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Competition Law Litigation in the UK Courts: A study of all cases 2005–2008—Part I

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Introduction

It is clear from a cursory examination of the academic literature in the field that private enforcement is an established, well-developed and vibrant mode of enforcement of US antitrust law, constituting the preponderance of antitrust enforcement activity complemented by public enforcement by the DOJ and FTC.¹ Historically, a range of factors have combined to ensure that private enforcement is effectively the default setting for antitrust enforcement in general, namely the wider litigative culture, the significant period of development of antitrust law and economics, and the specific characteristics of US civil procedure: the rules on discovery, the funding of actions, the availability of class actions and the existence of treble damages actions, together with clarification (and modification) of the legal position in relation to issues such as the passing-on defence and standing for indirect purchasers. Private antitrust enforcement is a well developed and mature system of

litigation. On the other hand, in the European Union, and the United Kingdom in particular, competition law enforcement has traditionally been the virtually exclusive dominion of administrative authorities, the European Commission (“DG Competition”) and the Office of Fair Trading,² respectively. Nonetheless, the basic EC doctrine of direct effect ensures that certain EC Treaty rules create rights and obligations which can be enforced in the domestic courts—and in an early art.234 (ex art.177) ruling, the ECJ confirmed that the doctrine applied to the Treaty competition rules.³ In addition, the dramatic change in UK competition law heralded by the Competition Act 1998, with the introduction of a modern EC-modelled prohibition system, was underpinned by the intention that the Ch.I and Ch.II prohibitions (equivalent to arts 81 and 82) would be enforced by private party litigants before the courts.⁴ Moreover, it is clear that during the last 20 years, the European Commission has sought to encourage and facilitate private enforcement of Community competition law, and a similar process has taken place in the United Kingdom since 1998, including the introduction of the Enterprise Act 2002 which made provision inter alia for follow-on actions before a specialist Competition Appeal Tribunal (CAT). These “decentralisation/modernisation” processes were promulgated, at least partly, to develop a greater complementary role for private litigation and thereby enhance the deterrence and effectiveness of EC and UK competition law and alleviate the authorities’ resource limitations.

Accordingly, there have been a number of important developments over the last 20 years to encourage private enforcement of competition law, such as the Commission Notice on Co-operation with the National Courts in 1993,⁵ the passing of the Competition Act 1998 and subsequent innovations introduced by the Enterprise Act 2002, the ECJ’s *Crehan* and *Manfredi* rulings,⁶ and the introduction of Regulation 1/2003. Currently there are two sets of proposals at the EU

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1 See S. Calkins, “Perspectives on state and Federal Antitrust Enforcement” (2003) 53 Duke L.J. 673, 699–700. See also, for example, C. Jones, *Private Enforcement of Antitrust Law in the EU, UK and USA* (Oxford: OUP, 1999); R.H. Lande and J.P. Davis, “Benefits From Private Antitrust Enforcement: An Analysis of Forty Cases” (2008) 42 U.S.F.L.R. 879; and the US Antitrust Modernization Commission, Report and Recommendations, 2007, available at http://govinfo.library.unt.edu/amc/report_recommendation/toc.htm [Accessed April 16, 2009].

2 Note that this is a relatively simplistic outline, and in fact the Office of Fair Trading in its current statutory corporate guise was created under s.2 of the Enterprise Act 2002.

3 See *Belgische Radio en Televisie v SV SABAM* (127/73) [1974] E.C.R. 51.

4 For a historical discussion of the issue, see MacCulloch, Ch.5, in B. Rodger and A. MacCulloch (eds), *The UK Competition Act: A New Era for UK Competition Law* (Oxford: Hart Publishing, 2000).

5 Commission Notice on Co-operation with the National Courts [1993] OJ C39/6.

6 *Courage Ltd v Crehan* (C-453/99) [2001] E.C.R. I-6297; *Manfredi v Lloyd Adriatico Assicurazioni SpA* (C-295/04) [2006] E.C.R. I-6619.

and UK level to further facilitate and enhance private competition litigation, in the Commission White Paper on damages actions for breach of the EC antitrust rules of 2008,⁷ and the OFT recommendations on private damages actions in competition law of 2007.⁸ In addition, there has been considerable literature on the application of the EC competition law rules in the national courts,⁹ but very little consideration of competition litigation in practice across the European Union,¹⁰ with the exception of the subset of art.234

7 At <http://ec.europa.eu/competition/antitrust/actionsdamages/documents.html#link1> [Accessed April 16, 2009]. The White Paper is currently before the European Parliament. “A little more action please! The White Paper on damages actions for breach of the EC antitrust rules” [2008] C.M.L. Rev. 609; F. Bulst, “Of Arms and Armour—The European Commission’s White Paper on Damages Actions for Breach of EC Antitrust Law” (2008) 2 *Bucerius Law Journal* 81. See also the earlier Green Paper at COM (2005) 672, December 19, 2005, and associated staff working document, SEC (2005) 1732, both available at <http://ec.europa.eu/comm/competition/antitrust/actionsdamages/documents.html#greenpaper> [Accessed April 16, 2009].

8 Available at <http://www.of.gov.uk/news/press/2007/162-07> [Accessed April 16, 2009]. These recommendations are currently being considered by BERR.

9 See, for instance, S.F. Hall, “Enforcement of EC Competition Law by National Courts” in P. Jan Slot and A. McDonnell (eds), *Procedure and Enforcement in EC and US Competition Law* (London: Sweet & Maxwell, 1993); J.H.J. Bourgeois, “EC Competition Law and Member States’ Courts” (1994) 17 *Fordham International Law Journal* 332; Behrens (ed.), *EEC Competition Rules in National Courts, I and II* (Nomos Verlagsgesellschaft, 1992 and 1994). See also M. Hoskins, “Garden Cottage Revisited: The Availability of Damages in the National Courts for Breaches of the EEC Competition Rules” [1992] E.C.L.R. 257; R. Whish, “The Enforcement of EC Competition Law in the Domestic Courts of Member States” [1994] E.C.L.R. 60; Kon and Maxwell, “Enforcement in National Courts of the EC and New UK Competition Rules: Obstacles to Effective Enforcement” [1998] E.C.L.R. 443; A.D. MacCulloch and Barry J. Rodger, “Wielding the Blunt Sword: Interim Relief for Breaches of EC Competition Law before the UK Courts” [1996] E.C.L.R. 393. In relation to *Crehan* [2001] E.C.R. I-6297: A. Komninos “New Prospects for Private Enforcement of EC Competition Law: Courage v Crehan and the Community right to damages” [2002] C.M.L. Rev. 447; G. Monti, “Anti-competitive agreements: the innocent party’s right to damages” (2002) 27 E.L. Rev. 282; A. Andreangelini, “*Courage Ltd v Crehan* and the Enforcement of Article 81 EC before National Courts” [2004] E.C.L.R. 758; N. Reich, “The ‘Courage’ doctrine: encouraging or discouraging compensation for antitrust injuries?” [2005] C.M.L. Rev. 35; for consideration of some of the UK case law, see A. Robertson, “Litigating under the Competition Act 1998: The early Case-law” (2002) 4(1) *Comp. L.J.* 335 and “Litigating under the Competition Act 1998: recent Case-law: Part 2” (2004) 3(2) *Comp. L.J.* 85.

10 However, see, for partial coverage, T.M.J. Mollers and A. Heinemann, *The Enforcement of Competition Law in Europe* (Cambridge: CUP, 2007). The author is currently planning a research project to analyse all competition-law related cases across the European Union for the period 2000–2009 inclusive.

cases involving competition law.¹¹ The Ashurst report in 2004¹² found only 60 damages cases across the European Union, and subsequently, the External Impact study associated with the Commission White Paper of 2008¹³ indicated that there had been an additional 96 antitrust damages actions across the European Union between May 1, 2004 and the third quarter of 2007. The focus has been on damages actions; yet it is clear that EU and domestic competition law are relied upon by parties in both sword and shield situations, including nullity actions, and it is important to seek an understanding of how competition law rights are exercised in all contexts including damages actions. This research seeks to build on and update recent work involving a comprehensive analysis of all competition law litigation in the UK courts, involving the application of both EC and UK competition law, to the end of 2004, which identified very limited evidence of an increase in competition law litigation in the United Kingdom in recent years.¹⁴ Nonetheless, these findings could not take into account competition litigation settlement practice. Subsequently, empirical research was undertaken which provided some limited information on 43 settlements in the United Kingdom between 2000 and 2005 inclusive,¹⁵ whereas only one of those settlements had previously reached the public domain. This research provided a partial narrative of the hidden story of settlement activity in that period to confirm the anecdotal evidence regarding the prevalence of settlement activity, and it identified that uncertainty of litigation was also the most significant difficulty identified in pursuing or establishing a competition law case according to respondents. While

11 See B. Rodger, *Article 234 and Competition Law: An Analysis* (The Hague: Kluwer Law International, 2008).

12 ‘Study on the Conditions of claims for damages in case of infringement of EC competition rules, available at http://ec.europa.eu/comm/competition/antitrust/others/actions_for_damages/study.html [Accessed April 16, 2009].

