


EUROPEAN COMMISSION'S  
WORK PROGRAMME 2010 –  
Proposal on  
Private damages actions further delayed

(Letter sent on 27 April 2010  
to Mr. Joaquín Almunia, Vice-President of the EC -  
Ref.: PMA/MGO/2010 069/rsa)

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 EC register for interest representatives: identification number 9505781573-45 

Dear Vice-President,

Much to our regret and disappointment, we have noticed the absence of any follow-up initiative to the White Paper on private damages actions (COM 2008, 165) in the European Commission's Work Programme for 2010. The further postponement of the adoption of a proposal that would enable victims of anti-competitive practices to get compensation, almost 10 years after the ruling of the European Court of Justice in the Courage case<sup>1</sup>, contradicts the title of the Work Programme, "Time to act".

The ambitious objective of *building a citizens' agenda which would put people at the heart of European action* has proven to be another empty promise. Despite the significant scientific evidence and the multiple consultations on the need for a legislative proposal, the new European Commission has surprisingly decided that further consultation is needed in an effort to enhance coherence between the initiatives of its different services with regard to collective redress.

Although we agree with the need for policy coherence in the field of collective redress, it has always been our understanding that DG Competition and DG Consumer Affairs have been coordinating their actions from the very beginning. The statement by your predecessor, Commissioner Neelie Kroes that she "(...) *has worked closely and is in regular contact with Commissioner Kuneva to ensure a coherent and consistent approach to the issue of collective redress*"<sup>2</sup>, leaves no doubt as to its interpretation.

Nevertheless, the adoption of a coherent approach should not automatically entail a single horizontal instrument. Such an approach fails to recognise the particular complexities and difficulties with regard to competition law, which would justify a targeted approach:

- The initiative of DG Competition in the field of collective redress is designed to benefit both consumers and businesses – in particular SMEs. Competitors of the infringing entity should also be eligible to obtain compensation for the losses suffered. On the contrary, the ongoing work by DG Consumer Affairs is only focused on consumer redress.
- The damages consumers suffer as a result of anti-competitive practices are often scattered and particularly hard to quantify, notably in case of indirect damages. Consequently, it is almost impossible for consumers to take legal action on an individual basis.
- Other specificities of competition enforcement refer to the complex rules on access to evidence, binding effect of National Competition Authorities' (NCA) decisions and leniency programmes that are not of relevance to enforcement of consumer protection legislation.

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1 Case C-453/99 Courage and Crehan [2001] ECR I-6297, confirmed in joined Cases C-295/04 to C-298/04 Manfredi [2006] ECR I-6619.

2 Speech by Neelie Kroes "Collective redress in Europe", address at panel discussion organized by DHIK at the Representation of the Free State of Bavaria to the EU? Brussels 10 December 2008, <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/08/700&format=HTML&aged=0&language=EN&guiLanguage=en>

In light of the specificities of competition law, we are concerned that the launch of an additional consultation on the need for coherence between the different initiatives aims exclusively at further delaying the work of DG Competition in the field of private damages actions.

We urge you, as Commissioner responsible for the Competition portfolio, to publicly explain why a follow-up initiative to the White Paper, while foreseen in official documents<sup>3</sup> and vigorously defended by your predecessor Neelie Kroes, has been completely deleted from the Commission's work programme. European consumers have the right to know the reasons for such a decision and receive an explanation as to why the European Commission hesitates to allow consumers to receive compensation for the damages suffered.

Every day, consumers are paying the price of competition infringements (higher prices, fewer choice, less innovation) while their right to compensation remains non-existent. DG Competition has itself calculated the annual direct cost to consumers and victims of cartels in the EU to range from approximately €25 billion to €69 billion annually.

On the contrary, the immediate adoption of the proposal would at last allow victims of anti-competitive behavior to claim compensation for the damages they have suffered and would launch an open and democratic debate within the EU institutions.

BEUC urges you to show from the very beginning of your mandate that consumers' welfare will continue being at the heart of EU Competition law and that the European Commission really believes that *"the 'raison d'être' of the EU is to improve the well-being of its citizens and to further their interests"*, as stated in its work programme for 2010.

We remain at your disposal to discuss this issue at your best convenience and we are currently in touch with your cabinet to arrange a meeting.

Yours sincerely,

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BEUC President

Monique Goyens  
BEUC Director General

C/C: Cabinet of Mr. John Dalli and Cabinet of Ms Viviane Reding.

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<sup>3</sup> In the draft 18 month programme of the Council, it is stated that "In the area of competition, as a follow-up to the "White Paper on damages actions for breach of the EC antitrust rules", a legislative proposal is expected to be submitted by the Commission in the first semester of 2010, and thus, substantive work on this initiative will be initiated".

Supported by our member organisations:



*Dan weet je het.*



