

## **Statement on the White paper on damages actions for breach of the EC antitrust rules**

The BVMW-Bundesverband mittelständische Wirtschaft, Unternehmerverband Deutschlands e.V. welcomes the efforts by the European Commission aimed at enabling business and individuals to claim damages from infringements of the competition rules under EU legislation. BVMW supports the proposals of the Commission that could provide an effective minimum protection of the victims' right to damages under Articles 81 and 82 TEC in every Member State and create a more level playing field and a greater legal certainty across the EU.

According to § 34a/33 II GWB (German antitrust law) associational claims are already possible in Germany. However in practice trade associations usually do not have the infrastructure necessary to cope with the complexity of antitrust damage actions. In this light it make sense to expand the different types of claims.

As the Commission suggests a combination of two complementary mechanisms of collective redress in order to address antitrust issues effectively, namely representative actions and opt-in collective actions, we appreciate the opportunities that could derive from these representative actions and opt-in collective actions, especially for small and medium businesses.

Furthermore, we share the Commission's view that the actions proposed in the White Paper could increase the deterrent effect of competition law.

Meanwhile, we would like to remind the Commission of eventual negative impacts on small and medium-sized businesses. The Commission suggests that "*indirect purchasers should be able to rely on the rebuttable presumption that the illegal overcharge was passed on to them in its entirety*". This statement puts direct purchasers, many of which are small and medium businesses, in a less favourable situation in comparison to indirect purchasers. Thus, BVMW sees the risk that several businesses would not actually benefit from the current proposals of the Commission. In order to adress these issues, we suggest to recalibrate some of the proposals in order to provide for a more balanced representation of the interests of SMEs ("Think Small First" principle).

Together with the CEA-PME the BVMW will continue to monitor any developments in this area closely and remains at the disposal of the Commission and all relevant stakeholders for further input.