

5. Private enforcement

Private enforcement

Chart C56

Topic:

Private enforcement of EU competition law means legal action brought by a private party, under national law and before a national court, including, in particular, actions for damages and for injunctive relief. Private enforcement may relate to EU competition law on undertakings as well as on state aid.

Private enforcement of EU competition law

Private enforcement before national courts is one of two avenues for the enforcement of EU competition law, the other being public enforcement by the Commission and, with respect to the conduct of undertakings, the NCAs (see **Chart C33**, **Chart C41**, **Chart C55**).

Examples of private actions

- Action for damages: brought against the infringer of the law to seek financial compensation for the harm suffered by the applicant through anti-competitive conduct by the undertaking(s);
- Injunctive relief: e.g. action to stop anti-competitive conduct or action for the enforcement of a contract.

In particular, **action for damages for infringement of EU competition law relating to:**

Conduct of undertakings

The CJEU in:

- *Courage Crehan* (2001), further e.g. *Manfredi* (2006), *Pfleiderer* (2011), *Donau Chemie* (2013): parties suffering loss as a result of a cartel that is contrary to EU law can claim compensation from the members of the cartel;
- *Kone* (2014): where a cartel has the effect of leading competitors outside the cartel to raise their prices ("umbrella pricing"), the members of the cartel may be held liable for the damage caused as a result;
- *Otis* (2012): the Commission may, on behalf of the EU, bring an action for compensation of damage caused to the EU.

Proposal for a Directive on antitrust damages (2013)

Double aim:

- Optimising the interaction between public and private enforcement;
- Ensuring the effective exercise of the victims' right to full compensation.

Some important specific elements:

- Disclosure regime vis-à-vis competition authorities, aiming to ensure a minimum level of effective access to the evidence needed by claimants and / or defendants, though to the exclusion of leniency statements and settlement submissions;
- A final decision of an NCA or a court finding an infringement of EU competition law cannot be called into question in a damages action relating to the same infringement (i.e. it can be used as *prima facie* evidence in a damages action);

Generally, the Member States must observe the principles of equivalence and effectiveness.

State aid

The CJEU in:

- *SFEI* (1996): EU law does not provide a direct basis for claims against the beneficiary of the aid, but national law may do so;
- *CELF* (2008): Art. 108(3) TFEU may require the national court to uphold claims for compensation for damage caused by unlawful aid.

For claims against the state, see **Chart B17**

Generally, the Member States must observe the principles of equivalence and effectiveness; *SFEI* (1996), Handbook on the enforcement of State aid law by national courts (2010)

See also the Communication on quantifying harm in actions for damages based on breaches of Arts. 101 or 102 TFEU (2013) and the Recommendation to the Member States to introduce mechanisms for collective redress (2013).