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EUROPE, MIDDLE EAST AND AFRICA
ANTITRUST REVIEW 2023

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Preface

Global Competition Review is a leading source of news and insight on competition law, economics, policy and practice, allowing subscribers to stay apprised of the most important developments around the world.

GCR's *Europe, Middle East and Africa Antitrust Review 2023* is one of a series of regional reviews that deliver specialist intelligence and research to our readers – general counsel, government agencies and private practitioners – who must navigate the world's increasingly complex competition regimes.

Like its sister reviews covering the Americas and the Asia-Pacific region, this report provides an unparalleled annual update from competition enforcers and leading practitioners on key developments in both public enforcement and private litigation. In this latest edition, we have significantly expanded coverage of the European Union, with a specific focus on abuse of dominance and article 102 of the TFEU, a deep dive into the intersection between competition law and joint ventures, and analysis of vertical agreements under the new VBER. This features alongside updates from Angola, Cyprus, Denmark, Egypt, France, Germany, Greece, Israel, Switzerland, Turkey, the United Kingdom and Ukraine.

GCR has worked closely with leading competition lawyers and government officials to prepare this report. Their knowledge and experience – and above all their ability to put law and policy into context – are what give it such special value. We are grateful to all the contributors and their firms for their time and commitment.

Although every effort has been made to ensure that all the matters of concern to readers are covered, competition law is a complex and fast-changing field of practice, and therefore specific legal advice should always be sought. Subscribers to Global Competition Review will receive regular updates on any changes to relevant laws during the coming year.

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European Union and United Kingdom: a new dawn for class actions

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IN SUMMARY

Regimes allowing for class actions, including on an opt-out basis, have emerged in various EU member states. After a slow start, the UK's collective proceedings regime has gathered pace and the Competition Appeal Tribunal is grappling with several key issues shaping the class action landscape, including the appropriateness of opt-out claims, the prospects of stand-alone claims that do not rely on a regulator's finding of infringement and competing applications to bring collective proceedings.

DISCUSSION POINTS

- While there is no EU-level antitrust collective action legislation, member states are increasingly adopting mechanisms at a national level
- The Digital Markets Act
- Antitrust class actions in the UK

REFERENCED IN THIS ARTICLE

- EU Directive 2014/104/EU (the Antitrust Damages Directive)
- EU Directive 2020/1828 (the Collective Actions Directive)
- Section 47B, Competition Act 1998
- *Sainsbury's v Mastercard* [2020] UKSC 24
- *Mastercard v Merricks* [2020] UKSC 51 (Merricks SC)
- *Lloyd v Google* [2021] UKSC 50
- *O'Higgins, Evans v Barclays and others* [2022] CAT 16 (FX)
- *Justin Le Patourel v BT* [2022] EWCA Civ 593(BT)
- *Justin Gutmann v First MTR, Stagecoach, and LSER* [2021] CAT 31 (Boundary Fares)

Introduction

Although there is no EU-level collective action legislation for antitrust violations, the recently agreed EU Digital Markets Act (DMA) will provide for collective consumer actions in respect of violations of the DMA. In addition, several member states have adopted class action regimes and some, including Belgium, the Netherlands and Portugal, even provide for opt-out regimes. These and other EU member states will look with interest to the developments in the UK, where the first antitrust class action rulings have been adopted.

In the UK, class actions for alleged breaches of competition law are a fairly new phenomenon, having been introduced via the Consumer Rights Act 2015. As with any new regime, the state of class actions is in flux, with the Competition Appeal Tribunal (CAT) determining key substantial and procedural issues on a case-by-case basis. Nevertheless, as discussed below, the CAT's jurisprudence thus far has identified important battlegrounds between claimants and defendants and each party will keep a keen eye on how the CAT decides issues of liability, quantum and procedure, particularly, whether a claim should proceed on an opt-out or opt-in basis.

An important dynamic in the development of the class actions regime in the UK is how the English appeal courts will look upon collective actions proceedings. So far, the Court of Appeal and the Supreme Court have paid particular attention to the legislative purpose behind introducing competition class actions – facilitating group claims where bringing them individually would be prohibitive. Thus, they have taken a generous approach to certifying claims. For claimants, this has been a welcome development and is likely to result in creative attempts to stretch the boundaries of competition law so that various types of alleged corporate wrongdoing can be packaged as anticompetitive conduct. All eyes will now be on how the CAT balances its competing duties of vindicating genuine claims and weeding out frivolous litigation. The stage is set.

