

A photograph of a rowing team in a boat, with a large purple diagonal overlay on the left side. The image shows several rowers in blue uniforms, with their hands on oars. The background is a blurred view of water and a white boat hull.

SLAUGHTER AND MAY

Private enforcement of competition law in the UK

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1. Introduction

- 1.1 The English courts' willingness to grant damages (and other relief) for breaches of competition law has been clear at least since the decision of the House of Lords in *Garden Cottage Foods* in 1983. However, it is only with more recent developments that private enforcement has come to be seen as a credible complement to public enforcement by competition regulators.
- 1.2 In 2002 the UK established a specialist tribunal, called the Competition Appeal Tribunal (CAT), to hear claims for damages that "follow on" from infringement decisions taken by the UK or European competition authorities. In October 2015 the Consumer Rights Act broadened the CAT's jurisdiction so that it can now hear "standalone" claims (that is, claims that do not rely on infringement decisions). The same Act also introduced collective proceedings - the UK's equivalent of US-style class actions.
- 1.3 Alongside these developments, the Competition and Markets Authority (CMA), the UK's primary competition authority, has increased its focus on the usefulness of private enforcement: the CMA's prioritisation principles take into account the possibility that private litigants may be better placed to enforce breaches of competition law than the CMA. Legislative policy at the UK and European level also strongly supports private enforcement: the Consumer Rights Act was introduced to promote and encourage civil claims, as was the European Damages Directive (which came into force in the UK in March 2017).
- 1.4 This publication examines the key aspects of competition litigation before the CAT, the jurisdiction of which extends to the United Kingdom as a whole, and before the High Court of England and Wales. It also outlines Slaughter and May's capability and experience in this important field.

2. Actionable competition law breaches

- 2.1 Private actions brought before the UK courts for breaches of competition law are generally framed as actions for breach of one of the following statutory prohibitions:
- the prohibition of anti-competitive conduct (including cartels) in Article 101 of the Treaty on the Functioning of the European Union (TFEU) or the UK's domestic equivalent in section 2 of the Competition Act 1998 (CA98) (commonly referred to as the "Chapter I prohibition"); or
 - the prohibition of the abuse of a dominant position in Article 102 of the TFEU or the UK's domestic equivalent in section 18 of the CA98 (commonly referred to as the "Chapter II prohibition").
- 2.2 Claims for breaches of the TFEU can be brought directly before a UK court. In practice, however, claims before the UK courts are often based on both the relevant European provision and the UK's domestic equivalent.

The prohibition of anti-competitive conduct

- 2.3 Article 101 of the TFEU prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between EU Member States and which have the object or effect of preventing, restricting or distorting competition. The UK's domestic equivalent in Chapter I prohibits similar practices that may affect trade within the UK.
- 2.4 Types of conduct that may be caught by Article 101 or Chapter I include the following:
- price-fixing or market-sharing cartels;
 - agreements to limit production or sales;
 - bid-rigging;
 - resale price maintenance;
 - exclusivity agreements;
 - intra-EU export bans;
 - territorial restrictions; and
 - exchanges of commercially sensitive information.

The prohibition of the abuse of a dominant position

- 2.5 Article 102 of the TFEU prohibits the abuse of a dominant position within the EU (or a substantial part of it) which may affect trade between EU Member States. The UK's domestic equivalent in Chapter II prohibits similar abuses that may affect trade within the UK.

- 2.6 Article 102 and Chapter II only apply to undertakings that hold a “dominant position”. For these purposes, an undertaking will hold a dominant position in the relevant market if it has “the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers”. The analysis of whether or not an undertaking has a dominant position is often complex, and takes into account a variety of factors such as market shares, barriers to entry, entry or expansion by competitors and countervailing buyer power.
- 2.7 Where an undertaking holds a dominant position, it only infringes competition law if it abuses that position. Although there is no closed list of potential abuses under Article 102 or Chapter II, they typically fall within two broad categories: (i) conduct that may exclude competitors; and (ii) conduct that may exploit customers.
- 2.8 Types of conduct that have previously been found to constitute an abuse under Article 102 or Chapter II include the following:
- unfair purchase or selling prices;
 - discriminatory treatment of certain customers without objective justification;
 - predatory pricing;
 - exclusivity provisions;
 - exclusivity rebates;
 - tying or bundling; and
 - refusals to supply essential components or information.

