

CLIENT ALERT

European Commission Proposes Legislation to Facilitate Antitrust Damages Claims

Jun.12.2013

Yesterday, 11 June 2013, the European Commission published its long-awaited proposal for legislation to facilitate damages claims by victims of infringements of EU antitrust rules. At the same time, the Commission also published a non-binding recommendation on collective redress mechanisms in relation to infringements of EU law and guidance for judges on the quantification of damages in antitrust cases.

The Commission is concerned that only 25 percent of its infringement decisions in the last seven years have resulted in damages claims by victims. Most claimants were large companies, and most actions were brought in the three Member States seen as having favorable legal systems; the UK, Germany and the Netherlands. The Commission estimates that this has resulted in losses of up to EUR 23 billion going unclaimed each year.

The proposed legislation will now go to the European Parliament and Council for debate and adoption. The Parliament and Council will have less than a year to adopt the proposed legislation before the mandate of the current Parliament (and Commission) expires in May 2014. If adopted, the legislation would require further implementation by EU Member States, which would have a further two years to achieve this.

For plaintiffs, the main principles to be introduced by the proposed legislation would be:

- Disclosure of documents relevant to the claim to be available in all EU Member States (currently disclosure is only routinely available in the UK and Ireland);
- Pass on defense to be available, but the burden to be on the defendant to show that pass on occurred;
- Antitrust infringement decisions by national competition authorities to be construed as binding evidence of infringement before national courts in any and all Member States;
- Limitation periods to run for at least five years from the date on which a plaintiff could reasonably be aware of its claim and for at least one year following an infringement decision by an authority;
- A presumption that cartels have caused harm (but rebuttable and with no presumption as to the level of harm);
- Cartelists and other joint infringers to be jointly and severally liable for the infringement;
- Victims' rights to damages to include compensation for lost sales; and
- Defendants who settle to be protected from compensation claims from co-infringers.

The proposal also includes various protections from damage claims for leniency applicants:

- Protection from disclosures of certain classes of documents including leniency and settlement submission; and
- Limitation of leniency applicant's liability to plaintiff other than its direct and indirect purchasers absent special circumstances.

The recommendation on collective redress mechanisms stops short of proposing opt-out style class actions in favor of representative actions brought by designated not-for-profit organizations. In the UK, legislation permitting representative actions of this type in antitrust cases has been in effect for several years without generating significant litigation.

The guidance for judges on quantification of damages in antitrust cases sets out high level principles and runs to 69 pages. It will not be binding on the courts (judges).

The Commission documents can be found here:

[Full-text of proposed legislation.](#)

[FAQ on the proposed legislation.](#)

[Recommendation on collective redress mechanisms.](#)

[Guidance on quantification of damages.](#)

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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