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Review paper

PRIVATE ACTION OF THE INJURED PARTY AS MEANS OF COMPLEMENTARY ENSURANCE OF CPMPETITION ON THE MARKET

THE ESTABLISHED SYSTEM OF ENSURING COMPETITION PROTECTION

In the legal system in the EU, as well as within every member state's national legal system, a clear system of protection has been established, to protect the market from any unlawful actions that could disrupt it through misuse of established competition rules, with the main objective to create and maintain competition, pursuant to the adopted Lisbon strategy. Monitoring all disturbances on the common European market is in the competency of EU Commission, as is passing sentences to those market participants that have threatened the functioning of a significant part, or even of the entire market of the European Union. On the other hand, national commissions for protection of competition direct their efforts primarily towards monitoring their domestic markets and towards cooperation with other national commissions from other member states of the EU, within the established National Competition Authority Network[1].

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[1] National Competition Authority, „NCA".

The European Commission, within its Competition Directorate, as well as national Commissions, have been striving to expand their scope, adopting new legislative instruments to gain more power and broader competency. Strengthening of institutional bodies, European and national Commissions for the Protection of Competition is accompanied by increase in fines delivered to offenders[2], with the intention of having these high fines act preventively on possible future offenders[3]. However, in addition to the procedures[4] opened and conducted by the Commissions themselves, through which the Commissions deliver significant fines, another question arises: what with all the other participants on the same market on which this violation of competition rules, which resulted in the fine, occurred[5]? In other words, what with all the natural/legal persons who have suffered considerable material damage therewith, are they, too, entitled to compensation of a certain amount of damage caused, or is the fine, intended for the budget, a sufficient sanction? Are they entitled to file private lawsuits for compensation of such damages and, if they do, what are the difficulties that a natural/legal person encounters when attempting to sue for damages that are the result of a violation of competition rules by a participant in the market named in the ruling of the Commission? Does a commission, whether it is the EU Commission or a national commission, have a „monopoly" on determining whether there was a breach of competition rules, or is this a right of any participant to the market even without the procedure before the Commission and determination of whether there was an infringement? Is it even necessary, and, in the end, is it useful to help and develop procedures of compensation for damages through joint[6] and/or individual lawsuits from market participants on the

[2] Thus, at the time that Mario Monty was the Commissioner, from October 1999 till the end of his mandate in 2004, the EU Commission delivered fines that, in total, amounted to 4.55 billion Euros.

[3] Thus, it was exactly the objective of preventive action that was set as an element for increasing fines delivered by the EU Commission, following the determination of the basic fine and application or extenuating/aggrevating circumstances, see: *Guidelines on the Method of Setting Fines Imposed pursuant to Art. 23(2)(a) of Regulation no. 1/2003*.

[4] Competition rules violation procedure is primarily an administrative procedure in most of EU countries. This is also the type of procedure prescribed in the Republic of Serbia, by the *Competition Protection Law* („Official Gazette of the Republic of Serbia" no. 94/2005). Criminal procedure is characteristic of countries that have adopted the american „Antitrust Law", for example, Latin American countries, Japan, Korea, Canada, Brazil. Still, the voices advocating the criminal proceedings of responsible persons in EU economy are getting louder; thus, the criminal procedure has already been adopted in Hungary and Estonia.

[5] Primarily the existence of a prohibited (cartel agreement) and abuse of a dominant position (individual and/or collective).

[6] So-called class actions, or group lawsuits in which the procedure is conducted based on only one

market, on which the Commission has determined the violation of competition rules through its decision? In other words, would support to the system of damage compensation through lawsuits, subsequent to the establishment of the existence of competition rules violation, have any negative implications on the adopted *leniency*[7] programs in all member states and at the EU level?

These are some of important questions that have influenced the careful and, it is safe to say, slow adoption of legislation at the EU level that would clearly define rules and possibilities for ensuring compensation for damage and profit loss for market participants following the establishment of a violation of competition protection rules by the competent authorities.

Even though the idea on compensation of damages through a private lawsuit, following an established violation of competition protection rules by the competent authorities in an administrative or criminal procedure, only came to life in 2000 in the EU, it has been exploited in countries that have adopted the American approach to competition protection for a long time. In contemporary legal theory it is clear, as has been proven in practice, that some form of private action procedure is necessary, together with the protection of competition rules and market ensured by national and supranational bodies. Almost every state is presently considering the most adequate solution that would allow initiation of a procedure for compensation of damage resulting from a breach in the established competition rules[8]. Without a more intense and significant involvement from the market participants, that have, for example, been „ousted" from the market as a result of actions taken by offenders, or have suffered considerable damage, there is a realistic danger that those participants on the market who have the opportunity will, in an organised manner and with definite intent, violate the competition rules because they have a

„named" plaintiff representing the interest of all parties in the matter. The purpose of these lawsuits is in disputes of insignificant individual value that are economically unjustified and would not be appropriate as individual procedures.

