

Competition Council of the Republic of Latvia

Comments on the discussion paper “Private actions in competition law: effective redress for consumers and business” of OFT

Latvian competition authority has read with interest the discussion paper “Private actions in competition law: effective redress for consumers and business” prepared by OFT. We found it very useful for continuing discussion initiated earlier by Commission’s Green paper on damages actions for breach of the EC antitrust rules and we fully agree that issues viewed by this paper are important for establishing an effective private action system. Therefore we would also like to share our view in some issues with you.

Regarding representative actions we may acknowledge that Community instrument requiring all Member States to ensure that there is an effective collective means (especially for consumers) to bring claims for breaches of the competition law could be appropriate, if the choice of the appropriate (effective) form of collective action could be left to the Member States. Such community instrument could include also some of the key features of effective collective actions system mentioned in Discussion paper.

It seems that *opt out* (claim brought on behalf of consumers at large) system irrespectively whether it is follow-on or stand alone case according to our considerations are more suitable to meet the effective private actions in the competition area.

However in such a case serious attention has to be paid to the duty to proof the amount of losses that is directly related to such issue as calculation of losses (compensation).

For this reason as in certain type of cases it would be hard for consumers and individuals to provide proofs for losses to make a claim, discussion has to be continued whether the amount of illegal gain had to be taken into account in calculation of losses to be compensated. This mostly refers to the cases when entrepreneur due to its business nature do not have records with its consumers.

We agree that disclosure provisions may be effective tool to diminish information asymmetry. Civil Procedure Law of Latvia allows requiring before the court to secure the evidences. Such measures may be executed if a person has cause to believe that the submission of necessary evidence on their behalf may later be impossible or problematic, they may ask for such evidence to be secured and it may be done in any stage of proceeding as well as prior to the bringing of an action to a court.

However such application is decided by court with presence of potential defendant (exception may be only cases regarding violation of intellectual rights) that could burden obtaining of the needed evidences as defendant is already informed on the matter of case.

Binding status of the definitive decision of one EU National Competition Authority in other member states will contribute to the facilitation of private actions and providing for this binding effect on EU-wide basis seems more efficient than on a reciprocal basis.

Removal of the joint and several liability for the immunity recipient or rights to seek contributions of up to 100 per cent from non-leniency recipients is contrary to the principle that everyone had to compensate losses caused by him. From our point of view such measure will be too unproportional and unfair regarding non-leniency recipients, therefore discussions on this matter may be related only to partial removal of liability, if necessary.