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Collective redress in Europe

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Introduction

Across Europe there is growing interest in finding solutions for collectively redressing “mass” claims. It is hard to assess to what extent this emerging trend is a result of the spread of American legal culture over European societies and to what extent it derives from an actual need. Nevertheless, strong political pressure has recently been observed to introduce into domestic legal systems possibilities of pursuing collective actions as a form of court action enabling “weaker” parties effectively to pursue corporate businesses. In some European jurisdictions this pressure has been translated into legal reform. In view of the potential threat such reform poses to corporate businesses, a brief overview of legal regulations on this issue in European jurisdictions may be helpful in assessing the additional risk of doing business in those jurisdictions. This paper presents information on the state of legislation regarding collective redress in European jurisdictions covered by the CMS network and will be updated quarterly.

Collective redress is not only being addressed in domestic legal regimes. There is also much activity at the European Union level. Two Directorates-General of the European Commission are investigating options for the introduction of collective actions across Europe – one relating to the enforcement of consumer protection and the other to the private enforcement of competition law.

In the area of consumer protection, the European Union Consumer Strategy 2007-2013 headlined the need to overhaul the legislation on cross-border shopping rights and the creation of a system for redress and enforcement, including consideration of collective redress mechanisms. In the area of competition, the European Commission published a Green Paper in December 2005 that revealed an intention to facilitate private damages claims, especially through collective redress. In April 2008, the European Commission published a White Paper suggesting a new model for achieving compensation for consumers and businesses that have been victims of antitrust violations, including collective actions in

which victims expressly decide to combine their individual claims for harm they have suffered into one single action.

This paper refers only to collective actions that seek monetary compensation for a class or group of claimants and does not analyse actions seeking declaratory/injunctive relief.

Further, we do not present information on the joinder of parties in proceedings. Although the joinder concept relates to multiple parties (i.e. more than two), it is based on individual claims against a counterparty and therefore does not fall within the concept of collective redress.

Connected to the availability of collective redress are issues of the costs of litigation, recoverability of those costs and the method by which the costs may be funded.

Accordingly, for each jurisdiction a summary is provided of the costs position in litigation in that jurisdiction.

For clarity, in this paper the following terms have the following meanings:

Class Action: An action that allows a group of individuals or entities with the same or similar grievances to seek a single amount of compensation in a single court action. Claimants must belong to a class, need not be individually identified and must opt out if they do not wish to be bound by the outcome.

Group Action: An action brought by a group of claimants each of whom must opt in to the procedure in order to be bound by the outcome, and each of whom must be individually identified.

Representative Action: An action brought by a representative body (for example, a consumer organisation), on behalf of a group of claimants (i.e. the claimants do not bring the action themselves).

Austria

Austrian law does not provide for any form of group or class action that seeks monetary compensation for members of a group or class. However, the government contemplates the introduction of such actions.

Fees, Costs and Third Party Funding

Court fees are calculated as a percentage of the value of the claim. Those fees can be waived only if the claimant is entitled to legal aid. As a general rule, a losing party is obliged to reimburse a winning party the costs of the proceedings, including legal costs. However, the legal costs that are recoverable from the losing party are provided for in law in the form of tariffs. Contingency fees are prohibited, but conditional fee arrangements are permissible within certain limits.

Belgium

Belgian law does not provide for any form of group or class action that seeks monetary compensation for members of a group or class. However, there have been proposals to introduce representative collective actions for damages. A proposal dated 22 February 2008 is currently being considered by the parliament. It appears that the right to bring collective actions will be limited to associations that have existed for at least three years and whose statutory goals involve the protection of the interests of a given group.

Fees, Costs and Third Party Funding

Court fees for bringing a legal action are relatively low and amount to approximately EUR 250-300. However, those fees cannot be waived. As a general rule, a losing party is obliged to reimburse a winning party the costs of the proceedings, including legal costs. However, the legal costs that are recoverable from the losing party are provided for in law in the form of tariffs. Contingency fees and conditional fee arrangements are not permitted. On the other hand third party funding is allowed, although it is rarely used in practice.

