COMMENTARY

AUGUST 2017

Belgium Adopts Law Enacting EU Directive on Private Antitrust Damages

IN SHORT

The Background: Belgium recently (and belatedly) adopted a Law transposing the EU directive on private antitrust damages.

The Result: The recently adopted Law aims at facilitating damage claims by parties harmed by competition law infringements. It brings Belgium into line with other EU countries that have already implemented the Directive.

Looking Ahead: The Law is expected to boost private competition law enforcement in Belgium and should enhance the full effectiveness of EU and Belgian competition rules. Still, some thorny issues remain open, such as damage quantification.

SKIP TO THE FULL VERSION.

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 private 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 Appeal, constitutes evidence of fault in a follow-on damages action. Infringement decisions issued by the competition authority 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 unaddressed the knotty issue 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.

> 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.

To address the information asymmetry characteristic of these types of cases, the Law empowers national judges to order the defendant and/or third parties to disclose relevant evidence within their control. However, to protect the leniency and settlement regimes, leniency applications and settlement submissions have absolute protection from disclosure. Parties refusing to comply with an order to disclose evidence risk fines of up to €10 million.

Participants in a competition law infringement will, in principle, be jointly and severally liable. However, the Law derogates from this general rule for immunity recipients and (under certain conditions) for small to medium-sized enterprises, which will be liable only toward their own (direct or indirect) customers.

Competition law damage claims will be subject to a five-year limitation period, starting from the moment the infringement ends *and* the injured parties become aware of the infringement, the harm, and the infringer's identity. In addition, an investigation by a competition authority interrupts the limitation period until the investigation is concluded. To encourage out-of-court settlements, the limitation period also is suspended for a maximum duration of two years during a consensual dispute resolution procedure.

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

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

THREE KEY TAKEAWAYS

1. Transposition of the Directive into Belgian law should boost the private enforcement of antitrust law in Belgium. Parties that suffer harm from antitrust infringements can more confidently launch damages claims, e.g., following a cartel decision involving one of their suppliers.
2. In particular, the Law alleviates claimants' burden of proof, facilitates access to evidence, and enables claimants to await the outcome of a competition authority's enforcement procedure before initiating a civil damages suit.
3. The Law does not remove all potential obstacles to a successful damage claim, in particular because: (i) quantification of the damage remains a thorny issue to be determined on a case-by-case basis; and (ii) it does not provide for U.S.-style discovery or class actions by businesses.

WANT TO KNOW MORE?
READ THE FULL VERSION.

CONTACTS


Laurent De Muyter
Brussels


Alexandre G. Verheyden
Brussels


Serge Clerckx
Brussels


Sébastien Champagne
Brussels

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

YOU MIGHT BE INTERESTED IN: Go To All Recommendations >>


ECJ: Clarification on Withdrawing State Aid from Companies Deemed "Undertaking in Difficulty"


Germany Issues Antitrust Guidance on Multilateral and Unilateral Behavior


Online Trade Under Antitrust Scrutiny in EC's E-Commerce Sector Inquiry Final Report


European Commission Sets its Sights on Allegedly Excessive Drug Prices

SUBSCRIBE SUBSCRIBE TO RSS