Title: UK implementation of the EU Damages Directive (2014/104/EU) **IA No:** BISCCP004 **Lead department or agency:** Department for Business, Innovation and Skills **Other departments or agencies:**	**Impact Assessment (IA)** **Date:** 06/07/2015 **Stage:** Development/Options **Source of intervention:** EU **Type of measure:** Secondary legislation **Contact for enquiries:** Nick Seaford (nick.seaford@bis.gsi.gov.uk, 020 7215 5443)

Summary: Intervention and Options

RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, Two-Out?**	**Measure qualifies as**
£90.08m	£0	£0	Yes	Zero Net Cost

What is the problem under consideration? Why is government intervention necessary?

The legal framework for taking private actions for damages resulting from infringements of EU competition law varies across member states, potentially leading to distortions in the internal market. From October 2015, the UK will have one of the most accessible legal systems to claimants following the changes to private actions in competition law introduced as part of the Consumer Rights Act 2015. European regulation is necessary in order to make it easier to take private damages actions for antitrust infringements in the rest of Europe. In practice there will be very few incremental changes to the law in the UK, and these are likely to have a small positive, or even zero impact.

What are the policy objectives and the intended effects?

Because of changes made in the Consumer Rights Act 2015 as well as pre-existing UK law, this directive should make only small incremental changes in the UK. It is possible that there will be no change to legal practice, but most likely that there will be a small increase in the number of private cases taken. This would have a small positive economic impact by marginally reducing cartel activity.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Policy option 1 – Do nothing: Take no action and do not implement the directive. This is not a preferred option as it would be likely to lead to infraction proceedings being taken against the UK.
Policy option 2 – Dual Regime/ December 2016 implementation: This option follows the directive most closely (no gold plating). This means that there are very few changes to the way in which private cases covered by EU competition law are implemented in the UK.
Policy option 3 – Dual Regime/ October 2016 (early) implementation: this is the same as policy option 2, but implementation would be on 1 October 2016, rather than the deadline of 27 December 2016. The earlier date is a common commencement date (CCD) for UK regulation.
Policy option 4 – Single Regime/ December 2016 implementation: This is the same as policy option 2, except that the scope additionally includes cases where there has been an infringement only under UK law, not EU law or EU law when applied with UK law. This makes application of damages consistent, irrespective of whether the infringement has been determined under UK or EU law, or both.
Policy option 5 – Single Regime/ October 2016 (early) implementation: This is the same as policy option 4, but with implementation on 1 October 2016.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 1 October 2020

Does implementation go beyond minimum EU requirements?			Yes		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** No	**< 20** No	**Small** No	**Medium** No	**Large** No
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** 0	**Non-traded:** 0	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: ..... Date: .....

Summary: Analysis & Evidence

Policy Option 2

Description: Dual Regime, December 2016 implementation (no gold plating).

FULL ECONOMIC ASSESSMENT

Price Base 2016	PV Base 2016	Time Period 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.26	**High:** 116.55	**Best Estimate:** 58.15

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0		£0	**£0**
High	£0		£0	**£0.3**
Best Estimate	£0		£0	**£0.1**

Description and scale of key monetised costs by 'main affected groups'

The impact of this directive is a small (or even zero) increase in the number of cases that are brought to the CAT and the ordinary courts. The net cost to the courts of this is £17,000 per year. The legal costs to businesses are between £4.2m and £7.5m per case. Under the loser pays rule, these only fall on businesses that are non-compliant with existing competition law. Therefore these costs are not counted as a "cost to business" for the purposes of the Government's Better Regulation Framework, or in the above cost calculations. As a non-gold plating option, they are out of scope in any case.

Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£0		£0	**£0**
High	£0		£13.8	**£116.5**
Best Estimate	£0		6.9	**£58.3**

Description and scale of key monetised benefits by 'main affected groups'

There will be economic benefits from the increase in cases as cartel and other illegal competition activity is deterred, and also due to the reduction in prices and the reduction in deadweight loss. This is based largely on the Private Actions impact assessment from 2013, due to be implemented as part of the Consumer Rights Act (2015) in October 2015. In this policy option, the non-discounted central estimate for these gains is £7.66m per year.