Bulgaria

Class / Representative Actions

The possibility of bringing a class action was introduced into Bulgarian law in 2005 by the Consumers' Protection Act. It was made available to associations of customers that were entitled to bring class actions upon an infringement of their interests and could take place in front of administrative bodies and/or in front of courts. However, detailed procedural rules were only introduced by the enactment of a new Civil Procedure Code ("CPC"), which came into force on 1 March 2008.

According to Article 379 (1) of the CPC, a class action may be brought on behalf of persons who have suffered damage as a result of the same illicit act or omission where, according to the nature of the act or omission, the class of the said persons cannot be defined precisely, but is identifiable. Such an action may be brought either by a member of the class or a representative body (for example, by social organisations like consumer protection organisations) who represent the interests and act on behalf of the whole class. The law does not limit the applicability of the class action to certain defined areas of law. The claim has to meet all formal requirements of a regular lawsuit. Additionally, it has to present the circumstances on which the class action is based, as well as a description of the circumstances upon which the number of persons who have incurred damage will be defined and the proposed method of notifying the public of the class action. Moreover, the claim must be supported by evidence proving the ability of the person/body who brought the claim to represent the class interests in good faith and with due care and to be able to reimburse to the defendant all the costs borne in relation to the court proceedings.

After verifying if those criteria have been met by the claim, the court either admits the class action to examination or refuses to examine it. Only the latter decision can be appealed. Once the court has decided to admit the class action to examination, it decides on how to announce the class action to the public (i.e. number of announcements, their frequency and the kinds of media disseminating them). The announcement, apart from informing the

public of the class action, sets the deadline for other injured parties to join the claim and for class members who want to pursue their claims individually to file a request for their exclusion from the class (i.e. to opt out). The court verifies the motions for parties being included in and excluded from the class, and issues decisions in this respect. A party can appeal against a court decision dismissing the above motions. If the decisions on excluding certain persons from the class are final and binding, the court issues a list of persons who are excluded from the class.

Settlement and Judgment

The court may refer the parties to mediation and is obliged to direct parties to the possibility of amicably settling the claim. However, the court has to approve any settlement agreement. The court may refuse to approve the settlement if it is in conflict with law or good morals and if the harmed interests are not sufficiently protected by measures agreed by the parties in the settlement. At the request of the claimants, the court may also decide on adequate interim measures necessary for protecting the harmed interests for the duration of the proceedings. Any of the parties may appeal against the court decision on interim measures.

The court's final judgment is binding on the defendant and persons/entities who brought the action. Moreover, it is also binding on anybody who did not opt out of the proceedings by making a statement to this effect in the time limit set by the court in the public announcement of the class action. A list of persons who opted out of the proceedings will be attached to the judgment. In the judgment awarding monetary compensation the court may decide that the compensation is to be paid to (i) the account of one of the persons who brought the claim; or (ii) a joint account of the persons who brought the claim; or (iii) a joint account belonging to the whole class, including those parties who did not bring the claim, but who did not opt out of the claim. The law also provides for a General Meeting of the class and the Constitution of a Committee elected by it. These bodies supervised by the court organise the redistribution of the awarded compensation among the members of the class.

Fees, Costs and Third Party Funding

Court fees for bringing a class action amount to the equivalent of 4% of the value of the claim. However, it is important to note that the court fee may be waived if the court trying the claim finds that the claimants are natural persons who cannot bear the fee due to insufficient financial resources. It is also a general rule that the losing party is liable for the costs of the winning party, including court fees and legal fees. However, if the court finds the latter excessive, they may be limited.

Contingency fees and conditional fee arrangements for lawyers are not permitted. The law is silent on the issue of third party funding as a form of financing class actions. Attempts to use this form of funding cannot be ruled out.

