

The Creation of the Business and Property Courts will Enable Competition Law Claims to Be Heard Outside London

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The new Business and Property Courts of England and Wales ("B&PCs") became operational on 2 October 2017. As well as London, new BPCs have also been established in seven regional centres. As part of the reforms, the Mercantile Court has been renamed as the 'Circuit Commercial Court' and Mercantile Judges are now known as 'Circuit Commercial Judges'. The formation of the B&PCs is to create a single 'umbrella' for specialist jurisdictions, including the Commercial Court and Chancery Division, which both form part of the High Court and the courts in which claims involving competition law are heard. Each specialist court will, however, continue to apply both the Civil Procedural Rules (including for competition claims, the [Competition Law Practice Direction](#) and its own procedural guide. A new Practice Direction (available [here](#)) has also been made, which contains new rules for the issue and transfer of proceedings.

The B&PCs have ten specialist lists, one of which is the 'Competition List', which will hear claims based upon the Competition Act and/or EU competition law.

A significant change brought about by the creation of the B&PCs is that claims based upon either UK or EU competition law can now be issued and heard outside of London, in one of the seven regional centres in which the High Court sits, i.e. in Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and Newcastle upon Tyne. Previously, claims based upon competition law could only be brought in either the High Court in London (in either the Chancery Division or the Commercial Court) or in the Competition Appeal Tribunal ("CAT"), which is based in London, although it has on occasion sat in Cardiff, as well as in Edinburgh and Belfast, including in *Z Travel v Cardiff Bus* when it heard, over 9 days, a follow on damages action.

One of the principal objectives of the introduction of the B&PCs is to ensure that claims are brought and heard in the most appropriate centre, which will not necessarily be London. Where a claim has 'significant links' to one of the regional circuits, it should normally be issued in the appropriate hearing centre, i.e. Bristol for the Western Circuit and Cardiff for the Wales Circuit. Cases may also be transferred from the High Court in London to a regional centre, so that cases with a significant link to a circuit are heard there by a specialist judge. In this way, only cases which are suitable for management and trial will remain in London; all other claims will be transferred to the appropriate regional centre.

A 'significant link' can be established in different ways, including by reference to the location of the parties, witnesses and legal representatives, as well as whether the dispute occurred in a location within, or concerns land, goods or other assets located within, the circuit.

The B&PCs will include a new specialist list for competition claims, the Competition List, which forms part of the Chancery Division. Claims involving competition law may also be brought in the Commercial Court (which forms part of the Queen's Bench Division), including the Circuit Commercial Court, if they form part of a contractual or other business dispute.

It should be noted that where a claim allocated to the Competition List is issued in a regional centre, its case management and/or trial will be dependent on the availability of a suitable judge. However, the President of the CAT and many of its Chairmen are High Court judges and so have expertise in competition law matters, as do a number of other High Court judges, whether on the bench or in practice. Therefore, provided judges with competition law expertise are available, there is no reason why case management and trial cannot take place in a regional centre.

The introduction of the B&PC therefore provides an opportunity for litigants and solicitors based outside of London to bring competition claims in regional centres. This may mean that cases can be heard more quickly and at lower cost than if they were to be issued and heard in London. By way of example, the following claims, even if large or complex, would appear to be suitable for hearing in the regions:

- claims for damages following a decision by the Competition and Markets Authority ("CMA") that companies in a particular town or region have participated in an illegal cartel, for example to fix prices or commissions
- claims for damages following a CMA decision that a company dominant in a local market has abused that dominance, for example by refusing rivals access to its essential infrastructure (such as a port, pipeline or bus station) or by pricing below cost to foreclose rivals
- actions for an injunction to stop threatened or on-going anti-competitive behaviour by a competitor, supplier or other business counterparty
- applications for a declaration that the terms of a commercial agreement (such as a distribution agreement or a property lease) restrict competition in a local area and are therefore void and unenforceable

It is still early days for the B&PCs, but it is to be hoped that the ability to for claimants to bring and have heard competition law claims outside of London will both increase access to justice and increase the number of claims being brought.

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