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in 27 jurisdictions worldwide

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Introduction

Anthony Maton and Scott Campbell

Hausfeld & Co LLP

Claimants and actionable claims

Breaches of UK or EC competition law, or both, give rise to claims for damages (or other types of relief) in English courts.¹ Thus, any party who has suffered a loss as a result of an infringement of the following provisions has an actionable claim for damages in either the Chancery Division of the High Court or the Competition Appeal Tribunal (CAT):

- articles 81 and 82 of the EC Treaty – article 81(1) prohibits parties from entering into anti-competitive agreements which have an appreciable effect on trade between member states. Article 82 prohibits parties from conduct which amounts to an abuse of a dominant position, and which has an appreciable effect on trade between member states.
- The chapter I and II prohibitions in the Competition Act 1998 (Competition Act) – these provisions largely reflect the prohibitions contained in articles 81 and 82 of the EC Treaty, but are applicable to where trade within England and Wales rather than trade between EU member states is affected.

Parties who may bring damages claims before the courts include direct, indirect and potential purchasers in addition to competitors and suppliers. Thus, direct and indirect purchasers may share the financial injury stemming from the overcharge from the cartel.

Choosing the jurisdiction and consolidation of claims

As stated above, in England and Wales, a claimant may elect to bring a private claim for damages in either the High Court, or before the CAT. There are several factors which may influence a claimant's decision to select one forum over the other. These include whether it wishes to bring the case on a 'stand-alone' or 'follow-on' basis,² what kind of relief it seeks, the level of expertise required of the court, and the time and cost that it is willing to invest in litigation.

Available forums

If a claimant elects to bring a private action on a stand-alone basis, the High Court will be the only forum in which it can do so. Where there has been a prior infringement decision by a regulatory authority, however, a claimant may bring a follow-on claim for damages in either the High Court or before the CAT.

Choosing between a stand-alone action and a follow-on action

There are several advantages to pursuing an action on a follow-on rather than stand-alone basis. From a cost and resources perspective, regulatory authorities are in a much stronger position than individual plaintiffs to procure the evidence and information necessary to make a determination in a claim for a breach of competition law. For example, competition authorities will be able to collate market information and commission reports into particular markets – something which would be extraordinarily difficult for an individual plaintiff to do. Furthermore, under sections 26 to 28 of the Competition Act, competition authorities have specific powers to obtain information

from parties that are the subject of a complaint in order to make an assessment of that claim. One such power is that provided by section 27 of the Competition Act, which allows the Office of Fair Trading (OFT) to search and enter into company premises without a warrant in order to investigate an allegation of infringing behaviour.

Secondly, national courts are bound by OFT and European Commission decisions.³ Thus, a plaintiff will only need to prove causation and the quantum of loss suffered (and not breach of the statutory duty) in a follow-on claim for damages. This significantly reduces the time and cost involved in litigation, more so than if the plaintiff had to bring a stand-alone action before the courts. Nonetheless, the House of Lords has made it clear in *Crehan v Imntrepreneur Pub Company*,⁴ that decisions of competition authorities will only be binding in relation to the same agreement between the same parties as was the subject of the regulatory authority's decision. Thus, where a court is faced with a dispute involving different parties, the European Commission's decision will not be binding (even if the conduct concerned relates to the same product or market, or both). The European Commission's decision may nevertheless still be persuasive in the related action, and therefore, may still be beneficial to a plaintiff pursuing a claim before the courts.

There are fewer reasons why claimants may wish to pursue a stand-alone action. Nonetheless, in appropriate circumstances, the reasons why it may elect to do so are compelling. In certain cases, for example, it may be strategically important to issue a claim at an early stage if there is a threat of a rival claim being filed in an EU jurisdiction outside England and Wales.

Choosing between the High Court and the CAT in follow-on claims

Where a plaintiff has decided to pursue a follow-on claim for damages in England and Wales, there are several reasons why they are likely to choose the CAT over the High Court as their forum of choice. First, the strict rules of procedure that are applicable to claims before the High Court are not applicable to claims before the CAT. Whereas the standard rules of disclosure apply to claims before the High Court, for example, disclosure is not an automatic part of proceedings before the CAT, the tribunal having the discretion to make orders for disclosure only when it is satisfied that it would be 'necessary, relevant and proportionate to determine the issues before it'.⁵ Additionally, it is at the Tribunal's discretion as to what stage in proceedings it may seek discovery, and how this discovery should proceed.