Czech Republic

Class / First Actions

Although Czech law does not provide for group or class actions, it does have a certain type of action that mixes the characteristics of group, class and test actions. According to Section 83 (2) of the Civil Procedure Act (“CPA”), this type of claim is limited to cases referring to unfair competition, consumer protection, transformation of companies (mergers, change of legal form etc.), takeover bids and squeeze-outs. According to Section 159a (2) of the CPA, any action falling within any of the above areas of law initiated by an individual claimant or group of claimants acting in one proceeding on the basis of a joinder of parties causes a *lis pendens* to the same claims of any other claimant, and the judgment issued in such an action is also binding on those other claimants. As a result, the action initiated by the first claimant works as a test case for the claims of other claimants entitled to redress in the same matter.

Fees, Costs and Third Party Funding

Court fees are calculated as a percentage of the value of the claim. Those fees may be waived, on the motion of the claimant, if his/her financial situation gives reason to do so and if the claim is not abusive. As a general rule, a losing party is obliged to reimburse a winning

party the costs of the proceedings, including legal costs. However, the legal costs that are recoverable from the losing party are provided for in law in the form of tariffs. Contingency fees are not permitted, but a reasonable conditional fee arrangement may be agreed upon. The law does not permit third party funding.

England and Wales

Group Action

English law does not provide for class actions. However, group actions by way of a Group Litigation Order (“GLO”) have been available since 2001 under Part 19 of the Civil Procedure Rules (“CPR”). A GLO can be made wherever there are multiple claimants to the same cause of action and where there are common or related issues of fact or law. These common issues will be specified in the Order as “GLO Issues”. When an Order has been made a Group Register of claimants will be set up and maintained.

A claimant wishing to join a GLO must file an individual claim form and will then be joined to the Group Register, i.e. he/she must opt in. A GLO will usually be publicised by the Law Society and a list of all the GLOs made is available on the web at www.hmcourts-service.gov.uk/cms/150.htm. There is a minimum number of claimants for a GLO and in a recent GLO application the court considered that anything under 20 claimants could easily be case managed in one action without the need for a GLO. Any party to a GLO may be appointed as a representative of the group.

Further, Part 19 of the CPR provides that the GLO must:

- contain directions on the establishment of the Group Register;
- specify the issues which will identify the claims to be managed as a group under the GLO; and
- specify the court which will manage the claims on the Group Register.

Representative Action

A form of representative action is also available under Part 19 of the CPR. Where more than one person has the “same interest” in a claim, the court can order that one person may then represent the others, a classic example being shareholders with the same interest in a company. Representative actions are rare as the phrase “same interest” is strictly interpreted by the court and it is easier to pass the common issues test of a GLO. Any party to such action may be appointed as a representative of the group. Representative actions are opt in.

A representative action is commenced by filing and serving a claim form in the same way as normal proceedings.

Competition Claims

Section 47B of the Competition Act 1998 (the “Competition Act”), as introduced by Section 19 of the Enterprise Act 2002 (the “Enterprise Act”), also enables a “specified body” to bring an action for damages in the Competition Appeals Tribunal (“CAT”) on behalf of a number of consumers for breach of either English or EU competition law (known as a “follow-on claim”). Further, the Enterprise Act provides that consumer organisations may submit “super complaints” to the Office of Fair Trading (“OFT”). The OFT can then act for the claimants provided their claims all relate to the same breach of competition law, and may take enforcement action, refer the complaint to the Competition Commissioner or a sector regulator, or may even launch a market study.

Follow-on claims by “specified bodies” follow if the CAT finds a breach of competition law. Such a claim may only be brought when (i) a decision has been made by the EC Commission, the OFT or the CAT that establishes that one of the relevant prohibitions has been infringed; and (ii) any appeal from such decision has been finally determined or the time for an appeal has expired. The claim is commenced by way of a claim form, then follows the detailed procedures set out in the CAT rules. “Super complaints” are submitted by consumer organisations designated by the Secretary of State to the OFT based on complaints received

from consumers and various elements including market features and how they harm consumers' interests.