13 “Making Antitrust damages more effective in the EU: welfare impact and potential scenarios”, available at <http://ec.europa.eu/competition/antitrust/actionsdamages/documents.html#link1> [Accessed April 16, 2009].

14 See B. Rodger, “Competition Law Litigation in the UK Courts: A Study of All Cases to 2004—Part I” [2006] E.C.L.R. 241; “Competition Law Litigation in the UK Courts: A Study of All Cases to 2004—Part II” [2006] E.C.L.R. 279; “Competition Law Litigation in the UK Courts: A Study of All Cases to 2004—Part III” [2006] E.C.L.R. 341. However, it should be stressed that in Germany there is considerable evidence of high levels of litigation activity involving competition law (around 200 cases per year over the last 10 years) in a database maintained by the *Bundeskartellamt*.

15 See B. Rodger, “Private Enforcement of Competition Law, the Hidden Story: Competition Litigation Settlements in the UK, 2000–2005” [2008] E.C.L.R. 96.

accepting that settlement is the “norm” generally in all types of commercial litigation, it is arguable that parties and litigators could negotiate settlements more effectively and appropriately if the legal rules in this area were more clearly enunciated and developed (“bargaining in the shadow of the law”), and we await ongoing developments in this regard at both EC and UK level with interest. As outlined earlier in this article, the position is markedly different from the United States,¹⁶ where there is considerably more antitrust litigation, a number of aspects of the litigation process have been considered and resolved, and where there is also more evidence of antitrust litigation settlement practice and outcomes in relation to class actions at least.¹⁷

The aim of the research undertaken in this project was to seek to comprehensively identify all competition law cases before the domestic courts of the United Kingdom¹⁸ where parties were seeking to exercise rights conferred on them either by Community law or domestic UK competition law, under arts 81 and 82 of the EC Treaty and the Ch.1 and 2 prohibitions of the Competition Act 1998. This was partly to create a record of all relevant cases, but also to verify the hypothesis that we would identify an increased use of competition law in litigation in recent years. The research covers the period 2005–2008, and the case law was categorised, as outlined below, in various ways and for each of the years within that timescale.

It is necessary at the outset to outline the process by which the list of relevant cases was identified and delimited. Thereafter, in the following sections, various aspects of the relevant competition case law will be considered: the number of competition law cases over the period; degree of success generally in relation to

competition law issues raised in litigation; the extent to which competition law issues have been raised as claims or defences and their relative success; the court where the competition law issue was determined, i.e. at first instance, on appeal or at the CAT; success at different stages of the litigation process; the competition law provisions which were relied on and their relative success, and success according to the variety of remedies sought by claimants.¹⁹ It is hoped that by looking at these various facets of the recent competition law case law, as demonstrated by the various tables and charts, we will have a clearer representation of the developing nature of private litigation in the UK courts during this period.

Methodology and limitation of cases covered

In order to identify all competition law cases between private parties in UK courts since 2004, the Westlaw search engine was used. Searches were undertaken using the terms “Article 81 EC”, “Article 82 EC”, “Chapter 1 Competition Act 1998”, “Chapter 2 Competition Act 1998”, together with “s.47A Competition Act 1998”. Cases appearing in the UK courts between private parties were identified and the individual “case analysis” summary consulted in order to confirm relevance. This was repeated using the LexisNexis database to ensure the results were comprehensive.²⁰ Finally, the website of the Competition Appeal Tribunal was consulted and the “cases” feature used to identify additional actions which may have settled or are yet to be decided. In comparison with the earlier research period, it is arguable that a more inclusive approach was adopted in the current study, although clearly some case results from the searches were still excluded.²¹ Some competition law cases fail on a procedural issue or because of some other technical or legal hurdle and not simply because they have failed to establish the substantive competition law claim or defence to the requisite standard, but we considered

16 See in particular, R.H. Lande and J.P. Davis, “Benefits from Private Antitrust Enforcement: An Analysis of Forty Cases” (2008) 42 U.S.F.L.R. 879.

17 Lande and Davis, “Benefits from Private Antitrust Enforcement” (2008) 42 U.S.F.L.R. 879.

18 It should also be noted that in addition to private enforcement before the courts, under s.47A and 47B, claims may be brought before the Competition Appeal Tribunal where an infringement of any of the UK or Community prohibitions has already been established. For a fuller discussion of these provisions, see B. Rodger, “Private Enforcement and the Enterprise Act: An Exemplary System of Awarding Damages?” [2003] E.C.L.R. 103. See also A. Riley, “The Consequences of the European Cartel-Busting Revolution” (2005) *Irish Journal of European Law* 3. It should be emphasised that together with out-of-court settlements, this research does not take into account competition-related disputes which are settled through arbitration. See for instance E. Stylopoulos, “Powers and Duties of Arbitrators in the application of competition law: an EC approach in the light of recent developments” [2009] E.C.L.R. 118.

19 Note that Scottish case law will refer to the pursuer.

20 A number of judgments found initially via this search process were automatically excluded, notably rulings by the European Court of Justice, and judgments delivered in other jurisdictions. The research focuses on private enforcement and it was important to remove cases which essentially concerned aspects of the process of public enforcement of UK competition law.

21 For example, *Artificial Solutions Germany GmbH v Creative Virtual Ltd* [2008] EWHC 593 (Ch), where art.81 and Regulation 2790/1999 were mentioned at [110]–[111] but only in the context of agreement between the parties that a contract should be interpreted in a way which made it valid rather than invalid.

it crucial to consider the purported application of competition law rights in a comprehensive manner. Much of the recent focus at European and UK level has simply been on private damages actions. While these are very important, and attract the highest public profile, it is important to recognise that competition law may also be used as a shield and that damages are not always an appropriate remedy for a competition law claimant. Moreover, it would provide merely a partial insight into competition litigation practice if one were only to consider and assess competition law rulings on the substance or merits after a trial (proof). This would ignore the wider legal framework in which competition law claims and defences may be successfully made and the context in which they are facilitated or obstructed. Accordingly, the research extends to all cases in which the competition law aspect was a factor in the determination of the particular issue between the parties in dispute, irrespective of the stage of the litigation process at which it was resolved.

Number of competition law cases

The pre-2005 research identified 90 “competition law” cases where judgments were delivered in the UK courts in competition-law related litigation. There were 86 competition law judgments in total in England and Wales and four for Scotland. The current research has not separated the cases according to jurisdiction, and it was also decided that whereas in the earlier research, where a case was appealed, it was only referred to once, for the period 2005–2008 we have focused on all judgments, even where there has been a subsequent appeal, to allow a fuller consideration of how competition law claims and defences play out during the litigation process. There have, accordingly been 41 judgments, although this may give a slightly distorted view when compared to the earlier data—in fact there have been 27 cases, some involving multiple judgments or appeals²² As with the earlier period, it should also be noted that cases are referred to by the date of the judgment, where available, as opposed to the date of publication in any published volume of cases. The list of cases in chronological and alphabetical order is provided in Table A. Despite the expectation that there would be an exponential increase in subsequent

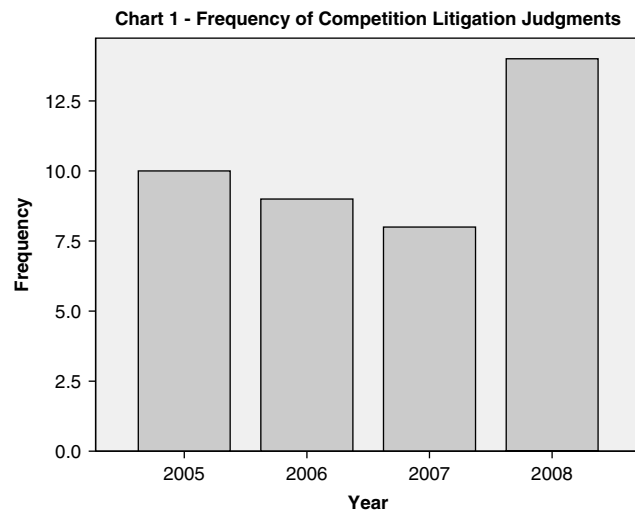
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²² See for instance *Emerson I, II, III and IV* and *Devenish Nutrition Ltd v Sanofi-Aventis SA* [2007] EWHC 2394 (Ch) respectively.

