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## Adoption of EU Legislation on Private Damages Actions Following on from Competition Violations to Face Long Delay

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From a position last year where Commissioner Kroes had a draft Directive ready to push through more private actions for antitrust violations and collective redress, the momentum has now been stopped and it will likely be several years before a new directive can be realistically adopted.

John Dalli, the EU Consumer Commissioner, recently revealed plans to work in parallel with DG Comp on the consultation process for private "follow-on" actions relating to competition violations and collective redress for consumers seeking damages for product failures and other related issues.

The Commissioner said that he hopes the consultations will take place later this year.

In February, the new EU Competition Commissioner, Joaquín Almunia, acknowledged that the European Court of Justice has made it clear that effective compensation of damages following on from competition violations is essential for the successful implementation of competition rules on several occasions. However, Commissioner Almunia also said that before taking any initiative in this area, he intends to closely examine the different options, whilst ensuring that the kinds of excesses that exist in other jurisdictions are avoided.

The cautious approach adopted by Commissioner Almunia, and the announcement of a further public consultation for private actions, will most probably lead to a long delay in the adoption of EU rules on collective redress following on from competition rules infringements.

The former Competition Commissioner, Neelie Kroes, made private damages a priority during her five year tenure which ended in January 2010. However, despite a draft Directive that was ready to be adopted, Commissioner Kroes was unable to push through the proposal because of pressure from the European Parliament. The Parliament was concerned about its lack of involvement in the definition of the legislative initiative, and about the Directive's impact on national businesses. There had also been concern from business associations and large multinational companies which were afraid that the inclusion of a provision for opt-out class actions could lead to the typical distortions of the US class-action system.

In conclusion, there are still a lot of live issues and it therefore seems that for now, the future of private damage actions in the EU will continue to be uncertain.

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