from those decisions are only now seeing the light of day, whilst many more have been settled behind the scenes.

Renault

Of particular note are two claims issued by the Renault Group, a relative newcomer to UK

cartel litigation. Renault first pursued a hybrid follow-on and stand-alone claim against DENSO in the High Court in respect of the thermal systems cartel. Renault successfully leveraged the litigation tools available before the English courts to obtain disclosure after the claim was issued, in November 2020, but before it was served on the Defendants – a first for this type of action (if not for any English claim).

Shortly afterwards, Renault pursued a stand-alone High Court claim against its main supplier of maritime car carrier services, Höegh, which was not sanctioned by the European Commission but sanctioned by other competition authorities.

This stand-alone claim, the first 100% stand-alone cartel claim brought by a car manufacturer in England, was issued in December 2020 to preserve Renault's right to pursue the claim in the English courts in the context of Brexit. The strategy was successful, and the case was settled within 8 months of filing.

PSA

At a similar time, the PSA Group, now part of the larger Stellantis Group following a merger with the Fiat-Chrysler Group, pursued a stand-alone claim relating to the occupant safety systems cartel, again in order to preserve its rights to bring the claim in the English courts in the context of Brexit.

This claim was filed in the High Court against ZF/TRW, Autoliv, Toyota Gosei and Tokai Rika in December 2020 and, despite initially indicating that they intended to challenge jurisdiction, the defendants in that claim ultimately did not do so. The litigation therefore progressed in 2021 with a first case management conference to be listed in 2022, likely to cover areas relating to disclosure and access to the European Commission's investigation file.

Different parties take different approaches in all these claims. One trend we have identified is that claimants are prepared to pursue claims on a stand-alone rather than a follow-

on basis (in part or in full). This trend looks set to continue in 2022.

Foundem (Infederation)

On 10 November 2021, the General Court delivered its judgment in Google's appeal of the European Commission's Google Shopping Decision from June 2017. The General Court dismissed Google's appeal and upheld the EUR 2.42 billion fine imposed on Google – a record fine at the time.

The General Court agreed with the European Commission's finding (in its vast majority) that Google abused its dominant position by favouring its own comparison shopping service over competing comparison shopping services. The General Court ruled out any objective justification for Google's conduct and found that Google had acted intentionally and not negligently.

While there are three European Commission infringement findings against Google, this is the first time that the EU's courts have considered whether Google's conduct complies with European competition laws – and the answer here is an emphatic 'no'. The judgment is good news both for those who attempt to compete with Google's myriad services and for the millions of consumers who are impacted by Google's stranglehold over markets that depend on Google Search.

The contribution made by many of the interveners supporting the European Commission – including Hausfeld's clients (Foundem, VDZ, BDZV and Visual Meta) – assisted the Court in its finding against Google.

Further infringement findings against pharmaceutical companies

In 2021, the CMA imposed fines of over £260 million in the hydrocortisone tablets market in the UK for excessive pricing, after a price increase of more than 10,000% over a ten-year period, along with "pay-for-delay" agreements, in which potential competitors were paid millions to stay out of the market for

years allowing Auden Mckenzie and Actavis UK to continue to exploit the NHS by charging high prices. [More info.](#)

In August, the CMA also fined a pharmaceutical company for breaching competition law having charged excessive and unfair prices in relation to the supply of Liothyronine, inflating the price of the drug by 1,110%. In imposing its fine, the CMA found that the price increases were not driven by any meaningful innovation or investment, the volumes of supply remained broadly stable, and the cost of producing Liothyronine did not significantly increase. [More info.](#)

The CAT strikes out abuse of dominance claim

In September 2021, the CAT handed down judgment in *Forrest Fresh Foods Ltd v Coca-Cola European Partners Great Britain Ltd*, striking out the claim. It is unusual for the CAT to strike out claims, so the judgment in this case serves as a reminder of the importance of formulating and pleading competition claims properly. That said, applications of this kind are difficult to win and this claim was unusual in meeting the requisite threshold. [For further details.](#)

New government proposals to boost competition and consumer policy

In July, the Government unveiled a package of proposed reforms to competition and consumer policy with a view to bolstering competition and improving outcomes for consumers. These proposals entailed streamlined and strengthened powers for the Competition and Markets Authority (CMA), including that the CMA be given new, direct fining powers for violations of consumer law – similar to its existing powers in respect of competition law breaches. In addition, the government proposed the introduction of faster enforcement processes, mandatory merger thresholds and greater protections for emerging businesses against so-called “killer acquisitions”.

These proposals are a welcome attempt to improve competition and consumer outcomes

in the decade ahead. Interested parties, ourselves included, studied the proposals in depth and responded to the Government’s consultations. [More info.](#)

LOOKING AHEAD

Like 2021, 2022 appears set to be a busy year in relation to the enforcement of competition law. From the point of view of public enforcement, it will be interesting to observe how the UK continues to plot its own course post-Brexit, and in particular to see how the CMA’s heightened scrutiny of Big Tech manifests itself in the coming year.

From the point of view of private enforcement, 2022 will see a growing volume of both follow-on and stand-alone damages actions progressing through the courts in the UK and in Europe. The collectives actions sphere will be particularly active, with the Competition Appeal Tribunal due to deliver judgments in relation to certification in several important claims and to hold certification hearings in further high-profile cases.

[With special thanks to Scott Campbell, Anna Morfey, Lucy Rigby, Jonothan Broadbent and Antoine Riquier. If you would like to discuss anything in this newsletter, please contact Scott Campbell, Head of Competition Disputes, on \[scampbell@hausfeld.com\]\(mailto:scampbell@hausfeld.com\) or your usual Hausfeld contact.](#)



"Without a doubt, the leading claimant firm for competition litigation. They blazed the trail which others now follow."

Legal 500 UK, 2022

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