

Kluwer Competition Law Blog

Significant developments in private enforcement of competition law – EU Parliament passes Commission’s Directive

Lesley Hannah (Hausfeld) · Thursday, May 8th, 2014

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On 17 April 2014, a major step was taken in facilitating the pursuit of cartel damages claims across Europe. The European Parliament approved the European Commission’s proposal for a new Directive that will harmonise national rules in order to make it easier for consumers and businesses to recover damages for competition law infringements. Once the Directive has been officially adopted, Member States will have two years to implement the provisions in their legal systems. The Directive reinforces the Commission’s objective of encouraging those that have suffered loss from cartel conduct to turn to the courts for compensation. It should further increase the level of cartel damages recovery that is being seen across Europe as companies recognise that it is in the interest of their shareholders to recover the often significant sums of damages caused by cartel conduct.

The Directive provides that:

- National courts will be able to order cartelists or third parties to disclose evidence to victims claiming damages, including evidence on the file of a competition authority. Whilst a wide ranging disclosure regime already exists in the UK, this new development will make it easier for claimants to evidence their losses and substantiate the damages they are claiming in other Member States.
- A final decision of a national competition authority finding a breach of competition law will be binding on the courts of the same Member State in which the infringement occurred. In actions before courts of other Member States, claimants will be able to present such decisions as evidence of the infringement. This will allow for greater forum shopping by claimants to select the most favourable jurisdiction irrespective of which competition authority’s decision they are relying on for their claim.
- The Directive makes it expressly clear that in all the Member States, those who have suffered loss from cartel conduct can obtain full compensation for actual loss and for loss of profit, plus payment of interest from the time the harm occurred until compensation is paid.
- Claimants will have at least one year to file a claim for damages once there is a final infringement decision by a competition authority. In some Member States there is a degree of uncertainty as to when limitation periods expire, so this will now provide greater certainty and protect claimants from having limitation periods expire whilst appeals from cartel decisions are pending.
- The Directive also clarifies the right of indirect purchasers to claim damages for competition law

infringements. Where the price increase caused by an infringement has been “passed on” along the supply chain, an indirect purchaser who has suffered harm will be able to claim damages.

- The Directive introduces certain rules to facilitate consensual settlements between victims and cartelists such as the suspension of limitation periods during settlement discussions, allowing for greater flexibility in the resolution of damages claims.

The Directive should be welcomed by all consumers and businesses that have suffered losses caused by cartel conduct. Introducing common standards across the Member States will ensure that Claimants will be able to obtain compensation for the loss they have suffered regardless of the Member State in which they are domiciled or where they suffered the loss. The Directive provides far greater certainty in the bringing of cartel damages claims. This European development should be viewed alongside the legislation that has been passed in the UK and expected to be in effect by 2015, which will further facilitate the pursuit of cartel damages actions on a collective basis and for SMEs to obtain relief from competition law infringements on a fast-track basis.

Hausfeld and Co LLP is at the forefront of bringing cartel damages claims for competition law infringements. We are involved in many of the largest and most complex damages claims in the UK and Europe. We have unparalleled experience in securing damages for competition law infringements and our unique insurance and funding options allow our clients to pursue these claims without any financial investment or risk. The Directive will allow us to further recover for clients across Europe and we are well placed to take advantage of the new regime that the Directive will bring about in all Member States.

Should you want further information about the Directive or how it may enable you to recover losses caused by a cartel, please contact:

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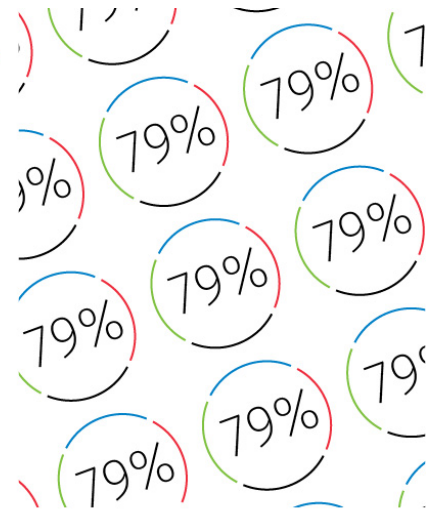
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