Secondly, given the CAT's expertise in competition law, claimants should expect their matters to proceed in a more stream-lined fashion than would otherwise be the case before the High Court. Nonetheless, the difference in expertise between judges sitting in the Chancery Division of the High Court and those sitting before the CAT is perhaps not as marked as it once might have been, owing to reforms which now require judges sitting in the Chancery Division to undergo specialist training in the competition law area.

Multi-jurisdictional claims and consolidation

EC Regulation 44/2001 (Brussels Regulation) and the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters set out the rules on jurisdiction for claims involving parties located in different countries. The Brussels Regulation states that claims should ordinarily be heard in the jurisdiction in which the defendant is domiciled.⁶ Nonetheless, article 5 of the Brussels Regulation provides for exceptions to this rule in particular circumstances. For example, article 5 stipulates that a claim in tort may also be brought in the EU member state where the harmful event occurred.

Furthermore, multi-jurisdictional claims may now be consolidated and heard as a single claim before the courts of a particular member state where the claims are 'so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings'.⁷ In a preliminary application to strike out the claim in *Provimi Limited v Aventis Animal Nutrition*,⁸ the High Court indicated that it would interpret this provision broadly, finding that it had the jurisdiction to hear claims from European purchasers of cartel-affected goods against the English subsidiary of one of the cartelists in respect of all of the European losses, despite there being no direct contractual relationship between the purchasing company and the English subsidiary. Nonetheless, as articulated by the High Court in *SanDisk Corporation v Koninklijke Philips Electronics NV*,⁹ there has to be some connection to England and Wales before a court will assert such jurisdiction. In that case, for example, the court held that there was no connection to England and Wales, as there was neither evidence that the first steps of the alleged infringing conduct had occurred in the UK nor that the immediate damage had been caused to San Disk in the UK as a result of that alleged conduct.

Limitation periods

High Court

A claimant has six years from the time that a cause of action accrues to bring an action founded on tort.¹⁰ In the event of fraud, concealment or mistake on the part of the defendant, the limitation period will not begin to run until the claimant has discovered (or could reasonably with due diligence have discovered, such as on the announcement of a European Commission decision) the fraud, concealment or mistake.¹¹ In the recent case of *National Grid v ABB Limited*,¹² the High Court indicated that follow-on claims for damages would not necessarily be stayed in the event of an appeal against a regulatory authority's decision insofar as concerns an infringement. It is, thus, simply a matter of case management as to what stage the claim will be allowed to proceed pending the outcome of any appeal.

CAT

A claimant has two years from the infringement decision of the OFT or the European Commission in which it may bring a follow-on claim for damages before the CAT.¹³ The time limit may be extended, however, in the event of an appeal against the regulatory authority's infringement decision. In *BCL Old Co Limited v BASF*, the Court of Appeal clarified that in follow-on claims for damages before the CAT, time will be prevented from running where a defendant appeals against the substance of a regulatory authority's infringement decision. However, it will not stop running where a defendant is solely appealing against the fine imposed by a regulatory authority.¹⁴

Group actions

The mechanisms described below allow for the consolidation of claims concerning damages arising out of anti-competitive behaviour into group actions. Nonetheless, English courts have been reluctant to move towards a US-style class action system, whereby claimants may be joined to proceedings on an 'opt-out' rather than 'opt-in' basis.¹⁵ Thus, despite criticism and calls for reform of the present group action mechanisms in England and Wales, the system remains based on an opt-in model.

Representative actions

Rule 19.6 of the Civil Procedure Rules (CPR) allows one or more claimants with the 'same interest' in a claim to bring that claim before the High Court as representatives of any other person who has that interest. It has been argued that CPR rule 19.6 effectively allows representative proceedings to be brought on an opt-out basis, and it was this issue that was tested as a preliminary issue in the case of *Emerald Supplies Ltd v British Airways Plc*.¹⁶ In that case, two UK flower importers sued British Airways Plc (BA) for losses suffered as a result of inflated prices for air-freight services set by a cartel comprised of BA and a number of other leading airlines. The plaintiffs sought to bring their claim as representatives of 'all direct or indirect purchasers of air freight services'. BA submitted an application to strike-out the representative element of the claim, which the chancellor of the High Court granted on 8 April 2009. Relying on the principle articulated by the House of Lords in *Duke of Bedford v Ellis*,¹⁷ the chancellor held that the 'same interest' requirement meant that all members of the claimant group would have to have 'a common interest and a common grievance' and the relief sought would have to be 'beneficial to them all', and therefore the claim could not succeed as the criteria for inclusion within the representative class was dependant on the outcome of the action itself. That is to say, that the criteria for inclusion within the class – being a person that had purchased air-freight services at a price higher than it should have due to cartel activity – was dependant on the claimants first establishing that that in fact happened. Thus, it would be impossible to say that any party could have been a member of that class at the time the claim was initiated.