Table 1: Frequency of Competition Litigation Judgments

Year	Frequency	Percent	Cumulative Percent
2005	10	24.4	24.4
2006	9	22.0	46.3
2007	8	19.5	65.9
2008	14	34.1	100.00
Total	41	100.00	

years from the high of seven cases in 2004, particularly following Regulation 1/2003 and the number of cartels uncovered by the Commission’s leniency programme,²³ Table 1 and Chart 1 demonstrate that litigation practice was fairly steady across 2005–2007. However, perhaps the marked increase in 2008 indicates that we may be witnessing early signs of a surge in competition law claims, and there is some evidence to support this in Table B, at least in relation to claims raised before the CAT. Of course, one must always be aware of the “hidden story” of competition litigation settlements which ensures that the visible litigation practice is effectively the “tip of the iceberg”.²⁴



²³ See A. Riley, “Beyond Leniency: Enhancing Enforcement in EC Antitrust Law” (2005) 28(3) *World Competition* 377, and “The Consequences of the European Cartel-Busting Revolution” (2005) 12(1) *Irish Journal of European Law* 3.

²⁴ See Rodger, “Private Enforcement of Competition Law, The Hidden Story” [2008] E.C.L.R. 96.

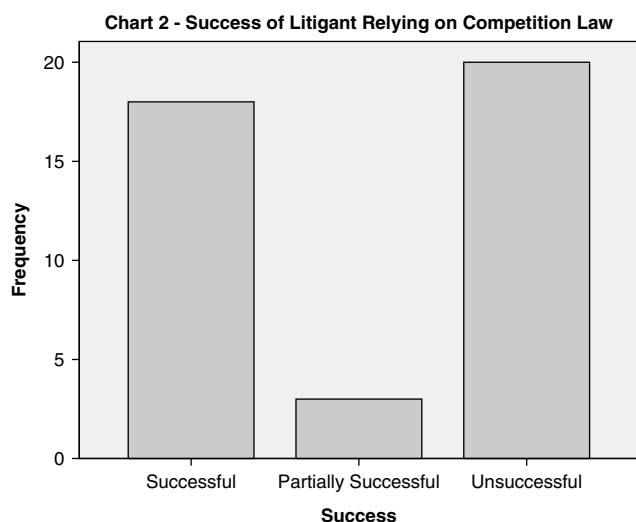


Table 3: Party Utilising Competition Law Provision

Success	Frequency	Percent	Cumulative Percent
Claimant	29	70.7	70.7
Defendant	12	29.3	100.0
Total	41	100.0	

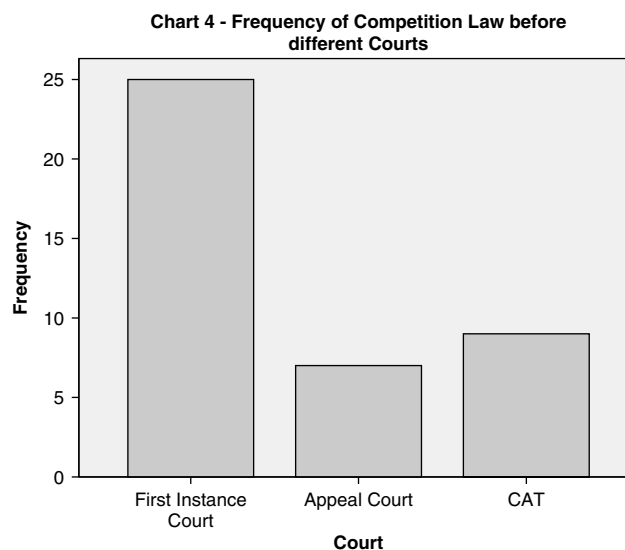
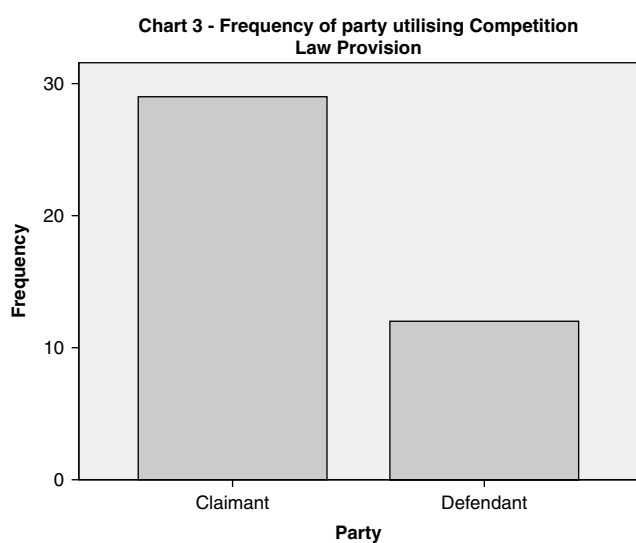


Table 2: Success of Litigant Relying on Competition Law

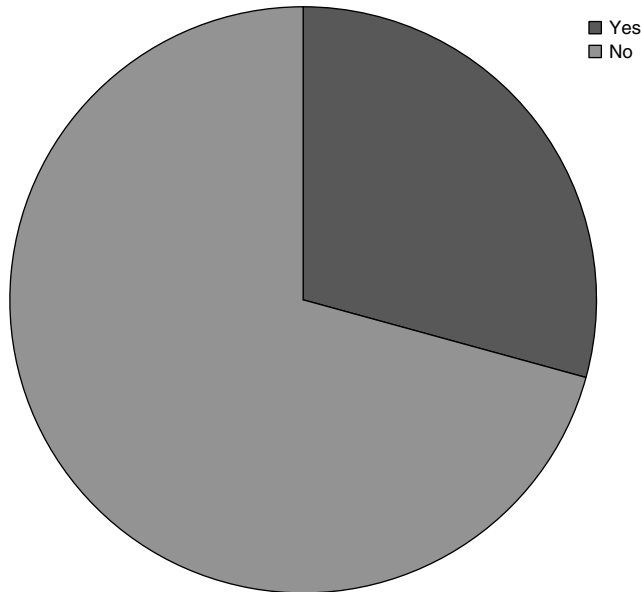
Success	Frequency	Percent	Cumulative Percent
Successful	18	43.9	43.9
Partially Successful	3	7.3	51.2
Unsuccessful	20	48.8	100.0
Total	41	100.0	

Success of competition law issues

Obviously there is an insufficient number of cases to draw any clear inferences from the information obtained on success rates; but there are some interesting aspects. In the earlier study, out of the total of 90 cases, 16 were designated as successful and seven as partially successful. The “success” rates have increased considerably as demonstrated by Table 2 and Chart 2, with 18 successful and three partially successful rulings out of the total of 41 judgments, spread fairly evenly across the four-year period, as indicated by Crosstabs 3. The three partially successful judgments include an order for partial recovery of costs for a defendant against a competition law claimant in *Emerson IV*,²⁵ and two cases resulting in references to the ECJ for a preliminary ruling in relation to defences based on

²⁵ *Emerson Electric Co v Morgan Crucible Co Plc* [2008] CAT 28.

Chart 5 - Competition Law Follow-On Actions



art.81.²⁶ It should also be stressed here that success does not relate to the claim but the success of the competition law issue, raised either by the claimant or the defendant, in whatever context.²⁷ Success does not necessarily entail final success on the substantive merits of the action, but may for instance be at an interim stage of the litigation. Accordingly, there are degrees of success in terms of overall significance to developing competition law jurisprudence, dependent for instance on the stage of the litigation process and the relationship between substantive and procedural rules, which it is difficult to reflect accurately by stark figures on success as demonstrated by Table 2 and Chart 2. Nonetheless, it is clear that the number of successful rulings in favour of litigants relying on competition law, particularly claimants, predominantly before the CAT in procedural issues, will help to further clarify the legal position and make the law more transparent. This may facilitate and encourage further private litigation,²⁸ although inevitably a number of complicated issues such as the passing-on defence and extent to which indirect purchasers can sue have still to be directly addressed.

²⁶ *Murphy v Media Protection Services Ltd* [2008] EWHC 1666 (Admin) and *Football Association Premier League Ltd v QC Leisure* [2008] EWHC 1411 (Ch).

²⁷ See further at heading, “Success at Different Stages of the Litigation Process”.

²⁸ See Rodger, “Private Enforcement of Competition Law, The Hidden Story” [2008] E.C.L.R. 96.

Competition law claims and defences and their success

In relation to the number of competition law claims and defences each year, the preponderance of competition law defences, in the 1970s, 1980s and early to mid 1990s was notable. Only between 1999 and 2004 did the competition law claims outnumber the competition law defences, and this trend has clearly been continued between 2005 and 2008 with 29 of the 41 judgments involving claims. These include a number of cases where the defendant raised a competition law issue in a counter-claim.²⁹

The majority of competition law judgments until 1999 were intellectual property-related cases and they were virtually all defences to actions for infringement of various intellectual property rights, and tended to arise at an early stage in proceedings, notably where the claimant sought summary judgment. In the current study, only 6 of the total 41 judgments were IP-related,³⁰ dealing with defences based on alleged breaches of competition law. Moreover, as demonstrated by Crosstabs 5, 15 of the 18 successful cases during this period have involved claimants.