In respect of claims by "specified bodies" and "super complaints" the claimant in such proceedings is usually the consumer organisation bringing a claim on behalf of consumers. There is no minimum number of consumers on whose behalf the consumer organisation may bring the claim. Actions by a specified body under the Competition Act are opt in. Decisions of the Competition Appeals Tribunal that may give rise to a follow-on claim are published on its website.

Follow-on claims under the Competition Act and Enterprise Act are restricted to loss or damage suffered as a result of infringement of the following prohibitions: (i) the Chapter I and Chapter II prohibitions in the Competition Act; (ii) Articles 81(1) and 82 of the Treaty Establishing the European Community; or (iii) Articles 65(1) and 66(7) of the European Coal and Steel Community Treaty.

Fees, Costs and Third Party Funding

Normal court fees apply to issue a claim form for a GLO or for a representative action and these will vary depending on the amount claimed, and also if any non-monetary remedy is sought. Currently, issue fees vary from £30 to £1,930. Court fees may be waived, provided the claimant qualifies under the fee concession system. Certain subsequent court fees are not payable if a GLO has been made (e.g. fee for filing an allocation questionnaire). There are no fees for commencing follow-on claims in the CAT. As a general rule, a losing party is obliged to reimburse a winning party the costs of the proceedings, including legal costs, although the award of and amount of costs awarded are in the court's discretion.

Contingency fees are not permitted. Conditional fee arrangements are permitted, but are subject to a maximum uplift of 100% of the lawyer's basic fees on a successful claim (although what constitutes success will be a matter to be agreed upon between the lawyer and the client). On the other hand, it is generally possible to fund litigation using a third

party funder who will, in return for funding, take a percentage of any damages ultimately recovered. Alternatively, in some circumstances it is possible to obtain insurance to cover legal costs in advance and even to obtain such cover after the dispute has arisen (although the premium for such a policy will be substantial).

France

Class actions are not currently permitted but may be introduced into French law in future. Two draft bills have been submitted to the National Assembly, but they have been withdrawn twice at the request of the government. It has been proposed that class actions, if permitted, should be restricted to consumer protection law. It appears that an opt-out mechanism will not be adopted in French law due to concerns regarding its compliance with the Constitution (i.e. limitation of the right to court justice and fair trial).

Fees, Costs and Third Party Funding

Since the draft bill has not yet been adopted, there are no particular fees for bringing an action. However, standard court fees are calculated as a percentage of the value of the claim. As a general rule, a losing party is obliged to reimburse a winning party the costs of the proceedings, including legal costs. However, the legal costs that are recoverable from the losing party are provided for in law in the form of tariffs. Contingency fees are not permitted, but they will be introduced into French law with a new bill. Third party funding is also not permitted.

Germany

Group Actions – Securities Claims

German law provides for a specific kind of group action, which is limited to securities claims based on the misrepresentation of a publicly listed company to investors (either in the prospectus or in the course of trading). This kind of action is provided for in the Capital Investor's Model Proceedings Act. In order for a group action to be instigated, an action of a single claimant acting on his own behalf is required. Additionally, the claimant must request

the court to try the case as a group action. However, the claimant is then required to present to the court questions of law and facts that he/she believes may be common for the group of people, along with written substantiation. The court may then decide to hear the case as a group action and place an announcement of the group action in the public registry. After this announcement has been published, other claimants may opt in to the proceedings within the time limit set by the court in the announcement. However, if less than nine persons opt in within four months of the announcement, the court dissolves the group and tries the claims of the claimants who opted in individually. If a group action is formed then the court combines questions of law and facts common for all members of the group in one proceeding. A judgment issued by the court in such proceedings is binding upon every member of the group.