Furthermore, it was held that the relief sought by the claimants was not equally beneficial to all members of the class. This was due to the fact that at various stages of the supply chain, each member of the class would be either absorbing or passing on the alleged inflated price. Thus, there would inevitably be some conflict between the claims of different members of the class such that the relief sought could not be said to be equally beneficial to them all. The claimants have been granted permission to appeal this decision, and the appeal is likely to be heard by the Court of Appeal in December 2009.

A representative action may also be brought before the CAT pursuant to section 47B of the Competition Act. However, the circumstances in which a section 47B representative action may be initiated are considerably more limited than would be the case before the High Court. First, section 47B only allows for a 'specified body' – as so defined under that section – to bring a damages action on behalf of a group of named consumers. To date, only the Consumers' Association, 'Which?', has been deemed a 'specified body' under this provision.¹⁸ Section 47B also does not allow for a claim to be brought on a stand-alone basis. Furthermore, a representative action may only be brought under section 47B on behalf of named consumers, and accordingly, cannot be brought on behalf of businesses or of consumers at large. Finally, consent of each of the individuals concerned is required in order to bring a claim under the section, thus reflecting an opt-in system rather than an opt-out system. Thus, while section 47B provides an avenue for bringing representative actions before the CAT, the circumstances in which such actions may be brought are unlikely often to occur.

Group litigation orders

CPR rule 19.11 also allows a court to manage claims raising 'common or related issues' of law or fact under what is called a group litigation order (GLO). GLOs operate on an opt-in basis, whereby the court consolidates claims lodged on an individual basis by named clients. The test for what constitutes a 'common or related issue' is substantially broader than the 'same interest' test and provides the court with wide discretionary powers with which it can manage grouped claims. GLOs can be made by a court on its own motion, or in response to a request by either a claimant or defendant to the claim.

Procedural mechanisms short of a trial**Injunctions**

The High Court has jurisdiction to grant interim injunctions if it deems that there is a serious question to be tried. If this threshold is met, the court will then have to decide if damages are an adequate remedy for a party injured by the court's grant of, or its failure to grant an injunction on the balance of convenience.¹⁹ No final injunctions have to date been granted by the High Court insofar as concerns infringements of competition law.

Declaratory relief

The High Court has general jurisdiction to grant declaratory relief – that is, a declaration as to the parties' rights – irrespective of any other remedy claimed, pursuant to the provisions outlined in CPR rule 40.20. The underlying rationale of declaratory relief is that an early determination of parties' rights may resolve some of the outstanding issues in a claim.

Default judgment

Pursuant to CPR part 12, a default judgment may be obtained without a trial in the event that a defendant has either failed to file an acknowledgment of service within the required time; or filed an acknowledgment of service but then failed to file a defence within the required time.

Summary judgment

Pursuant to CPR part 24, a court may give summary judgment against a claimant or defendant on the whole of the claim or a specific issue if it deems that the claimant has no real prospect of victory on the claim or issue and there is no other compelling reason why the case or issue should be disposed of at trial.

Offers to settle

Pursuant to CPR part 36, an offer to settle may resolve a claim without that claim having to go to trial. Part 36 contains detailed rules as to the form and content of an offer to settle and the cost consequences of such an offer.²⁰ A party may, nonetheless, make any offer to settle in whatever way it chooses. However, if the offer is not made in accordance with the form and content provisions contained in rule 36.2, it will not have the consequences specified under the part.²¹

Remedies**Compensatory damages**

Compensatory damages are the most common type of remedy awarded by English courts for breach of antitrust provisions. Such damages compensate claimants for losses suffered as a result of defendants' wrongdoing. As articulated by the High Court in *Devenish Nutrition Ltd v Sanofi-Aventis SA*,²² English courts will generally use the 'but for' test to calculate the loss to be compensated to claimants, attempting to return the claimant to the financial position that it would have been in 'but for' the infringement. In order to do this, a court will generally ask what the difference is between the claimant's actual position and the position that it would have been in 'but for' the illegal conduct (the counterfactual).²³ The damages figure payable to claimants will usually be accompanied by a sum for interest and costs.