Court where competition law issue determined

Of the 41 judgments, 25 were decided at first instance,³¹ seven were delivered on appeal, and nine by the Competition Appeal Tribunal. It should be emphasised that the CAT judgments arose in relation to only four separate cases.³² Table B provides further details in

²⁹ See *Bookmakers’ Afternoon Greyhound Services Ltd v Amalgamated Racing* [2008] EWHC 2688 (Ch) and *Creban*. Note also that *British Sky Broadcasting Plc v Virgin Media Communications Ltd* [2008] 1 W.L.R. 2854 (CA) and [2008] EWHC 1283 (Ch) were classified as claimant cases although the party who had raised the competition law claim was a respondent in an interim process application.

³⁰ *Hewlett-Packard Development Co LP v Expansys UK Ltd* [2005] EWHC 1495; [2007] ECC 9; *Sportswear Co SpA v Stonestyle Ltd* [2005] EWHC 2097 (Ch) and [2005] EWHC Civ. 830 (CA); *Murphy v Media Protection Services Ltd* [2008] EWHC 1666 (Admin) and *Football Association Premier League Ltd v QC Leisure* [2008] EWHC 44 (Ch) and [2008] EWHC 1411 (Ch).

³¹ Either the High Court in England and Wales, or the Court of Session (Outer House) in Scotland.

³² *BCL Old Ltd v Aventis SA* [2005] CAT 1; *BCL Old Co Ltd v BASF SE* [2008] CAT 24; *Emerson Electric Co v Morgan Crucible Co Plc* [2008] CAT 28 and *Healthcare at Home Ltd v Genzyme Ltd* [2006] CAT 30.

Table 4: Frequency of Competition Law before Different Courts

Court	Frequency	Percent	Cumulative Percent
First Instance Court	25	61.0	61.0
Appeal Court	7	17.1	78.0
CAT	9	22.0	100.0
Total	41	100.0	

relation to the increasing number of actions raised before the Competition Appeal Tribunal, as outlined in fuller detail in this article in relation to follow-on actions. Although there are only seven appeal court judgments during the four-year period,³³ they are obviously of considerable significance.³⁴ In *Arkin v Borchard Lines*,³⁵ the claimant had been unsuccessful in an art.81 action, for which a third party funder had underwritten the litigation in exchange for 25 per cent of the first £5 million and 23 per cent of any excess should the claim be successful. At first instance, the defendants were unsuccessful in a costs application but this was overturned by the Court of Appeal, which limited the potential liability of a third party funder on a “pound for pound” basis.³⁶ *Devenish Nutrition Ltd v Sanofi Aventis SA (France)*³⁷ was a post-*Vitamins* follow-on action in the High Court and concerned the preliminary issue of whether the claimant would be entitled to restitution of unjust enrichment and exemplary damages, although only the former issue was considered on appeal, unsuccessfully.³⁸ *British Sky Broadcasting Plc v Virgin Media Communications Ltd*³⁹ was one part of a trilogy of proceedings between these groups of companies competing in the pay TV market involving the High Court, proceedings before the CAT

and an OFCOM Review. Virgin brought a claim alleging that Sky was abusing a dominant position, partly by the acquisition of a 17.99 per cent shareholding in ITV. Pursuant to rule 31 of the Civil Procedure Rules (CPR), they had been required to make disclosure of relevant documents, but Sky applied for an order restricting inspection of their sensitive documents, amounting to 89 per cent of the documents disclosed in the High Court proceedings, to lawyers who were not acting for Virgin in the OFCOM Review or CAT proceedings. This application was rejected and the Court of Appeal dismissed the subsequent appeal. The final instalment in the *Crehan v Inntrepreneur*⁴⁰ saga took place in 2006 before the House of Lords.⁴¹ Disappointingly, on appeal, the House of Lords did not rule on the key remedy issue or on the appropriate quantification of damages, but focused on the issue of the national court’s duty of sincere co-operation.⁴² In overruling the Court of Appeal on the issue, the judgment of Park J. in the High Court was restored, on the basis that where there was no “real conflict” between a Commission decision and a national court ruling, the national court was not required to follow the Commission decision but was only required to give such weight to the Commission’s assessment as the evidence merited.⁴³ Accordingly, as determined earlier by Park J., Crehan was not entitled to damages and there have still been no final judgments in the UK courts awarding damages on the basis of the EC competition law rules.⁴⁴

In *AttheRaces Ltd v British Horseracing Board*,⁴⁵ the claimant—which supplied websites, TV channels, and other media relating to British horse racing—alleged that the defendant (which had a central role in the

33 Including the House of Lords in *Crehan v Inntrepreneur Pub Co (CPC)* [2006] 4 All E.R. 465 in 2006 and *Murphy v Media Protection Services* [2008] EWHC 1666 (Admin), which was an appeal against conviction by the Crown Court and is classified as an appeal although it was heard before the High Court.

34 Although, as *Crosstabs 6* demonstrates, only two have been successful and one partially successful.

35 *Arkin v Borchard Lines* [2005] EWCA Civ 655.

36 See J. Peysner, “After Sub-Prime” [2008] *Civil Justice Quarterly* 407.

37 *Devenish Nutrition Ltd v Sanofi Aventis SA (France)* [2008] EWCA Civ 1086 (CA).

38 See J. Skilbeck, “Cartel Damages: The Court of Appeal Rejects a Gain-Based Remedy” [2009] E.C.L.R. 105.

39 *British Sky Broadcasting Plc v Virgin Media Communications Ltd* [2008] 1 W.L.R. 2854 (CA).

40 *Crehan v Inntrepreneur Pub Co (CPC)* [2007] 1 A.C. 333.

41 See, for instance, A. Komninos, “New Prospects for Private Enforcement of EC Competition Law: *Courage v Crehan* and the Community Right to Damages” [2002] C.M.L. Rev. 447; B. Rodger, “The Interface Between Competition Law and Private Law: Article 81, Illegality and Unjustified Enrichment” (2002) 6 Edin. L.R. 217, particularly at [217]–[226] and [232]–[243]; See Andreangeli, “*Courage Ltd v Crehan* and the Enforcement of Article 81 before National Courts” [2004] E.C.L.R. 758, 761. See also B. Rodger (ed.), *Article 234 and Competition Law: An Analysis* (The Hague: Kluwer Law International, 2008), pp.545–552.

42 *Crehan v Inntrepreneur* [2007] 1 A.C. 333, HL. See in particular the leading speech by Lord Hoffmann.

43 See T. Petch, “Relying on Commission Decisions” (2007) 123 L.Q.R. 186; A. Andreangeli, “The Enforcement of Article 81 EC Treaty before National Courts after the House of Lords’ decision in *Inntrepreneur Pub Co Ltd v Crehan*” (2007) 32 E.L. Rev. 260.

44 See further elsewhere in this article, and in particular *Healthcare at Home Ltd v Genzyme Ltd* [2006] CAT 29.

45 [2005] EWHC 3015 (Ch) and [2007] EWCA Civ 38.

organisation and promoting of British horse racing and which kept a computerised database including pre-race data which included the date and place of the race meeting, the name of the race, a list of horses entered, etc.) had abused a dominant position and thereby infringed both art.82 and the Ch.2 prohibition. BHB effectively held a monopoly in the provision of the pre-race data and it was held in the High Court that it had abused its dominant position by excessive, unfair and discriminatory pricing,⁴⁶ and that a constructive refusal to supply the pre-race data, which constituted an essential facility, was caught by the prohibitions. Referring to European Court case law on excessive and discriminatory pricing, it was held that the price was excessive in comparison to the cost to BHB plus a reasonable return, and discriminatory in being markedly higher than the sum normally charged to other broadcasters. On appeal, this ruling was overturned by the Court of Appeal, which was sceptical about art.82/Ch.II becoming a general provision for the regulation of prices.⁴⁷ The court stated that exceeding cost was a necessary but not a sufficient test for abuse of dominance, there was little evidence that competition on the market was being distorted by BHB's demands and that the value to ATR of the pre-race data was relevant in determining whether the price was excessive. Furthermore, differential pricing was not necessarily abusive, and prices essentially were dependent on market forces. Accordingly BHB's pricing strategy was not abusive and the Court of Appeal clearly advocated a restrained approach to court involvement in claims of excessive or discriminatory pricing. The final two appeal judgments were delivered in *Sportswear Co Spa v Stonestyle Ltd*,⁴⁸ a successful appeal against summary judgment by a claimant to a competition law defence based on art.81 in a trade mark infringement case, and *Murphy v Media Protection Services Ltd*,⁴⁹ an appeal against conviction for offences contrary to s.297(1) of the Copyright, Designs and Patents Act 1988 in relation to broadcasting live Premier League football matches.

46 The first case was a striking out application by the defendant, *AttheRaces Ltd (ATR) v British Horseracing Board (BHB)* [2005] EWHC 3015 (Ch). This was unsuccessful and the claimant's application for an interim injunction restraining BHB from causing the termination in the supply of pre-race data to ATR. This has been classified as the former rather than an interim process case.

47 *Attheraces Ltd v British Horseracing Board Ltd* [2007] EWCA Civ 38, CA.

48 *Sportswear Co Spa v Stonestyle Ltd* [2006] EWCA Civ. 380, CA.