3. Claims in the High Court and the CAT

3.1 A claimant may bring a competition claim either before the High Court (the court of first instance for high-value claims) or the CAT (the UK's specialist competition forum). The High Court has jurisdiction over England and Wales. The jurisdiction of the CAT extends to the whole of the UK.

Common features

3.2 There are many similarities between the High Court and the CAT, particularly in light of the recent changes introduced in October 2015:

- **Binding nature of decisions:** Decisions of the European Commission and CMA are binding on both the High Court and the CAT. Hence, where a claimant brings a follow-on action (relying on a decision already taken by the one of those authorities), it does not need to establish that the defendant has infringed competition law; it only needs to show that it has suffered loss as a result of the infringement. Decisions of national competition authorities other than the CMA will not be binding on the High Court or the CAT, but are treated as prima facie evidence that an infringement of competition law has occurred.
- **Interaction with Commission proceedings:** Both the High Court and the CAT must avoid handing down judgments which might conflict with decisions contemplated by the European Commission. Consequently, when they hear claims relating to agreements or practices under investigation by the European Commission, they may have to stay their proceedings until the investigation is closed and the European Commission's verdict becomes known. Nonetheless, parties will normally be required to file all of their pleadings before a stay is granted.
- **Type of claim:** Both standalone and follow-on claims can be brought in either the High Court or the CAT. Most significant competition cases today are hybrids of the two. A typical case will have a follow-on element that relies on a pre-existing decision, but will also have a standalone element that adduces other evidence to establish a broader infringement than that described in the decision.
- **Limitation periods:** In general, claims may be brought before the High Court or the CAT within six years of the date on which cause of action accrued. (Previously the CAT's limitation period was different.) There is, however, a lack of clarity in the CAT's procedural rules, meaning that the limitation period that currently applies to standalone claims arising before October 2015 is not certain.

High Court v. CAT

3.3 Choosing between the High Court and the CAT will depend in part on the type of action and the type of relief sought. The main considerations will include the following:

- **Procedure:** There are certain differences between High Court procedure and CAT procedure. Generally the CAT's approach is more flexible and informal.
- **CAT fast track procedure:** Claimants in the CAT can benefit from a "fast track" process introduced by the Competition Appeal Tribunal Rules in October 2015 primarily for use where one or more of the parties involved is an individual or a small or medium enterprise, and where the case is relatively simple.

- Judge: Claims in the High Court are generally heard by a single judge, who will be a lawyer (normally a barrister) by training. Claims in the CAT are generally heard by a tribunal made up of three people. One person (the chairman) will be a lawyer, but the other two will be drawn from the CAT's panel of ordinary members, which includes experts from other fields, such as economics, accountancy and business. Claimants may therefore regard the CAT as more commercial and less legalistic than the High Court.
- Collective proceedings: Collective proceedings are only available before the CAT. Group litigation is possible in the High Court using mechanisms known as representative proceedings and group litigation orders, but these mechanisms are much less flexible than collective proceedings, since they are generally thought only to allow the lead claimant to claim on behalf of other named claimants, not on behalf of an entire class (see below).

