



Competition Section seminar: round up of CAT private enforcement

Tuesday 12 September 2017

Speakers:

Jon Lawrence, partner, Freshfields

Kassie Smith QC, Monckton Chambers

Mark Hoskins QC, Brick Court Chambers

Tom de la Mare QC, Blackstone Chambers



The Competition Section

The Competition Section is a Law Society subscription based membership group which provides the support you need to be prepared for market change in competition law and practice, helping you to understand the implications for both you, your business and consumers.

We deliver expert analysis and practical guidance through our face-to-face networking events, topical webinars and archived podcasts, providing practical guidance with insight from competition law experts, both solicitors and representatives of related institutions.

For more information about the Competition Section or to join -
www.lawsociety.org.uk/competition

Representing, promoting and supporting solicitors



Competition calendar

The below are inclusive to Competition Section members

6 Sept - Competition Section webinar: Multi-Jurisdictional Mergers

- Speaker: Davina Garrod, partner, Akin Gump Strauss Hauer & Feld LLP

9 Oct - Horsfall Turner essay competition deadline

16 Oct - Competition Section webinar: Vertical Restraints

- Speakers: Ann Pope, Claudia Berg, CMA and Steve Smith, Bristows

17 Oct - Competition Section Seminar: Abuse of dominance - case overview

- Speaker: Robert O'Donoghue QC, Brick Court Chambers

31 Oct - Competition Section webinar: Dawn Raids

- Speaker: Omar Shah, Morgan Lewis and Jasvinder Nakhval, Peters & Peters

22 Nov - Competition Section annual dinner & awards

- Keynote speaker: TBC

30 Nov - Competition Section webinar: Legal Privilege - EU & the Brexit impact

- Chris Owen and Patrick Boylan, Simmons & Simmons LLP

[Book today - www.lawsociety.org.uk/competition](http://www.lawsociety.org.uk/competition)

Horsfall Turner Essay Competition question announced:

‘What challenges does the digital economy present for the development of antitrust law?’

- Deadline for entries: Monday 9 October
- Prizes:
 - First prize = £1,000 awarded by the annual dinner keynote speaker, free place at the annual dinner top table
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22 November - Competition Section annual dinner & Horsfall Turner awards - [Book now](#)

The following past seminar presentations can be downloaded by Section members from the Competition Section website under '**Past seminar presentations**':

- Fairness and due process in UK antitrust proceedings (18/2017)
- Online hotel booking - antitrust investigation (06/2017)
- Competition Section seminar: big data (05/2017)
- Mergers updates (03/2017)
- Infringements under EU cartel law and their future (02/2017)
- BT/EE merger investigation (11/ 2016)
- Brexit Part 2: Litigation and enforcement (10/2016)
- Brexit Part 1: Models, mergers and the wider competition framework (09/2016)

Socrates v Law Society **- fast track in the CAT**

Kassie Smith QC
Monckton Chambers

12 September 2017

The fast track procedure

- Competition Appeal Tribunal Rules 2015, rule 58
 - trial within 6 months or as soon as practicable
 - costs to be capped
 - test for fast track procedure:
 - one of parties is individual or SME
 - trial time estimate of 3 days or less
 - “complexity and novelty of the issues involved”
 - number of witnesses
 - scale and nature of the documentary evidence
 - whether disclosure sought and, if so, extent thereof
 - nature of remedy sought/ amount of damages

The fast track procedure

- Guide to Proceedings 2015, §§ 5.139-5.149
 - FTP can be used in damages actions, but not collective proceedings
 - Application for FTP to be made with claim form and costs budget to be provided
 - Explains matters set out in rule 58(3)
 - Given the complex nature of competition claims only FTP in “clear-cut cases”, e.g. injunctions
 - Interim injunctions granted without or with capped undertaking as to damages
 - Close case management and specific disclosure only

The *Socrates* litigation

- Timetable to trial:
 - 5 April 16 – claim form and application for FTP served on Law Soc
 - 12 May 16 – Law Soc defence
 - 16 May 16 – CMC; FTP designation; split trial; amended pleadings; limited disclosure; witness statements and limited expert evidence; 3-4 day hearing in first week of Nov
 - 21 Jun 16 – second CMC; further specific disclosure; costs capping; PTR listed

The *Socrates* litigation

- 22 Jul 16 – disclosure; witness statements and further information
- 29 Sep 16 – expert reports exchanged
- 5 Oct 16 – application to adduce further expert evidence refused – factual analysis instead
- 14 Oct 16 – PTR; trial timetable; bundles; skeleton arguments
- 8-11 Nov 16 – hearing
- 26 May 17 – Judgment on liability

Thoughts on FTP in *Socrates* case

- Art 102 abuse of dominance by tying
- Specific disclosure
- Control of witness evidence and further information
- Specific disclosure
- Limits placed on use of expert economic evidence
- Hot tubbing
- Split trial and settlement of quantum



Walter Merricks CBE v Mastercard

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Mark Hoskins QC

Brick Court Chambers

Walter Merricks CBE v Mastercard

Jon Lawrence, Partner

Freshfields Bruckhaus Deringer LLP

Walter Merricks CBE v Mastercard – key funding features

Interesting features / issues

- **The funding agreement**
 - Funder's potential return
 - Funder's reward stated as only payable out of undistributed damages – question whether this qualified within the references in the legislation to
 - costs or expenses
 - incurred by the representativein connection with the proceedings (see section 47C(6) CA 1998 and rule 93(4) of CAT Rules 2015)
 - Accessibility of agreement (confidentiality; style)

Walter Merricks CBE v Mastercard – CAT’s decision on funding

- **Key points from CAT’s decision**
 - Funder’s return was a “cost or expense” of the litigation for the purposes of collective proceedings costs rules
 - Funding costs therefore potentially recoverable from undistributed damages
 - NB changes required to agreement to ensure cost or expense was incurred by the Applicant
 - Adverse cover provided for in agreement was sufficient in the context of the CPO hearing
 - Concerns re potential conflict of interest rejected
- **Other points**
 - Confidentiality
 - Criticism re format of the agreement
- **Impact of decision?**



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