

UK COMPETITION LAW REFORMS AID ACTIONS

This article first appeared in The Times on 7 February 2013 and is reproduced with their kind permission. www.thetimes.co.uk



Changes encourage consumers and businesses to bring collective action against companies involved in price-fixing cartels.

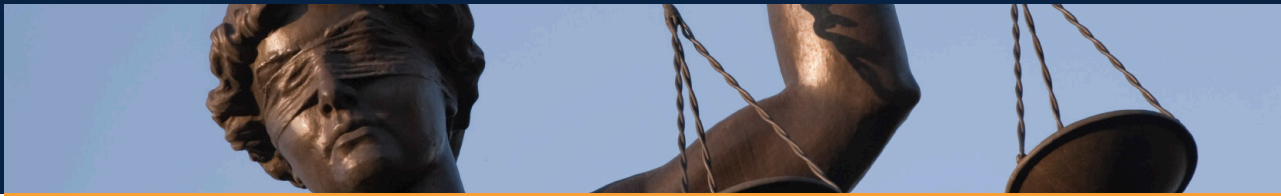
Reforms published by the Government following a consultation into private actions in competition law mark significant changes to the way consumers will be able to bring actions against companies that have infringed competition law.

Following the consultation and the responses to it, the Government has concluded that the existing private action regime for competition law "is not working". The main reason for this is that individuals and small businesses have been restricted from challenging anti-competitive behaviour due to cost and complexity - such an obstacle has meant that consumers and businesses may still fail to benefit from the identification of those involved in a prohibited price-fixing agreement.

Several new powers, including the ability to grant injunctions, will make the Competition

Appeal Tribunal the UK's main venue for hearing competition cases. A fast-track for less complicated cases will also provide greater strength to SMEs who have in the past experienced difficulty in challenging anti-competitive behaviour due to their size. Many of these changes will likely be implemented by the amendment of the Competition Act 1998 and other primary legislation.

Until now, the UK competition regime has functioned on an 'opt-in' basis, with claimants needing to take positive action to bring a claim. These reforms provide for an 'opt-out' system whereby individual consumers are given the opportunity to opt out of competition claims if they do not want to be part of them. This should encourage consumers and businesses to bring such collective actions against companies involved in price-fixing cartels, companies abusing their dominant position in the market and in several other situations, overcoming the problem of the reluctance of multiple consumers bringing actions for small amounts. Such collective action is more cost-effective



and straightforward for the consumer than the existing system and acts as more of a deterrent to parties breaking the law or considering doing so. Importantly, the opt-out aspect of a claim will only apply to UK-domiciled claimants, though non-UK claimants would be able to opt-in to a claim if desired.

We feel that the opt-out provision constitutes a radical step for the Government towards boosting its competition regime and rendering the UK one of the preferred jurisdictions for damages claims, in particular with regard to smaller players. It is anticipated that the proposed changes will increase the likelihood of claims and reinforce the deterrent effect of antitrust rules, but this will depend on how effectively the reforms are implemented in practice. To avoid frivolous claims being made, cases will be judicially certified so that only meritorious cases are taken forward. In addition, contingency fees for lawyers will be prohibited - avoiding potentially frivolous actions being brought by lawyers offering services on a 'no win, no fee' basis. Furthermore, claims will only be allowed to be brought by claimants or by genuine representatives of the claimants, such as trade or consumer associations. Law firms, third party funders or special purpose vehicles will not be allowed to bring competition claims.

Since the competition authorities simply don't have the resources to investigate every case, it could be said that these proposals are designed to make companies become more compliant against the prospect of these collective actions. These proposals will only apply to competition cases but, if successful, could be rolled out wider to other areas of the law. However, we don't anticipate that these proposals will lead to a US-style litigation culture emerging in the UK.

For more information, please contact, **Anthony Woolich** (pictured right), Partner, on +44 (0)20 7264 8033 or anthony.woolich@hfw.com, or **Eliza Petritsi**, Partner, on +44 (0)20 7264 8772 or eliza.petritsi@hfw.com, or your usual HFW contact.



“Since the competition authorities simply don't have the resources to investigate every case, it could be said that these proposals are designed to make companies become more compliant against the prospect of these collective actions.”

Lawyers for international commerce hfw.com

HOLMAN FENWICK WILLAN LLP
Friary Court, 65 Crutched Friars
London EC3N 2AE
United Kingdom
T: +44 (0)20 7264 8000
F: +44 (0)20 7264 8888

© 2013 Holman Fenwick Willan LLP. All rights reserved

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice.

Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please contact Craig Martin on +44 (0)20 7264 8109 or email craig.martin@hfw.com