Other key non-monetised benefits by 'main affected groups'

None.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

The key assumption is that the legal changes will result in a 2.5% increase in the number of cases taken to the ordinary courts and the CAT.

The costs and benefits of an increase in cases are taken from the 2013 private actions impact assessment.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	**Benefits:** 0	**Net:** 0	No	N/A

Summary: Analysis & Evidence

Policy Option 3

Description: Dual regime, October 2016 (early) implementation.

FULL ECONOMIC ASSESSMENT

Price Base 2016	PV Base 2016	Time Period 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.27	**High:** 120.38	**Best Estimate:** 60.07

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		£0.0	**£0**
High	Optional		£0.0	**£0.3**
Best Estimate			£0.0	**£0.1**

Description and scale of key monetised costs by 'main affected groups'

The costs will be the same as the costs outlined in policy option 2, except slightly higher as the implementation is 3 months earlier. This is therefore gold-plating, but the additional costs do not count as a "cost to business" for the purposes of the Government's Better Regulation Framework as all the additional costs fall either on the public sector or on companies that are non-compliant with competition law.

Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		£0	**£0**
High	Optional		£14.2	**£120.4**
Best Estimate			£7.1	**£60.2**

Description and scale of key monetised benefits by 'main affected groups'

The benefits will be the same as in policy option 2, except slightly higher as the implementation is 3 months earlier.

Other key non-monetised benefits by 'main affected groups'

The additional non-monetised benefit implementing in October 2016 is that it is on the CCD for new regulation. This is therefore likely to reduce the familiarisation costs for affected firms.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

The key assumption is that there will be a 2.5% increase in the number of cases taken to the ordinary courts and the CAT.

The costs and benefits of an increase in cases are taken from the 2013 private actions impact assessment.

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	**Benefits:** 0	**Net:** 0	Yes	Zero net cost

Summary: Analysis & Evidence

Policy Option 4

Description: Single regime, December 2016 implementation.

FULL ECONOMIC ASSESSMENT

Price Base 2016	PV Base 2016	Time Period 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.40	**High:** 174.82	**Best Estimate:** 87.21

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0		£0	**£0**
High	£0		£0	**£4**
Best Estimate	£0		£0	**£0.2**

Description and scale of key monetised costs by 'main affected groups'

The costs here are double those in policy option 2; there will be costs to the courts of £26,000 per year. This is because the scope of the changes additionally includes cases not covered by EU competition law in this option. Therefore the increase in cases is likely to be 1.5 times as high. Whilst this is gold-plating, the costs are not counted as a "cost to business" for the purposes of the Government's Better Regulation Framework because they only fall on businesses that are non-compliant with existing law, or the public sector.

Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£0		£0	**£0**
High	£0		£20.7	**£174.8**
Best Estimate	£0		£10.3	**£87.4**

Description and scale of key monetised benefits by 'main affected groups'

Like the costs, the benefits have the same basis as in policy option 2, except that they are twice as large as there is likely to be twice the increase in cases brought. Therefore the central estimate for the benefits is £11.49m per year.

Other key non-monetised benefits by 'main affected groups'

There are also non-monetised benefits from having a single competition regime. These are a reduction in legal uncertainty resulting from dual regimes, the costs of satellite litigation in determining which regime applies, and a small reduction in familiarisation costs for competition lawyers. Under a dual regime, there may be cases where it is unclear whether or not trade across different member states is affected, and therefore it will be unclear whether to bring the case under the EU or the UK regime. Fully incorporating the EU regime will remove this uncertainty.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

The key assumption is that there will be a 3.75% increase in the number of cases taken to the ordinary courts and the CAT.

The costs and benefits of an increase in cases are taken from the 2013 private actions impact assessment.

BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	**Benefits:** 0	**Net:** 0	Yes	Zero net cost

Summary: Analysis & Evidence

Policy Option 5

Description: Single Regime, October 2016 (early) implementation.

