The European Commission has published a proposal for a directive aiming to facilitate compensation for antitrust harm. The Paris Île-de-France CCI is making a number of proposals, on the one hand to improve the expected interaction between public and private enforcement and, on the other, to allow injured parties in competition law infringements to obtain more effective compensation.

1. Give preference to the prior existence of a final decision by a competition authority to allow the introduction of follow-on action for damages.

2. Preserve the attraction of leniency programmes.
   - Extend the protection of the category of evidence supplied by the leniency applicant (information and documents collected by the competition authority prior to the leniency application, evidence after the administrative proceedings, etc.).

3. Place limits on the disclosure of evidence.
   - Avoid any risk of forum shopping by removing the possibility for Member States to maintain or introduce provisions resulting in wider disclosure of evidence, in the light of the rules already implemented by the proposal for a Directive in such matters.

4. favour the introduction of a "reduced" joint and several liability rule for leniency applicants.

5. Use the passing-on defence.
   - Drop any reversal of the burden of proof of such passing on of overcharges and leave the burden on the claimant, who is in the best position to demonstrate whether they overcharged or not.
   - Ensure that national courts are empowered to check whether overcharges have actually been passed on (by commissioning economic studies, etc.).

6. Introduce a fixed limitation period of 3 years.

7. Encourage consensual dispute resolution.
   - Approve the introduction of a "reduced" joint and several liability rule for the settling infringer, as this guarantee will provide a greater incentive for injured parties to choose this method in order to obtain full compensation for the harm suffered.

8. Make the binding effect of decisions by national competition authorities conditional upon compliance with the fundamental rights of the procedure.

9. Delete the presumption of harm caused by a cartel.
In your opinion, is this proposal for a directive useful?

Yes it is useful, victims of anticompetitive practices - companies, consumers - must be able to obtain compensation for damage. But there are many procedural obstacles: lack of legal certainty, cost of bringing an action in court, difficulty of providing evidence of an infringement and of quantifying harm. Although we believe that alternative dispute resolution should be preferred especially in the context of trade where links are meant to last, it is necessary to remove procedural obstacles to actions for damages.

How to remove such procedural obstacles?

By providing more guarantees to businesses. I think to the limits of the disclosure of evidence and the protection of business secrets, the use of the defence related to passing on of overcharges or limitation periods. Today, the Commission’s draft provides a basis for an interesting discussion, particularly with regard to the “reduced” joint and several liability rules in favour of the applicant for leniency, however we remain vigilant, and many issues need to be framed more.

What might be the best compromise for compensation proceedings?

It is essential to avoid any risk of divergence between Member States as this could lead to forum shopping. Finally, although damages actions must indeed be effective and those companies that have committed an infringement must be sanctioned, they must not be overexposed in a context of increasing fines. We must therefore ensure that companies are not condemned to remedy the same harm twice.