On June 6, 2017, Belgium adopted legislation ("Law") transposing the EU directive on private antitrust damages (Directive 2014/104) ("Directive"). The Law became applicable on June 22, 2017, and is expected to boost competition law enforcement in Belgium and should enhance the full effectiveness of EU and Belgian competition rules.

The Law recognizes the right of injured parties to full compensation for the harm suffered as a result of competition law infringements, while ruling out any form of overcompensation. The Law also eases claimants’ burden of proof by introducing several presumptions:

• The Law contains an irrefutable presumption that a final decision finding an infringement, issued by either the Belgian Competition Authority or the Brussels Court of Appeals, constitutes evidence of fault in a follow-on damages action. Infringement decisions issued by the competition authorities of other EU Member States constitute only prima facie evidence of wrongdoing.

• The Law also introduces a rebuttable presumption that cartel infringements cause harm. However, this presumption leaves undetermined the locus of the quantification of the damage.

• Furthermore, the Law provides for a rebuttable presumption to the benefit of indirect purchasers of goods or services affected by an infringement, i.e., that direct buyers passed on the overcharge.

To address the information asymmetry characteristics of these types of cases, the Law empowers national or regional courts to order the defendant and/or third parties to disclose relevant evidence within their control.

The Law also eases claimants’ burden of proof, facilitates access to evidence, and enables successful damage claims, in particular because:

(i) The evidence rules are enhanced in the Law. For example, a new evidentiary device is introduced, the "cross search" device, involving a search of one’s suppliers’ records.

(ii) In particular, the Law advances claimants’ burden of proof, facilitates access to evidence, and enables claimants to avoid the exhaustion of a competition authority’s enforcement procedures and the subsequent introduction of civil damages suits.

(iii) The Law also excludes all potential obstacles to a successful damage claim, in particular because: (i) a quantification of the damage remains a thorny issue to be determined as a case-by-case basis; and (ii) the Law does not provide for a discovery of sorts to help claimants launch damages actions by businesses.

THREE KEY TAKEAWAYS

1. Transposition of the Directive into Belgian law should boost the private enforcement of antitrust law in Belgium. In particular, the introduction of irrebuttable presumptions for cartel infringements can more confidently furnish damages claims, e.g., following a cross search involving one’s suppliers.

2. In particular, the Law advances claimants’ burden of proof, facilitates access to evidence, and enables claimants to avoid the exhaustion of a competition authority’s enforcement procedures and the subsequent introduction of civil damages suits.

3. The Law also excludes all potential obstacles to a successful damage claim, in particular because: (i) a quantification of the damage remains a thorny issue to be determined as a case-by-case basis; and (ii) the Law does not provide for a discovery of sorts to help claimants launch damages actions by businesses.

YOU MIGHT BE INTERESTED IN:

- Belgium adopts EU directive on private antitrust damages

WANT TO KNOW MORE?

CONTACTS

Laurent De Moult
Partner

Alexandre G. Verheyden
Partner

Sébastien Champagne
Brussels

Serge Clerckx
Brussels

Laurent De Moult
Partner

Karl Stas
Brussels

Alexandre G. Verheyden
Partner

Sébastien Champagne
Brussels

Serge Clerckx
Brussels

Karl Stas, an associate in the Brussels Office, assisted in the preparation of this Commentary.

IN SHORT

Belgium recently (and belatedly) adopted a Law transposing the EU directive on private antitrust damage claims (Directive 2014/104). The Law recognizes the right of injured parties to full compensation for the harm suffered as a result of competition law infringements, while ruling out any form of overcompensation.

The Law contains an irrefutable presumption that a final decision finding an infringement, issued by either the Belgian Competition Authority or the Brussels Court of Appeals, constitutes evidence of fault in a follow-on damages action. Infringement decisions issued by the competition authorities of other EU Member States constitute only prima facie evidence of wrongdoing.

The Law also introduces a rebuttable presumption that cartel infringements cause harm. However, this presumption leaves undetermined the locus of the quantification of the damage.

The Law provides for a rebuttable presumption to the benefit of indirect purchasers of goods or services affected by an infringement, i.e., that direct buyers passed on the overcharge.

The Law recognizes the right of injured parties to full compensation for the harm suffered as a result of competition law infringements, while ruling out any form of overcompensation.

Collective damages actions can be brought only by companies, not by businesses.

The text of the Law is available in English and in Dutch.

SUBSCRIBE TO RSS IN FEEDS VIA RSS 
© 2017, Jones Day. All rights reserved. 51 Louisiana Avenue, N.W., Washington, D.C. 20001-2113

Three Key Takeaways

1. Transposition of the Directive into Belgian law should boost the private enforcement of antitrust law in Belgium. In particular, the introduction of irrebuttable presumptions for cartel infringements can more confidently furnish damages claims, e.g., following a cross search involving one’s suppliers.

2. In particular, the Law advances claimants’ burden of proof, facilitates access to evidence, and enables claimants to avoid the exhaustion of a competition authority’s enforcement procedures and the subsequent introduction of civil damages suits.

3. The Law also excludes all potential obstacles to a successful damage claim, in particular because: (i) a quantification of the damage remains a thorny issue to be determined as a case-by-case basis; and (ii) the Law does not provide for a discovery of sorts to help claimants launch damages actions by businesses.