FULL ECONOMIC ASSESSMENT

Price Base 2016	PV Base 2016	Time Period 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.41	**High:** 180.57	**Best Estimate:** 90.08

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0		£0	**£0**
High	£0		£0	**£0.4**
Best Estimate	£0		£0	**£0.2**

Description and scale of key monetised costs by 'main affected groups'

The costs are the same as those in policy option 4, except that they are slightly higher due to the earlier implementation date. This policy option has two sets of gold-plated costs; extending the scope of the changes to domestic-only cases, and bringing forward the implementation date. However, as in policy options 3 and 4, they do not count as a "cost to business" for the purposes of the Government's Better Regulation Framework as all the costs fall on businesses who are not compliant with existing competition law, or on the public sector.

Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£0		£0	**£0**
High	£0		£21.3	**£180.6**
Best Estimate	£0		£10.6	**£90.3**

Description and scale of key monetised benefits by 'main affected groups'

Again, the benefits are very similar to those in policy option 4, but slightly higher due to the earlier implementation of the directive.

Other key non-monetised benefits by 'main affected groups'

The non-monetised benefits are the same as in policy options 3 and 4. In particular, there is a benefit from reducing legal uncertainty and from reduced familiarisation costs by having a single regime, and there is a benefit from bringing forward the implementation date so that it is implemented on the common commencement date (CCD).

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

The key assumption is that there will be a 3.75% increase in the number of cases taken to the ordinary courts and the CAT.

The costs and benefits of an increase in cases are taken from the 2013 private actions impact assessment.

BUSINESS ASSESSMENT (Option 5)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	**Benefits:** 0	**Net:** 0	Yes	Zero net cost

Evidence Base (for summary sheets)

Problem being addressed

1. The problem under consideration is the difficulty of bringing private actions for damages against undertakings who have infringed EU competition law and domestic competition law where it is applied in parallel with EU competition law. A case is in scope of EU competition law if it may affect trade between member states. Domestic competition law normally is in scope where it may affect trade within the member state.

2. Making it easier to bring private actions is considered to have direct benefits in terms of lower prices and reduced deadweight costs for consumers as well as a direct deterrent effect on future cartel activity, as put forward in the 2013 impact assessment for changes to private actions as part of the 2015 Consumer Rights Act.[1] The 2013 impact assessment also highlights the restorative justice of additional damages awarded to those who have suffered as a result of a competition law infringement resulting from more cases being brought. This is a transfer from non-compliant business to consumers or other businesses.

3. The directive that has been issued to address this problem makes very little change in the UK as it very closely replicates UK law including many of the changes that made it easier to bring private actions as part of the 2015 Consumer Rights Act (CRA) and pre-existing UK law. This impact assessment therefore relies heavily on the evidence put forward to the RPC in 2013 for changes to the rules around private actions for the CRA in order to estimate any costs associated with the limited incremental changes to UK law arising from this Directive. This previous impact assessment was green-rated.

Policy options and changes

4. There are five options being considered. The first is to do nothing. This is not a preferred option as it will lead to likely infraction proceedings from the European Commission. This is being used as the baseline.

5. Policy option 2 is to incorporate the directive into UK law without any gold plating. There are a few minor changes to the way in which cases covered by EU competition law are treated as a result of this.

6. Policy option 3 is to implement the directive early – on the common commencement date of 1 October 2016, rather than the deadline of 27 December 2016.

7. Policy option 4 is like policy option 2, except that the changes will affect all private actions cases, i.e. not just those in the scope of EU competition law, defined as cases that may affect trade between member states or UK competition law when applied in parallel with EU competition law.

8. Policy option 5 is the same as policy option 4, but with implementation on 1 October 2016, rather than the deadline of 27 December 2016.

