

Commissioner Neelie Kroes
European Commission
Directorate-General for Competition, Unit A 5
Damages actions for breach of the EC antitrust rules
B-1049 Brussels

15 July 2008

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Dear Ms Kroes

EU Commission White Paper on damages actions for breach of the EC antitrust rules

INTRODUCTION

- 1 Ernst & Young LLP welcomes the opportunity to comment on the *EU Commission White Paper on damages actions for breach of the EC antitrust rules* (the "White Paper").
- 2 Ernst & Young LLP is one of the largest professional services organisations globally and in the UK. We provide a wide range of audit, accounting, tax, corporate finance and other business advisory services. All of our UK activities are supervised by the Institute of Chartered Accountants in England & Wales, with further supervision over certain parts of our business by the Financial Reporting Council, the Financial Services Authority and other regulators.
- 3 In reviewing and responding to the White Paper, we were conscious that the process represents a substantial exercise for the Commission and we are grateful for this commitment. In view of this, we would like to offer some general observations on those areas where we hope commentary from us is most likely to inform and/or benefit the interests of multiple stakeholders.

GENERAL COMMENTS

Proposal for single damages

- 4 We support these proposals because we believe that any system of civil compensation must be based on a calculation of actual loss rather than on a concept of multiple



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damages. Multiple damages would import a punitive element into civil liability in this area which is inconsistent with English law and decisions of the European Court of Justice.

- 5 We recognise though that the calculation of damages in competition claims can often be very difficult. We therefore welcome the principle of the Commission's proposal to draw up guidance for the quantification of claims in competition cases. However, we anticipate that the drawing up of the framework will be challenging and therefore we would need to see the draft framework before commenting in more detail.

Collective redress

- 6 We note that the White Paper suggests that representative actions should be allowed as long as (i) they are led by recognised consumer groups; or (ii) victims can choose whether or not to participate. We believe that these proposals are sensible. Provided that the above safeguards are properly implemented and enforced, the proposals will strike a good balance between saving costs by allowing multiple claims to be heard together, providing a practical solution for victims (particularly those with low value claims) and protecting against system abuse.

Disclosure

- 7 We support the White Paper's proposals which advocate an EU-wide minimum level of document disclosure between the parties to a competition damages claim, but with appropriate safeguards in place to avoid procedural abuses. We believe that sensible disclosure rules save costs in the long run and encourage early settlement of disputes by underpinning a general "cards on the table" approach to civil litigation.

Binding effect of final decisions

- 8 The White Paper recommends that in order to avoid the time and cost of re-litigation, final decisions of Member States' competition authorities should be considered sufficient proof of an infringement in subsequent actions for damages. We support these proposals provided that (i) a decision of a competition authority will only be treated as final once all appeal avenues have been exhausted; and (ii) the factual matrix which underpins the relevant decision and the subsequent action for damages are the same.

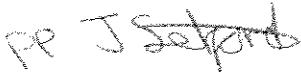
Costs of damages actions

- 9 We support access to justice for all and believe that claimants should not be obstructed from bringing meritorious claims solely for financial reasons. However, we strongly believe that the availability of costs sanctions in some form is important to help ensure that matters are dealt with fairly and expeditiously by all parties. We believe the right balance is already struck by the existing discretion for the courts in England & Wales to make awards of costs which do not necessarily follow the principle that the loser pays, coupled with access for claimants to conditional fee arrangements and legal costs insurance.

CONCLUSION

- 10 We are grateful to the Commission for publishing the White Paper and for the analysis it has put forward. We hope that you have found our comments helpful. We wish you every success with the rest of the consultation process and hope that the Commission's proposals fully achieve their aims.
- 11 If you would find it useful, relevant members of our firm are available to discuss further any of the points we have raised.

Yours sincerely



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