



22 September 2011

### **EUROPEAN PARLIAMENT'S ECON COMMITTEE HEARING ON COLLECTIVE REDRESS IN ANTITRUST**

**22 SEPTEMBER 2011**

EUROPEAN PARLIAMENT, ASP 5G3

### **REMARKS BY PHILIPPE DE BUCK DIRECTOR GENERAL, BUSINESSEUROPE**

- I would like to thank the ECON Committee for organizing this hearing and giving the floor to BUSINESSEUROPE.
- BUSINESSEUROPE has always been a strong supporter of the single market.
- We are now in the midst of a difficult economic period, and we need to strengthen the single market. Consumers' confidence is key to reach this objective. Improving redress for breaches of EU law can contribute to this goal.
- The Commission consultation is asking a number of questions. I would to focus today on two of them:

#### **First: should collective redress be used as a tool to enforce EU law?**

- BUSINESSEUROPE strong view is that law enforcement must remain strongly in the hands of public authorities. This is their role and they are better placed to guarantee a fair outcome.
- EU policy-makers should avoid shifting towards private enforcement.
- They should concentrate on keeping up effective public enforcement by competition authorities.
- Shifting to private enforcement would mean more court actions, which goes against the efforts of many Member States that are trying to decrease litigation, because of its cost for society.
- Private enforcement might encourage abusive litigation, merely based on the financial interest of intermediaries (for example lawyers and firms funding court actions in exchange of a "slice of the cake").
- Judicial collective actions are long and expensive, in particular for antitrust cases and often result in little compensation for victims.



- As an example, if we look at the experience in Portugal, where a judicial collective redress system has been in place for years, the results are mitigated:
  - enforcing the judgments is very difficult - because of the complexities of the execution procedure;
  - and the damages distribution is very complicated - because identifying the victims is not easy (*Paula Meira Lourenço, President of the Portuguese Committee for the efficiency of the executions, at the 12 July hearing held by the JURI Committee*).
- Let me stress again that the importance of ensuring compensation for those harmed by a breach of law is key and is not under discussion. However, we do not share the Commission's choice to focus on judicial collective actions to achieve this objective:
  - If judicial collective redress is established at EU level, it will be difficult to avoid that toxic elements are introduced.
  - The EU can impose judicial collective redress, but does it have the power to impose safeguards on opt-out, legal expenses, third-party funding, discovery procedures?
  - We doubt it: many court rules are exclusive competence of Member States.

**This leads me to the second key point I want to make today, which is that there are other solutions to compensate cartel victims.**

- I refer here to Alternative Dispute Resolution (ADR). They are a more
  - pragmatic,
  - politically realistic, and
  - efficient way to provide compensation.
- ADRs can provide rapid and cost-effective redress to consumers and so improve their confidence in the single market.
- ADRs are the subject of many debates inside this House and outside, and they receive broad support from stakeholders – including BEUC, I hope Monique!
- It's worth exploring the potential benefit of ADRs also for redress in competition cases.
- Let me conclude by saying that BUSINESSEUROPE is ready to work together with the Commission on an out-of-court instrument that can help provide rapid and effective redress to those who suffered damages as a consequence of an antitrust violation, without engaging in litigation.
- Thank you.

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