49 *Murphy v Media Protection Services Ltd* [2008] EWHC 1666 (Admin).

Table 5: Competition Law Follow-on Actions

Follow-on	Frequency	Percent	Cumulative Percent
Yes	12	29.3	29.3
No	29	70.7	100.0
Total	41	100.0	

Follow-on actions

The Enterprise Act 2002 made specific provision for encouraging follow-on private actions. Under s.47A of the 1998 Act, as introduced by s.18 of the 2002 Act, the CAT, in addition to its role as an appeal tribunal, is able to award damages and other monetary awards where there has already been a finding by the relevant authorities of an infringement of the Chapters I and II prohibitions, or arts 81 and 82 EC.⁵⁰ Section 19 of the 2002 Act added s.47B to the 1998 Act, which allows damages actions to be brought before the CAT by a consumer representative body—a form of “class action”.⁵¹ Furthermore, s.58A of the 1998 Act—added by s.20 of the 2002 Act—provides that, in any action for damages for infringement of the prohibitions under UK or EC law, prior decisions on the infringement by the OFT or CAT will be binding.⁵² Although Table 5 and Chart 5 demonstrate that 12 of the 41 judgments to date have been in follow-on actions, in fact this represents only seven separate cases, as there have been multiple judgments in a number of the cases. Two follow-on actions have been raised and dealt with at the High Court (and Court of Appeal in the latter) in *English, Welsh and Scottish Railway Ltd v E.ON UK Plc*⁵³ and *Devenish Nutrition Ltd v Sanofi-Aventis SA (France)*.⁵⁴ There have only been four follow-on actions

50 See, for instance, *Healthcare at Home Ltd v Genzyme Ltd* [2006] CAT 29, a judgment for interim relief by the CAT, although the case subsequently settled out of court.

51 For instance, *The Consumers' Association v JJB Sports Plc* (CAT Case 1078/7/9/07), a follow-on consumer representative action under these provisions before the CAT in relation to replica kits, although this case was settled out of court in January 2008 following an agreement by JJB to pay consumers who were unlawfully overcharged £20 each (see CAT Order of January 14, 2008).

52 Generally, for the potential impact of these provisions, see B. Rodger, “Private enforcement and the Enterprise Act: an exemplary system of awarding damages” [2003] E.C.L.R. 103.

53 *English, Welsh and Scottish Railway Ltd v E.ON UK Plc* [2007] EWHC 599 (Comm).

54 *Devenish Nutrition Ltd v Sanofi-Aventis SA (France)* [2007] EWHC 2394 (Ch) and [2008] EWCA Civ 1086 (CA).

which have resulted in judgments by the CAT, and none of these have been final judgments on the merits.⁵⁵ There have been multiple judgments in some cases as the CAT has determined a number of interim process issues, notably in relation to time-bar.⁵⁶ There appears to be a limited number of follow-on claims when one assesses the decision-making activities of the OFT. From March 1, 2000 to the end of 2005, there were 17 Ch.1 infringement and five Ch.2 infringement decisions by the OFT. Since then, the OFT has taken four Ch.1 infringement decisions, one infringement decision under Ch.2, and one under Ch.2/art.82.⁵⁷ Given that follow-on actions may be raised at the CAT in relation to OFT and Commission infringement decisions, the results certainly appear disappointing at first glance. In fact, one of the actions before the High Court, *Devenish*, was raised following the Commission's *Vitamins* decision, as were the two *BCL Old Co* cases, and the protracted *Emerson* litigation is a follow-on to the *Electrical and Mechanical Carbon and Graphite Products* Commission decision. The only judgments following UK authority decisions were in *English, Welsh and Scottish Railway Ltd v E.ON UK Plc* (an infringement finding by the ORR) and in *Healthcare at Home Ltd v Genzyme Ltd*. Moreover, there have been no judgments in any s.47B representative action proceedings by the CAT. Section 47B, available since June 20, 2003, allows a representative action to be brought by a specified body in respect of "consumer claims made or continued on behalf of at least two individuals" as follow-on actions before the CAT in relation to established infringements. The only specified body is Which? (the Consumers' Association), pursuant to Specified Body (Consumer Claims) Order 2005, SI 2005/2365. However, there has been one high-profile s.47B claim, in the *Consumers' Association v JJB Sports Plc*.⁵⁸ The OFT, upheld by the CAT and Court of Appeal, decided that there had been an infringement of the Ch.1 prohibition involving illegal RPM in relation to Man Utd and England shirts during 2000 and 2001. The price increase per replica shirt was approximately £15, and JJB and others were fined a considerable sum by the OFT. Ultimately, this action, with only 144 consumers party to the action, was settled

on the basis of compensation of £20 if receipts had been retained.⁵⁹ The paucity of s.47B claims is disappointing, and more generally there has been a very limited number of follow-on claims raised before the CAT. There is some evidence, as indicated in Crosstabs 1, that we may be witnessing an increase in this context—and from an academic viewpoint it is helpful that all claims raised before the CAT leave a clear "footprint", even although inevitably the majority of these claims also settle, as also demonstrated by Table B. Nonetheless, the CAT has already tackled a range of legal questions relating to the litigation framework set up by s.47A, and although there have been no "final" judgments to date,⁶⁰ the success rate for claimants in relation to a number of procedural issues is important in clarifying various issues and facilitating private litigation in the future. As anticipated, Crosstabs 8 and 9 highlight that 11 of the 12 follow-on cases involved damages claims, of which 10 were based on art.81. Overall, per Crosstabs 10, 8 out of 12 follow-on cases have been successful and as Crosstabs 6 indicates, 7 out of the 9 CAT judgments are denoted as successful. For instance in *BCL Old Co Ltd v Aventis I*⁶¹ where the defendants alleged that the claimants had sold their businesses and assigned their interests in the claim to third parties—the purchasers—and should be dismissed, the Tribunal accepted that it had the power to add third parties to the action, and exercised its discretion accordingly. Similarly, in *Emerson II*,⁶² the CAT rejected Morgan Crucible's Rule 40 application to reject a claim.

Two of the rulings have focused on costs issues. In *BCL Old Co Ltd v Aventis SA II*⁶³ the defendant made an application for security for costs under r.45 of the Tribunal rules. The Tribunal noted that the power to award costs at the end of proceedings was discretionary and that there was no automatic costs-follow-the-event rule. Furthermore, in the context of the follow-on procedure the Tribunal was satisfied that normally the defendant would not be entitled to costs and the only issue would concern quantum subject to special factors such as payments into court or unreasonable or vexatious conduct. Accordingly it was not satisfied that the defendants would be likely to have a costs

55 Although, in *Healthcare at Home Ltd*, the CAT awarded an interim damages payment of £2m prior to the case settling.

56 See, for instance, *Emerson I, II, III and IV* and both cases involving *BCL Old Co Ltd* which have involved two judgments each.

57 See http://www.of.gov.uk/advice_and_resources/resource_base/ca98/decisions/ [Accessed April 16, 2009].

58 Case no. 1078/7/9/07.

59 <http://www.which.co.uk/news/2008/01/jjb-to-pay-fans-over-football-shirt-rip-off-128985.jsp> [Accessed April 16, 2009].

60 See Crosstabs 7 and *English, Welsh and Scottish Railway Ltd* [2007] EWHC 599 (Comm).

61 *BCL Old Co Ltd v Aventis I* [2005] CAT 1.

62 *Emerson II* [2008] CAT 30.

63 *BCL Old Co Ltd v Aventis SA II* [2005] CAT 2.

order in their favour in due course. In *Emerson IV*⁶⁴ the question was whether r.55 of the Tribunal Rules enabled the Tribunal to make a costs order between an unsuccessful applicant for permission to make a claim against a party,⁶⁵ and a proposed defendant who made observations in the application. It was held that an application for permission represented “proceedings” for the purposes of the Tribunal Rules, and it would be unfair if a proposed defendant, who exercised his statutory right to be heard and successfully resisted an application, was denied the right to recover some or all incurred costs.⁶⁶ The CAT highlighted that the application process is optional and that, albeit not an automatic rule, the starting point would be that costs follow the event. This was categorised as a partially successful case as the CAT made a costs order in favour of the defendants but imposed a 50 per cent discount as a result of considerable reliance and time spent on the issue of jurisdiction raised unsuccessfully by the proposed defendants. There have been three judgments relating to time-bar issues by the CAT. In *Emerson I*,⁶⁷ the Emerson claimants were seeking damages following the Commission decision in *Electrical and Mechanical Carbon and Graphite Products*. Section 47A(5)(b) of the 1998 Act provides that no claim may be made except with permission during any period specified on subs.(8), i.e. during the period in which appeal may be instituted or if so, prior to its determination. In addition, r.31 of the Tribunal Rules provides a claim must be made within two years of the relevant date. The claimants were direct purchasers of mechanical carbon and graphite products and sought exemplary damages. Morgan Crucible was a successful leniency applicant and did not bring an action for annulment of the Commission decision, although other parties to the decision brought annulment applications before the CFI. The CAT emphasised that s.47A refers to any such proceedings and therefore, although MC did not appeal, the time limit for raising an action would not start to run until the appeal process had been completed, and accordingly the action against MC was not time-barred. Subsequently, in *Emerson III*,⁶⁸ the claimants made applications for permission to make a claim for damages pursuant to s.47A(5)(b) and r.31(3) of the Tribunal Rules against parties who had made appeals to the CFI and accordingly time had not yet started to run

for the purposes of a damages claim under s.47A. The claimants contended that the claims were so interrelated that it would be expeditious and fair to grant permission to initiate a claim for damages against the proposed defendants. The CAT confirmed that permission in these circumstances would be “exceptional” and the overriding consideration would be whether it enabled a case to be dealt with justly. The CAT would also consider the extent of any prejudice suffered by a party. In this case, the CAT was not satisfied that justice would not be done if the claimants waited, and furthermore the European courts’ appeal process may be relevant to quantification of the claim. In any event, the CAT stressed that stand-alone actions could be raised before the civil courts.