9. This table shows how the policy options fall across two dimensions. The first of these is whether to implement by the EU deadline of 27 December 2016, or whether to implement the directive early on the UK common commencement date for new regulation of 1 October 2016. The second is whether only to apply the changes to cases which fall under the jurisdiction of EU competition law (i.e. cases which may affect trade between member states) or whether to apply it to all UK cases. Policy option 2, therefore, has no gold plating, whereas policy option 5 (the preferred option) is gold-plated on both dimensions. Policy options 3 and 4 are each gold-plated on one dimension, but not on the other.

Summary table of policy options

	October 2016 (early) implementation	**December 2016 implementation**
Single regime (gold plating)	Policy option 5 (preferred option)	Policy option 4
Dual regime	Policy option 3	Policy option 2

[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69124/13-502-private-actions-in-competition-law-a-consultation-on-options-for-reform-final-impact.pdf

10. Policy options 2, 3, 4 and 5 involve some small changes to the way in which private damages cases for competition infringements are treated. These changes are small because a very similar legal change that made private actions easier was introduced as part of the Consumer Rights Act (2015) or already exist as a result of the well developed UK competition law. The incremental changes in the Directive relative to existing UK law are therefore as follows:

- There will now be a legal presumption of harm in a cartel. This could encourage a higher number of cases to be taken as the evidentiary burden of proof on claimants is reduced. However, this is a minor change as under current UK law the available evidence must be used to establish the level of harm and hence set the level of damages, and the same evidence will be used to set the level of damages under the proposed changes (and the defendant can still rebut the evidence); it therefore seems unlikely in practice that this is a significant legal change. It is however possible that this will marginally increase the likelihood of damages being awarded compared to under the current UK law, meaning that it is possible that a higher number of cases will be heard.
- The principle of the "passing on" defence will become law. This means that if a cartel member overcharges a purchaser, and that purchaser then passes on the entire overcharge to another purchaser, the cartel member will have a defence. Whilst the principle of a "passing on" defence has never been established in a court case in the UK, it is likely that if an appropriate case were to be heard under the current law that it would be established following the normal principles of the law of tort. Again, there is likely to be no change in legal practice, but there is a small possibility that there will be an increase in cases being brought as this change makes the law clearer.
- Whistle-blowers will be completely protected from disclosure of their leniency statement. Under current law, the leniency statement can only be released if the interest in release outweighs the public interest in non-release. This will not lead to additional costs.
- The new directive stipulates when the start of the limitation periods is calculated. The directive requires it to run from when the claimant knows, or can reasonably be expected to know of the behaviour and the fact that it constitutes an infringement of competition law, the fact the infringement caused harm and the identity of the infringer. At present, the limitation period for cases in the High Court of England and Wales (and when the relevant provision in the Consumer Rights Act 2015 is commenced, similar cases in the CAT) runs from when the infringement took place, or for cases which section 32 of the Limitation Act 1980 applies, which may include cartel cases, when the claimant has sufficient information to bring the case. This means that in some cases, the limitation period may run for longer than before, making it slightly easier for some parties to bring a case.

11. In policy options 2 and 3, the above legal changes only affect cases in scope of EU competition law or UK competition law when applied in parallel with EU competition law, whereas in policy options 4 and 5 they also include cases that are only in the scope of UK competition law, and not EU competition law.

Impact

12. It is hard to predict the impact of these changes on the number of cases brought as there is little legal precedent to use, and no precedent of these exact changes being made in other countries. However, the 2013 impact assessment which led to much more significant changes to be implemented as part of the Consumer Rights Act (2015) predicted a 25% increase in cases being brought. This was based on consultation with a legal expert. The changes as a result of this subsequent policy change are much less significant, and may not even increase the number of cases being brought at all. However, each change makes it potentially slightly easier to bring a case; therefore, as outlined below, we are assuming a small increase in the number of cases.