Collective proceedings

- 3.4 One widely acknowledged deterrent to the private enforcement of competition law has historically been that it is not always cost-effective for a single victim to bring an action against an infringer if the loss suffered by that one victim is small. Collective proceedings have been introduced to overcome that problem by combining the claims of a whole class of claimants into a single action.
- 3.5 In collective proceedings, the so-called “representative” brings a claim on behalf of an entire class of claimants. Any person may act as the representative, whether or not they are a class member, as long as the CAT considers that it is “just and reasonable”. The class can be defined using one of two models:
- the opt-in model, in which the representative claims on behalf of all those who have expressly chosen to participate; or
 - the opt-out model, in which the representative claims on behalf of all parties matching a particular description except for those who have expressly chosen not to participate.
- 3.6 In collective proceedings, the claimants' claims all have to raise the same, similar or related issues of fact or law, and the CAT has to make an order approving the proceedings. The CAT's order will specify whether the class is to be defined using the opt-in or opt-out model. The CAT can revoke its order at any time and its discretion is relatively broad.
- 3.7 To date, two applications for collective proceedings orders have been filed with the CAT, both of which proceeded to the application hearing. However, the first application was ultimately withdrawn following concerns raised by the CAT regarding the proposed approach to class certification (which meant that the expected costs might outweigh the damages). In the second application, the CAT refused to grant a collective proceedings order on the basis that the applicant had not established that the claims had sufficient commonality to be brought as collective proceedings. These two decisions will provide helpful guidance to other applicants seeking collective proceedings orders in the future.

4. Jurisdiction and applicable law

4.1 Modern litigation often concerns parties from, or events that took place in, a number of different countries. Where this kind of cross-border element is present, it will not always be obvious what court will have jurisdiction to hear the case and what law should be applied to determine it. It is important to regard these as two distinct issues: sometimes, the court of one country will have jurisdiction, but will apply the law of another country or countries.

Jurisdiction

4.2 In Europe, the default position is that a claim should be brought in the jurisdiction in which the defendant is domiciled. Therefore, the starting point is that an English company can always be sued before the English courts.

4.3 Actions may also be brought in the jurisdiction where “the harmful event occurred” (which in competition cases can mean either where the competition infringement was agreed upon or where the claimant company has its registered office). Alternatively, if the action is being brought by a consumer, the action may be brought in the jurisdiction where the consumer is domiciled.

4.4 Where there are multiple defendants domiciled in different jurisdictions, but the claims are closely connected, it is often possible to bring all actions in the UK, as long as at least one defendant is domiciled there.

4.5 These rules can provide considerable flexibility for claimants when deciding where to launch proceedings, especially in cases involving multiple defendants.

Applicable law

4.6 Where an English court takes jurisdiction, it will not necessarily apply English law. The court may in certain circumstances decide to apply foreign law:

- Where the case arises from “unfair competition”, the applicable law will, in general, be the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected.
- Where the case arises from a “restriction of competition”, the applicable law will be the law of the country where the market is, or is likely to be, affected. Where the markets of more than one country are affected, the position is considerably more complex and less certain.

Effect of Brexit

4.7 The rules governing jurisdiction and applicable law in the UK may change as a result of Brexit, with the extent of the changes dependent on the arrangements entered into between the UK and other European states.

Arbitration

- 4.8 Recent case law has given guidance on when competition tort law claims will be caught by an arbitration clause in a sale or supply agreement. Where any contractual claims arising out of the agreement would be sufficiently closely related to the tortious claims so as to render rational businessmen likely to have intended such a dispute to be decided by arbitration, the tortious claims will be subject to the arbitration clause. This is the case regardless of whether the claimant advances any contractual claims or not.

5. Scope of claims

- 5.1 Recent cases demonstrate a trend in which claimants are being increasingly creative when framing their claims, with a view to bringing as broad a claim as possible, including for losses suffered outside of Europe and/or flowing from economic torts such as ‘interfering with business by unlawful means’. However, this trend has not always been welcomed by the English courts.
- 5.2 First, recent case law has established that in order for European competition law to apply to a damages claim, the harm suffered must arise from the implementation of the relevant arrangement or practice in the territory of the EU. Where, for instance, cartelised products are sold directly to customers outside the EU, such customers may face difficulties bringing a claim under European competition law.
- 5.3 Second, a recent case placed significant limitations on the scope of potential economic tort claims, which are often brought in order to recover for losses not covered by European competition law. The court held that for the two torts claimed, it was necessary to evidence an intention to harm the particular claimants in question (rather than a class of potential victims). This intention will often be difficult to establish in practice because cartelists may not know whether an overcharge will be borne by an immediate purchaser or passed on to a subsequent purchaser in the value chain.
- 5.4 The cumulative impact of these cases is that claimants will need to consider new ways of claiming damages in the English courts resulting from cartel overcharges implemented outside the EU. This may include seeking to plead breaches of relevant foreign competition law.

