



## ACTIONS FOR DAMAGES IN ANTITRUST

### KEY MESSAGES

- 1** Effective redress for victims of antitrust violations is key but cannot be best achieved through more litigation.
- 2** Encouraging private enforcement through collective actions must be avoided. It would introduce a litigation culture in Europe and a serious risk of abuses.
- 3** Enforcement of competition rules should remain firmly in the hands of public authorities.
- 4** Alternative Dispute Resolution (ADR) mechanisms like mediation and arbitration and deserve further attention.

### BACKGROUND

The objective of this debate is to find ways to provide effective redress of those who suffer harm from an antitrust breach. BUSINESSEUROPE supports effective redress for victims of antitrust violations but does not believe that this can be best achieved through more litigation. There is currently a focus on judicial collective actions, which are essentially aimed at creating instruments for individuals to enforce competition.

Creating a system of private enforcement through damages actions is incorrect, as the objective of private actions for damages cannot and should not be the enforcement of competition law: it is to provide a private law remedy for compensation.

Enforcement should remain within the remit of public authorities. If authorities do not have enough resources, they should be provided with more funds and staff. This will improve enforcement and deterrence, help victims who will be able to rely on a decision by an authority when claiming damages, and avoid risks of abuses.

The introduction of judicial collective actions would not lead to better compensation. Collective actions are complex, lengthy and costly: this often results not in awarding compensation to victims, but only in enriching intermediaries. In addition, introducing financial incentives for intermediaries will inevitably lead to more court cases and, without adequate safeguards, to a real risk of abuses.

Cases that do not need to be litigated should be kept out of court. Alternative Dispute Resolution (ADR) should be the main avenue to go down, since they are a simpler, cheaper and faster way to provide compensation to victims.

## WHAT DOES BUSINESSEUROPE AIM FOR?

- Engage in a constructive debate aimed at finding balanced ways for effective redress.
- Avoid the introduction of US-style class actions and of a litigation culture in Europe. EU legislative action obliging Member States to introduce judicial collective redress mechanisms should be avoided. In the light of the principle of subsidiarity and the complexity and diversity of national judicial systems, this decision should be left to Member States.
- Reconsider the general approach to redress, and shift focus from regulatory intervention to other more effective means like ADRs. Compared with judicial means, ADRs provide faster, cheaper and easier resolution of cases whilst avoiding risk of abuses.