Exemplary damages

While exemplary damages (awarded so as to punish or deter grossly unlawful behaviour) may theoretically be awarded in England and Wales for breaches of antitrust law, it seems clear from *Devenish* that they are not available in the context of follow-on actions for breaches of antitrust law. In that case, the court held that the principle of *ne bis in idem* – which dictates that a person should not be sanctioned more than once for the same illegal conduct – precluded the award of exemplary damages in cases in which defendants had already been fined by the European Commission.²⁴ Furthermore, the court held

that article 16 of Regulation 1/2003 – which dictates that European Commission decisions will be binding on national courts – precluded the court from making a decision counter to the one already adopted by the European Commission in respect of the same facts.²⁵ Thus, even before it needed to assess the relevant principles under domestic law, the court held that EC law precluded the award of exemplary damages on the facts of the case.

Nonetheless, it remains to be seen whether future courts will deem it appropriate to award exemplary damages in stand-alone actions – where no penalty has been imposed by a regulatory authority (and thus the reasons barring an award of exemplary damages in *Devenish* will not be applicable).

Restitutionary damages

Restitutionary damages are aimed at stripping relevant profits from the wrongdoer, rather than measuring the loss to the victim. In the Court of Appeal's decision in *Devenish Nutrition Limited v Sanofi-Aventis SA (France)*, it was held that restitutionary damages would only be available in exceptional circumstances, such as where compensatory damages would be an adequate remedy for the plaintiff.²⁶

Interest

EC law regards the payment of interest on damages awards as an essential component of compensation for a breach.²⁷ This principle is reflected in section 35A of the Supreme Court Act 1981, which stipulates that the High Court may grant simple interest on all or any part of a damages payout, for all or any part of the period from the date that the infringement occurred up to the date of the judgment. The CAT may also include, in any sum award for damages, interest on all or any part of the damages in respect of which the award is being made. Compound interest may be available in certain circumstances, for instance where there has been clear dishonesty on the part of the defendant.

Interim damages

Both the CAT and the High Court may also grant an interim payment of damages.²⁸ The interim payment should not be more than a reasonable proportion of the likely amount of the final judgment.²⁹ Unlike the US, treble damages are not available in England and Wales.

Joint and several liability

Breaches of competition law are likely to give rise to joint and several liability, provided that the defendants are acting in concert and jointly produce the same damage. This principle safeguards the claimant, especially if other defendants to the infringement are domiciled outside the EU and have no subsidiary in Europe.

The passing-on defence

It has yet to be conclusively determined whether the passing-on defence is applicable under English law. If applicable, it would preclude claimants from recovering damages on losses passed on to customers by way of higher prices, on the grounds that compensation should only be recoverable in respect of losses actually suffered. The applicability of the defence under English law was raised in an interlocutory application for security of costs in *BCL Old Co Ltd v Aventis SA*.³⁰ In that application, the third and fourth defendants argued (in support of their application for security of costs) that the claimant had not in fact suffered any loss, having passed on all of its loss to other purchasers by way of higher prices and should therefore provide security for costs. The court held that the applicability of the passing-on defence under English law raised 'novel and important issues' in that case and for future cases, and 'would be an important consideration to potential claimants when considering whether to issue proceedings in the future'.³¹ However, the court deemed it premature to consider fully the issue at that stage in proceedings, arguing that it should only be assessed when all the relevant facts had been found.³² It is unlikely, in any event, that a national court would

apply the passing-on defence without first making a reference to the European Court of Justice.

Collective and individual settlements

English courts cannot create aggregated pools of damages akin to US-style cy-pres funds. Nonetheless, individual and collective settlements of claims in claims involving antitrust violations have given rise to new and inventive ways of distributing damages to groups of claimants. For example, in the *Air Passenger* litigation – which involved a class action brought in the US against BA and Virgin Atlantic for the fixing of prices on fuel surcharges – an unprecedented settlement agreement was reached which compensated purchasers from both the US and the UK under the applicable laws of both legal systems. The terms of the settlement agreement allow passengers who purchased tickets from both airlines during a specified period to claim a partial refund on their tickets. Passengers who purchased tickets from BA and Virgin Atlantic in the US and the UK will receive a refund of approximately 33 per cent of the fuel surcharge paid on each flight segment purchase out of a \$73 million US settlement fund.

