

# Abuse of process—follow-on damages claims and admissions in EU infringement proceedings (AB Volvo v Ryder)

This analysis was first published on Lexis®PSL on 18 November 2020 and can be found [here](#) (subscription required).

**Dispute Resolution analysis:** This case concerned the application of the common law doctrine of abuse of process in claims for damages arising from an infringement of competition law. The Court of Appeal upheld a judgment of the Competition Appeal Tribunal (CAT), finding that it would be an abuse of process for the defendants in such a case to contest findings contained in the decision of the European Commission (the Commission), where those findings reflected admissions by the defendants, unless there was some justification for doing so. Written by Ben Lask, barrister at Monckton Chambers.

*AB Volvo (publ) and others v Ryder Ltd and others* [\[2020\] EWCA Civ 1475](#)

## What are the practical implications of this case?

The Court of Appeal's judgment has important practical implications for 'follow-on' damages claims in competition law. These are claims in which a party seeks damages for losses that it claims to have suffered as a result of an infringement of competition law, but does not need to prove the infringement because it has already been established by a decision of the Commission. It applies in particular to cases where the Commission's decision was a 'settlement decision' in which the defendant admitted the infringement and underlying facts.

The upshot is that, where a claimant seeks to rely on the Commission's findings in a subsequent claim for damages, the defendant cannot contest those findings to the extent that they reflect its prior admissions, unless there is some justification for doing so. That is because it would be an abuse of process under English common law for it to resile from its admissions without good reason.

The judgment applies directly in the context of claims based on Commission settlement decisions. Depending on the circumstances, it may also apply to claims based on settlement decisions by a domestic competition authority. It remains to be seen whether there is also scope for it to apply in the context of contested decisions, to the extent that such decisions reflect certain admissions by the defendant even though the overall infringement is not admitted.

## What was the background?

The case before the Court of Appeal arose in the context of a series of ongoing damages claims before the CAT. Those claims are based on a 2016 decision by the Commission, in which it found that a number of trucks manufacturers had participated in a long-running infringement of EU Competition Law by colluding over the prices of trucks and other matters—*Trucks Case AT39824* (not reported by LexisNexis® UK). The addressees of the decision had admitted the infringement and underlying facts during the commission's investigation, in return for which they received significant reductions in the fines imposed by the commission. In addition, the commission's decision was much shorter than it would have been following a contested procedure.

In March 2020, the CAT ruled on a preliminary issue concerning the binding nature of the Commission's decision. It held that (a) a number of the Commission's findings were binding as a matter of EU law; and (b) in relation to the remainder, it would be an abuse of process under

English common law for the defendants to contest findings that the decision recorded them as having admitted, unless there was some justification for doing so. The CAT identified a number of possible bases on which a departure from previous admissions might be justified, drawing inspiration from [CPR 14](#) and the accompanying Practice Direction ([CPR PD 14](#)).

The defendants appealed the CAT's judgment on issue (b) with the tribunal's permission. None of the parties sought to appeal its judgment on issue (a).

### What did the court decide?

The Court of Appeal upheld the CAT's judgment on abuse of process. In doing so it considered the scope and application of that doctrine as a matter of pure domestic law, and its interaction with relevant provisions of EU law. It held that:

- the application of the abuse of process doctrine was not precluded by EU law. In particular, it did not contravene Article 16 of Council Regulation 1/2003, which precludes a national court from reaching a decision that is inconsistent with a Commission decision. Nor was it precluded by Articles 47 and 48 of the EU Charter of Fundamental Rights, which enshrine the right to a fair trial and the presumption of innocence respectively, or the duty of sincere cooperation in [Article 4\(3\)](#) of the Treaty on European Union
- the court was sufficiently confident in its conclusions on the issues of EU law that it was not necessary or appropriate to make a reference for a preliminary ruling to the EU Court of Justice
- as a matter of domestic law, the CAT had applied the doctrine of abuse of process correctly. In particular, the whole of the commission's decision was one to which 'Hunter-type' abuse applied (this type of abuse consisting of a collateral attack on a final decision—*Hunter v Chief Constable of the West Midlands Police* [1982] AC 529). Moreover, the CAT had fully appreciated that a high threshold needed to be crossed in order for abuse of process to apply, and had been entirely justified in deciding that the relevant test was satisfied. To require the claimants to prove facts that the defendants had already admitted to the Commission would create 'great unfairness' to the claimants and be 'an affront to most people's ideas of justice'

### Case details:

- Court: Court of Appeal, Civil Division
- Judge: Sir Geoffrey Vos (Chancellor of the High Court), Lord Justice Flaux and Lady Justice Rose
- Date of judgment: 11 November 2020

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