

economiesuisse

European Commission  
DG Competition, Unit A 5  
Damages actions for breach of the EC  
antitrust rules  
rue Joseph II / Jozef II straat 70  
1000 Brussels

July 15, 2008

**White Paper “Damages Actions for Breach of the EC Antitrust Rules”**

Dear Sirs

With reference to the above mentioned public consultation, we would like to raise the following comments based on our internal discussion with our competition policy experts as well as our participation in the respective working groups of BUSINESSEUROPE and ICC International Chamber of Commerce.

- economiesuisse is convinced that competition provides the best incentive for businesses and guarantees the best choice to consumers. Therefore, economiesuisse is resolutely in favour of a competitive commercial environment in the EU and supports effective redress for antitrust violations.
- economiesuisse acknowledges the effort of the Commission to recognize that the model of mass compensation existing in USA is not appropriate in Europe and therefore welcomes the further steps taken through the White Paper to ensure a more balanced approach. However, it remains concerned that the current measures continue to involve a high level of risk of excessive and abusive litigation mechanisms.
- Collective actions often have limited merits for the plaintiffs. Complex and lengthy procedures often result in compensation not being awarded to those damaged but only enriching intermediaries. Often, they do not even facilitate the administration of justice. Introducing special procedures would not solve these problems.
- As a strong public enforcement has to be ensured, safeguard measures should be put in place in order to ensure that private enforcement does not undermine the public enforcement mechanism. We welcome the focus of the proposal on compensation comprising actual loss, loss of profit and interests and not encompassing punitive elements entailing an unjust enrichment of the victims. There would still be a need of coordination if both fines and private compensation would refer to

the same case to avoid unproportional sanctions.

- *economiesuisse* notes that seeking to increase litigation is both wrong and counter to the public policy of many EU Member States. Other, non judicial, redress mechanisms available should be taken into account as well. Stimulating a "litigation culture" might lead to a counterproductive burden to business and lead to a "forum shopping".

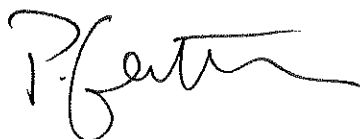
For further comments, we refer to the detailed position papers submitted by *BUSINESSEUROPE* and *ICC INTERNATIONAL CHAMBER OF COMMERCE*. We have participated in the elaboration of these submissions and do endorse the respective conclusions.

We do hope that the above comments are helpful and look forward to continue to contribute to this import project.

\*\*\*

*economiesuisse* is the largest umbrella organization representing the Swiss economy. *economiesuisse* has the support of more than 30,000 businesses of all sizes, employing a total of more than 30,000 businesses of all sizes, employing a total of 1.5 million people in Switzerland. Most of our members are active within the European Union. They are directly concerned by EU competition regulations.

Yours sincerely,  
*economiesuisse*



Pascal Gentinetta  
Chairman of the Executive Board



Thomas Pletscher  
Member of the Executive Board