6. Features of litigating in the UK

6.1 There are many reasons why parties in disputes often choose to come to the UK to resolve them, such as a level of trust in the UK's legal system, a connection to the UK (for example, a listing on the London Stock Exchange), or simply the fact that all the parties have English as a common language. There are also several features of the UK system that make it a particularly attractive forum for competition litigation.

Joint and several liability

6.2 English law applies the principle of joint and several liability: generally, if there are multiple wrongdoers (such as in cartels) then one wrongdoer can be held liable for the whole loss caused to a claimant, even though it may only have played a limited part in events. Claimants often regard this feature of English law as being particularly attractive, since it allows them to bring a claim against just one of a number of possible defendants for the entirety of the loss they have sustained.

6.3 Defendants that have suffered the effects of joint and several liability have recourse through contribution proceedings, in which they can pursue fellow wrongdoers to recoup a "just and equitable" amount. Contribution proceedings can be brought in respect of sums paid under a judgment or a settlement agreement, but in practice a defendant will typically start contribution proceedings against co-infringers soon after the claimant initiates proceedings.

6.4 The Damages Directive, which was implemented by the UK on 9 March 2017, modifies this regime to make settlement a more attractive option in the following ways:

- Immunity for whistle-blowers: Businesses that have received immunity from fines in return for blowing the whistle on their fellow infringers will receive a partial exemption from the principle of joint and several liability. Under this partial exemption, they will only be liable to their own direct or indirect purchasers (assuming the other injured parties can obtain full compensation from elsewhere).
- Protection for defendants that settle: Non-settling co-cartelists will not be able to bring contribution proceedings against defendants that do settle.

International enforceability

6.5 The UK's membership of the EU and the EEA means that, in general, judgments from UK courts can be enforced relatively simply almost everywhere in Europe. This gives UK judgments an international value that can exceed that of judgments from other jurisdictions with well-developed dispute resolution capabilities, such as Singapore and Dubai.

6.6 Outside Europe, the UK has a wide network of treaties that facilitate the enforcement of its judgments. As a result, it is generally thought that UK judgments can be enforced in Australia, Canada, India, Israel, Malaysia, New Zealand, Nigeria, Pakistan, and Singapore, as well as many other jurisdictions. The fact that a judgment in the UK can bring an end to disputes in so many places means that parties often choose the UK as their global litigation hub, or indeed as the sole forum in which to conduct worldwide litigation.

Limitation periods

6.7 Generally, competition claims in the High Court and the CAT can only be brought in respect of loss suffered up to six years from the date on which the cause of action accrued (which in competition claims will normally mean when the loss was suffered). The start of this six-year period can, however, be deferred where the defendant has deliberately concealed essential facts about the infringement (so that time only starts to run from the point when the claimant discovers the relevant facts). This will often be relevant in cartel damages actions, since concealment is an inherent part of any cartel. Following implementation of the Damages Directive, where both the infringement and the harm occur after 9 March 2017, time does not start to run until (i) the infringement has ceased or (ii) the claimant knows (or can reasonably be expected to know) of the infringement, the identity of the infringer and that they have suffered a loss, whichever is the later. The limitation period is also now to be suspended while a competition authority's investigation is ongoing and for at least one year after the investigation has been concluded. The combined effect of these changes is that claimants will be able to bring claims for even larger sums at an even later stage.

