

September 2013

 Period of
 limitations in
 follow-on
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 elephant in the
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CCP Policy Briefing

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BACKGROUND

- A series of private competition law cases in the UK has demonstrated that there are significant procedural issues that need to be resolved before private enforcement can take off in the way that the European Commission and the UK Government are currently encouraging.
- One of these issues is the period of limitations in a follow-on case where there are multiple infringers, some of whom appeal the infringement decision of the competition authority and some of whom do not.
- Where the infringement decision is taken by the Commission and the follow-on action has to be decided by a national court, the applicable period of limitations presents a complicated mix of European and national law that must be overcome before finding the correct solution to the case. This is an on-going problem in the UK in the context of follow-on actions before the Competition Appeal Tribunal and is currently awaiting resolution by the Supreme Court in *Deutsche Bahn*.
- The issue has not been picked up as a problem by the Commission or the UK Government, both of whom are currently in the process of reforming private actions.
- The issue is not a UK-specific one and is applicable to all Member State jurisdictions.

METHODOLOGY

- The author discusses the case law relating to the period of limitations and its calculation in follow-on cases before the Competition Appeal Tribunal.
- This case law is analysed with a view to establishing what the correct approach is in the presence of multiple infringers, some of whom appeal the infringement decision and some of whom do not.
- The author proposes ways in which the legally correct approach should be improved to make it fairer.

KEY FINDINGS

- The author finds that the seemingly simple question of period of limitations is in fact loaded with serious implications going well beyond a procedural, timing issue.
- Although the issue is pertinent to all types of infringements of competition law with multiple infringers, it has particular implications for leniency recipients in cartel cases and therefore for the overall relationship between private and public enforcement of competition law. These implications demonstrate how far from desirable the current legal situation is.
- The leniency recipients are the least likely addressees to appeal the Commission decision. Exposing these leniency recipients to undue damages actions will automatically discourage leniency applicants from coming forward in the first place and thereby weaken the public enforcement of competition law.

POLICY ISSUES

- The article demonstrates what the overall preferable solution is regarding the treatment of period of limitations in follow-on cases based on Commission infringement decisions in the presence of multiple infringers from a UK and EU law point of view.

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- An improvement requires EU-level legislation specific to follow-on actions that renders certain established EU law principles inapplicable, as well as domestic legislation to clarify the existing and envisaged rules.

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THE CCP

The ESRC Centre for Competition Policy (CCP), at the University of East Anglia, undertakes competition policy research, incorporating economic, legal, management and political science perspectives, that has real-world policy relevance without compromising academic rigour.

FOR MORE INFORMATION

The full working paper (13-8) and more information about CCP and its research is available from our website: www.competitionpolicy.ac.uk

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