An issue similar to the one in *Emerson I* arose in *BCL Old Co Ltd v BASF I*,⁶⁹ a post-*Vitamins* indirect purchasers’ claim. Rule 31 of the Tribunal Rules⁷⁰ provides time limits for the raising of damages actions before the CAT—essentially within two years beginning with the relevant date. BASF appealed against the Commission decision to the CFI but did not appeal against the infringement, and thereby claimed that the possibility of appeal against infringement ended in January 2002. The CFI determined the appeal on March 15, 2006 and the CAT claim was commenced on March 13, 2008. The CAT considered in detail the earlier *Emerson I* and *III* rulings and held that the claim was not time-barred:

“The findings made by a competition authority in deciding to impose, and calculating the level of, a penalty may well be relevant to, and be determined by, the nature and extent of the infringement which is being penalised. For example, the gravity, duration and scope of the infringement . . . may well be factors relevant, not only to the size of the penalty imposed, but also to liability in damages.”⁷¹

Subsequently, in *BCL Old Co Ltd v BASF II*,⁷² in another “successful” judgment, the CAT rejected an application for permission to appeal to the Court of Appeal by the defendants as there was no “real prospect of success” or “compelling reason why the appeal should be heard”. The final “successful” case was *Healthcare at Home Ltd v Genzyme Ltd*⁷³ which comes as close to a final ruling awarding damages as there has been in

64 *Emerson IV* [2008] CAT 28.

65 Pursuant to s.47A(5)(b) and r.31(3).

66 At para.36.

67 *Emerson I* [2007] CAT 28.

68 *Emerson III* [2008] CAT 8.

69 *BCL Old Co Ltd v BASF I* [2008] CAT 24.

70 Competition Appeal Tribunal Rules 2003 (SI 2003 No. 1372) adopted pursuant to Part 2 of Sch.4 to the 2002 Act.

71 *BCL Old Co Ltd v BASF I* [2008] CAT 24 at [34].

72 *BCL Old Co Ltd v BASF II* [2008] CAT 29.

73 *Healthcare at Home Ltd v Genzyme Ltd* [2006] CAT 29.

the United Kingdom. This was an action under s.47A of the 1998 Act, following an earlier OFT decision⁷⁴ that the defendant had a dominant position in the upstream market for the supply of drugs for the treatment of Gaucher's disease and had abused it by a margin squeeze abuse, pricing the drug in a way to effectively exclude other homecare service providers from competing in the downstream market for home delivery and homecare services to patients with the disease. The defendant

admitted that the claimant was entitled to rely on the Tribunal finding and the claimant sought an order for an interim payment. The Tribunal stressed that it "may make an interim payment order if it is satisfied that if the claim were to be heard the Claimant would obtain judgment for a substantial amount of money".⁷⁵ The Tribunal awarded £2 million as an interim payment, on the basis of the lowest figures to calculate a loss of revenue at £2,866,490, and the action was subsequently settled.

74 Decision no CA 98/3/03.

75 *Healthcare at Home Ltd v Genzyme Ltd* [2006] CAT 29 at [66].

CROSSTABS

CROSSTABS 1: Year/Follow-On Actions

Year	Follow-On		Total
	Yes	No	
2005	2	8	10
2006	1	8	9
2007	4	4	8
2008	5	9	14
Total	12	29	41

CROSSTABS 2: Year/Competition Law Provision

Year	Provision							Total
	art.81	Ch.2	arts 81/82	Chs 1/2	art.81/Ch.1	art.82/Ch.2	arts 81/82 and Chs 1/2	
2005	3	1	1	0	1	4	0	10
2006	4	1	2	1	0	0	1	9
2007	3	2	0	0	0	2	1	8
2008	9	0	0	0	2	2	1	14
Total	19	4	3	1	3	8	3	41

CROSSTABS 3: Year/Success

Year	Success			Total
	Successful	Partially Successful	Unsuccessful	
2005	4	0	6	10
2006	4	0	5	9
2007	4	0	4	8
2008	6	3	5	14
Total	18	3	20	41

CROSSTABS 4: Party/Provision

Party	Provision							Total
	art.81	Ch.2	arts 81/82	Chs 1/2	art.81/Ch.1	art.82/Ch.2	arts 81/82 and Chs 1/2	
Claimant	11	3	3	0	3	6	3	29
Defendant	8	1	0	1	0	2	0	12
Total	19	4	3	1	3	8	3	41

CROSSTABS 5: Party/Success

Party	Success			Total
	Successful	Partially Successful	Unsuccessful	
Claimant	15	1	13	29
Defendant	3	2	7	12
Total	18	3	20	41

CROSSTABS 6: Court/Success

Court	Success			Total
	Successful	Partially Successful	Unsuccessful	
First Instance Court	9	1	15	25
Appeal Court	2	1	4	7
CAT	7	1	1	9
Total	18	3	20	41

CROSSTABS 7: Follow-on/Stage of Action

Follow-On	Stage				Total
	Substantive final judgment	Summary judgment for defendant to competition claim	Summary judgment for claimant to competition defence	Interim process	
Yes	1	1	0	10	12
No	8	2	6	13	29
Total	9	3	6	23	41

CROSSTABS 8: Follow-on/Remedy

Follow-On	Remedy							Total
	Damages	Damages and other remedy	Injunction	Pre-action disclosure	N/A-defence	Declaration	Declaration and Injunction	
Yes	11	0	0	0	0	1	0	12
No	2	6	3	1	14	0	3	29
Total	13	6	3	1	14	1	3	41

CROSSTABS 9: Follow-on/Provision

Follow-On	Provision							Total
	art.81	Ch.2	arts 81/82	Chs 1/2	art.81/Ch.1	art.82/Ch.2	arts 81/82 and Chs 1/2	
Yes	10	1	0	0	0	1	0	12
No	9	3	3	1	3	7	3	29
Total	19	4	3	1	3	8	3	41

CROSSTABS 10: Follow-on/Success

Follow-On	Success			Total
	Successful	Partially Successful	Unsuccessful	
Yes	8	1	3	12
No	10	2	17	29
Total	18	3	20	41

CROSSTABS 11: Follow-on/Court

Follow-On	Court			Total
	First Instance Court	Appeal Court	CAT	
Yes	2	1	9	12
No	23	6	0	29
Total	25	7	9	41

CROSSTABS 12: Stage of Action/Success

Stage	Success			Total
	Successful	Partially Successful	Unsuccessful	
Substantive final judgment	3	0	6	9
Summary judgment for defendant to competition claim	2	0	0	2
Summary judgment for claimant to competition defence	2	0	4	6
Interim process	11	3	10	24
Total	18	3	20	41

CROSSTABS 13: Remedy/Provision

Remedy	Provision							Total
	art.81	Ch.2	arts 81/82	Chs 1/2	art.81/Ch.1	art.82/Ch.2	arts 81/82 and Chs 1/2	
Damages	11	1	1	0	0	0	0	13
Damages and other remedy	0	2	0	0	3	0	1	6
Injunction	0	0	2	0	0	0	1	3
Pre-action disclosure	0	0	0	0	0	0	1	1
N/A-defence	8	1	0	1	0	4	0	14
Declaration	0	0	0	0	0	1	0	1
Declaration and Injunction	0	0	0	0	0	3	0	3
Total	19	4	3	1	3	8	3	41

CROSSTABS 14: Remedy/Success

Remedy	Success			Total
	Successful	Partially Successful	Unsuccessful	
Damages	7	1	5	13
Damages and other remedy	1	0	5	6
Injunction	2	0	1	3
Pre-action disclosure	0	0	1	1
N/A-defence	5	2	7	14
Declaration	1	0	0	1
Declaration and Injunction	2	0	1	3
Total	18	3	20	41