[7] Program/procedure of mitigation of the fine, in a percentage of the determined sum, for the parties to the prohibited agreement, in case when it was reported in time and significant evidence presented to the Commission (prior to and/or after the procedure was opened). The Competition Protection Law in the Republic of Serbia also prescribes this option, but it was never used in Commission's two-year practice. The new draft of this law prescribes this possibility that is open to offenders in a far clearer manner, so it can be expected that, in future, legal entities in Serbia will also use this legal possibility to avoid high fines.

[8] Issue of system efficiency and proportionality of the sanction (single, double or even triple amount of the fine determined by the national body; for example, Turkey has adopted the triple amount system, but this penalty has never been prescribed; see www.rekabet.gov.tr/ebaskanmesaj.html.

justified economic interest to do so, i.e. because the prescribed sanction is definitely lower than the possible profit that could be gained from the unlawful action. In any case, competition protection bodies need to cooperate with market participants that have suffered damage, to prevent, identify, sanction and compensate all victims of unlawful actions of market participants.

For several years now there has been an open debate at the EU level on whether legal and natural persons should be allowed and encouraged to file private lawsuits, initiating legal procedures against market participants whose actions have, in violation of the provisions of competition protection law, caused them to suffer damage, or if the established system, in which the Commission monitors and sanctions market disruptions is an adequate and sufficiently developed protection mechanism. And indeed, up to recently, protection of competition rules at EU level was completely in the hands of the Commission, directing all interested parties to turn to the Commission for aid. This mode of protection, naturally, brought numerous problems, which are most visible in the Commission's inability to process and act on all cases brought up by market participants, forcing it to select priority cases by its discretion, depending on observed consequences caused by market disruptions.

To this end, the EU Commission initiated the transfer of part of its competence to national commissions interlinked by the NCA Network and national courts. One of the results of this imitative was the adoption of the very important Regulation 1/2003, which extensively modified the distribution of competence between EU Commission, national commissions and national courts that was in force at the time. The EU Commission and the National Competition Authority Network are now closely cooperating within the European Competition Network[9]. Nevertheless, the most important contribution of Regulative 1/2003 is in „decentralisation" of EU rules for competition protection, within which the national courts are allowed to implement EU competition rules completely and directly, especially Articles 81 and 82 of the EU Treaty in their entirety[10]. As a result of these newly adopted solutions, victims of competition rule violations may now submit their complaints to the EU Commission, National Competition Authority Network or national courts, depending on who they consider is the most competent authority to answer their claims. Still,

[9] European Competition Network, „ECN".

[10] Prior to the adoption of Regulative 1/2003 and its coming into force, the EU Commission had the exclusive right to approve or not approve exceptions prescribed in Article 81(3) of the EU Treaty.

one should bear in mind that awarding damages to natural and legal persons for competition rules violation on the national market is exclusively within the competency of national courts.

A logical development following the adoption of Regulation 1/2003, which reinforced the role of national commissions and courts, is the further development of instruments that would allow natural and legal persons to sue enterprises for damage they caused them and that was established in a decision by the Commission, or even in those cases in which there is no prior decision by any commission on the violation of competition rules[11].

The view that any natural and legal person is free to sue, through private legal action, for damages caused by a violation in competition rules by a participant on the market was adopted in 2001 by a decision of the European Court of Justice, which lead to a sort of an indirect harmonisation at the EU level, in the case of *Courage v. Crehan*[12]. In this case, the European Court of Justice established that:

„complete application of Article 81 of the EU Treaty would be brought into question, especially the prohibition effects prescribed in Art. 81 par. 1, if all natural and legal persons were not allowed to initiate proceedings, through a lawsuit, for compensation of damages suffered by a contract or as a result of actions that may threaten or disrupt competition on the market".[13]

In this way the European Court of Justice has also lent support to the view that each natural and legal person has the right to claim compensation for damages before national courts and that member states are obliged to provide a legal framework for the establishment of an efficient system for damage compensation.