Fees, Costs and Third Party Funding

There are no court fees for bringing a group action. Moreover, although a losing party is generally liable for the winning party's costs, this liability is limited by statutory caps, which make recovery of legal fees, in particular, illusory. In addition, it is noteworthy that German law presents a restrictive approach towards contingency fee arrangements. The matter of third party funding has not been regulated yet.

Hungary

Hungarian law does not provide for any form of group or class action that seeks monetary compensation for members of a group or class.

Fees, Costs and Third Party Funding

Court fees equal 6% of the sum in dispute. In exceptional circumstances those fees can be waived, if the financial standing of the claimant substantiates such a decision. However, all non-governmental organisations may initiate court actions without paying any court fees. As a general rule, a losing party is obliged to reimburse a winning party the costs of the proceedings, including legal costs. Parties can freely agree the lawyer's fee, including

contingency and conditional fee arrangements. The matter of third party funding has not been regulated yet.

Italy

Group Action - Consumer Protection

From 1 January 2009, a new law on group actions is due to come into force in Italy. According to Article 140-*bis* of Legislative Decree no. 206/2005 as amended (the so-called Consumers' Code), consumers associations listed on a list maintained by the Ministry of Productive Activities are entitled to bring court actions seeking monetary compensation for damages caused to consumers' collective interests. However, this type of action is restricted to areas of law regulating consumer safety and other interests.

Once the authorised representative body has brought the action it may announce this fact to the public. Moreover, the representative body is obliged to make available to individual consumers forms enabling them to opt in to the proceedings. Individuals who have suffered damage may fill in the form and opt in to the proceedings any time before the last court hearing of the case.

Fees, Costs and Third Party Funding

Court fees for bringing such a group action are relatively low as they are calculated as a percentage of the total value of the claim, but cannot exceed EUR 1,100. Moreover, as a general rule the losing party covers the costs incurred by the winning party and these costs are not capped by law. Lawyers are not allowed to provide services on a contingency fee basis. The matter of third party funding has not been regulated yet.

The Netherlands

Collective Settlement

Dutch law does not accept class actions, but it does provide for out-of-court collective settlements between interested parties. The relevant rules are embodied in the Dutch Class Action Act.

These new rules enable the effective and efficient settlement of mass tort claims. They provide a facility whereby an agreement on the amicable settlement of a mass tort claim, which has been concluded between an organisation championing the interests of those who have sustained a loss and the responsible party or parties, may be declared binding by the court in relation to the entire group of victims. Those victims can then arrange for payment of their losses by virtue of the agreement.

The agreement must be concluded between one or more parties who have bound themselves in terms of the agreement to compensate the loss, and a foundation or association with full legal capacity which (by virtue of its Articles of Association) represents the interests of the parties who have been adversely affected. These parties can then submit a joint request to the court to declare the agreement to be binding. The agreement must provide for compensation for losses caused by “a single event or similar events”.

In order to have a settlement validated by the Company Division of the Court of Appeal in Amsterdam, the regulation contains the following requirements:

- (a) the settlement should be agreed upon between one or more parties who commit themselves to pay compensation and a (Dutch) legal entity (an interest organisation) which represents the interests of a group of persons (victims), which group is defined in the Articles of Association of the legal entity;
- (b) the definition of the group or groups of persons in whose interests the settlement has been agreed upon;
- (c) a specification of the number of persons belonging to the group or groups;
- (d) the amount of compensation which will be granted to these persons;
- (e) the conditions the persons have to comply with to qualify for compensation;
- (f) the method of calculating the damage;
- (g) the name and domicile of the person who should be notified with the representation on opting out of the settlement;

- (h) compensation should be established objectively and the settlement should give evidence of this;
- (i) the Court may make a decision about compensation if the establishment of the compensation or circumstances under which the compensation has been established are unreasonable.

