



EU AND COMPETITION LAW

PROPOSAL ON PRIVATE COMPETITION DAMAGES ACTIONS

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The Commission has adopted, on 11 June 2013, a proposal for a Directive on damages actions for the infringement of EU and national competition laws. If adopted by the EU legislator, the Directive would require the EU Member States to enact implementing legislation within a two year period. Although the groundbreaking features of the proposal make its final adoption uncertain, such adoption would have enormous implications for private competition damages actions within the EU. The following aspects of the proposal should be highlighted:

EVIDENCE: The Commission's proposal aims to facilitate the proof of infringement by injured parties. According to the draft text, a final decision of any national competition authority will be binding on any EU Court hearing a damages case on the question of whether a breach of EU or national competition law took place. The proposal also creates a rebuttable presumption that the competition breach has caused harm. It further determines that implementing legislation should not create an excessive burden on plaintiffs to prove the amount of damages. Courts will be granted the power to estimate the amount of damages sustained where plaintiffs fail to do so with precision. As far as disclosure of evidence is concerned, the proposal explicitly provides for the protection of confidential business information. Furthermore, it establishes that leniency and settlement submissions filed with the Commission or national competition authorities are fully protected.

CLAIMS OF INDIRECT PURCHASERS: The proposal establishes that a defendant may eliminate or reduce damages claims filed against him by showing that a direct customer paying an overcharge was able to pass such overcharge on to his own customers.

JOINT AND SEVERAL LIABILITY OF INFRINGERS: The proposal confirms the principle that each infringer is joint and severally liable for the entire harm caused by the infringement and provides for contribution claims against co-infringers. However, the proposal limits the liability of successful immunity applicants to harm caused to their direct and indirect purchasers, unless the remaining infringers are unable to compensate the injured parties in full.

COLLECTIVE REDRESS: Collective redress is not covered by the Commission's proposal. Instead, the Commission has published a non-binding recommendation to the EU Member States to introduce collective redress mechanisms in the national procedural rules.

In short, if adopted, the Directive will have a profound impact on private competition damages actions in the EU. In particular, its provisions on evidence will greatly facilitate the success of damages actions under both EU and national competition law.

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