13. There is limited evidence on exactly how many additional cases are likely to be brought as a result of these additional changes. We are explicitly seeking views and calling for evidence on this as part of the consultation as this is clearly a key assumption on the impact of the changes. We are currently assuming that there will be an increase of 2.5% in our central estimate (with a low estimate of 0, and a high estimate of 5%) of cases being brought to the CAT or the ordinary courts (the CAT is a specialised competition court which means cases can be progressed faster and with less expense) under a dual regime (policy options 2 and 3), where just cases covered by EU law are affected. A dual regime (options 2 and 3) would mean that the changes in the directive would only cover cases under

the scope of EU competition law, i.e. cases where trade between member states could be affected as a result of the competition law infringement and where EU competition law is applied in parallel with UK law. Such cases may be investigated by a national competition authority (such as the Competition and Markets Authority) using EU and national competition law simultaneously. A case that may affect trade between member states can include anything that could realistically be produced in another member state or anything that is a component part for goods produced in another member state. However, agreements between companies with small market shares (across the EU) may benefit from a presumption that such agreements do not have an appreciable effect on trade.[2] Under a dual regime, the directive will not make any differences to cases that are covered by or investigated solely under national competition law. This is why we are referring to this option as a "dual regime" as it will result in the rules being different for cases that are covered by EU law (including where it is applied in parallel with UK law) and those that are not. This is on the basis that the increase in cases brought will be substantially lower than the increase expected as a result of the changes in the Consumer Rights Act (2015). There is likely to be a much lower increase in the number of cases brought as a result of implementing this directive compared with the changes in the Consumer Rights Act (2015) because these changes are much less substantial. The changes made as part of the Consumer Rights Act included developing court rules and alternative dispute resolution (ADR), and allowing opt-out collective actions to be taken by consumers and/or by businesses. Those changes fundamentally increase the ability of consumers and businesses to take private actions, whereas the changes in the Damages Directive (this impact assessment) are much more limited.

14. There will be a slightly higher increase in additional cases brought under a single regime (policy options 4 and 5), where all cases are affected by the directive. Under a dual regime, only cases that are within scope of EU competition law (i.e. where trade between member states may be affected – this includes many cases investigated by national competition authorities), including where applied in parallel with UK competition law. Cases not in scope of EU competition law would remain unaffected by the directive. Under a single regime (policy options 4 and 5), additionally to cases within the scope of EU competition law, cases which are not would be affected by the implementation of the directive. We estimate an increase of 3.75% in our central estimate (with a low estimate of 0 and a high estimate of 7.5%) of cases being brought to the CAT or the ordinary courts in options 4 and 5, comprised of the 2.5% increase as in the dual regime plus an additional 1.25% increase associated with extending the Directive to apply also to infringements under UK law.

15. In order to assess how many additional cases would be covered by the directive if we gold-plated it to include cases which related to UK competition law only (in addition to that covered by EU competition law, i.e. to maintain a single regime), we looked at 20 CMA civil cartel investigations opened between 2004 and 2015, selected at random, and we found that in 65% of the investigations was taking place under both UK and EU competition law, whereas in 35% the investigation was only taking place under UK law. Of course, there are other types of infringements which can be investigated, such as abuse of dominance and there will be some private actions which do not relate to CMA investigations, but instead EU commission decisions or stand-alone actions. Based on this, there would be around a 50% greater increase in cases if we extend the changes to also cover UK law only cases. Given that we are assuming that there will be a 2.5% increase in cases under a dual regime (policy options 2 and 3), we assume a 50% higher increase in cases, i.e. a 3.75% increase, under a single regime (policy options 4 and 5).

16. As outlined in the tables below, the predicted increases in the number of cases are fractions; this reflects the fact that there is likely to be less than one additional case per year.

17. Stand-alone cases are where there has not been an infringement decision from a competition authority; follow on cases are where there has been. The latter are therefore generally simpler and have smaller additional economic benefits.