This action is not restricted to certain areas of law. The number of claimants is not specified in the Dutch Class Action Act. However the claimants must be victims of a “mass disaster accident” or “mass exposure accident”. The victims are united in a foundation or association. This means that the board of the foundation or association is the victim’s representative body.

If the court declares the agreement to be binding, it will no longer be possible for a victim to obtain compensation beyond that which falls under the scope of the agreement. Due to concerns regarding a possible conflict between such a regulation and the constitutional right to the court, it is possible for a victim to withdraw from being bound by the agreement within a specified period. This is what could be described as an opt out facility. Those who avail themselves of this option remain fully entitled to lodge their claim separately and go to court if needed. It is also important that victims are offered the opportunity to be heard in the proceedings leading to the declaration that the agreement is binding. This means that the court can take into account the comments and objections before issuing a verdict. This facility is offered by summoning the victims to take part in the proceedings. The Court of Appeal in Amsterdam has exclusive jurisdiction to deal with a request to have an agreement declared binding.

Fees, Costs and Third Party Funding

The level of court fees is based on the tariffs as set down in the “Tariffs in Civil Procedures Act”. The fees are calculated in relation to the value of the claim in question. Those fees cannot be waived. The loser pays a small part of the actual legal costs. A court order to pay costs includes the bailiff fee, the court fee and an amount for the salary of the Dutch lawyer

according to a very old-fashioned court-applied tariff that has no relation to the actual costs. Dutch law does not permit contingency fees or conditional fee arrangements, however third party funding is available.

The costs of implementing the collective settlement procedure are generally met by the defendant and included in the terms of the settlement.

Poland

Group Action

Class/group actions are not currently permitted, but are to be introduced into Polish law. Draft legislation on pursuing claims in group actions has been introduced by the Polish Civil Law Codification Commission. The Commission's role is to analyse and propose amendments to Polish civil law that are then submitted to the Polish Minister of Justice. As the bill requires political acceptance from the Polish Government and subsequently from the Polish Parliament, its introduction into law may take some time.

According to the draft law, the threshold for bringing a group action is at least ten claimants. All of those claims must be based either on the same facts or on the same material factual circumstances and the same legal grounds. What is more, the assessment of damages of the claims within a group action would have to be unified for the whole group of claimants (i.e. each group member claims the same amount) or they need to be unified in sub-groups (i.e. claimants are divided into sub-groups claiming the same amount for each sub-group member). This way any dispute concerning the quantum of the claim would be generalised for all claimants (or their sub-groups), thereby simplifying and shortening the proceedings.

The Polish Civil Law Codification Commission has decided to follow the British model of the opt-in group actions as opposed to the American class action. Once a group action claim is brought to court, the court would set a date before which other potential claimants may opt in; thereafter the class is closed. Details of every claim would be published in the official court journal (*Monitor S dowy i Gospodarczy*) and, at the court's discretion, may also be

announced in the press. This approach permits other potential claimants to bring separate group actions or individual claims that may be decided upon by courts in a different manner, as there is no principle of precedent in Polish civil law. The downside of this solution for potential defendants is the inability accurately to calculate damages coming from unfavourable judgments or settlements.

Claims would be brought by a group representative who must be either a member of the group or the municipal consumer ombudsman. The group representative must then be legally represented in court by either an advocate or a legal counsel. Legal fees may be a percentage of the award, however the proposed law does not enforce a maximum percentage.

As these proceedings would concern a larger number of participants, the potential damages awarded could be high and the subject matter of the cases complex, the Commission decided that group actions would be heard by the Regional Court composed of three professional judges to reduce the risk of erroneous decisions.

The draft law foresees several mechanisms aimed at protecting the interests of the defendant. The Court is equipped to protect potential defendants against unjustified claims by first deciding whether to certify the group action. Such a decision may then be appealed against. If the claim is deemed frivolous, the claimants are required to pay the defendant's costs. To deter such cases, the defendant may petition the court to impose on the claimants a deposit payment of up to 20% of the value of the claim as security for costs, prior to the commencement of the proceedings. Furthermore, the court sets a period within which the defendant may object to individuals being members of the group (or sub-group).

