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ON COLLECTIVE ACTIONS FOR VIOLATION OF EU COMPETITION LAW

Summary

The mechanism and legal remedies of collective protection due to the violation of EU competition law are set general and specific goals. In a general sense, their implementation should enable the smooth functioning of the internal market, which is taken care of by the Commission in the procedure of public law enforcement. The smooth functioning of the internal market, however, cannot be ensured if the equality of all market participants is not guaranteed: direct competitors and consumers as customers and users of services.

As practice has shown that it is impossible to avoid violating the rules on protection of competition, it is necessary to find a quick, reliable and simple procedure for compensation damage caused by the injury. The jurisdiction to decide this has been retained by the national courts in the Member States. However, due to the nature of the massive damage, the classic system actions proved to be insufficient and inadequate. Expectations that this issue will be resolved by the Directive on Representative actions, which would be applied in disputes due to violations of EU competition rules, have not been realized. One possible solution is to introduce the US model of class action, as a type of actio popularis in cases where independent regulatory bodies (IRB) has established the existence of a violation. In such situations, aggrieved individuals (consumers) should be allowed to initiate collective redress proceedings themselves or through authorized bodies under liberal conditions. The injured parties would be obliged to prove the existence of damage, and a rebuttable presumption would apply that there is a causal link between the damage and the injury. The lawsuit would cover all consumers (opt-out), and those who do not want to would express their withdrawal in an explicit manner. In that case, stand-alone actions would lose their practical significance, because the court would transform them into accompanying ones, after it would stop the procedure and refer the issue of the existence of the violation to the IRB.

Keywords: public and private enforcement of competition law, consumer, damages, restrictive agreements, collective redress mechanisms, remedies.