Procedure

- 6.8 A flowchart showing the main stages in civil actions proceedings before the English courts is set out in the Annex to this publication. The procedure adopted by both the High Court and the CAT in competition cases largely reflects that used in all litigation.
- 6.9 Timing will depend on a number of factors, including the volume of evidence, the number of parties, the complexity of the issues (including the possible hearing of preliminary issues) and the length of the trial. While large commercial cases can sometimes be dealt with in less than 18 months, competition cases can take much longer, particularly if publication of the competition authority's decision is delayed or if the defendant appeals against the decision.
- 6.10 Litigation in the UK is generally perceived as being faster than in some continental European jurisdictions, but not as fast as in others. Nonetheless, many litigants value what are felt to be tactical advantages that flow from certain of the UK's comparatively fulsome procedures, such as disclosure.

7. Available relief and costs

7.1 Various forms of relief are available to those affected by competition law breaches, including damages and injunctions (which are available in both the High Court and the CAT). In practice, however, many cases settle before reaching trial, with the result that the parties often have the flexibility to agree a compromise that differs significantly from any potential court-imposed remedy.

Damages

7.2 Generally, damages awarded by the English courts are compensatory in nature and thus limited to the amount necessary to “place a person who has suffered harm in the position in which that person would have been had the infringement of competition law not been committed”. In certain very limited circumstances, “exemplary” damages may be available for infringements of competition law where it is necessary to punish and deter.

7.3 The Court of Justice of the European Union has ruled that another species of damages, known as “umbrella damages”, must also be available where:

- a cartel has inflated the price of a good or service; and
- in light of this, a non-cartelist has raised its prices as well (under the protection of the cartel’s umbrella, as it were).

7.4 In those circumstances, a party that has paid a non-cartelist an inflated price can claim umbrella damages from the cartelists. The amount of the umbrella damages will be the difference between the inflated price and the competitive price of the good or service in question.

7.5 The “passing-on defence”, which is available to defendants in many competition claims, flows from the principle behind compensatory damages: where the claimant has reduced its loss by passing price increases down the supply chain, the claimant’s claim should be abated accordingly. Following implementation of the Damages Directive, the defendant bears the burden of proof of showing passing-on by the claimant (but a claimant that is an indirect purchaser can benefit from a rebuttable presumption that an overcharge was passed-on to them).

7.6 The passing-on defence has the potential to make a very big difference. Economic analysis suggests that businesses typically pass on between 50% and 100% of any overcharge to the next level of the value chain (especially in highly competitive markets), although it can be difficult to prove in practice. For instance, in a recent case the passing-on defence failed as the CAT found it was impossible to say what proportion of the overcharge was passed on in the form of higher prices, or was paid out of cost-savings or by reducing service levels.

Interest

7.7 The High Court may award interest at whatever rate it thinks fit on damages it awards. Interest may accrue in respect of part or all of the period from the date of the infringement to the date of judgment. In practice, the High Court tends to award simple interest at the base rate plus 1%. Separately, simple interest will normally accrue at the “judgment rate” (currently 8% per annum) on damages and costs which remain unpaid after the date of judgment.

7.8 The CAT may award simple interest in respect of part or all of the period from the date the cause of action arose to the date of the award. The rate of interest cannot generally exceed the judgment rate. In previous cases, consistent with the High Court's approach, the CAT has typically awarded interest at the base rate plus 1%.

7.9 Both the High Court and the CAT may also award compound interest, but it must be pleaded as part of the loss actually suffered, not as interest on that loss.

Injunctions

7.10 An injunction is a judicial (and therefore binding) order. Breach of an injunction can constitute contempt of court, which can lead to fines or imprisonment. Both the High Court and the CAT may grant injunctions either as a final remedy or as an interim measure.