EU

EU Framework

There is no EU-level antitrust collective action legislation. In Europe, the 2014 Directive on Antitrust Damages (the Antitrust Damages Directive) excludes collective actions and, similarly, the 2020 Directive on Representative Actions for the Protection of the Collective Interests of Consumers (the Collective Actions Directive) does not apply to competition claims. As a result, a variety of approaches have developed across member states. Within member states, legal procedures designed specifically for antitrust class claims have so far only played a minor role. More commonly, claims are joined under ordinary civil

procedure rules, for example, through aggregation of claims or joining together follow-on damages claims by multiple companies.

Antitrust Damages Directive

The Antitrust Damages Directive does not provide for collective actions. However, at the time the Directive was adopted, the Commission issued a non-binding Recommendation on collective redress mechanisms,[1] which invited all member states to introduce collective redress principles and mechanisms for a variety of EU rules, including competition law. The Recommendation laid out basic principles that all member states should follow in devising and implementing such mechanisms, including, firstly, that the claimant party should be formed on the basis of the 'opt-in' principle (any deviation from which should be justified by 'reasons of sound administration of justice') and, second, that representative actions should be brought only by public authorities or by representative entities (that have to meet certain conditions) designated in advance or certified on an ad hoc basis by a national court. The Recommendation failed to lead to consistent collective compensatory redress mechanisms across member states, which led to the adoption of the Collective Actions Directive. While the Collective Actions Directive builds on the Recommendation, it is limited to consumer actions and does not extend to competition claims.

Collective Actions Directive

The Collective Actions Directive introduces for the first time an EU legal framework for collective actions seeking injunctions or financial compensation for breaches of EU consumer protection law across all member states. The mechanism enables non-profit consumer organisations (referred to as 'qualified entities' (see article 4 of the Directive)) to bring collective actions. The Collective Actions Directive also facilitates cross-border collective actions by providing that qualified entities designated in one member state will also be able to bring representative actions in other member states. Member states have discretion to implement the mechanism on an opt-in or opt-out basis.

Member states have until 25 December 2022 to transpose the Directive into their national legal frameworks. The Directive leaves it open to member states to maintain or introduce collective redress mechanisms for claims arising

1 Commission Recommendation 2013/396/EU of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the member states concerning violations of rights granted under Union Law. The Recommendation defines the appropriate situations for such collective actions as 'a situation where two or more natural or legal persons claim to have suffered harm causing damage resulting from the same illegal activity of one or more natural or legal persons'.

outside the area of consumer protection law, including competition claims.[2] Any certified classes of claimants would most likely be comprised only of consumers within that jurisdiction unless a specific claimant from a different jurisdiction expressly opted in.[3]

DMA

However, the Collective Actions Directive may yet have a more significant impact on competition class actions across the EU. The DMA[4] will amend the scope of the Collective Actions Directive to allow for collective consumer actions in respect of violations of the DMA. The DMA lays down detailed obligations to address perceived unfair practices by large tech platforms designated as gatekeepers. This will require national laws to allow representative actions against gatekeepers for breach of DMA obligations (article 37(d) DMA, draft March 2022).

Piecemeal landscape

In the absence of EU level legislation, at a national level, EU Member States have adopted a variety of mechanisms to deal with the consolidation of competition law damages claims, ranging from claim assignment models to representative actions by consumer bodies to opt-in and opt-out collective actions.[5]

In Germany, certain representative associations or special purpose vehicles (SPVs) authorised by law are permitted to bring collective actions.[6] The legislation does not allow claims by unknown claimants. So collective antitrust litigation is possible only on an opt-in basis. This mechanism has only played a very limited role in practice. Actions mostly failed because German Civil Procedure rules prevent joining claims of consumers across different market levels and

2 Similarly, EU Directive 2014/104/EU adopted in 2014 (the Damages Directive) governing private enforcement of competition claims in the EU did not provide for a collective redress mechanism and left the decision to introduce collective redress mechanisms under national law up to member states.

