Basic information

2006/2207(INI) INI - Own-initiative procedure	Procedure completed
Competition: damages actions for breach of the EC antitrust rules. Green paper **Subject** 2.60.01 Trade restrictions, concerted practices, dominant positions	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	SÁNCHEZ PRESEDO Antolín (PSE)	17/01/2006

Committee for opinion	Rapporteur for opinion	Appointed
ITRE Industry, Research and Energy	The committee decided not to give an opinion.	
IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	
JURI Legal Affairs (Associated committee)	DOORN Bert (PPE-DE)	30/05/2006

European Commission

Commission DG	Commissioner
Competition	KROES Neelie

Key events

Date	Event	Reference	Summary
19/12/2005	Non-legislative basic document published	COM(2005)0672	Summary
07/09/2006	Committee referral announced in Parliament		
07/09/2006	Referral to associated committees announced in Parliament		
27/03/2007	Vote in committee		Summary
10/04/2007	Committee report tabled for plenary	A6-0133/2007	

23/04/2007	Debate in Parliament		
25/04/2007	Decision by Parliament	T6-0152/2007	Summary
25/04/2007	Results of vote in Parliament		
25/04/2007	End of procedure in Parliament		

Technical information	
Procedure reference	2006/2207(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Strategic initiative
Legal basis	Rules of Procedure EP 55
Stage reached in procedure	Procedure completed
Committee dossier	ECON/6/33416

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE380.685	24/10/2006	
Amendments tabled in committee		PE382.331	29/11/2006	
Committee opinion	JURI	PE380.769	27/02/2007	
Committee report tabled for plenary, single reading		A6-0133/2007	10/04/2007	
Text adopted by Parliament, single reading		T6-0152/2007	25/04/2007	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2005)0672	19/12/2005	Summary

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

2006/2207(INI) - 19/12/2005 - Non-legislative basic document

PURPOSE: to launch a debate on damages actions for breach of EC antitrust rules. (Green Paper).

CONTENT: as part of an effort to improve the enforcement of competition law, this Green Paper and the accompanying Commission Staff Working Paper, considers under what conditions and under what circumstances, damages claims for infringement of EC antitrust law, may be brought.

The purpose of this Green Paper is to identify the main obstacles to a more efficient system of damages claims and to set out different options for further reflection and possible action to improve damages actions – both for follow-on actions and for stand-alone actions. It should be noted that the Green Paper focuses on damages actions alone. Damages actions for the infringement of antitrust law serve several purposes including compensation

for those who have suffered a loss as a result of anti-competitive behaviour as well as discouraging anti-competitive behaviour. In bringing damages claims, individual firms and consumers will be brought closer to competition rules.

Bearing the above in mind, the Commission invites interested parties to submit their views and opinions on the following issues:

Access to evidence: Evidence is not always easily available. Yet, access to evidence by claimants can be key to making damages claims more effective. The Commission, therefore, wants to consider whether obligations to turn over documents should be introduced. This is particularly important for stand-alone actions. Obliging a defendant to disclose documents to a competition authority needs to be considered. The question of the evidentiary value of NCA decisions is of particular importance.

Fault requirements: Damages claims in many EU Member States require fault to be proven. In some of these Member States, fault is presumed if an action is illegal under antitrust law. In others, however, no such presumption exists. Consideration, therefore, need to be given to the standard of fault required for damages claims.

Damages: A number of issues concern the scope of the damages claim. Firstly, the amount of the award has to be defined. Further, several definitions are possible which could be founded on the concept of compensation for the recovery of illegal gain. The Commission asks interested parties to consider whether any damages should be awarded, should damages include interest, what the amount of interest to be paid should be and how it should be calculated. For horizontal cartel infringements, a doubling of damages could be considered. In other words, the quantification of damages to be awarded is a key issue.

Passing on defence and indirect purchaser's standing: This concerns the legal treatment of the fact that an undertaking, which purchases from a supplier, could be engaged in anti-competitive behaviour and could, as a result, be in a position to mitigate economic loss by passing the overcharge on to its own customers. The damage thus caused could be passed on, ultimately, to the final consumer. Should the infringer be allowed to raise such a pass-on as a defence? Similarly, the standing of indirect purchasers – to whom the overcharge may or may not have been passed on – has to be considered. The “passing-on defence” can lead to further complexities in damages claims.

Defending consumer interests: It is highly unlikely that consumers and purchases with small claims will bring action for damages for breach of antitrust law. The Commission invites interested parties to consider how consumer interests can be better protected through collective action, which can serve to consolidate a large number of smaller claims into one action – thereby saving time and money.

Costs of actions: Cost recovery rules can play an important role as incentive or disincentives for bringing an action to court. The Commission asks how rules on cost can facilitate access.

Co-ordination of public and private enforcement: Public and private enforcement need to be co-ordinated in as optimal a way as possible. Particularly so between leniency applications in public enforcement and damage claims. Both leniency programmes and civil liability contribute by the effects to the same aim, namely more effective deterrence from entering into cartels. Consideration also needs to be given to the impact of damages claims on the operation of leniency programmes in order to preserve the effectiveness of the programmes. The operation of leniency programmes is generally helpful for private litigants in damages actions given that leniency programmes uncover secret cartels.

