

# COMPETITION REFORMS AND DAMAGES ACTIONS

## A CLAIMANT PERSPECTIVE

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# INTRODUCTION

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- Damages Claims
  - Our experience
  - Practical issues
- Proposed Reforms
  - Draft EC Directive - key provisions
  - Draft EC Directive – issues
  - Collective Redress
- UK Reforms
- Impact

# OUR EXPERIENCE

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- Diverse claimant groups
  - Companies including large corporates such as:  
Deutsche Bahn, Michelin, Emerson, Metro and Hertz
  - SMEs and Consumers
- Strong settlement record
  - Recent settlements include:
    - Paraffin Wax (30 clients) with SASOL
    - Another case involving 50+ clients

# PRACTICAL ISSUES

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- Jurisdiction
- Applicable law and limitations
- Data
- Pass -on
- Joint and several liability
- Reluctant defendants
- Sensitive commercial relationships

# DRAFT EC DIRECTIVE

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## Key provisions

- Leniency and disclosure
- Presumption of harm
  - Loss of profits
  - Quantification
  - Pass on (indirect purchases)
- Settlements
- Limitation period

# DRAFT EC DIRECTIVE

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## Issues

- Article 9 - Binding nature of NCA *final* decisions
  - What does final mean?
  - Will we be able to start proceedings but then agree to a stay pending the decisions of foreign NCAs?
- Article 18 - Settling co-infringer's *share of the harm*
  - Liability for umbrella damages - how will it be allocated?
  - On what basis will the share be determined?
- Consolidation of direct and indirect claims not addressed

# COLLECTIVE REDRESS

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- Proposed opt-in model - practically unworkable
- The UK experience of opt-ins
  - Air passenger claim
- UK reforms introducing opt-out regime
  - Claimants automatically part of a claim unless they opt-out
  - Favourable regime for consumers and SMEs
  - Costs and funding of key importance

# OPT-OUT MODEL

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## Key points

- Standing
  - Not limited to a list of designated bodies
  - Right extended to:
    - a. directly affected claimants
    - b. genuinely representative bodies
  - Precluded: law firms, third-party funders and special purpose vehicles



# OPT-OUT MODEL

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## Key points

- Safeguards
  - Robust certification process
  - Judicial approval for settlements
  - No contingency fees
  - No exemplary damages

# IMPACT

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- Limited impact in the UK
- But will help :
  - correct asymmetry of information
  - create a level playing field across EU
  - enhance legal certainty
  - facilitate pursuing damages claims (pan-European cartels)

# THANK YOU

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