



European Commission

Competition

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# Damages Actions for Breach of Articles 81 and 82 EC

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## Context & Objectives

- Effective legal framework for victims to exercise their rights under the Treaty (ECJ in Courage & Manfredi)
- Compensation as primary objective
- Balanced measures based on European legal cultures and traditions
- Legal certainty and more level playing field
- Preserving strong public enforcement



## Acquis communautaire

- Principles of equivalence and of effectiveness
  - Limitation periods: Manfredi (C-295 to 298/04)
  - Access to evidence: Laboratoires Boiron (C-526/04)
- Binding effect of Commission decisions (Article 16(1) of Regulation 1/2003)
- Full compensation prevents *a priori* fixed upper limit on the amount of compensation (Manfredi)



## Issues to be addressed

- Standing: **indirect purchasers and collective redress**
- Access to **evidence**: *inter partes* disclosure
- Binding effect of **NCA decisions**
- The **passing-on** of overcharges
- **Fault** requirement
- **Limitation** periods
- Interaction with **leniency programmes**
- **Costs** of damages actions



## Standing & collective redress

- Objective: to enable all victims to claim compensation
- Suggestions to enhance effectiveness:
  - Representative action by a qualified entity that was designated in advance or certified *ad hoc*
  - Opt-in collective action
- Relationship with other Commission initiatives in the field of collective redress



## After the White Paper (1)

- Public consultation and feedback from EP and EESC
  - Large agreement on
    - existence of obstacles to competition
    - something needs to be done
    - focus on competition
    - need to have balanced & genuinely European measures
  - Divergent views on
    - the various specific measures (views cover the full spectrum from general scepticism to strong support and calls to go further)
    - who should act



## After the White Paper (2)

- Follow-up by the European Commission
  - An EU legislative proposal?
  - Guidance to courts and parties on quantification of damage