

**Neelie Kroes**

Member of the European Commission in charge of Competition Policy

## **The Green Paper on antitrust damages actions: empowering European citizens to enforce their rights**

*Check Against Delivery  
Seul le texte prononcé fait foi  
Es gilt das gesprochene Wort*

Opening speech at the European Parliament workshop on damages actions for breach of the EC antitrust rules

**Brussels, 6 June 2006**

Honourable Members of Parliament,  
Ladies and Gentlemen,

I am delighted to be here today to discuss the Commission's Green Paper on damages actions. I am grateful to the European Parliament, and to your rapporteur **Mr Sanchez Presedo**, for having organised this workshop. I am pleased that the Parliament shares the importance that I attach both to the issues dealt with in the Green Paper and to the involvement of as many stakeholders as possible in the discussion. Today's debate brings together an impressive mix of interests and views. So thank you very much for organising this event and thank you for inviting me to address this audience.

### **Private enforcement of Treaty rights**

The stakes of the Green Paper are very high. The EC Treaty gives the victims of anti-competitive behaviour a basic right to reparation for the damage caused. We have to find a way to make that right a reality for more people and more businesses.

The **importance of private enforcement** of EC law in general has been embedded in case law for more than forty years. In the landmark case of ***Van Gend & Loos***, the Court emphasised that “*the vigilance of individuals to protect their rights amounts to an effective supervision in addition to the supervision entrusted to the diligence of the Commission and of the Member States.*”

The central message is clear:

- **firstly**, the EC Treaty creates rights which protect every country, company and consumer;
- and **secondly**, everyone that benefits from those rights, can go to court to enforce them.

These ideas – which were groundbreaking at the time - are now commonplace in most fields of Community law. And in its **Courage v Crehan** judgment in 2001, the ECJ confirmed that these basic principles as much apply to **competition law** as to other areas. When damage is caused as a result of an EC antitrust infringement, that damage should be repaired.

So it is unacceptable that - as half a century of experience shows - this rarely happens in the competition field. The main reason appears to be that victims find it too difficult to enforce their rights in this area. And if a victim is unlikely to take action – a wrongdoer is less likely to repair the damage that he caused.

But there's another objective behind our thinking too. Private enforcement of competition law has an important role to play in building the **competition culture** that we need to stimulate in order to fulfil our ambitions for economic growth in Europe.

Competition authorities – whether European or national – have to work within certain constraints. Inevitably, the resources available are not unlimited. So that means that priorities have to be set as to how and where to use enforcement powers. Consequently, there is huge

**potential for public enforcement to be complemented by the actions of individuals and business** – who will naturally make their own cases the top and only priority! If we can help citizens and businesses to enforce their rights – then potential offenders will be more likely to think twice before breaking EC competition rules. And that objective – greater compliance with European competition law - is a key factor in the Green Paper which the Commission published last December.

### **Turning actions for antitrust damages into a reality**

Our Green Paper identifies some of the current problems in the systems of private enforcement. It also suggests some solutions, which we hope will both contribute to ongoing discussions at national level, and stimulate debate in those Member States where this has not yet begun! In accordance with subsidiarity, we will of course only consider possible action at European level where this can be shown to genuinely add value.

### **Stimulating damages actions while respecting European legal traditions**

Later on, you will hear more on the detail of our Green Paper from representatives of DG Competition. But there are **four key points** that I would like to highlight now.

**First**, let me emphasise that the Green Paper is **not a blueprint for an American-style system** of actions for damages. I am aware of the concerns, and we are not seeking to cut-and-paste the US model into the European system. It would be irresponsible not to learn some lessons – positive and critical - from those countries that have already gone through this process. But clearly any solutions we may design would have to be completely tailor-made to fully respect European legal traditions and values.

**Secondly**, if we are to succeed in creating a competition culture, we must encourage ‘**stand-alone**’ actions which do not simply follow-on from public enforcement activity. We have found that two reasons for the current lack of private enforcement are that victims cannot afford the costs involved and do not have access to existing evidence. There need to be reasonable ways to ensure evidence is available to victims and the court. And we should ensure that the potential benefits of bringing proceedings will outweigh the possible costs.

**Thirdly**, I think we should carefully consider the involvement of **consumer associations**. Consumers are almost always the ultimate victims of anti-competitive behaviour, yet they are the least likely to ask for damages. The Green Paper includes – for discussion - the possibility of collective actions. This fits into the work that my colleague, Markos Kyprianou, is currently doing on the general issue of consumer redress.

**Finally**, how will the public and private enforcement systems interact? **Leniency** programmes are essential in uncovering cartels. The options in the Green Paper show how public leniency programmes and more private damages actions can be co-ordinated so as to ensure the optimal operation of both. Options include the idea of

reducing the civil liability for a leniency applicant, which might even create a greater incentive for such applications.

## **A broad welcome**

The Green Paper has certainly struck a chord – we've received **over 140 submissions** so far, and we are starting to analyse them carefully. But there is clear consensus that something should be done to improve the rights of victims and to complement public enforcement with stronger private actions. Obviously, there are disagreements as to the methods which could be used – the devil is always in the detail. And we will of course **await Parliament's views** later this year, before deciding on the way forward, whatever that may be. At this stage, I have a completely open mind on whether there should be any action at EU level and, if so, what it should be.

## **Conclusion**

Honourable Members, Ladies and gentlemen, in ***van Gend & Loos*** the Court gave EU citizens a central role in our European project. That is why I am so pleased that the European Parliament has organised this workshop and intends to prepare a report on these issues. Your involvement signals the importance of the debate launched by the Green Paper. It is also an incentive to continue our joint efforts to give European citizens and businesses the place they deserve in the enforcement of the European competition rules.