# Summaries

## Rip it up and start again? Cartel regulation post-Brexit

**Nicholas Querée**

On 23 June 2016, the people of the UK voted to leave the EU. The significance of this development cannot be overstated. The aftershocks of this momentous decision reverberated throughout the political institutions and financial markets of the UK, Europe and further afield. They will no doubt continue to do so for some time.

This article will address what Brexit could mean for cartel and antitrust enforcement. In particular, it will consider whether Brexit will provide an opportunity for competition law regulators in the UK to take a lead in cartel enforcement along a more traditional 'Anglo-Saxon' line, that is more prosecutorial rather than administrative in character and with a greater emphasis on using existing criminal powers to regulate cartel conduct.

## Brexit: the implications for EU and UK merger control

**Paul Johnson**

On Friday 24 June 2016, the results of the UK's much anticipated European Referendum were announced, with 51.9% of the UK electorate voting to leave the EU. The economic, legal and constitutional implications of this decision are likely to reverberate for years to come.

This article explores what the new relationship between the UK and the EU might look like and considers what impact such new relationships could have on UK and EU merger control.

## Brexit: exit stage left for competition damages?

**Anneli Howard**

The EU's new wonderchild, the Damages Directive, has had a difficult conception. Ten years in the making, it was finally delivered by the Commission in December 2014 and is due to be implemented by December 2016. This development has been heralded as an important catalyst for private enforcement, levelling the playing field between national courts and shifting the balance of arms to make it easier for claimants to pursue their claims for redress. Will Brexit render this initiative a 'lost child', like Perdita in *The Winter's Tale*, exiled from the royal kingdom and forced to survive on her wit and charm alone? Or are these fears exaggerated? Can UK competition litigation go it alone?

# Class certification – how the CAT might learn from Canada and the USA

**Jennifer Reeves**

In October 2015 collective actions were introduced for competition claims in the Competition Appeal Tribunal (CAT). In determining the first collective proceedings applications, the CAT will be called on to determine which such claims meet the certification criteria and can proceed on a collective basis. The importance of the certification criteria as a gateway to collective redress cannot be overstated, yet the governing legislation and rules leave a remarkable discretion to the CAT in applying these criteria. The UK certification criteria bear a considerable resemblance to the criteria that apply in other common law jurisdictions, notably the USA and Canada. These jurisdictions have decades of experience in grappling with class action proceedings and offer the UK the chance to shortcut some of the inevitable complexities which arise in the early years of any new collective regime (although the CAT is likely to forge its own path as it applies the unique perspective of the UK legal systems to the collective action mechanism). This article considers the UK certification criteria and what the CAT might learn from the jurisprudence of the US and Canadian jurisdictions in those areas where parallels can be drawn.

# New economic questions in 'opt-out' collective actions

**Joseph Bell and Kimela Shah**

On 1 October 2015, the Consumer Rights Act 2015 came into force, making 'opt-out' collective actions for competition law claims possible in the UK for the first time. The legal requirements for a case to proceed as an opt-out collective action introduce a number of economic questions. This article highlights examples of the kind of economic analysis that might emerge in the context of three aspects of these requirements: cost-effectiveness; the presence of common issues; and the definition and identification of a class.

# Implementing the Damages Directive – will the UK maintain its competitive advantage?

**James Flett**

The EU antitrust litigation landscape is changing as EU Member States act to implement the EU Directive on antitrust damages actions. The Directive is designed to make it easier for victims of anti-competitive conduct to obtain compensation for loss suffered across the EU and to achieve a coherent coordination of the public and private enforcement of competition law across the EU.

This article considers: (1) the features of the English regime that have encouraged damages actions; (2) the extent to which existing English law is already compliant with the Directive and the amendments that are necessary to bring English law into line with the Directive; (3) the Government's proposed method of implementation of the Directive; and (4) what the future might hold.

# The role of competition law in UK competitiveness

**Peter Freeman**

This article considers how competition policy and the law that implements it contribute to making the UK's economy more competitive. Some years ago, in an argument about the merits of protectionism and European Champions, the then President of France, Nicolas Sarkozy, asked: 'Competition, as an ideology, as a dogma, what has it done for Europe?' The question rather invites the answer 'probably quite a lot', but the purpose of this article, leaving aside issues of ideology and dogma, is to pose a similar question in a slightly narrower context: 'What has competition law done for the UK?'