

ARNOLD & PORTER

**Digital markets:
The role of private enforcement
of competition law**

6th GRUR Int. / JIPLP Joint Seminar

Christopher Stothers, *Partner, London*

28 October 2015

Claim Form



Claim Form

In the

Fee Account no.

For court use only

Claim no.

Issue date

Does, or will, your claim include any issues under the Human Rights Act 1998? ☐ Yes ☐ No

Practice Direction - Notice

- 2.2 Any party whose statement of case raises an issue relating to the application of Article 81 or 82 of the Treaty, or Chapter I or II of Part I of the Act, must –
 - (a) state that fact in his statement of case;...
- 3. Any party whose statement of case raises or deals with an issue relating to the application of Article 81 or 82, or Chapter I or II, must serve a copy of the statement of case on the Office of Fair Trading at the same time as it is served on the other parties to the claim

Practice Direction – Stays

- 5.2 Every party to such a claim, and any national competition authority which has been served with a copy of a party's statement of case, is under a duty to notify the court at any stage of the proceedings if they are aware that –
 - (a) the Commission has adopted, or is contemplating adopting, a decision in relation to proceedings which it has initiated; and
 - (b) the decision referred to in (a) above has or would have legal effects in relation to the particular agreement, decision or practice in issue before the court.
- 5.3 Where the court is aware that the Commission is contemplating adopting a decision as mentioned in paragraph 5.2(a), it shall consider whether to stay the claim pending the Commission's decision.

(Applying Regulation 1/2003, Article 16(1))

Nature of Pleading

- *P&S Amusements* [2006] EWHC 1510 (Ch) at [15]:

The general requirement for the party to plead the facts on which he relies applies to claims or defences under [sections 2 and 18 of the Competition Act 1998] as to any others. Thus, as with claims or defences under Articles 81 or 82 EC Treaty, so with claims or defences under ss. 2 or 18 of the Competition Act 1998 the party relying on the same must plead the primary facts on which he relies for the relevant conclusion, see per Neuberger J in *Esso Petroleum v Gardner* (8th July 1998 unreported) approved by the Court of Appeal in *Parks v Esso Petroleum Co Ltd* [1999] EWCA Civ 1942. For example it is insufficient merely to aver that a given concerted practice has as its effect the distortion of competition within the United Kingdom. This is a mere recitation of the statutory condition or conclusion imposed or required by s.2(1)(b) without alleging any primary facts from which it might be inferred or found. In any event such claims or defences require careful scrutiny so as to prevent cases lacking in sufficient merit going to long and expensive trials, see *Intel Corporation v Via Technologies* [2002] AER(D) 346 para 32 and *Adidas v The Lawn Tennis Association* [2006] EWHC 1318 (Ch) para 24.

So why is the UK such a popular forum?

- Specialist courts and judges
- Anchor defendants for pan-European claims
- Disclosure
- Injunctive relief (interim and final)
- High potential damage awards
- Transparency

Infederation (Foundem) v Google

HC12A02489

- Case filed by Infederation (Foundem) in June 2012
- Case Management Conference 28 June 2013
 - Infederation wanted standard disclosure
 - Google wanted stay pending Commission investigation
 - Judgment [2013] EWHC 2295
 - Case not stayed
 - Disclosure limited to documents provided to Commission
 - No injunction sought
- Interim Hearing 14-15 October 2014 (disclosure/scope)
- Further CMC 2-3 February 2015 (trial scope)
- Further CMC 31 March-1 April 2015
 - Delayed trial from February to July 2016, to allow Commission investigation to progress

Streetmap v Google

HC-2013-000090

- Case filed by Streetmap in March 2013
- Interim Hearing 14-15 October 2014 (with *Foundem*)
 - Further disclosure/scope
- Further CMC 2-3 February 2015
 - Proceed to trial on ranking, bundling and map pricing
- Pre-trial review 28 September 2015
 - Trial limited to geographical not company searches
- Application 16 October 2015
 - Confidentiality of documents
- Trial 2 November 2015
 - Bundling only

1 Plus V v Google France

- Case stayed in June 2012 pending Commission Decision

So why is the UK such a popular forum?

- Specialist courts and judges
- Anchor defendants for pan-European claims
- Disclosure
- Injunctive relief (interim and final)
- High potential damage awards
- Transparency

Thanks for listening!
Any other questions?



Christopher Stothers

Partner

+44 (20) 7786 6226

Christopher.Stothers@aporter.com