

An interview with Peter Camesasca

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Covington & Burling partner Peter Camesasca heads from one capital of competition law to another next week, as he sets off from his Brussels office for Washington, DC, where he will moderate a panel at GCR Live: Cartels on the topic of private cartel actions in the European Union. Camesasca previewed his part of the 5 April conference in a Q&A with GCR.

Why do you think this topic is particularly timely?

Cartel damage litigation in Europe has reached a turning point. The number of cartel damage claims has materially grown over the past years, with a clear concentration in three “hot spots”: the UK, Germany, and the Netherlands. But recent legislative developments, at both the European (the EU Directive) and country level (for example, the UK Consumer Rights Act), are bound to intensify the dynamics at play. They facilitate claims across the various levels of the distribution chain – from direct to indirect purchasers and even beyond – and across Europe, as well as encouraging class action litigation, at least in the UK. In this fast-developing and complexifying context, I believe this topic is particularly timely to assist potential defendants understand what civil exposure they may face in Europe and ways to contain that exposure, and identify opportunities and pitfalls of bringing litigation in Europe.

What aspects of your own practice and experience made this topic one for which you wanted to moderate a panel?

As an antitrust lawyer, I routinely represent clients in EU cartel investigations. In recent years, as damage litigation started mushrooming in some EU countries, I have increasingly advised clients on their litigation defence strategies following these investigations. Today, companies cannot ignore the civil exposure risk when dealing with Europe, and this adds another layer of complexity when they devise their European and wider defence strategies. I wanted to moderate this programme to give the audience practical insights on how best to tackle the European civil exposure aspects, but also, possibly, on how Europe might provide certain litigation opportunities.

What do you think each of the panellists will bring to the discussion?

Mr Justice Peter Roth, president of the UK's Competition Appeal Tribunal, will provide his unparalleled experience dealing with some of the highest profile damage claims brought in the UK to date, as well as his views on how the newly introduced UK class action mechanism and the implementation of the EU Directive are likely to shape cartel damage litigation in the UK for the years to come.

Belinda Hollway, from Scott & Scott, will contribute the plaintiff perspective to the debate, which may be of interest not just to prospective plaintiffs, but also to potential defendants, to better grasp what triggers civil actions in Europe, what drives forum selection and the shape of these actions.

James Flynn QC, from Brick Court Chambers, will contribute the wider EU and defendant perspective, discussing how defendants must look beyond an extant claim when devising their EU litigation strategies, and the need for coherent pan-European and global defence strategies.

Bryan Keating, from Compass Lexecon, will provide the economist's perspective on critical quantum issues such as pass on and overcharge in the context of multiple litigation fronts at various levels of the supply chain, and how defendants can best use the economics to help their strategies.

If you could have had one more person on the panel, who would it be and why?

Alan Wiseman, from my firm, to contrast the trends we are observing in Europe with those at play in the US and what this means in terms of litigation exposure for companies involved in global cartel investigations. For instance, the *Motorola* ruling somewhat reduces antitrust litigation exposure for defendants, by limiting the possibility to bring damage claims based on foreign purchases. The US landscape is perhaps a glimpse over the horizon for those of us who practise in Europe, and Alan has been doing this for over 30 years – probably more like over 40 – and seen it all.