

**Neelie Kroes**

European Commissioner for Competition Policy

**Making consumers' right to damages a reality: the case for collective redress mechanisms in antitrust claims**

*Check Against Delivery*  
*Seul le texte prononcé fait foi*  
*Es gilt das gesprochene Wort*

Conference on collective redress for European consumers

**Lisbon, 9<sup>th</sup> November 2007**

Dear Fernando [Serrasqueiro, Secretary of State for Trade, Services and Consumer Protection],

Ladies and gentlemen,

I am delighted to be here in Lisbon today, and I know that my dear colleague Meglena Kuneva is looking forward to joining you tomorrow. I would like to thank the Portuguese Presidency for organising this conference on collective redress for European consumers.

Here in the splendid Atlantic Pavilion, we are reminded of the historic quest of the Portuguese explorers. I hope that the same spirit – daring to look beyond the here and now and to imagine a new world – can inspire us here today. And we do need to be daring and we do need to be inspired.

Of course Europe's nearly 500 million consumers are already at the heart of many Community policies. In the field of consumer protection, clearly – and Meglena Kuneva is doing a great job in renewing and strengthening these rules. But as she has rightly made clear, consumer interest is not just consumer protection, important though that is. Consumer interest is also about consumer empowerment, consumer choice, consumer satisfaction.

Our Single Market, the greatest and best achievement, is delivering these things for consumers on a daily basis. When market forces operate freely, when markets work well, consumers are the first ones to benefit: from more choice of better quality goods and service, at better prices.

And that is where competition policy, my particular responsibility, comes into play. An effective competition policy is key to keeping the Single Market working well, because it makes sure companies compete on their merits alone, which means that those who provide the best deal for consumers are rewarded for it.

This essential role of competition policy is recognised in the new Protocol which will be annexed to the Reform Treaty. While we are talking about the Treaty, I would like to congratulate the Presidency on the leadership it has shown to bring a decade of institutional uncertainty to an end and prepare Europe's institutions to meet the challenges of today's globalised world. I do not think it purely coincidental that the city of Lisbon has already given its name to the European reform strategy which is proving so successful in creating economic growth, jobs and competitiveness in Europe!

But I am not naive. Our Single Market is working well – it is delivering for consumers - but it could work better. And we could certainly do more to ensure that consumers are able to take a proactive role in the process.

I'd like to use my time today to highlight how European competition policy is helping make sure the Single Market delivers the best for consumers. And I'll explain why my experience in the competition field has convinced me that we need to do far more to empower consumers to play their own part in the process.

### **Consumer welfare is the standard of antitrust enforcement**

The consumer is at the heart of competition law enforcement.

Whether we are tackling abusive actions by dominant companies, breaking up cartels, vetting mergers, or assessing State aid – the potential harm to consumers is always at the heart of what we do. We are applying this 'consumer welfare standard' throughout our work, through a better use of economic analysis.

Let's look at just a couple of examples. Take for example the fight against cartels, which are highly damaging both for businesses and consumers. We have stepped up our enforcement action in this area, and have improved our tool-box to increase deterrence and to encourage companies to own up and end their bad behaviour.

We have already taken action this year alone against cartels in areas as diverse as lifts and escalators, zips and fasteners for clothes, and beer: all things that many Europeans would consider part of their daily lives.

I also think we have made it very clear that the European Commission will not accept illegal behaviour from dominant companies – particularly in key sectors like telecoms and IT – when they abuse their market power to deny consumers the benefits of competition and choice.

Our refined economic approach is helping the European Commission focus enforcement action where it really does make the most difference for European consumers. We also have appointed a dedicated Consumer Liaison Officer in DG Competition. And since cooperation and dialogue with consumers and consumer organisations is an important part of the core business of our family of national competition authorities across Europe, I am delighted that a Competition Working Group has been set up within the European Consumers Consultative Group.

But no matter how closely public intervention mirrors the concerns of consumers, no matter how effectively the fines that we impose punish and deter unlawful behaviour, the victims of illegal behaviour will still not be compensated for their losses. Public enforcement is simply not there to serve this goal. It is there to punish and deter illegal behaviour. It cannot make amends for the damage and suffering caused to consumers. Therefore, consumers should be empowered to enforce their rights themselves.