CROSSTABS 15: Provision/Success

Provision	Success			Total
	Successful	Partially Successful	Unsuccessful	
art.81	9	3	7	19
Ch.2	2	0	2	4
arts 81/82	2	0	1	3
Chs 1/2	0	0	1	1
art.81/Ch.1	0	0	3	3
art.82/Ch.2	5	0	3	8
arts 81/82 and Chs 1/2	0	0	3	3
Total	18	3	20	41

Table A: Private Enforcement Court Cases 2005–2008

Case Name	Citation	Court	Date
<i>AAH Pharmaceuticals Ltd v Pfizer Ltd</i>	[2007] EWHC 565 (Ch); [2007] U.K.C.L.R. 1561	E&W High Court, Chancery Division	March 5, 2007
<i>Adidas-Salomon AG v Draper</i>	[2006] EWHC 2262 (Ch)	E&W High Court, Chancery Division	August 31, 2006
<i>Arkin v Borchart Lines Ltd</i>	[2006] EWHC 1318 (Ch); [2006] U.K.C.L.R. 823	E&W High Court, Chancery Division	June 7, 2006
<i>Attheraces Ltd v British Horseracing Board Ltd</i>	[2005] EWCA Civ 655	Court of Appeal (Civil Division)	May 26, 2005
<i>BCL Old Co Ltd v Aventis SA</i>	[2007] EWCA Civ 38; [2007] U.K.C.L.R. 309	Court of Appeal (Civil Division)	February 2, 2007
<i>BCL Old Co Ltd v BASF SE</i>	[2005] EWHC 3015 (Ch); [2006] U.K.C.L.R. 167	E&W High Court, Chancery Division	December 21, 2005
<i>BHB Enterprises Plc v Victor Chandler (International) Ltd</i>	[2005] EWHC 1553 (Ch); [2005] U.K.C.L.R. 757	E&W High Court, Chancery Division	July 15, 2005
<i>Bookmakers' Afternoon Greyhound Services Ltd v Amalgamated Racing Ltd</i>	[2005] CAT 1	CAT	January 28, 2005
	[2005] CAT 2; [2005] Comp. A.R. 485	CAT	January 28, 2005
	[2008] CAT 24; [2008] Comp. A.R. 210	CAT	September 25, 2008
	[2008] CAT 29	CAT	October 17, 2008
	[2005] EWHC 1074 (Ch); [2005] U.K.C.L.R. 787	E&W High Court, Chancery Division	May 27, 2005
	[2008] EWHC 2688 (Ch)	E&W High Court, Chancery Division	November 6, 2008
	[2008] EWHC 1978 (Ch)	E&W High Court, Chancery Division	August 8, 2008
	[2008] EWHC 2503 (Ch)	E&W High Court, Chancery Division	June 26, 2008
<i>British Sky Broadcasting Plc v Virgin Media Communications Ltd</i>	[2008] EWCA Civ 612; [2008] 1 W.L.R. 2854	Court of Appeal (Civil Division)	June 6, 2008

Table A: (Continued)

Case Name	Citation	Court	Date
<i>Calor Gas Ltd v Express Fuels (Scotland) Ltd</i>	[2008] EWHC 1283 (Ch)	E&W High Court, Chancery Division	April 4, 2008
<i>Calor Gas Ltd v Express Fuels (Scotland) Ltd</i>	[2008] CSOH 13; 2008 S.L.T. 123	Court of Session (Outer House)	January 25, 2008
<i>Chester City Council v Arriva Plc</i>	[2007] EWHC 1373 (Ch); [2007] U.K.C.L.R. 1582	E&W High Court, Chancery Division	June 15, 2007
<i>Creban v Imntrepreneur Pub Co (CPC)</i>	[2006] UKHL 38; [2007] 1 A.C. 333	House of Lords	July 19, 2006
<i>Devenish Nutrition Ltd v Sanofi-Aventis SA</i>	[2008] EWCA Civ 1086; [2008] U.K.C.L.R. 783	E&W Court of Appeal, Civil Division	October 14, 2008
<i>Emerson Electric Co v Morgan Crucible Co Plc</i>	[2007] EWHC 2394 (Ch); [2008] 2 W.L.R. 637	E&W High Court, Chancery Division	October 19, 2007
<i>Emerson Electric Co v Morgan Crucible Co Plc</i>	[2007] CAT 28; [2008] C.P. Rep. 5	CAT	October 17, 2007
<i>English Welsh and Scottish Railway Ltd v E.ON UK Plc</i>	[2007] CAT 30	CAT	November 16, 2007
<i>English Welsh and Scottish Railway Ltd v E.ON UK Plc</i>	[2008] CAT 8; [2008] Comp. A.R. 118	CAT	April 28, 2008
<i>English Welsh and Scottish Railway Ltd v E.ON UK Plc</i>	[2008] CAT 28	CAT	October 17, 2008
<i>English Welsh and Scottish Railway Ltd v E.ON UK Plc</i>	[2007] EWHC 599 (Comm); [2007] U.K.C.L.R. 1653	E&W High Court, Queen's Bench Division	March 23, 2007
<i>Football Association Premier League Ltd v QC Leisure</i>	[2008] EWHC 1411 (Ch); [2008] U.K.C.L.R. 329	E&W High Court, Chancery Division	June 24, 2008
<i>Football Association Premier League Ltd v QC Leisure</i>	[2008] EWHC 44 (Ch); [2008] U.K.C.L.R. 65	E&W High Court, Chancery Division	18 January, 2008
<i>Healthcare at Home Ltd v Genzyme Ltd</i>	[2006] CAT 29; [2007] Comp. A.R. 474	CAT	November 15, 2006
<i>Hewlett-Packard Development Co LP v Expansys UK Ltd</i>	[2005] EWHC 1495 (Ch); [2007] E.C.C. 9	E&W High Court, Chancery Division	July 14, 2005
<i>Hutchison 3G UK Ltd v O2 (UK) Ltd</i>	[2008] EWHC 55 (Comm); [2008] U.K.C.L.R. 83	Queen's Bench Division (Commercial Court)	January 18, 2008

Table A: (Continued)

Case Name	Citation	Court	Date
<i>Ineos Vynyls Ltd v Huntsman Petrochemicals (UK) Ltd</i>	[2006] EWHC 1241 (Ch)	E&W High Court, Chancery Division	May 26, 2006
<i>Murphy v Media Protection Services Ltd</i>	[2008] EWHC 1666 (Admin); [2008] U.K.C.L.R. 427	E &W QBD Admin Court	July 16, 2008
<i>P&S Amusements Ltd v Valley House Leisure Ltd</i>	[2006] EWHC 1510 (Ch); [2006] U.K.C.L.R. 876	E&W High Court, Chancery Division	June 26, 2006
<i>PIK Facilities Ltd v Watson's Ayr Park Ltd</i>	[2005] CSOH 132	Court of Session (Outer House)	October 4, 2005
<i>Punch Taverns (PTL) Ltd v Moses</i>	[2006] EWHC 599	E&W High Court, Chancery Division	February 22, 2006
<i>Software Cellular Network Ltd v T-Mobile (UK) Ltd</i>	[2007] EWHC 1790 (Ch); [2007] U.K.C.L.R. 1663	E&W High Court, Chancery Division	July 17, 2007
<i>Sportswear Co SpA v Stonestyle Ltd</i>	[2006] EWCA Civ 380; [2006] U.K.C.L.R. 893	Court of Appeal (Civil Division)	April 11, 2006
<i>Wootton Trucks Ltd v Man ERF UK Ltd</i>	[2005] EWHC 2087 (Ch); [2006] U.K.C.L.R. 1	E&W High Court, Chancery Division	October 3, 2005
<i>Wootton Trucks Ltd v Man ERF 2005</i>	[2006] EWHC 943 (Ch)	E&W High Court, Chancery Division	March 31, 2006
<i>BCL Old Co Ltd v Aventis SA</i>	[2005] CAT 1	CAT	January 28, 2005
<i>BCL Old Co Ltd v Aventis SA</i>	[2005] CAT 2; [2005] Comp. A.R. 485	CAT	January 28, 2005
<i>Arkin v Borchard Lines Ltd</i>	[2005] EWCA Civ 655	Court of Appeal (Civil Division)	May 26, 2005
<i>BHB Enterprises Plc v Victor Chandler (International) Ltd</i>	[2005] EWHC 1074 (Ch); [2005] U.K.C.L.R. 787	E&W High Court, Chancery Division	May 27, 2005
<i>Hewlett-Packard Development Co LP v Expansys UK Ltd</i>	[2005] EWHC 1495 (Ch); [2007] E.C.C. ⁹	E&W High Court, Chancery Division	July 14, 2005
<i>Attheraces Ltd v British Horseracing Board Ltd</i>	[2005] EWHC 1553 (Ch); [2005] U.K.C.L.R. 757	E&W High Court, Chancery Division	July 15, 2005

Table A: (Continued)

