



*The Secretary General*

Mrs Neelie Kroes  
Commissioner in charge of  
Competition Policy  
200 Rue de la Loi  
B-1049 Brussels

Brussels, 16 June 2006

## **Orgalime feedback on the Commission's Green Paper "Damages Actions for Breach of the EC Antitrust Rules" - COM ( 2005) 672 final**

Dear Commissioner,

Orgalime represents the interests of the European mechanical, electrical, electronic and metalworking industries at the level of the EU. Our members include, at the present time, 35 national trade federations representing some 130,000 companies in 24 European countries. These industries, which consist of mainly SMEs, employ some 10 million people and account for around 1,598 billion Euro of output.

### **Green paper: Orgalime endorses Unice position**

Orgalime has always been in favour of developing and sustaining a competitive commercial environment in the EU and, in general, agrees with the Commission on the recognition that the public and private enforcement of antitrust rules is fundamental for creating and sustaining such an environment. Orgalime has however come to the conclusion that the current Green Paper puts into question the existing system of enforcing Community rights and that it entails the risk of introducing more litigation in Europe. Orgalime refers in this context to Unice's position paper which we fully endorse.

### **Help competitiveness: Discourage a compensation culture in Europe**

Like Unice, Orgalime is of the opinion that the existing system of enforcing community rights should not be changed for rights derived from community antitrust rules. Orgalime also fears that more court actions would increase chances of divergent decision-making between competition authorities and civil courts with obvious negative implications for the internal market and the ability of companies to compete in a global environment. We believe that increased litigation would neither serve public interest nor companies that, due to increased uncertainty, would avoid new forms of innovative and pro-competitive behaviour to the detriment of their competitiveness.

### **Keep the existing legal order: No strengthening of private enforcement, introduction of class actions or double damages in Europe**

In this context we would also like to highlight that a strengthening of private enforcement should not result in overcompensation. The competition authorities are primarily responsible for the prosecution of antitrust violations. Besides this principle, private persons should only be allowed to claim their actual damage and not to obtain additional legal instruments possessing a certain penal character. Especially class actions or double damages should not be introduced into the European legal order.



**Learn from the US experience: No US-style litigation in Europe**

We believe that if some ideas put forward in the Green Paper were realised, Europe might end up in conditions similar to those that exist today in the United States where primacy is on private enforcement. Orgalime is surprised that the Commission is reflecting on reshaping Europe's legal order at the very same time when the United States, due to bad experience with its enforcement system, is now reflecting on changing it and specifically extending public enforcement while simultaneously reducing private enforcement. We truly believe that the EU should take stock of the US experience by not changing its enforcement system to one that the US has adopted and is now in the process of making a U-turn. The introduction of a US-style litigation culture in Europe would only be to the detriment of the competitiveness of European manufacturing and service providers.

We thank you in advance for taking due account of our concerns.

A similar letter has been sent to your colleague Commissioner Verheugen.

Yours sincerely,

Adrian Harris

Cc DG Competition: Messrs Lowe, Paulis, Ms Rehbinder, Messrs Albers, Donnacadh, Cesarini, comp-damages-actions@cec.eu.int.