### **Empowering consumers in antitrust damages actions - a clear necessity**

The European Court of Justice has been very clear: the right to damages is a necessary tool to guarantee the useful effect of the EC competition rules. But today, even in Member States with an advanced private enforcement system, there is little evidence that consumers are fully exercising their right to damages for harm suffered from competition law infringements. That means that many injuries are left uncompensated. The law-breakers cream off the extra profits, and society and the economy is left to absorb the loss. This is clearly unjust and at odds with our shared objective of making the European economy more competitive.

The fact is that today consumers, more than other categories of victims, face huge hurdles when considering bringing a claim for damages. I've seen it with my own eyes in the competition field.

We identified the problems in this area in our 2005 Green Paper on antitrust damages actions. In that same paper, the Commission also put forward for discussion possible options to address the obstacles.

In launching this work, the Commission signalled its intention to make the right to compensation a reality. In parallel and as a complement to public enforcement, Europe needs an effective system of private actions for damages to benefit all victims, particularly consumers. Absent further steps, consumers will remain unable to enforce their rights in court.

The Green Paper launched a broad and exciting debate. Encouraged by the comments received from stakeholders, and the call from the European Parliament, we are now preparing a White Paper for early next year which will propose more specific recommendations.

The exercise is a challenging one. Our approach will have to be balanced, pragmatic, and evidence-based. The White Paper will therefore be accompanied by an assessment of the economic and social impact of possible measures to promote an effective system of private antitrust damages actions in Europe.

## **Empowering consumers in antitrust damages actions - the case for collective redress mechanisms**

The White Paper will cover the full range of problems faced when bringing a damages action for competition law breaches. One of the most significant is the issue on our agenda today: collective redress.

Given the costs of bringing a damages action in the competition field and the uncertainty in the outcome, the balance of risk and reward is often unfavourable to consumers. So consumers rarely if ever go to court – this is rational but it implies no compensation for the consumers, and no action against the illegal gains for the companies concerned. Yet the interest from consumers for effective redress is certainly there. Consumer organisations have already picked up on this interest, as we have seen in relation to replica football shirts in the UK, or more recently, banking services in the internet broadband sector in Spain.

I believe that collective redress mechanisms have a key role to play in changing such unjust outcomes.

I often hear that a court action is not the best way to undo the harm suffered by consumers, because it entails lengthy and costly proceedings. I hear those who say out-of-court settlements are better. Consumers should of course be given a real chance of being compensated without having to go to court. But what if they are not? What if the company is not willing to settle? And what is a “fair settlement” for the consumers unless there is a benchmark? Out-of-court settlements can only really work if they are coupled with a realistic chance of effective court action. And when court action can only be taken by each consumer individually, no consumer will ever make it to the court room: collective redress mechanisms are therefore an absolute must!

There are of course several ways such mechanisms could be designed. Our 2005 Green Paper looked in particular at the potential benefits of introducing representative actions by consumer associations. This kind of collective redress – empowering groups that truly represent the interests of consumers – is in line with European legal traditions. It therefore immediately springs to mind. But there are other possibilities which merit consideration.

I am well aware of the concerns about importing a system which, in combination with other features, have led to excesses in non-European jurisdictions. Let me repeat today that that it is not what the European Commission has in mind. We have learned from these foreign experiences, their strengths and their weaknesses.

But we are not in favour of introducing wholesale a system which would be alien to our European traditions and cultures, or which would encourage unmerited claims.

I am confident that we, in Europe, are able to design solutions firmly embedded in our European cultures and traditions. Recent legislative developments at national level are already very encouraging in this regard.

Our forthcoming White Paper on damages actions for breach of the EC competition rules will go hand in hand with the wider initiative of my colleague Meglena Kuneva.

We are together exploring how collective actions by consumers can be strengthened across the board. Because to a large extent, the problems in areas like product liability, unfair trading and so on are pretty similar to those consumers face when they try to take on anti-trust abuses. As concerns consumer redress, I am convinced that a common approach will produce huge synergies and is therefore consistent with our engagement for better regulation in Europe.

But there are also some special needs in the competition field. In our area businesses, in particular SMEs, are often in much the same difficult position as individual consumers when it comes to taking court action to defend their rights. This may need specific action.

## **Conclusion**

Ladies and gentlemen,

In the coming months, the debate will undoubtedly amplify, to the benefit of European consumers and businesses. Consumers not only have rights, but should also be able to effectively enforce them, if necessary through court action. It is only then that they will be able to fully benefit from the Single Market.

I invite you to be ambitious in your discussions over the coming days. Europe needs it if we are to achieve this most important goal.