In accordance with these principles, the EU Commission has, after a long period of careful consideration and debate, finally adopted the so-called „Green paper"[14], containing proposals on how to assist private legal action

[11] A special difficulty is encountered when it comes to proving injury in those cases in which no commission (EU Commission or national commission) has conducted a procedure and established, through its decision, that there was a violation, while in those cases in which there was such a commission decision, the injured party would be in an objectively easier position, being that they would not have to prove the injury and provide evidence, which are, in most cases, extremely difficult to obtain.

[12] Ruling from 20.09.2001; C-453/99, *Courage v. Crehan* [2001] ECR I-6314.

[13] *Ibid.* paragraph 26, freely translated by the Author.

[14] Document adopted by the Commission, which can be considered the only legal proposition that is open to public viewing, comments and suggestions until its final adoption (or refusal). In this particular case, the Commission adopted the „Green Paper" for compensation of damages resulting from an infringement of competition rules prescribed by the EU Treaty, available

in the damage compensation procedure as a complementary procedure to the administrative/criminal procedure conducted by national competition protection bodies and EU Commission. The primary reason for this activity of the Commission was to investigate why natural and legal persons were not using their options to file private lawsuits, which were clearly available to them, as well as which obstacles would be encountered in such a dispute, being that only a small, very limited number of private lawsuits had been filed before the courts of member states of the EU.

Introduction of new options that were previously described and development of execution and respect for competition rules through a private lawsuit would certainly contribute to the development and functioning of the internal EU market for several reasons, primarily:

The threat and the mere existence of the possibility of initiating proceedings through a lawsuit provides a significant preventive influence by intimidating potential offenders;

Increased number of private lawsuits would contribute to the development of competition among the participants on the market, including consumers, as well as to raising awareness of the existence of competition rules;

Private lawsuits can target those cases which the EU Commission or national commission refuse to process due to a smaller significance or lack of human resources needed[15].

Positive effects are also reflected in compensation of damages inflicted on injured parties, which is undoubtedly deserved, in allowing national courts to apply the sanction of nullifying the contract as well as in exploitation of the principle of obligation of national courts to rule on all disputes that have been opened before them through lawsuits.

On the other hand, those opposing the development of this possibility, or even allowing natural and legal persons to sue for damages before national courts based on violation of national competition protection laws, point out several important weaknesses. Firstly, some believe that administrative/criminal procedures of national commissions and the legally prescribed fines are already sufficient for the protection of competition on the market and that private lawsuits would lead to overcrowding the courts with an enormous number of cases; it would be

at:http://europa.int/comm/competition/antitrust/ others/actions_for_damages/gp.html.

[15] See: Mario Monty's speach from Septeber 17, 2004. Mario Monty is the former Commissioner for Competition Policy in the European Commission, IBA.

very difficult, within this system, to determine the amount that should be awarded as damage, or whether the damage should be awarded to indirect, or only to direct victims of the violation of competition rules.[16]

In any case, the realistic fear of potential plaintiffs that, should they lose, they would have to bear the costs of the proceedings and costs inflicted on the other party to those proceedings, is evident. This, along with considerable difficulty in collecting evidence, is the largest obstacle facing natural and legal persons in the process of filing lawsuits for damages before national courts.[17]

Several main problems have also been identified and addressed in the „Green Paper". In addition to litigation costs of the party to the dispute, it is necessary to define the method for determination of court competency[18], coordination of protection of public and private interests[19], amount awarded as damages[20] and the method of consumer protection[21].

COMPENSATION IN ANGLO-SAXON LAW

In the USA, ever since Sherman Act was adopted and came into force in 1980, a system of combined public and private protection has been adopted[22]. The Antitrust Department of the United States Department of Justice has the exclusive right to open and conduct criminal proceedings[23] for violation of competition rules. The prescribed sanctions are very significant, for the responsible natural person, up to ten (10) years in

[16] See: Wouter P.J. Wils „Should Antitrust Enforcement be Encouraged in Europe", World Competition 26(3), 2003, p. 481.

[17] From 1962, there have been only 12 cases in which compensation was awarded for the damage caused by a violation of competition rules on the Common Market of the EU.

[18] Rules of competency, in cases of lawsuits for violation of competition rules are not unified in the EU and need to be harmonised to avoid the so-called „purchase of competency", see: Maja Brkan „Procedural Aspects of Private Enforcement of EC Antitrust Law: Heading Toward New Reform?", World Competition 28(4), 2005, p. 484.