Novel compensation schemes have also arisen out of individual settlement agreements. In the *Marine Hose* litigation on foot in the US and in the UK, Parker ITR SrL (Parker) has made a global offer to settle claims arising out of its involvement in a cartel in the marine hose industry. Purchasers of marine hose from either Parker or its co-cartelists may claim against the settlement fund in return for giving up rights to litigate against Parker. Under the terms of the agreement, Parker has also agreed to cooperate in proceedings against its co-cartelists and has guaranteed against the payment of adverse costs in civil proceedings against those other cartelists. The amount paid to purchasers from the fund will be determined on a purchaser-by-purchaser basis, and will vary depending on whether marine hose was purchased from Parker or not. Nonetheless, direct purchasers of marine hose from Parker should expect to receive a 16 per cent refund from their purchasers subject to any of their losses having been passed through.

Funding litigation and insuring cases

The costs involved in litigating against powerful corporations, and the risks involved in paying adverse costs in the event that litigation is unsuccessful, are likely to deter plaintiffs from pursuing private claims for breach of competition law. Thus, the OFT has recommended a series of reforms to the current system designed to encourage and facilitate plaintiffs to bring forward their claims. These include recommendations that courts should be flexible in their assessment of costs for plaintiffs in the event of unsuccessful litigation, and that funding should be made available for meritorious cases that could not otherwise be brought by a plaintiff or group of plaintiffs. New and inventive means of financing litigation and insuring against the costs of unsuccessful litigation, described below, have also been developed in England and Wales so as to facilitate and encourage plaintiffs to bring forward their claims.

Conditional fee arrangements

Solicitors in England and Wales usually charge clients on an hourly rate basis, payable by clients monthly. Solicitors in England and Wales cannot act on a contingency fee basis, that is, they cannot enter arrangements whereby they take a percentage of a client's damages payout if the litigation is successful.

Solicitors in England and Wales may, however, act under conditional fee agreements (CFA). Under such arrangements, the plaintiff's solicitor will only be entitled to charge their fees to the plaintiff if the case is successful. A plaintiff's solicitor will usually be entitled to recover fees calculated as a basic hourly charge plus a success fee (which is usually an uplift expressed as a percentage of the hourly rate).

The 'adverse costs' rule in England and Wales assures that successful parties to litigation should ordinarily recover their costs of

litigation (including their fees) from the losing party. Thus, even if successful, plaintiff's solicitors will effectively be recovering their fees from the defendant and not the plaintiff. The result of such a structure is that in general the plaintiff will not have to pay legal fees irrespective of the outcome of litigation.

Indemnification

Claimants may be able to insure against the risk of paying adverse costs up to a limit or cap. This is called 'after the event insurance' (ATE). The costs of ATE are in principle recoverable from defendants when the claim is successful. In certain instances, insurance premiums may not be payable until after the judgment has been made. Under such arrangements, if the claim is won, the clients pay the premium which is ultimately recoverable from the defendants. If the claim is lost, however, the insurer pays the defendant's costs. Thus, claimants will be indemnified from paying any costs, irrespective of the outcome of litigation.

Third-party litigation funding

The use of professional litigation funders – that is, non-lawyers who provide claimants with the capital necessary to fund their claims in exchange for a return on their recovery – is becoming increasingly widespread. In the case of *R v Factortame v Secretary of State*,³³ the Court of Appeal held that litigation funded by third parties would be legitimate so long as the funder concerned did not interfere in an improper way with the litigation on foot. Professional funders may be held liable to pay the successful party's costs, but their liability will be capped at the amount of funding provided (as found in the case of *Arkin v Bouchard Lines Ltd*).³⁴

