



## European Commission Publishes Report on Quantification of Antitrust Damages

*January 20, 2010*

Yesterday, January 19, 2010, the European Commission published an external study conducted by Oxera Consulting on the quantification of damages suffered by victims of competition law infringements (the "Report"). The Report identifies a conceptual framework for damages estimation, supplies a number of methodologies and models for quantifying damages, and includes further insights from economics and finance to complement the use of these methods.

The Report was prompted by the Commission's April 2008 "White Paper on Damages Actions for Breach of the EC Antitrust Rules" (the "White Paper"). In the White Paper, the Commission noted that "any citizen or business who suffers harm as a result of a breach of the EC antitrust rules must be able to claim reparation from the party who caused the damage." However, due to various legal and procedural hurdles, the Commission observed that victims of EC antitrust infringements rarely receive compensation. The White Paper therefore set forth a host of proposals for policy choices and specific measures designed to ensure that victims have access to effective redress mechanisms so that they may be properly compensated. Most relevantly, the Commission expressed the need for "non-binding guidance for quantification of damages in antitrust cases, *e.g.* by means of approximate methods of calculation or simplified rules on estimating the loss."

The Report attempts to provide guidance for calculating damages by first detailing a conceptual framework for this type of an analysis. It then identifies three broad groups of methods that can be used to calculate damages in connection with this framework (the "comparator-based" approach, the "financial-analysis-based" model, and the "market-structure-based" method) and additional economic insight to be utilized as either general background information or as an aid to these methods. Not surprisingly, the choice of the most appropriate method (or methods) to employ in determining damages will ultimately depend on the facts of the particular case, including the availability of relevant data and information.

In many ways, the Report simply provides a primer for calculating damages that relies on conceptual approaches and methodologies that are quite familiar to practitioners in jurisdictions, such as the United States, where private damages actions are well-established. It remains to be seen whether the Report will begin to breach the entrenched skepticism in many European legal systems that damages can be estimated accurately. It does, however, demonstrate the Commission's on-going commitment to attempt to bolster the opportunities for victims of antitrust violations, whether businesses or consumers, to obtain compensation.

*This memorandum is for general information purposes and should not be regarded as legal advice. Please contact your relationship partner if we can be of assistance regarding these important developments. The names and office locations of all of our partners, as well as other recent memoranda, can be obtained from our website, [www.simpsonthacher.com](http://www.simpsonthacher.com).*

The contents of this publication are for informational purposes only. Neither this publication nor the lawyers who authored it are rendering legal or other professional advice or opinions on specific facts or matters, nor does the distribution of this publication to any person constitute the establishment of an attorney-client relationship. Simpson Thacher & Bartlett LLP assumes no liability in connection with the use of this publication.

**UNITED STATES****New York**

425 Lexington Avenue  
New York, NY 10017  
+1-212-455-2000

**Los Angeles**

1999 Avenue of the Stars  
Los Angeles, CA 90067  
+1-310-407-7500

**Palo Alto**

2550 Hanover Street  
Palo Alto, CA 94304  
+1-650-251-5000

**Washington, D.C.**

1155 F Street, N.W.  
Washington, D.C. 20004  
+1-202-636-5500

**EUROPE****London**

CityPoint  
One Ropemaker Street  
London EC2Y 9HU  
England  
+44-(0)20-7275-6500

**ASIA****Beijing**

3119 China World Tower One  
1 Jianguomenwai Avenue  
Beijing 100004  
China  
+86-10-5965-2999

**Hong Kong**

ICBC Tower  
3 Garden Road, Central  
Hong Kong  
+852-2514-7600

**Tokyo**

Ark Mori Building  
12-32, Akasaka 1-Chome  
Minato-Ku, Tokyo 107-6037  
Japan  
+81-3-5562-6200

**LATIN AMERICA****São Paulo**

Av. Presidente Juscelino Kubitschek, 1455  
São Paulo, SP 04543-011  
Brazil  
+55-11-3546-1000