7.11 In previous competition cases, applicants have requested a wide variety of injunctions, including:

- an injunction requiring a mobile telephone operator to activate connections with an Internet-protocol-based voice network;
- an injunction preventing a pharmaceutical company from ceasing to supply certain wholesalers; and
- an injunction forbidding an airport operator from excluding a parking service provider from the airport's forecourts.

Settlement

7.12 There are many options available for resolving disputes without going to court, including mediation, adjudication and arbitration. Even where court proceedings are initiated, there is a tendency for competition claims to settle. Courts in the UK encourage parties to engage actively in genuine attempts to settle cases before litigation and before trial. Once a claim has been commenced, a party may make an offer to settle the claim by serving a notice on the other party in accordance with the applicable rules. There can be cost consequences depending on whether the other party accepts. For example, if the defendant offers to settle and the claimant refuses but then wins a lower amount at trial, the claimant can be required to pay the defendant's costs from the date the offer closed until the end of the case.

7.13 Since October 2015, it has also been possible for the parties to enter into a collective settlement. A collective settlement using the opt-in model will only bind those claimants that expressly choose to participate. A collective settlement using the opt-out model will bind all parties matching a particular description except those that expressly choose not to participate. For a collective settlement to be binding, the CAT will have to approve it, and will only do so if it regards the settlement as being "just and reasonable".

7.14 The Damages Directive seeks to ensure that defendants who settle are no worse off than co-infringers (such as fellow cartelists) who do not. Therefore, it provides that when a defendant settles, any claimant's claim must be reduced by the amount of the loss attributable to the actions of the settling defendant. The claimant will then only be allowed to exercise the remainder of its claim against the non-settling co-infringers (except in exceptional circumstances). The settling defendant will also be exempted from any liability to pay contributions to non-settling co-infringers.

This represents a modification to the previous position at English law, where settling defendants could sometimes still be pursued under contribution proceedings.

Costs

7.15 In High Court proceedings, the general rule is that “costs follow the event”. That is, the successful party can recover from the losing party the majority of the costs it has incurred. Costs include court fees, lawyers’ and experts’ fees, and certain other expenses incurred in connection with the litigation. Whilst the court has some discretion to depart from this general rule (for instance, where the successful party’s conduct has been unreasonable), this is exceptional. Nonetheless, the High Court regularly varies the exact amount that the successful party can recover. It does so to discourage poor behaviour (most notably, failure to behave reasonably and comply with the procedural rules). Accordingly, the court takes account of the parties’ conduct over the entire course of the proceedings when deciding the exact amount the successful party can recover.

7.16 The rules in the CAT are more flexible. The CAT has the discretion (at any stage in proceedings) to make such an order as it thinks fit in relation to the payment of costs. There is no specific “costs follow the event” rule, and the CAT may take into account all the conduct of the parties in relation to the proceedings when determining costs.

Contingency fees

7.17 In the UK, “contingency fees” (which allow lawyers’ fees to vary depending on the outcome of the case) used to be prohibited. Since the 1990s, however, it has been possible to enter into “conditional fee arrangements” (CFAs) whereby the lawyers agree to receive no fees if the case is lost but higher-than-normal fees (including up to a 100% “success fee” uplift) if the case is won. In general, however, the CFA success fee is not recoverable from the losing opponent.

7.18 Since 2013, it has also been possible to enter into “damages-based agreements” (DBAs). Under DBAs, lawyers are not paid if the case is lost, but may take a percentage of the damages awarded if the case is won. The maximum percentage that the lawyers may take under a DBA is 50%.

7.19 In the private sector, interest in third-party funding (where businesses offer litigation funding in return for a percentage of the damages) has been fuelled by predictions of a surge in private actions before the English courts based on competition law. On 23 November 2011, the Civil Justice Council published its Code of Conduct for Litigation Funders. The Financial Conduct Authority has also approved certain funds to offer third-party funding in support of private litigation. An increasing number of cases are now funded in this way.

