



**Claims for Damages
in Competition Law and Intellectual Property Law:
Legal Framework and Economic Principles for the
Evaluation of Damages**

An 10 hour CPD course
taught by Vincent Smith (Sheppard & Smith)
and Peter Davis (Compass Lexecon)

May & June 2013

The Course Tutors

VINCENT SMITH is a partner at Sheppard & Smith and was, until mid 2010, a founding partner at Hausfeld & Co LLP in London focussing on UK and European claimant and complainant competition matters. He is also currently a Visiting Fellow at the British Institute of International and Comparative Law.

While at Hausfeld, Vincent led the team in the high profile 'air cargo' representative claim (*Emerald v British Airways plc*) and in a Competition Appeal Tribunal case in the chemicals sector for cartel claimants (*Moy Park and ors v Degussa AG*). He also worked on the claims against the marine hose cartel and the paraffin wax cartel for a wide spectrum of corporate claimants. In addition Vincent took a leading role in structuring insurance and funding for the firms collective damages claims.

He joined from the Office of Fair Trading, the UK's main public competition enforcement body, where he was Senior Director for Competition and Director of its Competition Enforcement division from 2003 – 2007. He led the OFT's 180-strong competition function, having overall responsibility for the OFT's work in combatting cartels and other anti-competitive practices, and also for the OFT's 'first phase' merger control duties, as well as oversight of its developing enforcement policy – for example on case prioritisation. From 2002-2003 he was the OFT's Director of Competition Policy Co-ordination and deputy Director of the division. At the OFT Vincent was responsible for many high profile decisions and policies. In particular, he led the settlement negotiations in Independent Schools and was heavily engaged in the ground breaking Mastercard interchange fees decision.

Cartel enforcement, particularly in the construction sector, formed a large part of his responsibilities, and he was involved in all of the OFT's major cartel investigations during his tenure. In particular he initiated the first steps in the UK to 'fast track' groups of cartel cases for public enforcement purposes.

He also oversaw the OFT's input to the later stages of negotiating and then implementing the 'devolved' European competition enforcement regime under EC Regulation 1/2003 in the UK and latterly took the initiative in shaping the OFT's ongoing work on encouraging a greater degree of private enforcement of competition law through damages actions in the UK.

Before joining the OFT, Vincent was Legal Director for competition issues at OFTEL, then the UK telecommunications regulator, for two years, where he advised on a wide range of regulatory issues, including the first use in the UK by a public enforcement body of its formal powers under the Competition Act 1998 in March 2000.

Vincent qualified as a Solicitor (England and Wales) in 1990 after training with Simmons & Simmons and spent ten years in private practice in London and Brussels with the firm, specialising in EU and competition law.

PETER DAVIS, Executive Vice President at Compass Lexecon, and has substantial experience in competition policy and regulatory investigations. His current case-load includes advising on an ongoing Competition Commission's (CC) market investigation; work on a large pan-European follow-on cartel damages case; and he has also worked on various high profile EU merger cases including EMI/Sony, NYSE Euronext/Deutsche Börse and Glencore/Xstrata.

Prior to joining Compass Lexecon he served on the CC's panel of expert academic economists (2004-2006) and subsequently as Deputy Chairman of the CC (2006-2011), acting as Chairman of a range of inquiry groups investigating mergers and also hearing appeals against regulatory price control decisions in telecoms and water sectors. He also chaired the CC's Payment Protection Insurance (PPI) market investigation.

He was President of the Association of Competition Economics (2009-2011).

Prior to joining the CC, he provided advice to clients and submitted written and/or oral testimony in a variety of Competition Act cases including Bacardi and BHB Rules and Orders in front of the OFT and in *At the Races* at the High Court under CPR Part 35.

He has a PhD in economics (Yale, 1999) and served on the faculties of MIT (1998-2002) and LSE (2002-2006). His academic work includes contributions to a number of leading academic journals. He is co-author of the leading textbook, *Quantitative Analysis for Competition and Antitrust Investigations*, which was published by Princeton University Press in 2010. He is currently Visiting Professor at University College London's Faculty of Laws and has been listed in *Who's Who* since 2010.

About the Course

The course will examine the legal framework for claims for damages in EU and UK competition law as well as in intellectual property law and the economic principles for the evaluation of damages in these contexts. The topic is of particular importance in view of the increasing numbers of competition law claims for damages in the UK, the harmonization initiatives at the EU level, the recent reforms envisaged in UK competition law promoting private enforcement and the importance of damages claims for infringement of IP rights, in view of the issues raised by other forms of protection of IP rights, such as injunctions. It will present a succinct but well focused analysis of the main practical issues involved, such as, the nature and objective of private competition law enforcement, issues of standing and passing-on, causation, characterization of damages, legal issues on the quantification of harm, the binding effect of infringement decisions, collective claims (class actions), access to evidence in a damages case, the interaction between private actions and the leniency

programme, including the issue of the discovery of corporate statements. The course will then delve into the economic principles relating to the quantification of damages. We will examine the following issues: cartel overcharges, output effects and deadweight losses, damages to producers of complements, imperfect substitutes and umbrella effects, passing on defences, an introduction to empirical analysis in cartel and abuse of dominance cases (including methods for estimating but-for prices, damages with two part tariffs, damages to rival firms versus consumers), evaluation of damages in IP cases.

At the end of this course the participants will be able to (i) understand the legal framework for damages cases in the competition law mainly but also IP law context; (ii) understand the economic principles for the evaluation of damages in competition and IP law cases; (iii) assess the application of these principles in practice, by looking to case studies.

WHO IS THE COURSE FOR?

The course has a strong focus on the needs of practitioners.

There are no formal entry requirements for the course, but it is designed for competition law or intellectual property law practitioners.