3 The Collective Actions Directive does not provide guidance on certification procedures, during which a court will generally assess the suitability of claims for collective redress and certify or dismiss claims or groups of claims depending on whether they meet certain standards required to allow them to proceed (or be certified as) collective actions. The only condition expressly referred to in the Directive itself is that collective redress mechanisms adopted under national law should ensure that national courts or administrative authorities can dismiss 'manifestly unfounded' cases at the 'earliest possible stage of the proceedings' (see article 7(7) of the Directive).

4 Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (the Digital Markets Act), WK 5540/2022 INIT, [latest agreed text] 13 April 2022.

5 See the European Parliament's 2018 study for a summary of applicable regimes across a selection of member states: www.europarl.europa.eu/RegData/etudes/STUD/2018/608829/IPOL_STU(2018)608829_EN.pdf.

6 Civil Model Declaratory Proceedings Act ('*Gesetz zur Einführung einer zivilprozessualen Musterfeststellungsklage*'), *Federal Law Gazette* ('*Bundesgesetzblatt*') I, 12 July 2018, p. 1151.

give judges significant discretion to separate proceedings.[7] Additionally, while the German Federal Supreme Court has allowed the assignment of individual claims to an SPV under this law, the legality of the model is still heavily disputed in the area of antitrust damages claims.

Similarly, France operates a limited regime allowing for opt-in class actions by certain authorised bodies on behalf of claimants for breaches of certain provisions. To date only a few actions have been launched, none of which has yet reached the stage of damages distribution. The EU Collective Actions Directive may, however, provide an inspiration for certain amendments that could make class actions more attractive, including in competition claims. A parliamentary report anticipating the implementation of the Directive has suggested allowing group actions in any matters (including competition law) if potential claimants have suffered a loss or damage due to breach of the relevant rules.[8]

Generally EU member states, to the extent they have adopted any collective action framework, have tended to provide for opt-in claims. Confining collective claims to identified defendants via opting in is seen as a way to discourage speculative claims. However, some member states including, for example, Belgium, the Netherlands and Portugal have introduced legislation providing for opt-out actions.

Opt-out mechanisms adopted in member states

Belgium introduced a limited collective redress mechanism in 2014 that allows certain consumer organisations or the Belgian Consumer Ombudsman to bring class actions on behalf of consumers or SMEs. The Belgian procedure provides for an alternative opt-in or opt-out model, where the competent court decides on the applicable mechanism depending on the circumstances of the case once the claim has been filed. However, the opt-out procedure is not available to potential claimants who do not reside in Belgium or do not have their primary establishment there. Such claimants must opt in to collective proceedings brought in front of Belgian courts to be considered part of the class and bound by the relevant judgment.

Similarly, the Netherlands maintain a collective actions regime that entered into force at the start of 2020, allowing foundations and associations to bring actions for damages on behalf of a class of injured parties, including on an opt-out basis. Again, this in principle only extends to domestic parties based in the Netherlands. Injured parties from outside the Netherlands must opt in-to any

7 While the German Parliament has recently considered facilitating claims being brought together, the proposal has not found favour with the higher chamber of Parliament, meaning collective actions are likely to remain exceptional: www.bundesrat.de/SharedDocs/drucksachen/2021/0001-0100/58-1-21.pdf?__blob=publicationFile&v=1

8 www.assemblee-nationale.fr/dyn/15/rapports/cion_lois/l15b3085_rapport-information#

action brought in the Dutch courts, unless the court extends the opt-out regime to foreign parties. Relatedly, the Dutch regime requires that for any collective action, the claim has a sufficiently close link to the Netherlands, which requires, for example, that a majority of injured parties reside in the Netherlands. The fact that the defendant resides in the Netherlands or that the claim organisation is established in the Netherlands will not in itself be sufficient.

A further example is Portugal, where the Portuguese Competition Court in July 2021 approved the first opt-out collective settlement, resulting in financial compensation for claimants. The settlement between Ius Omnibus (a Portuguese non-profit consumer association created with the goal of defending consumers across Portugal and the EU) and the Portuguese Land Surveyors Associations (ANT) concerned a claim by Ius Ominbus seeking compensation from ANT for fixing the price of land surveying services over a number of years. In September 2021, Ius Omnibus filed a follow-on collective action against the Portuguese utilities operator Energias de Portugal (EDP) seeking damages of approximately €95 million for an alleged abuse of dominance.