7.20 Third-party funding can be attractive to claimants who would otherwise be reluctant to take on the risk of litigation. Lawyers can offer such claimants a DBA, meaning that there will be no legal costs unless the claimant wins. In return for a percentage of the amount recovered, a third-party funder can then cover all other costs, including experts’ fees, administrative expenses, and any adverse costs orders made against the claimant. The funder can also agree to pay a proportion of the lawyer’s fees even if the case does not succeed (which claimants cannot do under a DBA). The result is that the claimant can bring a claim at no risk and no up-front cost, and with the certainty that the fees it has to pay will be no more than a fixed percentage of any amount it recovers. This kind of arrangement may be particularly attractive to representative claimants in collective proceedings, who would, under traditional funding models, have to put themselves at risk of having to pay the other party’s costs. The Consumer Rights Act prohibits the use of DBAs in collective opt-out proceedings, but it remains to be seen how this prohibition will be applied in practice.

8. Our capability and experience

An integrated approach

- 8.1 Slaughter and May has for many years provided a nationally and internationally recognised service across the range of contentious competition law work. Our team of specialist competition lawyers based in London and Brussels has extensive experience in appeals against decisions of competition authorities. This has encompassed the full range of inquiries by the Office of Fair Trading, the Competition Commission (both predecessors to the CMA), the CMA and the European Commission under European and domestic cartel, abuse of dominance, state aid and merger control laws.
- 8.2 In addition, our dispute resolution practice has an enviable track record in handling the whole range of statutory, regulatory and ad hoc investigations carried out by regulators, as well as the civil proceedings, including class actions, to which such investigations give rise in both the High Court and the CAT.
- 8.3 Building upon this experience, we have developed the firm's competition litigation group, consisting of cross-disciplinary specialists from the firm's competition and dispute resolution practices. These specialists work closely together on competition disputes, forming a formidable, integrated team of experts able to deal with all aspects of a case innovatively, seamlessly and efficiently, combining first-class litigation and dispute resolution skills with cutting-edge competition law and economics expertise. Working with specialists from our intellectual property practice, we have recently also played an innovative role in developing competition law defences to patent infringement actions before the UK courts.

An international resource

- 8.4 It is clear that there is an increasing need for the highest quality of service on a cross-border basis in jurisdictions outside the UK. We can provide this through our close relationships with the specialist competition and litigation practices of other leading firms in European and other jurisdictions, including the US.
- 8.5 Our objective is to ensure that we provide our clients with first-class legal advice and seamless case management worldwide. We place quality of advice and in-depth understanding of the relevant jurisdiction at the heart of our international strategy. We believe these are best provided by lawyers at the top of their profession in their respective countries, and that such lawyers are found in the independent law firms which comprise our "Best Friends" network.
- 8.6 We draw on our longstanding relationships within this network to gather the individuals who can provide the optimum legal knowledge and experience, and work with them as an integrated team. Our relationships are not, however, exclusive, and allow us to work with the client's existing legal advisers if preferred.

A leading role, working with other advisors

- 8.7 We are used to presenting complex legal and economic arguments, taking advantage of solicitors' rights of audience in many judicial fora, where early involvement in and familiarity with the case makes for the most compelling presentation of the arguments as well as cost-effectiveness. However, we are equally happy to work with barristers where the client wishes or it is otherwise felt appropriate, as will often be the case in High Court litigation. The team enjoys good relations with

all of the leading members of the competition bar. Where the case demands, we also work closely with the leading economists and other specialists who may be required to act as advisers or expert witnesses. Our familiarity with the role and disciplines of such specialists means that we naturally tend to play a key role in the directional management of the case.

Making a difference

8.8 We believe that clients acknowledge the added value they can get from a service which brings together a first-class competition practice and a heavyweight litigation team. We believe our strength lies in our offering:

- experience in litigious competition law matters;
- leading document management capabilities;
- the ability to handle large-scale litigation, including cross-border cases; and
- access to the most knowledgeable firms in each jurisdiction.