[19] To avoid threatening the success of the „leniancy" program in revealing and fighting cartels.

[20] For gravest violations of competition rules, e.g. cartels, the determined damages are doubled.

[21] Allowing class action, e.g. consumer interest groups, to increase the pleadings and reduce costs and workload imposed on national courts.

[22] This system is known to other anglosaxon legal systems, primarily in Canada, through *class actions* and in England, where the institution of „super complaint" has been introduced, allowing certain consumer protection groups to file OFT complaints, leading to the merger of complaints from damaged parties, where these complaints would definitely have been left unanswered due to their small individual value.

[23] Primarily for the cartel agreements, prohibited *per se*, on price determination, market distribution and defeating the purpose of tenders.

prison, while the prescribed sanction for a company is either 100 million USD or double the amount of profit gained through unlawful activities[24]. Administration procedure in the USA is prescribed for those violations of competition rules for which it is necessary to prove the effects induced[25], as well as for concentrations that can not disrupt the competition on the relevant market. In addition to the Department of Justice, Federal Trade Commission is also active in the USA in the field of competition protection and its competency covers consumer protection as well. FTC is not allowed to open criminal proceedings, only administrative proceedings with ordering provisional measures or submitting a request for judicial interdiction to the Federal Court[26]. Federal legislation entitles each natural and/or legal person who has suffered material damage due to a violation of competition rules to file pleadings that amount to triple the amount of the inflicted damage. They also prescribe the right of reimbursement of all expenses of the proceedings, including lawyers' fees for the defence attorneys[27]. Proceedings on private lawsuits in the USA can be classified in two groups[28]

a) procedures on the requests from the defendant's competitors alleging that they have been „ousted" from the market or that they have suffered damages as a result of unlawful actions of the defendant[29] and

b) procedures initiated per request of direct buyers of products and/or services, in case of violation of competition rules by manufacturers/distributors.

Private action in case of competition rules violation has proved very significant in the USA when state bodies, for any reason, fail to initiate

[24] In the USA, the practice of pleading guilty if there is a posibility of negotiating the fine is established, e.g. in the case against the vitamin cartel, Hoffman-LaRoche pleaded guilty and paid the agreed sum of 500 million USD.

[25] So-called unlawfulness *by rule of reason* and not by a prohibition *per se*.

[26] Nevertheless, neither the Department of Justice nor the FTC have the option of opening an administrative procedure that would result in a fine, in other words, there is no system analogous to that in the EU, but a combination of criminal sanctions and individual responsibility, with the objective to prevent the gravest violations of established competition rules.

[27] What is specific for the USA in such compensation procedures is the absense of an obligation of the pleading party to reimburse the expenses of the trial inflicted on the defendant if they lose the trial.

[28] See: Spencer Weber Waller „Towards Constructive Public-Private Partnership to Enforce Competition Law"; World Competition 29(3), 2006, p. 369.

[29] It is necessary to approach this type of procedure with due caution, bearing in mind the realistic possibility that the procedure was initiated to protect the plaintiff(s) and not to strenghten the competition.

proceedings[30]. Also, the Federal Department of Justice in the USA will seldom open cases of violation that include determination of minimal prices through negotiations (Resale Price Maintenance), association, application of unequal conditions to different participants etc.

COMPENSATION FOR DAMAGES IN THE EU

Even though the idea was born and developed in the USA, at the present time, the loudest advocate of private prosecution and compensation for damage is the EU. While there is still a heated debate in the USA on the existence, or, at least, a more restrictive application of this form of prosecution and compensation for damages resulting from a violation of competition rules, in the EU there is an intensive support to the introduction of a clearly defined procedure for compensation for damages through private action. Even the European Court of Justice has adopted the view that each member state must provide some efficient form of a compensation procedure through private action by the injured party[31]; it was to this end that Regulation 1/2003 was adopted. It is generally accepted that compensation of damages through private action needs to play a more significant role in ensuring the compliance with Article 81 and 82 of the EU Treaty, bearing in mind the inefficiency of protection provided by the established competition protection bodies at the national and EU level[32].

The greatest obstacles to a wider application of compensation procedure through private, individual and/or class action is the impossibility to provide evidence, litigation costs, low level of awareness among market participants on this option, incomplete and insufficiently clearly defined rights and therefore unwilling use, or lack of trust in a successful outcome of this type of procedure[33].