UK

The procedural framework for bringing collective proceedings

In the UK, collective proceedings seeking damages for infringements of competition law are governed by section 47B of the Competition Act 1998. A representative, proposing to bring a claim on behalf of a class, can apply to the CAT for a collective proceedings order (CPO) on either an opt-in or an opt-out basis. The CAT considers, inter alia, whether it is just and reasonable for the person bringing a claim to act as representative and whether the claims are eligible for inclusion in collective proceedings. The eligibility of claims turns on whether they raise common issues and are 'suitable' for collective proceedings. Once the CAT certifies collective proceedings, the class action can proceed.

Obtaining certification requires a relatively straightforward suitability threshold be satisfied. In *Merricks*, a majority of the UK Supreme Court decided that the assessment of suitability is 'relative'. It requires the CAT to determine whether the claims before it are more appropriately brought as collective proceedings rather than individual actions.

What hurdles might a class face on the substance of its claims?

While *Merricks* may have set a low certification threshold for obtaining a CPO, thereafter, claimants still have to establish a defendant's liability for damages. This occurs at the merits stage of the collective proceedings. One factor is whether a claim is 'follow-on' or 'stand-alone'. Follow-on claims rely on a

regulator's findings as prima facie evidence of the infringement. By contrast, stand-alone claims do not rely on an existing finding of infringement and, therefore, have to prove the fact of the anticompetitive conduct (ie, the 'breach' aspect of the cause of action).

In either case, a claimant has to prove causation and loss. In competition cases, where complex economic evidence may be required to quantify loss, these are key battlegrounds. Relatedly, as discussed further below, the possibility of losses being passed on down the commercial chain (eg, a retailer passing on an overcharge to the consumers) further complicates the assessments of causation and loss.

These battlegrounds came to the fore in the CAT's recent *FX* judgment. In *FX*, the CAT found that there was no pleaded case on causation – instead, there was over-reliance on economic theory without a legal theory to match. In fact, the CAT considered that the case was so inadequately pleaded it was liable to be struck out. However, given the novel nature of the issues at play and the nascent, developing nature of the class action regime, the CAT decided against striking out the claims. Nonetheless, the *FX* judgment is a clear warning that the CAT is a serious and proactive gatekeeper. Indeed, in *FX* the CAT considered strike-out of its own motion; this may mean that strike-out applications will be a key tool in defendants' arsenals going forward.

Opt-in or opt-out?

When certifying a CPO, the CAT considers whether to order collective proceedings on an opt-out or an opt-in basis. In deciding the opt-out versus opt-in issue, the CAT considers various factors described in Rule 79(2) and (3) of the Competition Appeal Tribunal Rules 2015. Special attention is paid to the strength of the claims (but only at a 'high-level' (*Boundary Fares*, 183)) and whether it is practicable for the claims to be brought as opt-in proceedings having regard to, inter alia, the damages that individual class members may recover. A large class size coupled with a small amount of estimated individual recovery may impose a disproportionate administrative burden on claimants and the CAT if opt-in proceedings were ordered. This might be at odds with a class-actions regime's central aim of facilitating and vindicating claims that are impractical to litigate individually. Therefore, in *Boundary Fares,* the CAT held that the vast class and small amount of damages would make opt-in proceedings 'very difficult to manage' (*Boundary Fares*, 183). At other instances, the CAT has recognised that opt-out proceedings would render administration more straightforward and maximise the potential recovery of the class as a whole (*FX,* 87). The Court of Appeal, in *BT*, similarly noted that opt-in proceedings may be complex and inefficient, with representatives having to 'scramble around' to raise funds, collect class members and organise the litigation (*BT*, 103). Further, the CAT has recognised that there is a difference between a failure to build a class and

the impracticability of an opt-in action – the former may just indicate a lack of interest among would-be class members. '[A]ccess to justice should not be forced upon an apparently unwilling class' (*FX*, 385(2)).

The type of class certification (opt-in or opt-out) is important for a number of reasons. For instance, claims might be viable from a funding perspective only where pursued on an opt-out basis (as intimated in *FX*). From a defendant's perspective, the settlement pressure and adverse judgment risk also differs significantly: in an opt-out claim, a notable proportion – considered to be at least 40 per cent – of damages is ultimately likely to be unclaimed (ie, not distributed to claimants) and this would be reflected in a lower percentage (ie, no more than 60 per cent) of the total claim being sought as a settlement figure. By contrast, in an opt-in claim, there would be no unclaimed damages and therefore the class might seek a settlement of up to 100 per cent of the damages claimed for.

