




**Public Hearing**  
***Added value of collective redress  
for improving the enforcement of EU  
law: entering a new debate***

**Jérôme P. Chauvin**  
**Director Legal Affairs & Internal Market**

**5 April 2011, Brussels**


# Entering a new debate

---

- Justifications for action are shifting
- In the past
  - lack of consumers' confidence in cross-border shopping
  - improve means of redress
  - compensation-driven objective
- New element in the debate: enforcement objective
- Compensation redress  Enforcement of EU law



# EU tradition of public enforcement of EU law

- Private actions <sup>mainly</sup>  economic compensation
- **But** public enforcement has always been main tool for correct application EU law, especially in complex areas such as competition
- The same applies at national level (national competition and other inspection authorities)
- Public enforcement driven by **general interest** considerations

# Risks of shifting from public to private enforcement of EU law

---

- Collective actions as enforcement tool in the EU: would require incentives to work
- Make it user-friendly (safeguard discussion)
- Provide funding
- This is the approach taken by the US system

**➔ Exactly what we want to avoid in the EU**

# Private enforcement of EU law: increasing costly litigation

---

- Private enforcement = more litigation
- Litigation as enforcement tool: more costly than public enforcement
- At a time where courts are « overloaded, understaffed, underfinanced »
- At a time where most Member States are reducing legal aid
- Not right solution
- Court should be the last resort and not main tool



# Trying to solve different issues with a one size fits all problems

---

- Consultation trying to deal with different objectives
  - Enforcement (injunctive relief)
  - Redress (compensation)



# **Problems related to public enforcement**

---

- What are the real problems?
  - Lack of means of the Commission
  - Lack of means of the national competition authorities
  - Lack of finance
  - Problem inherent to the system of public enforcement?

**➔ More discussion needed/better definition of problem**



# Redress problem

---

- We support efficient means of redress for parties harmed by breach of law
- Non-judicial route preferred
  - More flexible/Less costly/Quicker/Less confrontational
- ADRs to deal with cross-border cases
- Stronger commitment needed to improve ADRs
- Use of existing instruments (ECC, CPC, Solvit, FIN net,...)
- Sectoral approach?





# The way forward

---

- Clarify the objective
- Find appropriate solutions without upsetting legal traditions
- Improve redress by providing/promoting ADRs
- Non-judicial route more attractive/efficient
- Judicial collective action:
  - costs for society/benefits for consumers?
  - thorough impact assessment needed
  - justification for action



# Added value of collective redress for improving EU law enforcement

---

- Probably not a good idea
- We support:
  - Improving redress means ➔ ADRs
  - Improving public enforcement of EU law
- Two different issues ➔ different solutions needed
- Using the same instrument for both objectives

=

**wrong route**



BUSINESSEUROPE



**Thank you for your attention!**