ORGALIME

Position Paper

Brussels, 2 June 2009

Orgalime position on collective actions for damages for breach of antitrust rules at EU level

Orgalime calls upon the European Commission to avoid adopting in haste measures that will have a major impact on the legislative frameworks of the 27 Member States and could introduce in the EU a litigation culture that is alien to European legal traditions.

The European Engineering Industries have always been in favour of developing and sustaining a competitive environment in the EU and, in general, agree with the Commission on the recognition that the public and private enforcement of antitrust rules is fundamental for such an environment.

Orgalime was, to say the least, very surprised about the legislative instruments that the Commission is discussing and considering as a follow-up of the White Paper on damages actions for breach of EC antitrust rules. We are seriously worried that policy actions and forms of collective redress inappropriate for the legal systems in the EU might emerge from the current discussions. It seems that the Commission is working towards pushing Member States into a legal framework that will use litigation as the privileged mechanism of collective redress. Whereas in the past we welcomed the Commission ruling out some elements which European businesses always disliked in the US litigation system, e.g. the opt-out collective actions, we are deeply concerned that the proposal currently under discussion does foresee an opt-out mechanism for representative actions. This is contrary to European Commission statements of the past and we are particularly surprised that the Commission should be taking such steps at a time when we believe the Commission should be aiming at stabilising the regulatory and legal framework so as to reassure and attract investment in Europe in order to get the economy moving again.

Furthermore, the proposal does not clearly define the requirements for being recognised as a "qualified entity" eligible to file a representative action, nor does it exclude that these entities may intend to make a profit for themselves. Opt-out representative actions with these features bear the potential for abuse, similar to US-style class actions. As a consequence, companies may be forced to agree to a private settlement when threatened with an action. The Commission should be aware that European SMEs and middle-size companies in particular would be vulnerable to threatening actions and may not have the capacity to cope with such forms of damages actions.

Orgalime, the European Engineering Industries Association, speaks for 35 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 11.1 million people in the EU and in 2008 accounted for some €1,885 billion of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union.

www.orgalime.org

ORGALIME aisbl | Diamant Building | Boulevard A Reyers 80 | B1030 | Brussels | Belgium
Tel: +32 2 706 82 35 | Fax: +32 2 706 82 50 | e-mail: secretariat@orgalime.org
Ass. Intern. A.R. 12.7.74 | VAT BE 414341438

We are also surprised that the Commission apparently assumes that the position of claimants is very weak under national procedural rules. We believe already today the victims of cartels have a right to compensation of damages suffered. In this context we think that national procedure rules are sufficient, adequate and well functioning in the Member States. We believe that if changes are introduced at European level, there must first be a broad debate and consensus on how to tackle collective redress in a holistic way, before suggesting new forms of collective redress in the area of competition law.

Orgalime looks forward to further contribute to the current discussion.

ORGALIME aisbl | Diamant Building | Boulevard A Reyers 80 | B1030 | Brussels | Belgium
Tel: +32 2 706 82 35 | Fax: +32 2 706 82 50 | e-mail: secretariat@orgalime.org
Ass. Intern. A.R. 12.7.74 | VAT BE 414341438