Estimated annual cases after 2015 Consumer Rights Act reforms

	Stand-alone cases	Follow on cases	Total
Ordinary courts	2	1	3
CAT	7	3	10
Total	9	4	13

[2] http://www.fieldfisher.com/pdf/EU-competition-law-articles-101-102.pdf

Estimated increase in annual cases for policy options 2 and 3 (central estimate: a 2.5% increase)

	Stand-alone cases	Follow on cases	Total
Ordinary courts	0.05	0.025	0.075
CAT	0.175	0.075	0.25
Total	0.225	0.1	0.325

Estimated increase in annual cases for policy options 4 and 5 (central estimate: a 3.75% increase)

	Stand-alone cases	Follow on cases	Total
Ordinary courts	0.075	0.0375	0.1125
CAT	0.2625	0.1125	0.375
Total	0.3375	0.15	0.4875

Costs

18. The costs of options 2, 3, 4, and 5 are the costs to the courts of an increase in cases, as well as the legal costs to businesses of fighting the cases. The levels of these costs are taken from the 2013 impact assessment. There are no additional compliance costs as the content of what is legal and not legal behaviour is the unchanged.

19. As in the private damages impact assessment (2013) for the Consumer Rights Act (2015), all costs to business are not in scope of one-in-two-out (OITO) as they are incurred by non-compliant businesses. There are no costs to businesses that have not infringed the law due to the loser-pays principle. Therefore, in line with the Better Regulation Framework, these costs are not included in the Equivalent Annualised Net Cost to Business (EANCB) or in the overall cost-benefit analysis. The cost of damages settlements are transfers so are not included as costs or benefits, but again would not be in scope of OITO as they only affect businesses found to have infringed the law.

20. Our estimates for the cost to business that falls in scope for OITO is zero as even where more cases are taken, the costs only falls on businesses that have infringed on competition law.

Annual increase in court costs in policy options 2 and 3

	Increase in cases	Cost per case	Total Cost
Ordinary courts, stand alone	0.05	£105,000	£5,250
Ordinary courts, follow on	0.025	£28,000	£700
CAT, stand alone	0.175	£57,750	£10,106.25
CAT, follow on	0.075	£15,400	£1,155
Total Annual increase			**£17,211.25**

Annual increase in court costs in policy options 4 and 5

	Increase in cases	Cost per case	Total Cost
Ordinary courts, stand alone	0.075	£105,000	£7,875
Ordinary courts, follow on	0.0375	£28,000	£1,050
CAT, stand alone	0.2625	£57,750	£15,159.38
CAT, follow on	0.1125	£15,400	£1,732.50
Total Annual			**£25,816.88**

increase			

Annual increase in costs to non-compliant businesses, policy options 2 and 3

	Increase in cases	Cost per case	Total Cost
Ordinary courts, stand alone	0.05	£7.5m	£0.375m
Ordinary courts, follow on	0.025	£4.2m	£0.105m
CAT, stand alone	0.175	£7.5m	£1.3125m
CAT, follow on	0.075	£4.2m	£0.315m
Total Annual increase			**£2.1075m**

Annual increase in costs to non-compliant businesses in policy options 4 and 5

	Increase in cases	Cost per case	Total Cost
Ordinary courts, stand alone	0.075	£7.5m	£0.5625m
Ordinary courts, follow on	0.0375	£4.2m	£0.1575m
CAT, stand alone	0.2625	£7.5m	£1.96875m
CAT, follow on	0.1125	£4.2m	£0.4725m
Total Annual increase			**£3.16125m**

- There are also costs to businesses from the damages awards that will result from the additional cases. This was calculated in the 2013 impact assessment to be £3m per case. These do not count as costs to business as they are restorative justice and a cost on non-compliant businesses. Furthermore, they do not feature in the overall cost-benefit assessment due to the fact that they count as both costs and benefits (to the winning party).

	Annual increase in cases	Damages per case	Total cost
Policy options 2 and 3	0.325	£3m	£0.975m
Policy options 4 and 5	0.4875	£3m	£1.4625m
Total			£2.4375m

Total annual costs included in cost-benefit assessment (costs to non-compliant businesses not included):

	Policy options 2 and 3	Policy options 4 and 5
Court costs	£0.017m	£0.026m

One-in-two-out

- All of the costs of each policy option fall either on business that are non-compliant with competition law, or on the public sector. Therefore they are not included as costs to business. Also, the costs to non-compliant businesses are not included in the overall cost calculations.

