Competition: damages actions for breach of the EC antitrust rules. Green paper

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The committee adopted the own-initiative report drawn up by Antolín SÁNCHEZ PRESEDO (PES, ES) in response to the Green Paper on damages actions for breach of the EC antitrust rules. The report underlined the importance of an effective competition policy within the EU and described the actions that should be taken in order to ensure compensation in the event of infringement of EU competition rules. It advocated promoting competition rather than litigation and called for the European Parliament to play a greater role in competition policy.

The committee pointed out that, to ensure that competition rules had a dissuasive effect and maintained their effectiveness, the bringing of legal actions by the representatives of the public interest and victims should be facilitated. Citizens or businesses suffering damage as a result of a breach of competition law should have the opportunity to claim compensation for their losses. Such breaches "must be formally established through the applicable procedures provided that the injured parties' own interests are directly concerned". The committee welcomed the fact that the Court of Justice had recognised the right of victims of anti-competitive behaviour to bring 'stand alone' or 'follow on' legal actions to obtain compensation for their losses and that the EU competition authorities can to some extent perform an institutional arbitration role by administrating arbitration procedures including appointing arbitrators at the request of the parties.

With a view to promoting competition rather than litigation, the committee also called for the promotion of swift and amicable out-of-court settlements and the facilitation of plea agreements in claims for damages arising from anti-competitive behaviour. Among their other recommendations, MEPs suggested that, in order to protect competition and the rights of victims, all judicial authorities implementing the provisions of Community competition should be able to adopt provisional measures, order measures of enquiry and make use of their powers of investigation.

To avoid any "unjust enrichment", the committee suggested that payments awarded to complainants should be compensatory and should not exceed the actual damage (*damnum emergens*) and losses (*lucrum cessans*) suffered. However in the case of cartels, it should be possible to award compensation of double the amount of damages on a discretionary basis. The committee added that judicial authorities should be able to take into account the different economic situation of the parties and "where appropriate should control this point at the outset of proceedings". The report urged the Commission to adopt guidelines for the provision of assistance to the parties in quantifying the damage they have suffered and establishing the causal link, as well as to prepare a White Paper with detailed proposals to facilitate the bringing of 'stand alone' and 'follow on' private actions claiming damages for behaviour breaching EU competition law.

The report also called on the Commission and the Member States to work more closely in order to mitigate any cross-border obstacles preventing EU citizens from filing cross-border damages claims. Lastly, the committee emphasised that Parliament should play a co-legislative role in the field of competition policy and should be kept regularly informed on the bringing of private legal actions.