THE BINDING EFFECT OF NATIONAL COMPETITION
AUTHORITIES DECISIONS – OBSERVATIONS
ON ARTICLE 9 OF THE COMMISSION PROPOSAL
OF DIRECTIVE ON ANTITRUST DAMAGES

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2.1. The scope of the Proposal. — 2.2. The diversity of national rules applicable to damages
actions throughout Europe. — 3. The binding effect rule and the legal elements of tort liability.
— 3.1. The fault. — 3.1.1. The fault requirement: a decision. — 3.1.2. The fault requirement:
How to ensure the effective implementation of the new rule? — 4.1. Access to decisions on
public enforcement taken by NCAs in the EU. — 4.2. Should an infringement to the binding
effect rule be sanctioned? — 4.2.1. Would the claimant have a choice? — 4.2.2. Should control
of the application of the binding effect rule be given to reviewing courts? — 5. Conclusion.

1. Introduction: What does “binding effect” stand for?

Even since the early seventies, the EUCJ has made clear that EU competition law
produces direct effects in relations between individuals and creates subjective rights that
have to be safeguarded by national courts (†). This allowed the Cfi to rule that the
Commission was entitled to reject a complaint for lack of sufficient Community interest,
based, inter alia on the possibility for the prejudiced parties to seek relief before a
national court (‡). It was not before 2001 that the EUCJ ruled, in the Courage Crehan
case, that private parties who have suffered a loss due to an infringement of articles 81
or 82 (now 101 or 102 TFUE) have the right to claim an appropriate compensation before
the competent national court (§).

As ruled in the Delimitis (C-234/89) and Masterfoods (C-344/98) decisions, uniform
application of EU law requires that national courts must comply with the decisions taken
by the Commission and EU courts. The ruling is clear: national courts cannot contradict
the decisions taken by the Commission, as well as by Community courts were the cases
brought before them.

As indicated in these decisions, the grounds of such an obligation are to be found in

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tion of European Competition Law Judges (AECLJ). This note is strictly personal.
(†) EUCJ, 30 Jan 1974, case 127/73, BRT and Sabam...
(‡) CFI, 18 Sept 1992, T-24/90, Automec v Commission, para 84 s.