The group action procedure anticipates alternative dispute resolution. The court may refer the parties to mediation at any stage in the proceedings. As a general rule, the court will also need to approve the terms of any settlement reached. Settlements concluded during group action cases will not be approved if they do not comply with the law or good morals, constitute an attempt to circumvent the law or blatantly violate the interests of the claimant

group. The draft law does not mention the interests of the defendant. This raises concerns that courts will permit settlements which violate the defendant's interests. This may be the case with "blackmail settlements", where defendants find it necessary to settle even unjustified claims for economic reasons or to protect reputation.

Fees, Costs and Third Party Funding

The cost of initiating a group action is relatively low. Court fees amount to 2% of the value of the claim and up to a maximum fee of PLN 100,000. The claimants are required to cover their own costs, but it is not clear whether there is any role for third party funders who might agree to pay claimants' costs (and deposit) in return for a percentage of any award. The draft law provides that lawyers are entitled to provide legal services to the group on the contingency fee basis. Although a losing party is generally liable for the winning party's costs, this liability is limited by statutory caps, which make recovery of legal fees, in particular, illusory.

Romania

Romanian law does not provide for any form of group or class action that seeks monetary compensation for members of a group or class.

Fees, Costs and Third Party Funding

Court fees depend on the value of the total claims brought before the court. However, claims brought by consumers or consumers' associations regarding consumer protection are exempt from court fees by virtue of law. If there is no statutory exemption, the court fees cannot be waived. As a general rule a losing party is obliged to reimburse a winning party the costs of the proceedings, including legal costs. However, the reimbursement of legal costs is subject to the court's discretion. Contingency fees are not permitted, but reasonable conditional fee arrangements are allowed. Moreover, there are no restrictions regarding third party funding.

Russia

Representative Action

Russian law does not provide for any form of group or class action that seeks monetary compensation for members of a group or class. However, there is a form of action that bears some features of class action. This action consists of two parts: (i) general representative action brought by an authorised representative body or entity; and (ii) follow on individual actions that could use the court decision from the general representative action as proof of certain premises of liability.

Consumer Protection

According to Article 46 of the Federal Law on the protection of consumer rights, authorised representative bodies (like state institutions responsible for the protection of consumer rights and the safety of goods, or consumer organisations) can bring actions in courts in order to establish that acts of a manufacturer (service provider, seller or importer) are illegal in respect of an undefined group of consumers, and to obtain a court order obliging the defendant to cease such illegal activity. A judgment declaring that certain acts of a manufacturer (service provider, seller or importer) are illegal is announced to the public in a way stipulated by the court. Moreover, such a judgment is binding upon other courts trying claims of individuals who have suffered damage as a result of such illegal acts as proof of the fact that illegal acts have actually been committed by the defendant.

It is important to note that the general representative actions are limited to actions based on the Federal Law on the protection of consumer rights.

Fees, Costs and Third Party Funding

The court fees depend on the type of the claim. However, authorised bodies that bring a class or representative action to protect a non-defined scope of consumers or the group of consumers are exempt from the payment of court fees. As a general rule, a losing party is obliged to reimburse a winning party the costs of the proceedings, including legal costs.

However, the reimbursement of legal costs is subject to the court's discretion and Russian courts are rather reluctant to award legal costs. Contingency or conditional fee arrangements are prohibited. The issue of third party funding is not regulated under Russian law. However, it is not directly prohibited.

Scotland

Scottish law does not provide for class or group actions. Moreover, representative actions for monetary compensation are not permitted in the courts of Scotland.