Benefits

21. Our estimates of the benefits are also taken from the 2013 impact assessment. These costs consist of the impact the cases have on future economic behaviour. In particular, they are made up of the deterrent effect on cartel behaviour, and the benefits of lower pricing and deadweight gain. The breakdown of these benefits per case is as in this table:

Case type	Deterrence benefits per additional case	Lower pricing and deadweight gain benefits per case	**Total benefits per case**
Follow-on	£3m	£0	**£3m**
Stand-alone	£15m	£17.71m	**£32.71m**

22. Deterrence benefits and lower prices/deadweight gain benefits per case were calculated as part of the 2013 impact assessment, based on an OFT survey and an assessment of likely damages per case.

23. It is therefore better to implement the directive. There is either a zero impact or a small positive impact of doing so, and not doing so will result in infraction proceedings from the European Commission.

Annual economic benefits, policy options 2 and 3

	Increase in cases	Benefit per case	Total benefit
Stand-alone cases	0.225	£32.71m	£7.36m
Follow on cases	0.1	£3m	£0.3m
Total			£7.66m

Annual economic benefits, policy options 4 and 5

	Increase in cases	Benefit per case	Total benefit
Stand-alone cases	0.3375	£32.71m	£11.04m
Follow on cases	0.15	£3m	£0.45m
Total			£11.49m

- There are also benefits to businesses and consumers from the damages awarded in the additional cases. This was calculated in the 2013 impact assessment to be £3m per case. As noted above, this is both a cost (to the losing party) and a benefit, so has a net nil effect on the overall cost benefit assessment. However, it does form part of the deterrence effect and is of itself restorative justice. Based on £3m per case we estimate that the annual benefit of the damages awards will be

	Annual increase in cases	Benefit per case	Total benefit
Policy options 2 and 3	0.325	£3m	£0.975m
Policy options 4 and 5	0.4875	£3m	£1.4625m
Total			£2.4375m

Overall cost-benefit assessment

24. All four of the policy options have positive NPVs in the central estimate.

25. Option 2 has a central NPV of £58.15m as the economic benefits of reduced cartel activity are significantly higher than the additional costs to the courts. Option 3 has a slightly higher NPV of £60.07m as the earlier implementation means that the benefits (and costs) accrue 3 months earlier.

26. Options 4 and 5 have NPVs that are 50% higher than those of 2 and 3, as 1.5 times as many cases are likely to be brought. Option 4 has an NPV of £87.21m, and option 5 has a slightly higher NPV of £90.08m due to the earlier implementation.

Non-monetised benefits

27. There are two key sets of non-monetised benefits. The first are the legal certainty benefits of options 4 and 5, over 2 and 3. Having one set of rules for which all private damages cases are brought will reduce the need for lawyers to establish which regime they need to brought under. This reduces legal uncertainty (and the associated scope for satellite litigation, which can be costly) as well as marginally reducing lawyers' familiarisation costs. Indeed, alongside the direct benefit of more cases being brought, this is the rationale for implanting a single regime (options 4 and 5).

28. The second set is implementing the directive on the common commencement date of 1 October 2016, rather than 27 December 2016; benefits of options 3 and 5, over 2 and 4. Because many regulations are introduced on this date it is likely to be easier for businesses to familiarise themselves with the regulation on this date. This is the rationale for implementing on the earlier date.

Review date

29. This directive will be reviewed by 1 October 2020. This is on the same date as the changes to private actions in the Consumer Rights Act. Given the cross-over between the changes, it makes sense to review both at the same time.

Summary and preferred option

30. Our preferred option is option 5. The benefits of a single regime covering all cases can be seen in the higher monetised benefits, and there is also a clear non-monetisable rationale to reduced legal uncertainty. This narrows the choice to options 4 and 5. Option 5 is better, in part due to the marginally higher NPV, but moreover because of the administrative simplicity for business of bringing in the regulation on a common commencement date.