Some recent relevant experience

8.9 Many of our cases remain confidential. We are accustomed to handling cases involving a multiplicity of claims and a multiplicity of claimants, which will often be relevant in claims based on competition law. Some disclosable highlights include advising:

Private enforcement experience

- British Airways in relation to the multi-jurisdictional follow-on damages actions arising as a result of the US Department of Justice and European Commission investigations into an alleged air cargo cartel. It is one of the largest and most complex multi-party follow-on damages actions in the English courts, and we have successfully challenged the scope of the claim, in particular in obtaining strike-out of the representative element of the claim, and the economic tort claims.
- Philips in its successful application for strike-out of a EUR 1 billion follow-on damages action brought by the iiyama group in relation to the cathode ray tube cartel and in the subsequent appeal which is due to be heard in the Court of Appeal in December 2017.
- MAN AG in relation to likely follow-on damages actions arising out of the European Commission investigation into an alleged trucks cartel.
- Electrolux in connection with its global litigation strategy for recovery of losses suffered as a result of cartels in the refrigerator compressor sector.
- Royal Mail Group in relation to claims commenced in the English High Court.
- Unilever in proceedings before the European and national courts in relation to claims arising from distribution practices in the markets for impulse ice cream.
- Yale in its defence of a claim for damages based on alleged Article 102/Chapter II infringements, which settled on terms favourable to Yale.

Other experience of litigation in a competition law context

- British Airways in relation to the OFT's criminal and civil passenger fuel surcharges investigations (also including the multi-jurisdictional aspects of the US class actions).
- Deutsche Bank in the context of the multi-jurisdictional investigations into interbank offered rates.
- Coats in its appeals before both the Court of First Instance (now the General Court) and European Court of Justice against the European Commission's decision to fine Coats €30 million. The fine imposed on Coats was reduced to €20 million.
- Fuji Electric in its appeal before the General Court against the European Commission's gas insulated switchgear cartel decision. The fine imposed on Fuji was reduced by 8%.
- Japan Tobacco (Gallaher) on the judicial review of the OFT's decision on the retail pricing of tobacco products.
- AkzoNobel and Global Radio in respect of their appeals to the CAT against merger decisions by the UK competition authority.
- Bertelsmann on its successful joint appeal with Sony Corporation of America to the European Court of Justice following the Court of First Instance's annulment of the European Commission's unconditional clearance of the Sony BMG recorded music joint venture.

Annex: Key stages in English litigation

Pre-action	<p>Pre-action communications: the claimant sends a letter of claim, the defendant responds, and the parties exchange information and explore settlement options.</p> <p>The claimant issues a claim form.</p>
Statements of case	<p>The claimant serves and files its particulars of claim.</p> <p>The defendant serves and files its defence (and any counterclaim).</p> <p>The claimant serves and files its reply (and its defence to any counterclaim).</p>
Pre-trial	<p>Case management conference(s): the court sets directions through to trial.</p> <p>Disclosure of documents: both parties disclose material documents.</p> <p>Exchange of witness statements.</p> <p>Exchange of expert reports.</p>
Trial	<p>The parties present their cases orally at court.</p>
Post-trial	<p>Judgment and order for costs.</p> <p>Possible appeal.</p> <p>Possible enforcement of judgment.</p>

Key contacts



Richard Swallow
Partner
T +44 (0)20 7090 4094
E richard.swallow@slaughterandmay.com



Jonathan Clark
Partner
T +44 (0)20 7090 4039
E jonathan.clark@slaughterandmay.com



Bertrand Louveaux
Partner
T +44 (0)20 7090 4173
E bertrand.louveaux@slaughterandmay.com



Ewan Brown
Partner
T +44 (0)20 7090 4480
E ewan.brown@slaughterandmay.com



Tim Blanchard
Associate
T +44 (0)20 7090 3931
E tim.blanchard@slaughterandmay.com



Camilla Sanger
Associate
T +44 (0)20 7090 4295
E camilla.sanger@slaughterandmay.com

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