Case Name	Citation	Court	Date
<i>PIK Facilities Ltd v Watson's Ayr Park</i>	[2005] CSOH 132	Court of Session (Outer House)	October 4, 2005
<i>Sportswear Co SpA v Stonestyle Ltd</i>	[2005] EWHC 2087 (Ch); [2006] U.K.C.L.R. 1	E&W High Court, Chancery Division	October 3, 2005
<i>Attheraces Ltd v British Horseracing Board Ltd</i>	[2005] EWHC 3015 (Ch); [2006] U.K.C.L.R. 167	E&W High Court, Chancery Division	December 21, 2005
2006			
<i>Punch Taverns (PTL) Ltd v Moses</i>	[2006] EWHC 599	E&W High Court, Chancery Division	February 22, 2006
<i>Wootton Trucks Ltd v Man ERF UK Ltd</i>	[2006] EWHC 943 (Ch)	E&W High Court, Chancery Division	March 31, 2006
<i>Sportswear Co SpA v Stonestyle Ltd</i>	[2006] EWCA Civ 380; [2006] U.K.C.L.R. 893	Court of Appeal (Civil Division)	April 11, 2006
<i>Ineos Vinyls Ltd v Huntsman Petrochemicals (UK) Ltd</i>	[2006] EWHC 1241 (Ch)	E&W High Court, Chancery Division	May 26, 2006
<i>Adidas-Salomon AG v Draper</i>	[2006] EWHC 1318 (Ch); [2006] U.K.C.L.R. 823	E&W High Court, Chancery Division	June 7, 2006
<i>PôS Amusements Ltd v Valley House Leisure Ltd</i>	[2006] EWHC 1510 (Ch); [2006] U.K.C.L.R. 876	E&W High Court, Chancery Division	June 26, 2006
<i>Crehan v Imntrepreneur Pub Co (CPC)</i>	[2006] EWCA Civ 1042; [2007] R.T.R. 19	E&W Court of Appeal, Civil Division	July 19, 2006
<i>Adidas-Salomon AG v Draper</i>	[2006] EWHC 2262 (Ch)	E&W High Court, Chancery Division	August 31, 2006
<i>Healthcare at Home Ltd v Genzyme Ltd</i>	[2006] CAT 29; [2007] Comp. A.R. 474	CAT	November 15, 2006
2007			
<i>Attheraces Ltd v British Horseracing Board Ltd</i>	[2007] EWCA Civ 38; [2007] U.K.C.L.R. 309	Court of Appeal (Civil Division)	February 2, 2007

Table A: (Continued)

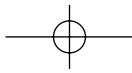
Case Name	Citation	Court	Date
<i>AAH Pharmaceuticals Ltd v Pfizer Ltd</i>	[2007] EWHC 565 (Ch); [2007] U.K.C.L.R. 1561	E&W High Court, Chancery Division	March 5, 2007
<i>English Welsh and Scottish Railway Ltd v E.ON UK Plc</i>	[2007] EWHC 599 (Comm); [2007] U.K.C.L.R. 1653	E&W High Court, Queen's Bench Division	March 23, 2007
<i>Chester City Council v Arriva Plc</i>	[2007] EWHC 1373 (Ch); [2007] U.K.C.L.R. 1582	E&W High Court, Chancery Division	June 15, 2007
<i>Software Cellular Network Ltd v T-Mobile (UK) Ltd</i>	[2007] EWHC 1790 (Ch); [2007] U.K.C.L.R. 1663	E&W High Court, Chancery Division	July 17, 2007
<i>Emerson Electric Co v Morgan Crucible Co Plc</i>	[2007] CAT 28; [2008] C.P. Rep. 5	CAT	October 17, 2007
<i>Devenish Nutrition Ltd v Sanofi-Aventis SA</i>	[2007] EWHC 2394 (Ch); [2008] 2 W.L.R. 637	E&W High Court, Chancery Division	October 19, 2007
<i>Emerson Electric Co v Morgan Crucible Co Plc</i>	[2007] CAT 30	CAT	November 16, 2007
2008			
<i>Football Association Premier League Ltd v QC Leisure</i>	[2008] EWHC 44 (Ch); [2008] U.K.C.L.R. 65	E&W High Court, Chancery Division	January 18, 2008
<i>Hutchison 3G UK Ltd v O2 (UK) Ltd</i>	[2008] EWHC 55 (Comm); [2008] U.K.C.L.R. 83	Queen's Bench Division (Commercial Court)	January 18, 2008
<i>Calor Gas Ltd v Express Fuels (Scotland) Ltd</i>	[2008] CSOH 13; 2008 S.L.T. 123	Court of Session (Outer House)	January 25, 2008
<i>British Sky Broadcasting Plc v Virgin Media Communications Ltd</i>	[2008] EWHC 1283 (Ch)	E&W High Court, Chancery Division	April 4, 2008
<i>Emerson Electric Co v Morgan Crucible Co Plc</i>	[2008] CAT 8; [2008] Comp. A.R. 118	CAT	April 28, 2008

Table A: (Continued)

Case Name	Citation	Court	Date
<i>British Sky Broadcasting Plc v Virgin Media Communications Ltd</i>	[2008] EWCA Civ 612; [2008] 1 W.L.R. 2854	Court of Appeal (Civil Division)	June 6, 2008
<i>Football Association Premier League Ltd v QC Leisure</i>	[2008] EWHC 1411 (Ch); [2008] U.K.C.L.R. 329	E&W High Court, Chancery Division	June 24, 2008
<i>Bookmakers' Afternoon Greyhound Services Ltd v Amalgamated Racing Ltd</i>	[2008] EWHC 2503 (Ch)	E&W High Court, Chancery Division	June 26, 2008
<i>Murphy v Media Protection Services Ltd</i>	[2008] EWHC 1666 (Admin); [2008] U.K.C.L.R. 427	E & W QBD Admin Court	July 16, 2008
<i>Bookmakers' Afternoon Greyhound Services Ltd v Amalgamated Racing Ltd</i>	[2008] EWHC 1978 (Ch)	E&W High Court, Chancery Division	August 8, 2008
<i>BCL Old Co Ltd v BASF SE</i>	[2008] CAT 24; [2008] Comp. A.R. 210;	CAT	September 25, 2008
<i>Devenish Nutrition Ltd v Sanofi-Aventis SA</i>	[2008] EWCA Civ 1086; [2008] U.K.C.L.R. 783	E&W Court of Appeal, Civil Division	October 14, 2008
<i>BCL Old Co Ltd v BASF SE</i>	[2008] CAT 29	CAT	October 17, 2008
<i>Emerson Electric Co v Morgan Crucible Co Plc</i>	[2008] CAT 28	CAT	October 17, 2008
<i>Bookmakers' Afternoon Greyhound Services Ltd v Amalgamated Racing Ltd</i>	[2008] EWHC 2688 (Ch)	E&W High Court, Chancery Division	November 6, 2008

Table B: Private Enforcement CAT Cases 2004–2008

Case Name	Citation/Case Number	Judgment Date	Status
<i>BCL Old Co Ltd v Aventis SA</i>	[2005] CAT 1	January 28, 2005	Settled
	[2005] CAT 2; [2005] Comp. A.R. 485	January 28, 2005	Settled
<i>BCL Old Co Ltd v BASF SE</i>	[2008] CAT 24; [2008] Comp. A.R. 210;	September 25, 2008	Settled
	[2008] CAT 29	October 17, 2008	Ongoing
<i>Emerson Electric Co v Morgan Crucible Co Plc</i>	[2007] CAT 28; [2008] C.P. Rep. 5	October 17, 2007	Settled
	[2007] CAT 30	November 16, 2007	Settled
	[2008] CAT 8; [2008] Comp. A.R. 118	April 28, 2008	Settled
	[2008] CAT 28	October 17, 2008	Settled
<i>Healthcare at Home Ltd v Genzyme Ltd</i>	[2006] CAT 29; [2007] Comp. A.R. 474	November 15, 2006	Registered
<i>JJ Burgess & Sons v Austim & Sons (Stevenage) Ltd</i>	1088/5/7/07	August 3, 2007	Settled
<i>The Consumers Association v JJB Sports Plc</i>	1078/7/9/07	March 5, 2007	Settled
<i>Deans Foods Limited v Roche Products Ltd</i>	1029/5/7/04	February 26, 2004	Settled
<i>Emron Coal Services Ltd (in liquidation) v English Welsh & Scottish Railway Ltd</i>	1106/5/7/08	November 7, 2008	Ongoing
<i>(1) Freightliner Ltd (2) Freightliner Heavy Haul Limited v English Welsh & Scottish Railway Ltd</i>	1105/5/7/08	August 26, 2008	Settled
<i>Grampian Country Food Group Ltd v Sanofi-Aventis SA</i>	1101/5/7/08	May 14, 2008	Ongoing
<i>N.J. and D.M. Wilson v Lancing College Ltd</i>	1108/5/7/08	December 3, 2008	Ongoing



Author: Please take time to read the below queries marked as AQ and mark your corrections and answers to these queries directly onto the proofs at the relevant place. DO NOT mark your corrections on this query sheet:

AQ1: AQ: Please supply citations.

