

Case summary

Issue(s)

To what extent, if at all, are factual findings made by the General Court of the European Union in the course of its judgment in Case T-691/14 Servier SAS v EU Commission annulling a competition infringement decision of the European Commission binding as *res judicata* on English courts in a follow-on private damages action brought by the Respondents against the Appellants?

Facts

The Appellants manufacture pharmaceuticals, including the drug perindopril. The Respondents, each of whom is acting for the NHS in one of the four UK nations, brought proceedings against the Appellants for damages caused by what they allege was the Appellants' anti-competitive behaviour, which allegedly delayed the introduction of a generic substitute that would have been cheaper.

Previously, in Case T-691/14 Servier SAS v European Commission, the General Court of the European Union ("GCEU") had annulled a part of the European Commission's decision by which it was found that the Appellants had infringed Article 102 TFEU. Appeals (by both Servier and the Commission) against the judgment are currently outstanding before the Court of Justice of the European Union.

In the present proceedings, the Appellants sought to rely on a number of factual findings made by the GCEU in the course of its judgment and argued that the English courts are bound by those findings.

The High Court and the Court of Appeal have held that the propositions on which the Appellants seek to rely are not *res judicata* as a matter of EU law, and are not binding in these proceedings. The Appellants now appeal to the Supreme Court.