However, section 47B of the Competition Act 1998 (the "Competition Act"), as inserted by Section 19 of the Enterprise Act 2002 (the "Enterprise Act"), enables a "specified body" to bring an action for damages in the Competition Appeals Tribunal ("CAT") on behalf of a number of consumers for breach of either English or EU competition law (known as a "follow-on claim"). Further, the Enterprise Act provides that consumer organisations may submit "super complaints" to the Office of Fair Trading ("OFT"). The OFT can then act for the claimants provided their claims all relate to the same breach of competition law and may take enforcement action, refer the complaint to the Competition Commissioner or a sector regulator or may even launch a market study.

Follow-on claims by "specified bodies" follow the finding of a breach of competition law by the CAT. Such a claim may only be brought when (i) a decision has been made by the EC Commission, the OFT or the CAT establishing that one of the relevant prohibitions has been infringed; and (ii) any appeal against such a decision has been finally determined or the time for an appeal has expired. The claim is commenced by way of a claim form, then follows the detailed procedures set out in the CAT rules. "Super complaints" are submitted by consumer organisations designated by the Secretary of State to the OFT based on complaints received from consumers and various elements including market features and how they harm consumers' interests.

Fees, Costs and Third Party Funding

As class, group or representative actions are not permitted, there are no court fees for these types of actions. However, standard court fees for raising proceedings are on a flat fee basis from £15 to £170 depending on the court and value of the claim. As a general rule, a losing party is obliged to reimburse a winning party the costs of the proceedings, including legal costs. However, the legal costs that are recoverable from the losing party are calculated by reference to a set table of fees, which is fixed by the court, and may then also be taxed (assessed) by the auditor of the court.

Contingency fees are not permitted. Conditional fee arrangements are permitted, but are subject to a maximum uplift of 100% of the lawyer's basic fees on a successful claim (although what constitutes success is determined by legislation and court rules). Third party funders are permitted to fund litigation and in return for funding take a percentage of any sum ultimately recovered. Alternatively, in some circumstances it is possible to obtain insurance to cover legal costs in advance and even to obtain such cover after the dispute has arisen (although the premium for such a policy will be substantial).

Switzerland

Swiss law, both federal and cantonal, does not provide for any form of group or class action that seeks monetary compensation for members of a group or class.

Fees, Costs and Third Party Funding

Court fees are calculated on the basis of the value of the claim. Claimants can request for a case to be conducted free of court fees if they have insufficient financial means and their cases have good prospects. As a general rule, a losing party is obliged to reimburse a winning party the costs of the proceedings, including legal costs. However, the reimbursement of legal costs is regulated by cantonal laws and usually is subject to the court's discretion. Under Swiss law contingency fees are prohibited. Conditional fees for the purpose of an agreement on incentive payments in addition to a reduced basic fee are

allowed if the basic fee is cost-covering. Third party funding is available as a form of financing litigation.

Ukraine

Representative Action

Under Ukrainian law the status of group/class actions is basically the same as under Russian law. Although the law does not provide for any form of group or class action that seeks monetary compensation for members of a group or class, it does provide for a type of action facilitating collective redress. Like Russian law, this type of action under Ukrainian law also consists of two parts: (i) general representative action brought by an authorised representative body or entity; and (ii) follow on individual actions that could use the court decision from the general representative action as proof of certain premises of liability.

The above action is regulated by the Ukrainian law on the protection of consumer rights. This action has the same characteristic features as the one provided for in Russian law. As a result, the information presented in the Russian section of this paper is fully applicable to claims under Ukrainian law.

Fees, Costs and Third Party Funding

Court fees for bringing legal actions usually amount to the equivalent of 1% of the value of the claim. Additionally, claimants pay expenses for information and technical services. However, consumers bringing court actions concerning the protection of their rights are statutorily exempt from the duty to pay court fees. As a general rule, a losing party is obliged to reimburse a winning party the costs of the proceedings, including legal costs. However, this liability is limited by statutory caps. Ukrainian law does not regulate the admissibility of contingency fees or conditional arrangements. Moreover, there are no restrictions regarding third party funding.

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