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Committee on Legal Affairs

2006/2207(INI)

27.2.2007

OPINION

of the Committee on Legal Affairs

for the Committee on Economic and Monetary Affairs

on the Green Paper: Damages actions for breach of the EC antitrust rules
(2006/2207(INI))

Draftsman (*): Bert Doorn

(*) Enhanced cooperation between committees – Rule 47
of the Rules of Procedure

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SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. whereas consumers and businesses who have suffered damage as a result of breach of antitrust rules have a right to compensation,
- B. whereas in the Member States, competition law is chiefly enforced through public-law channels and considerable differences and obstacles exist at Member State level which may prevent potential claimants from pursuing actions for compensation,
- C. whereas Article 85 of the EC Treaty requires the Commission to ensure application of the principles laid down in Articles 81 and 82 of the Treaty concerning competition law; whereas the Treaty provides for other legal bases that can contribute to the effectiveness of those principles, such as Article 65, which enables the European Union to eliminate obstacles to the good functioning of proceedings in civil matters having cross-border implications; and whereas as the Court of Justice considers that, in the absence of Community rules governing the right of victims to claim damages before the national courts, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive directly from Community law, provided that such rules are not less favourable than those governing similar domestic actions (principle of equivalence), and provided that they do not render practically impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness),
- D. whereas developments in EU civil justice, in particular access to justice, have not kept pace with recent developments in EU competition law in the internal market,
- E. whereas any proposal by the Commission in areas for which the Commission does not have exclusive competence must – pursuant to the EC Treaty – comply with the subsidiarity principle and meet proportionality criteria,
- F. whereas in Case C-453/99 *Courage v Crehan*¹ the Court of Justice ruled that, in order to ensure that Article 81 of the EC Treaty is fully effective, individuals and companies may claim compensation for damage caused to them by a contract or by conduct which restricts or distorts the play of competition,
- G. whereas the existing redress mechanisms for breach of antitrust rules at European level do not guarantee the full effectiveness of Article 81 of the EC Treaty, in particular with regard to victims,
- H. whereas many Member States are looking at ways to better protect consumers by allowing collective actions, and whereas differing courses of action may lead to distortion of competition in the internal market,

¹ Judgment of 20 September 2001, [2002] ECR I-6297.

1. Considers that citizens or businesses suffering damage as a result of a breach of competition law should have the opportunity to claim compensation for their losses; considers furthermore that such breaches must be formally established through the applicable procedures and provided that injured parties' own interests are directly concerned;
2. Considers, therefore, that the legal systems of the Member States should provide for effective civil law procedures whereby compensation may be claimed for damage resulting from breaches of antitrust law;
3. Considers that any Commission initiative governing the right of victims to claim damages before the national courts must be accompanied by an impact assessment that evaluates the legal basis of the initiative and its compliance with the principles of subsidiarity and proportionality, and must reflect the delicate balances of centuries of development in the different legal systems across the EU;
4. Urges those Member States in which citizens and businesses do not yet have such an effective right to claim compensation to adapt their civil procedural law;
5. Urges Member States to accept that a prior finding of infringement arrived at by the competition authority, once final and confirmed on a possible appeal, automatically constitutes prima facie proof of fault in civil proceedings involving the same issues, provided that the defendant had an adequate opportunity to defend itself in the administrative proceedings;
6. Also underlines that Member States should consider that the possibility to assert a passing-on defence is detrimental to the finding of the extent of the damage and the causal link;
7. Calls on the Commission to 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 EC antitrust rules in Member States; considers that, if necessary, the Commission should take legal action to remove such obstacles;
8. Suggests that the limitation period applying to the right to claim compensation in the event of a breach of antitrust law should be suspended from the time when the Commission or competition authority in one or more Member States opens an investigation into such breach;
9. Further considers that claims for damages resulting from a breach of antitrust laws do not require any specialised courts, unless provided for in the legal procedures of the Member States;
10. Considers that any proposed instrument must fully respect the public policy of the Member States, in particular with regard to punitive damages;
11. Considers it inappropriate to adapt at Community level the national rules concerning the disclosure of documentary evidence and the burden of proof in

civil proceedings for damages under Articles 81 and 82 of the EC Treaty;

12. Further considers it unnecessary to discuss and prescribe at Community level the need for the appointment of experts, clarification of the legal requirement of causation and the possibility of bringing collective actions, since those elements may be regarded as rooted in the tradition of national legal systems;
13. Considers that, whilst the proposed Regulation on the law applicable to non-contractual obligations ('Rome II') should provide a satisfactory solution save where the anticompetitive behaviour affects competition in more than one State, consideration should be given to a special rule to be inserted into that Regulation;
14. Considers that the Commission is not entitled to decide unilaterally and in advance upon which markets to focus its antitrust public-enforcement activities, and that initiatives should be launched only if they have received political backing from the European Parliament and the Council.

PROCEDURE

Title	Green Paper: Damages actions for breach of the EC antitrust rules			
Procedure number	2006/2207(INI)			
Committee responsible	ECON			
Opinion by Date announced in plenary	JURI 7.9.2006			
Enhanced cooperation – date announced in plenary	JURI 7.9.2006			
Drafts(wo)man Date appointed	Bert Doorn 30.5.2006			
Previous drafts(wo)man				
Discussed in committee	12.9.2006	3.10.2006	21.11.2006	27.2.2007
Date adopted	27.2.2007			
Result of final vote	+: 21 -: 0 0: 0			
Members present for the final vote	Wolfgang Bulfon, Bert Doorn, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Katalin Lévai, Hans-Peter Mayer, Manuel Medina Ortega, Hartmut Nassauer, Aloyzas Sakalas, Diana Wallis, Rainer Wieland, Jaroslav Zvěřina			
Substitute(s) present for the final vote	Mladen Petrov Chervenjakov, Adeline Hazan, Barbara Kudrycka, Eva Lichtenberger, Michel Rocard, József Szájer, Jacques Toubon			
Substitute(s) under Rule 178(2) present for the final vote	Toine Manders			
Comments (available in one language only)	...			