

Will the EU Directive change the face of competition enforcement?

José Rivas and Peter Willis

PETER WILLIS: Private competition law enforcement is an interesting point at the moment. We are seeing a lot more private actions in the national courts and there is also a European Directive just about to be finalised which will change things even more significantly in a number of Member States.

JOSE RIVAS: I see we are involved in separate cases across Europe, for example, we are involved in the escalator case in Germany; we are involved in the asphalt case in Sweden and the insurance case in Spain, and also we are very active in London.

PETER WILLIS: Yes, that's right the London courts are emerging as a particularly favourite jurisdiction for competition enforcement for various reasons and we've been involved in claims involving LCD displays and a number of other products as well.

JOSE RIVAS: As a firm we have been on both sides of the fence – we have represented and we represent claimants but we also represent defendants. This means that we have a unique perspective in the sense that we have an overall picture when defending clients or when attacking on behalf of the clients.

PETER WILLIS: That's right, I think the other thing that makes us special is the firm is very heavily focused on complex cross-border litigation. We've got the top patent litigators in Europe and there are very many similarities between competition claims and patent litigation. They involve complex jurisdictional issues, assessing markets, assessing

products and so on.

JOSE RIVAS: Indeed, this has proven to be a very effective way to approach the market. The combination between outstanding litigation skills and competition or anti-trust skills.

We should make a distinction between the continent and the situation in the UK, certainly for continental jurisdictions some basic principles are going to be harmonised, for example, when a directive is going to have a strong impact, is the area of disclosure something that it is quite common in the UK but not so common in continental Europe.

PETER WILLIS: Yes, that's right. In English courts there is already a very extensive disclosure of evidence between the parties and actually that is one of the reasons why the English courts are popular for this kind of claim so that you can get access to the evidence. So that won't change so much in the UK but we will see changes on things like time limits and the way that claims are allocated and the way that liability is divided up between the parties. That will change in the UK as well.

JOSE RIVAS: Without any doubt, once the directive is adopted the number of claims in Europe will increase. Ironically, what we are witnessing is that the number of claims is already increasing even before the directive is adopted.

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This document is a transcript of an edited video recorded in September 2014.

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