As this introduction has demonstrated, significant developments have been made in England and Wales insofar as concerns the bringing of private actions for breach of UK or EU competition law, or both. The forthcoming years are likely to see further developments, particularly with respect to the country's collective action regime. The OFT, the European Commission and the Civil Justice Council (CJC) have all independently made recommendations to improve claimants' access to compensation for their losses by reforming the collective action regime in the UK or Europe. The CJC has recommended expanding the representative bodies who may bring collective claims, including allowing representative actions to be brought by consumers at large. Furthermore, it has recommended that claims be able to be brought on an 'opt-out' or 'opt-in' basis subject to court certification and where it is in the interests of justice to do so.³⁵ The European Commission has additionally recommended a dual system, whereby representative actions can either be brought by qualified bodies (such as consumer associations, state bodies and trade associations) on behalf of identified or identifiable victims; or under an opt-in class action regime under which claimants can combine their individual claims for damages into a single action.³⁶ In addition, the European Commission is likely soon to publish a proposal for a directive on rules governing damages actions for infringement of articles 81 and 82 of the EC Treaty, in which it is likely to recommend that group and representative actions be available throughout the EU. This would be a significant change to the current model of collective actions both within the UK and across Europe, and would appreciably expand the class of litigants who may be able to bring claims in respect of their losses.

Endnotes

- 1 See *Garden Cottage Foods Ltd v Milk Marketing Board* [1984] AC 130, which establishes this principle.
- 2 A stand-alone action is where there has been no prior infringement decision by a regulatory authority in the matter, or where the relief sought extends beyond a claim for damages. A follow-on action for damages follows on from the decision of a regulatory authority as to whether there has been an infringement of English or EU competition law, or both.

- 3 Pursuant to article 16 of Regulation 1/2003, national courts will be bound by decisions taken by the European Commission in respect of allegations of breach of European Competitions Law (insofar as the decision in question relates to addresses of the Commission's decision). Sections 58 and 58A of the Competition Act contain analogous provisions to article 16 within the domestic regime, stipulating that national courts are bound by decisions made by the OFT with respect to a breach of competition law (provided that that decision is no longer appealable).
- 4 [2006] UKHL 38.
- 5 *Claymore Dairies Limited v Office of Fair Trading (Recovery and Inspection)* [2004] CAT 16, [113].
- 6 Article 3, Brussels Regulation.
- 7 The principle was discussed and has now been codified in article 6 of the Brussels Regulation.
- 8 [2003] EWHC 961 (Comm) (*Provim*).
- 9 [2007] EWHC 332 (Ch).
- 10 Section 2, Limitation Act 1980.
- 11 Section 32(1), Limitation Act 1980.
- 12 [2009] EWHC 1326.
- 13 Rule 13, Competition Appeal Tribunal Rules 2003.
- 14 [2009] EWCA Civ 434.
- 15 Under an opt-out system, claimants having the same interest in a claim will automatically be included within a claim unless they elect to opt out of proceedings. Under an opt-in system, each individual will have to actively join in the proceedings in order for it to have its interests represented.
- 16 [2009] EWHC 741 (Ch).
- 17 [1901] AC 1.
- 18 On 9 January 2008, Which? brought its first representative claim on behalf of consumers before the CAT: See *Consumers' Association v JJB Sports Plc* [2009] CAT 3.
- 19 *American Cyanamid Co v Ethicon* [1975] AC 396.
- 20 See rules 36.2, 36.10, 36.11 and 36.14 of the Civil Procedure Rules.
- 21 Rule 36.1(1), Civil Procedure Rules.
- 22 *Devenish Nutrition Ltd v Sanofi-Aventis SA* [2007] EWHC 2394 (Ch) (*Devenish*).
- 23 *Devenish Nutrition Ltd v Sanofi-Aventis SA* [2007] EWHC 2394 (Ch) [21], citing paras 126 and 127 of the Commission Staff Working Paper annexed to the Commission's Green Paper on Damages Actions for Breach of the EC Anti-Trust Rules.
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- 25 *Devenish Nutrition Ltd v Sanofi-Aventis SA* [2007] EWHC 2394 (Ch) [53].
- 26 *Devenish Nutrition Ltd v Sanofi-Aventis SA (France)* [2009] 3 All ER 27, [130].
- 27 C-295-298/04 *Manfredi v Lloyd Adriatico Assicurazioni SpA* [2006] ECR I-6619.
- 28 Rule 46, Competition Appeal Tribunal Rules 2003. See *Healthcare at Home v Genzyme Limited* [2006] CAT 29, in which the CAT granted the claimants an interim award of damages.
- 29 Rule 46(5), Competition Appeal Tribunal Rules 2003.
- 30 [2005] CAT 2.
- 31 *BCL Old Co Ltd v Aventis SA* [2005] CAT 2, [33], [38].
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