

# 21 September 2006: Class action in the field of competition

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## **The Conseil de la concurrence in favour of class action, under certain conditions, for consumers victim of anticompetitive practices**

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Following the publication in December 2005 of the report relative to class action, drafted by the working group set up by the Ministries of Economy and Justice, the Conseil was invited to give its comments in an opinion published today.

## **The Conseil de la concurrence approves the development of class action by consumers because they enable them to play a more active role in the implementation of competition rules**

Class actions can contribute to improve damages in compensation for losses sustained by consumers as the result of anticompetitive practices, by restoring the balance of power between powerful companies, which are often large groups, and consumers, which are by nature isolated. Seeking damages may remain limited on an individual basis, but can constitute significant amounts on a global basis.

Moreover, private actions in general and class action mechanisms in particular can contribute to strengthen deterrence in making the victim, and notably the consumer, a real player and an ally of public authorities in the fight against anticompetitive practices.

**However, the setting up of this type of mechanism require on the one hand, a satisfactory coordination between public and private actions and on the other hand, the preservation of leniency programmes' effectiveness**

### *The coordination of procedures over time*

In reference to the model of German legislation, which was amended recently, the Conseil is rather favourable to civil actions consecutive or complementary to those brought before it: firstly, the competition authority adopts a penalty decision and imposes fines on offending companies, secondly, the victim acting on an individual or class action basis, made confident by the recognition of the anticompetitive practice, refers to the civil judge to seek damages in compensation for its loss.

### *The protection of the leniency programme*

It appears crucial to ensure that the attractiveness of leniency programmes does not suffer from the introduction of class actions by consumers. If members of a cartel do anticipate that their collaboration with the competition authorities may risk to increase the success of individual or collective actions directed against them, the effectiveness of leniency programmes, which are essential instruments for the detection and the dismantling of anticompetitive practices, could be reduced. The Conseil estimates, that it is crucial, notably, to guarantee the confidentiality of the declarations made by the companies which benefit from leniency, so that they cannot be used in a civil procedure.