Jurisdiction and applicable law: With regard to the issue of applicable law, reference needs to be made to the Commission’s proposal for a Regulation on the law applicable to non-contractual obligations (Rome II Regulation). For a summary of this proposal see: COD/2003/0168. As damages claims are generally torts, they fall under the scope of this proposal. In this respect consideration needs to be given to whether the general rule contained in Article 5 of the proposal is appropriate for antitrust cases or whether a clarifying special rule is necessary. Alternatively, the law of the forum could be the applicable law in all cases. Special attention must be given to cases where the territory of more than one state is affected by anti-competitive behaviour.

Lastly, in view of the complex issues, the Commission questions whether experts should be used for damages actions for infringement of antitrust law. If experts were appointed by the court, cost savings might result since fewer experts would be required. This would also reduce the multitude of experts giving conflicting evidence.

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

2006/2207(INI) - 25/04/2007 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution based on the own-initiative report by Antolín **SÁNCHEZ PRESEDO** (PES, ES) in response to the Green Paper on damages actions for breach of the EC antitrust rules. It pointed out that the existing redress mechanisms for breaches of competition rules at European level do not guarantee the full effectiveness of Article 81 of the Treaty, in particular with regard to those suffering damage. Many Member States were examining ways better to protect consumers by allowing collective actions, and differing courses of action may lead to the distortion of competition in the internal market.

Parliament indicated that Community competition rules would lack dissuasive effect, and their effectiveness would be compromised, if anyone acting in a proscribed manner were able to enjoy advantages on the market or immunity in respect of breaches of the rules due to obstacles to full claims for damages. Litigation by 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. Parliament welcomed the fact that the Court of Justice has recognised the right of victims who have suffered losses as a result of anti-competitive behaviour to bring 'stand alone' or 'follow on' legal actions to obtain compensation.

With a view to promoting competition rather than litigation, Parliament 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. In addition, the legal systems of the Member States should provide for effective civil law procedures whereby compensation can be claimed for damage resulting from breaches of competition law. Instituting private actions should be complementary to and compatible with public enforcement, which, in turn, could become more strategic and selective in nature, focusing on the most important issues and significant cases. However, such changes in focus should not constitute a justification for the under-resourcing of competition authorities. Parliament maintained that, in order to protect competition and the rights of victims all judicial authorities implementing the Community competition rules should be able to adopt provisional measures, order measures of enquiry and make use of their powers of investigation where necessary.

With regard to payments, Parliament emphasised that payments awarded to complainants should be compensatory and should not exceed the actual damage (damnum emergens) and losses ('lucrum cessans') suffered, in order to avoid unjust enrichment. The ability of the victim to mitigate the damage and losses may be taken into account. However in the case of cartels, it suggested that applicants cooperating with the competition authorities in leniency programmes should not be held jointly and severally liable with the other infringers, and that interest should be calculated from the date of the infringement. Any measure must fully respect the public policy of the Member States, in particular with regard to punitive damages.

Parliament concurred with the case law of the Court of Justice that all victims should be able to bring legal actions. Member States that make provision for actions for indirect losses should grant the defendant the possibility of asserting a passing-on defence in order to avoid the possibility of unjust enrichment. It is therefore essential to have a mechanism for dealing with multiple small claims. Victims should be able voluntarily to bring collective actions, either directly or via organisations whose statutes have this as their object. The Commission was urged to adopt guidelines for the provision of assistance to the parties in quantifying the damage they have suffered and establishing the causal link. Parliament called for priority to be given to drawing up a communication on bringing independent legal actions, which included recommendations for the filing of claims and examples for the most frequent cases.

It was noted that in many cases there would be an asymmetry of resources between the complainant and the defendant in legal proceedings for damages arising from anti-competitive behaviour. In such cases, complainants should not be deterred from bringing well-founded actions for damages for fear of having to pay excessive legal costs, including the costs of the defendant in the event that the claim is unsuccessful. Parliament suggested, therefore, that judicial authorities should be able to take into account the different economic situation of the parties and, where appropriate, should make an assessment at the outset of proceedings. The level of costs should be based on reasonable and objective criteria taking into account the nature of the trial, and should include the costs engendered by the legal proceedings.

Parliament went on to make recommendations on limitation periods for actions for infringements of the Community competition rules. It called on the Commission to prepare a White Paper with detailed proposals to facilitate the bringing of 'stand alone' and 'follow on' private actions claiming damages for behaviour in breach of the Community competition rules.

The Commission should work closely with the competent national authorities of the Member States in order to mitigate any cross-border obstacles that prevent EU citizens and businesses from filing cross-border damages claims in cases of breaches of Community competition rules in Member States. If necessary, the Commission should take legal action to remove such obstacles.

Lastly, Parliament emphasised that it should play a co-legislative role in the field of competition law and that it should be kept regularly informed on the bringing of private legal actions.