The course is accredited with 10 CPD hours by the Solicitors Regulation Authority and the Bar Standards Board.

Course dates:

The course will run from 5 – 7.30pm on
Wednesday 15 May 2013
Wednesday 22 May 2013
Monday 3 June 2013
Monday 10 June 2013

Venue:

The course will be held at:
UCL Faculty of Laws
Bentham House
Endsleigh Gardens
London WC1H 0EG

Fees:

£240 standard fee

SUMMARY OF COURSE CONTENT

Wednesday 15 May 2013

Anatomy of a competition case

- As a claim
 - ▷ damages for breach of duty
 - ▷ injunction to prevent ongoing breach
 - Negative / Prohibition
 - Positive (supply obligations)
- As a defence
 - ▷ 'euro-defence' to contract claims
- How to spot a competition case
 - ▷ 'blacklisted' conduct - RPM, boycotts, bid rigging etc.
 - ▷ high market shares
 - ▷ claims involving regulating sectors
 - ▷ competition law and intellectual property
- Where a competition authority has already investigated
 - ▷ primary of EU competition law
 - EU Commission as *amicus curiae*
 - references to CJCE
 - ▷ ongoing investigations
 - duty not to impede (*Masterfoods* stay)
 - access to information

Wednesday 22 May 2013

Multi-party and multi-jurisdiction competition cases

- 'which way to the forum?'
 - ▷ for EU cases: 'Brussels' regulation
 - domicile of defendant
 - effects jurisdiction
 - ▷ for non EU cases: private international law of court seized
- whose law applies?
 - ▷ law of contract
 - ▷ law of place of effect? law of forum?
 - ▷ overriding effect of EU competition law: *ordre public*
- England as your forum
 - ▷ choice of High Court or Competition Appeal Tribunal
 - follow-on vs. stand alone actions
 - proposals for reform of CAT jurisdiction
- Multiple claimants
 - ▷ collective, group and class actions discussed
 - ▷ competition class actions for the UK: government reform proposals
 - aims of proposals: helping small business and consumers
 - only for competition claims in CAT
- Multiple defendants (cartels)
 - ▷ join and several liability: 'anchor' defendants and contribution claims
 - ▷ effect in England of non-EU (US) findings
- Conclusion / summary
 - ▷ competition litigation developments elsewhere

Monday 3 June 2013

Cartel damages

- Basic Theory
 - ▷ Cartel overcharges. Output effects and deadweight losses. Damages to producers of complements. Imperfect substitutes and umbrella effects
 - ▷ Passing on defenses.
- Estimation and the Risk of the black box: What happens in damage cases when economics is done very badly
- Introduction to empirical analysis in cartel cases
 - ▷ Methods for estimating but-for prices.
 - Overview of Nera Report for DG Competition.
- Beyond the basics:
 - ▷ Damages with two part tariffs
 - ▷ Imperfect cartelization
 - ▷ Damage estimation in practice
 - ▷ Discipline on reasonable interpretations of evidence – when economics is applied well

Monday 10 June 2013

Damages in abuse of dominance and IP cases

- Damages to rival firms versus consumers
- Framework for analysis
- Introduction to damages in IP cases.

COURSE VENUE



The course venue: UCL Faculty of Laws

The course will be held at the UCL Faculty of Laws' Bloomsbury Campus at

UCL Faculty of Laws
Bentham House
Endsleigh Gardens
London WC1H 0EG

The Faculty is well served by transport links with Euston, King's Cross, and St Pancras International overground train stations within 5 - 10 minute walk away.

Tube stations within easy walking distance of the Faculty are:

Euston

(Victoria / Northern Lines)

Euston Square

(Circle / Metropolitan / Hammersmith & City Lines)

Russell Square

(Piccadilly Line)

FEES AND HOW TO APPLY

The course fee is £240.

The course fee covers all course materials and tuition.

Application Process

Applications should be made using the form overleaf or online at <http://www.claims-for-damages.eventbrite.co.uk>

Applications should be accompanied by:

- 1 a short personal statement indicating what you hope to achieve by attending the course.

The **application deadline is Monday 13 May 2013**, or earlier if we are fully booked before that date.

Fee payment

Fees should be paid in full at the time of booking - by debit or credit card for online bookings or by cheque for offline bookings. Cheques should be payable to 'UCL'. You can request to pay via invoice if you book offline.

Please return your **completed application form**, together with **your short personal statement** as to what you hope to achieve by attending the course, to:

Lisa Penfold
Events & CPD Manager
UCL Faculty of Laws
Bentham House
Endsleigh Gardens
London WC1H 0EG

Queries should be made to:

Lisa Penfold

Telephone: 020 7679 1514

Email: lisa.penfold@ucl.ac.uk

DAMAGES IN COMPETITION LAW AND IP LAW APPLICATION FORM

Surname _____

First name _____

Title _____ Date of birth _____

Nationality _____ Do you require a visa? Yes/No (delete as appropriate)

Business Name _____ Position _____

Address _____

Telephone _____ Mobile Phone _____

Email address _____

Fee payment: Please include a cheque with this booking form or request an invoice by completing the details below. Please confirm the address/name that you would like an invoice sent to:

please use my details above

please use this name / firm / address for the invoice _____

Data Protection Act 1988: I agree to UCL processing personal data contained on this form or any other data which UCL may obtain from me or other people or organisations while I am applying for admission. I agree to the processing of such data for any purpose connected with my studies or my health and safety while on UCL premises, or for any other legitimate purpose.

To the best of my knowledge, the information on this application is accurate and complete.

Signature _____ Date _____

Please return this form to:

Lisa Penfold Events & CPD Manager

UCL Faculty of Laws, Bentham House, Endsleigh Gardens, London WC1H 0EG