



Mr José Manuel Barroso
President
European Commission
200 rue de la Loi
1049 Bruxelles

2 October 2009

Dear President,

I would like to thank you very much for the productive meeting we had this morning.

Allow me to come back on one issue we debated during our meeting: the proposed directive on collective actions for damages of infringements of competition rules, proposed by Commissioner Kroes.

I would like to reiterate our strongest opposition to both the political direction taken by this text and to its content.

This proposal constitutes a radical departure from the current legal practice of EU Member States. Shifting the public enforcement of competition rules, as is traditional in Europe, to private enforcement of competition rules as is the case in the USA. You know the strong opposition of a large number of Member States to this move.

When looking at the details of the proposal, we oppose the introduction of a system applicable independently of a previous finding of violation by a Court or competition authority. This confirms that the objective of the proposal is not compensation of suffered infringements but encouragement for private enforcement of antitrust rules.

As indicated, we oppose the proposal of an opt-out system where representative entities can claim to stand in court for a group of non-identified people. Despite assurances to the contrary, the draft contains clearly an opt-out clause. This is against Constitutional principles in a number of Member States (France, Germany, etc.) and has been opposed by the European Parliament in its opinion on the white paper.



Last but not least, you are aware that the European Parliament, when consulted on the white paper, clearly expressed the will that this sensitive topic be debated openly. As you are aware, the current legal basis only foresees consultation of the European Parliament and not co-decision. That will still be the case with the Lisbon Treaty that we very much hope will enter into force as scheduled.

I thank you once again for your attention and trust that you will take our views into account to stop a proposal that will be damaging to the European economy and with little benefit for consumers.

Yours sincerely,

Jürgen R. Thumann