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[30] The competition protection body will, generally, refuse to initiate proceedings per request of an interested party in those cases where the body itself does not believe in the success of such a procedure, or if it believes that initiating such a procedure would not serve its purpose. Nevertheless, one of the largest court cases in history of the USA was initiated by a private lawsuit in the field of review of the debit/credit card market in the USA; see *Visa Check/Master Card Antitrust Litigation*, 2002.

[31] See above, 13.

[32] This is particularly visible in violations that are subject exclusively to *ex ante* control.

[33] Certain member states of the EU have recently ammended their competition laws, introducing an explicit direct right of any market participant suffering damage due to a violation of competition rules to initiate proceedings through a private lawsuit, while the body in charge of competition

COMPENSATION FOR DAMAGES IN THE REPUBLIC OF SERBIA

Competition Protection Law doesn't prescribe any particular possibility of initiating a compensation procedure for damages inflicted and/or profit lost due to violations of competition rules by the Competition Protection Commission. Nevertheless, it is clear that there will be compensation procedures, if not through individual initiative, then certainly following the establishment of violations of competition rules by the Competition Protection Commission. In a situation in which the Commission is competent exclusively over the application of Competition Protection Law, it is practically impossible that the injured party that has suffered damage due to the existence of a cartel agreement, abuse of a dominant position or concentration without prior approval (or concentration in violation of the Commission's decision), will request, through a procedure, compensation for this damage and/or loss of profit prior to an irrevocable completion of the administrative procedure before the Commission, administrative procedure before the Supreme Court and/or correctional procedure.

In its practice so far, the Commission has established certain violations of competition rules[34] and it is to be expected that those market participants that have suffered damage from these violations will use the gathered evidence and facts even prior to completion of the opened administrative procedures, or prior to final ruling of the Commission, to represent their interests in compensation procedures for damages/profit lost in the best possible manner. In this way, the plaintiff is spared the almost impossible task of gathering relevant facts and evidence necessary for establishing competition rules violation and its effects on the relevant market.

POTENTIAL HAZARDS AND PROBLEMS IN DEVELOPING PRIVATE PROSECUTION OPTIONS

The primary problem arises in the very field that all competition protection bodies focus most of their activities and resolve, i.e. prevention of cartel agreements. An increase in number of compensation proceedings initiated

protection can act as *amicus curiae* in such a procedure; see, among others, new ammendments to the Competition Protection Law in Hungary.

[34] For example, cartel agreement of taxi associations in Belgrade, abuse of a domninant position of the Belgrade Bus Station and cable television provider SBB, interdiction of concentration that would disrupt competition (concluding the concentration against the request refusal); case Example C etc.

through private prosecution may have a deep impact on the existence and functioning of the program of protection of participants to such an agreement, i.e. to the so-called *leniency* program. In practice, these programs have proven to be a crucial instrument in the fight against cartels and represent the most important source of useful information on the existence and functioning of a cartel. In the Commission Notice on Immunity from Fines and Reduction of Fines in Cartel Cases[35] from 2006 it is clearly stated that immunity from fines and/or reduction of fines may not, in any case, provide protection in a compensation procedure for damages resulting from activities in violation of Art. 81 of the EU Treaty. Even though the Commission states, in its proposal, that the threat of potential compensation for damages through private prosecution will not deter cartel agreement participants in reporting them and, at the very least, secure lower fines in a procedure before the Commission, it is certainly not a persuasive argument, if for no other reason, then because these procedures have so far not been seen as a serious threat to cartel agreement participants. This is particularly the case because a large number of such requests would, with potential provision of doubling the amount of damages established, greatly alter the „calculation" of those contemplating the submission of a petition to *leniency* program, i.e. to immunity from fines.[36]

The issue of reinforcing the legal position of a certain category of plaintiffs in a litigation procedure, or the preferential treatment of victims of a cartel agreement in comparison to other litigation procedures[37] is also raised. In the process of popularisation of private prosecution the Commission, as well as member states individually, need to keep in mind the necessity of protection and interests of the defendants to prevent initiation of procedures that would exclusively be aimed at weakening a certain competitor's position on the market.

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[35] *Notice on Immunity from Fines and Reduction of Fines in Cartel Cases*; OJ 2006, C 298/17, p. 39.

[36] It should also be kept in mind that it is the enterprise that registers for the *leniancy* program that will be the „easiest mark" for the market perticipants that suffer damage, as they have undisputably registered and admitted to their participation in the procedure before the Commission.