As mentioned above, one of the criteria the CAT considers in determining whether to certify an opt-out or opt-in CPO is the strength of claims. Pursuant to the CAT's Guide to Proceedings 2015 (Guide), reference to strength of the claims does not require the CAT to do a 'merits assessment' (Guide, 6.39). The CAT forms a high level view on the basis of the claim form. This is likely to be a particular challenge for stand-alone claims (and may not be straightforward in certain follow-on claims). Although the Guide provides that follow-on claims will ordinarily be robust enough for the strength criterion not to be in play (such that opt-out certification is less difficult to obtain), this is not an absolute rule: in *FX*, the CAT held that the claims were weak to the extent that that was a 'powerful reason against certifying on an opt-out basis' (*FX*, 375). However, in *BT*, the Court of Appeal upheld a CPO granted on an opt-out basis in a stand-alone claim (albeit the claim relied in large part on adverse findings by a regulator). This emphasises that whether a claim is follow-on or stand-alone is just one consideration in whether certification on an opt-out or opt-in basis is likely; and the manner in which claims are pleaded is a significant factor.

Where the CAT is minded to certify multiple class actions with overlapping scopes on an opt-out basis, the CAT would have to resolve a 'carriage dispute', namely, which class representative should be permitted to take the collective proceedings forward to the merits stage. So far, *FX* has been the only occasion on which the CAT has addressed the carriage issue and in that case the point was only obiter dicta as the CAT only permitted the cases to proceed on an opt-in basis, hence the carriage issue fell away. The CAT stated that, had it been minded to certify an opt-out claim, it would have resolved the carriage dispute by gauging the 'relative 'strength' of the two claims' (*FX*, 388). It explained that the essential question in a carriage issue is which of multiple proposed representatives would better serve the interests of the class. The CAT found that both claims were defective (noting in passing that 'the real answer to this question is "Neither"'), but if it had to choose the better pleaded case on causation would have been certified.

Direct and indirect claims

The UK competition regime facilitates claims made by claimants who have suffered losses without having transacted directly with the infringer (indirect claims) and provides a pass-on defence with a view to upholding the compensatory principle, namely, a claimant can only recover the loss that they have suffered. To the extent that a claimant has passed on an overcharge to its customers, it might not have suffered a loss and the defendant may rely on the pass-on defence to argue that that claimant cannot recover for the overcharge that was passed on. In *Sainsbury's v Mastercard*, the UK Supreme Court found that a 'broad axe' (*Sainsbury's*, 176) approach should be used in estimating the quantum of loss mitigated (ie, passed on) by Sainsbury's. Once the pass-on defence is raised, a 'heavy evidential burden' shifts onto claimants to show how they have dealt with the loss (*Sainsbury's*, 216). On the other hand, consumers to whom the overcharge has been passed on can bring an indirect claim arising from the same infringement. All being equal, logically the defendant should be liable for the full quantum of the loss suffered across the levels of the chain – for instance if a retailer has passed on half the loss to consumers, the defendant should be liable for 50 per cent of the direct loss suffered by the retailer and 50 per cent of the indirect loss suffered by the consumers. However, unless the cases are managed together, there is a risk of irreconcilable judgments – the court in the retailer's case may find that no overcharge was passed on, and the court in the consumer case may find that the entire overcharge was passed on. In theory, a defendant could be liable for claimed losses that did not in fact occur, leading to overcompensation and double liability. The opposite may also occur.

The CPO regime is available to both businesses and consumers. However, as discussed above, the CAT will only grant a CPO if the claims are suitable to be brought in collective proceedings. This may be affected by the nature and identity of a claimant. Individual consumers may be more likely to have suffered the small homogenous harms that the CPO regime aims to vindicate. On the other hand, businesses may find that their losses are too differentiated to proceed as a class. The CAT may find that the latter claims are more appropriately brought as individual actions, rendering them unsuitable for collective redress. Businesses may also be less likely to require third-party funding, removing them further from the classic class action, which attracts and can be 'facilitated by litigation funding' [*Merricks SC*, 98, quoting from *Merricks Court of Appeal*). Issues about class size and composition may also arise in consumer claims. For instance, where the alleged infringement occurred a number of years before a claim is brought or a CPO is granted, persons who would otherwise constitute the class may have relocated or died. In *Merricks*, the original claim form was issued in September 2016 but the CAT did not grant certification until August 2021. Members who had died in this period would be excluded from the class if the later date was set as the domicile date, namely, the date determining whether a person is domiciled in the UK. Therefore, the CAT decided that date of the claim form should be the domicile date but noted that its decision was limited

to the case's circumstances (in light of the nascent nature of the regime) and advised future class representatives to consider the domicile date further when describing the class definition.

