



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMISSION STAFF WORKING DOCUMENT**

**EXECUTIVE SUMMARY OF  
THE IMPACT ASSESSMENT**

**WHITE PAPER on**

**Damages actions for breach of the EC antitrust rules**

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**{SEC(2008) 405}**

## EXECUTIVE SUMMARY

1. The key issue addressed in the White Paper on damages actions for breach of the EC antitrust rules is the current lack of an effective legal framework for private actions seeking compensation for the damage caused to citizens and businesses as a result of infringements of EC competition law. While public enforcement by competition authorities punishes breaches of competition law, compensation of victims can only be obtained via national courts, in accordance with national procedural rules.
2. Although the Court of Justice confirmed back in 2001 that victims of infringements of EC competition law are entitled to compensation for any harm they suffer, these victims rarely obtain damages. In its 2005 Green Paper, the Commission concluded that this failure is largely due to the obstructive nature of the Member States' rules and procedures governing antitrust damages actions. In order to create a legal framework that allows more effective redress, the Commission considers it appropriate to recommend, via a White Paper, a number of minimum rules that would guarantee an effective system of antitrust damages actions.
3. This report presents five coherent bundles of the most likely policy choices to attain that objective. The policy option at one end of the spectrum envisages legislative measures providing for maximum facilitation and incentives for damages claims, while the option at the other end envisages no action at all at EU level.
4. The impact of the policy options is assessed in terms of the following benefits and costs. Policy options score higher the more they (1) ensure full compensation of the entire harm suffered, (2) lead to increased awareness and enforcement of the competition rules, (3) allow better access to justice and (4) more efficient use of the judicial system and, finally, (5) contribute to a more level playing field in Europe for consumers and businesses alike. On the cost side, the report shows the impact of the different policy options on (1) litigation costs, (2) the administrative burden, (3) error costs and (4) the cost of implementing the suggested measure in the national legal system. Finally, on a more general level, the report also assesses the likely macro-economic impact and the impact on SMEs and consumers of the different policy options.
5. After assessing the costs and benefits of the five policy options, the report finds that Policy Option 2 is the most effective way to meet the objectives identified at the lowest possible cost. However, a combination of Policy Options 2, 3 and 4 would be even more cost-effective, as it would allow a further reduction of the costs, while maintaining the bulk of the benefits. The report concludes by analysing the overall cost/benefit impact of this Preferred Policy Option.
6. The main features of the Preferred Policy Option are:
  - **any individual** (both direct and indirect purchasers) **can claim compensation** for the harm suffered, where there is a causal link between that harm and the infringement of the competition rules;

- victims of infringements of competition law are entitled to **full compensation** of the **damage** suffered. That includes compensation of the actual loss, loss of profit and interest;
- upon request by one of the parties, the national court can order the other party (or third parties) to **disclose specified categories of information** that could be used in evidence. The disclosure order has to be proportionate to the objective of the claim. Corporate statements (confessions made in the context of a leniency programme), however, cannot be disclosed;
- in cases where the direct purchaser (partially) passed on the damage resulting from the **infringement** (the overcharge) to his own customers (the indirect purchasers), the defendant can invoke that **passing-on as a defence** against a claim brought by the direct purchaser. Conversely, in order to facilitate claims brought by indirect purchasers, proving that the overcharge was passed on to their level is facilitated;
- **national** courts dealing with antitrust damages claims cannot go against any **finding by a Member States' competition authority confirming an infringement of the competition rules**;
- in Member States that have no strict liability system, **fault is presumed** as soon as the infringement has been established. In the event of an **excusable error**, the defendant can be exonerated, however;
- victims of an infringement of competition law may have recourse to **collective redress mechanisms**. Damages actions can be brought by representative entities or by opting in to a collective action;
- **antitrust damages actions can be brought within five years** from the moment that the victim can reasonably be considered to have knowledge of the infringement and the harm it caused. If a competition authority is dealing with that infringement, victims can bring a damages claim up to **two years after a final decision** is taken by that authority;
- the **possibility** for national courts to **shift all or part of the costs to the winning defendant** should be considered on the basis of existing best practices in the Member States;
- in order to protect the leniency programmes of the European competition authorities, **immunity recipients should be liable only for the damage they have caused**, not for the total harm caused by the infringement.