[37] This solution was, in a certain way, prescribed in the *Annex to the Green Paper: Damages actions for breach of the EC Antitrust Rules*; Commission Staff Working Paper SEC (2005) 1732, p. 13, which states the necessity of private procecution for violation of competition rules, due to the lack of resources and the need to prioritise, as well as due to the importance of competition protection in the EU and high costs and complexity of procedures brought before the Commission and necessity of collecting indisputable, direct evidence.

Extremely high costs of a litigation procedure for compensation of damages are certainly one of the main obstacles to compensation procedures.[38] These procedures have become particularly long and costly with the advent of ever more demanding economical analyses and proving impacts of the unlawful actions of the defendants, together with the necessity to prove realistically inflicted damage (in the absolute amount), cause and consequence relationships and decisive facts. The risk of initiating a compensation procedure includes potential damage and losses arising from the disruption of business relationships with the defendant. One way to overcome the extremely high litigation costs is to agree that the defending attorney will receive a percentage of damages awarded[39] and/or introduction of an institution of doubling or multiplying the damage amounts[40] as compared to the damage inflicted and profit lost. Nevertheless, Commission Proposal prescribes a multiplied compensation of the damages incurred only in case of the gravest offences, i.e. cartel agreements.[41] Use of the option of prosecuting for damages would certainly be supported by the measures of decreasing court costs and costs of representation, with some form of modification of the general principle that all costs of the procedure are to be borne by the party that lost the dispute, by applying this principle only to maliciously initiated cases with the objective to damage the defendant without any clear, established evidence.

CONCLUSION

It is becoming clear that it is necessary to provide some form of class action in the protection of competition rules and market participants who suffer damage due to their violation, being that smaller claims otherwise have no hope of success. In other words, interim buyers and final consumers that the Law primarily attempts to protect need to be able to demand protection of their rights and compensation for damages suffered due to unlawful actions of market participants[42]. Development of consumer protection

[38] See: Riley and Peysner, „Damages in EC antitrust actions: Who pays the piper?“; Commentary to the Green Paper; www.ec.europa.eu/competition/antitrust.

[39] Commission proposal does not include such an option being that it is not within the spirit of legal systems in member states.

[40] This instrument would certainly add a penal character to the sanction, being that anything else is just compensation for the damage caused and is definitely a smaller amount when compared to the profit gained from unlawful action (especially when it comes to ousting the competition from the market, therefore inflicting irreparable damage).

[41] See 39. p. 50.

[42] This is particularly true bearing in mind that the enterprise primarily suffering damage, e.g. a

policies in a certain jurisdiction, awareness raising on established rights and developed consumer protection groups and organisations that would unify individual compensation claims are very important for the development of competition protection and damage compensation through private action

In ideal conditions, competition protection rules would primarily be monitored and applied efficiently and completely by public figures, i.e. competition protection bodies, which would have all the necessary material and human resources at their disposal. In such a system, participants to the agreement, who suffer damage due to unlawful actions, would also have the option of filing a compensation claim for damages caused by unlawful actions, as is the case in a criminal procedure.

However, regardless of the existing faults of private prosecution for compensation of damages resulting from competition rules violation at the national/EU level, there is a need for such a system, to compensate all those who have suffered damage due to an intentional violation of established business rules by large, powerful corporations. On the other hand, the form and scope of rights will largely depend on the internal legal system, history, judicial system as well as culture and the degree of development of each judicial system. Allowing private parties – natural and/or legal persons – to initiate proceedings through private prosecution for compensation of damages before the national courts, also contributes to raising the awareness of all participants on the market on the necessity of conforming to the established competition rules. Private prosecution for compensation of damages will certainly become more numerous once the proper instruments are adopted at the EU level and once an acceptable legal and institutional framework for its implementation is put in place in member states.[43]

In addition to all the previously described instruments, formation of a support system for the model of independence of public and private prosecution, with the objective of ensuring the respect of competition

manufacturer, will be in a position to transfer a part of damage it suffered in relation to their buyer, e.g. retail stores, to the final consumer, as it has both an obligation and a need to maintain a good relationship with its client who was operating in violation of competition protection rules.

[43] In Great Britain, a special court (Competition Appeal Tribunal) has been founded to rule on damage proceedings, pursuant to a previously adopted decision by the National Commission (OFT) or EU Commission; a so-called „opt-in" system of class action was introduced in 2003 in Sweeden and it is applied solely to the parties to the contract that have suffered damages from their contractual relationship with the offender etc.

protection rules, on the level of both EU and member states, is to be expected.