Looking beyond collective proceedings

While the scope of collective proceedings under the UK competition regime seems to be ever-expanding in light of the low bar set by the UK Supreme Court in *Merricks*, the ability of claimants to bring representative actions under the Civil Procedure Rules has been limited by the UK Supreme Court's judgment in *Lloyd v Google*. That claim alleged breach of data protection law on behalf of four million data subjects. The Supreme Court rejected that the proposed class members had the 'same interest' and therefore determined that their damages would have to be calculated on an individualised basis, namely, following a 'bottom up' rather than a 'top down' approach, making the claims inapposite for a representative action (*Lloyd v Google*, 82). *Lloyd v Google* therefore requires that, for representative actions, the damages due to each claimant must be capable of being quantified without individual assessments (eg, if a fixed amount is due to each claimant). In contrast, the CPO regime under the Competition Act provides for aggregate damages awards (ie, without each claimant's loss being assessed), in a rare and radical departure from the compensatory principle (see section 47C, the Competition Act; *Merricks SC*, 58). In line with the relative suitability assessment described above, the CAT is simply required to determine whether an award of aggregate damages is more suitable than a 'multitude of individually assessed claims for damages' (*Merricks SC*, 57). As such, the CPO regime is unique in the UK for allowing opt-out proceedings for aggregate awards of damages where each claimant's loss need not be quantified. Unsurprisingly, claimants are likely to find the CPO regime more attractive for bringing class actions. Indeed, as discussed below, the fact that the claimant in *Meta* chose to seek a CPO signals that, having learnt the lessons from *Lloyd v Google*, claimants may seek to repackage their claims as breaches of competition law.

Expanding the scope of anticompetitive conduct

In recent years, claimants have been increasingly creative with the subject matter of their claims and the competition law tools they deploy. The £2.3 billion competition claim against Meta illustrates the rise in imaginative claims that converge competition and data protection issues. The claim alleges that Meta set an unfair selling price by using the personal data of 44 million Facebook users without compensating them adequately. Thus, by presenting what might instinctively be considered as privacy issues as instead being anticompetitive conduct, the claimants have in effect sidestepped the requirement to prove individual losses arising from a data breach that would otherwise have to be

shown if a representative claim were pursued because of the unique aggregate damages provisions referred to above.

The stand-alone *Boundary Fares* claims provide another interesting example. The proposed class representative therein, Mr Gutmann, has alleged that certain train operating companies abused their respective dominant positions on certain routes by failing to make 'boundary fares' sufficiently available to their customers. This, it is alleged, resulted effectively in double-charging because customers bought fares that overlapped for part of their journeys. The CAT has certified the *Boundary Fares* collective action, but a key area of dispute is likely to be whether this alleged double-charging can constitute an abuse of dominance in the traditional sense.

Conclusion and looking ahead

EU member states have adopted a variety of mechanisms to deal with the consolidation of competition law damages claims, ranging from claim assignment models to representative actions by consumer bodies to opt-in and opt-out collective actions. Some, including Belgium, the Netherlands and Portugal, have introduced legislation providing for opt-out actions.

In the UK, a host of CPO applications have been waiting in the wings. With numerous claims now having been certified, the first collective proceedings will soon approach trial – this may lead to significant findings regarding issues such as theories of harm and quantification of aggregate damages. Other claims may meet an earlier conclusion, if collective settlements come to the fore – this in turn will require input from the CAT, which in *FX* has shown itself willing to take a robust approach in satisfying itself that the right outcome is being reached (even if the parties are ad idem).

Relatedly, after the CAT's warnings in *FX*, strike-out applications are likely to be a more prominent feature at the certification stage. While the UK class action regime has kick-started, it should not be assumed that hopeless or poorly pleaded claims will be allowed to proceed to trial.

In any event, it will be interesting to see whether the eye-watering headline figures that are being suggested are actually realised at trial or upon settlement. What is certain is that class actions will be an increasingly dynamic and important area of law in the coming years.

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