

José Manuel Durão Barroso
President
European Commission
Rue de la Loi 200
B - 1049 Brussels Belgium

16 April 2009

Dear President,

The purpose of this letter is to voice European entrepreneurs' serious concerns about the Commission proposing legislation introducing collective actions for damages for breach of antitrust rules at EU level.

Firstly, this dossier is intertwined with the debate on collective redress launched in the field of consumer policy. No conclusion has yet been reached on how Europe should deal with this issue. In our view, legislating on collective redress in the area of competition before the EU has decided how to tackle this subject in a holistic way would prejudice the conclusions of this broader debate.

Secondly, the political debate that this proposal will raise should not be underestimated since this proposal would constitute a radical shift from the current legal traditions of Member States. We are convinced that the case is not made for a legislative proposal at EU level and that initiatives on tort law should stay in the remits of Member States.

Such a proposal would foster a litigation culture in Europe, with more lawsuits and unmeritorious claims. We are supportive of an efficient redress system for consumers, but we do not believe that this can be best achieved through more litigation. We believe that the Commission should more seriously take into consideration non judicial mechanisms, which are faster and more efficient for all parties.

You will find at annex a joint statement with a number of other organisations providing more detailed comments on this issue.

We trust that you will take our views into account and we remain at your disposal should you wish to discuss the issue further with us.

Yours sincerely,



Philippe de Buck

CC

Margot Wallström, Vice-President of the European Commission
Günter Verheugen, Vice-President of the European Commission
Jacques Barrot, Vice-President of the European Commission
Siim Kallas, Vice-President of the European Commission
Antonio Tajani, Vice-President of the European Commission



JOINT STATEMENT

Collective Redress Mechanisms A call to avoid the introduction of a litigation culture in Europe

16 April 2009

The American Chamber of Commerce to the EU, BUSINESSEUROPE, EUROCHAMBRES, the European Justice Forum and the US Chamber Institute for Legal Reform have grave concerns regarding the proposed legislative instrument being prepared by DG Competition on the basis of the White Paper on damages actions for breach of EC antitrust rules.

While this proposal purports to be narrowly aimed at the enforcement of competition policy, it will have a wider impact on Member States' legal frameworks and civil procedure law as it focuses on litigation as the privileged mechanism of collective redress.

This approach has the potential to foster a litigation culture in Europe that is alien to national legal traditions and open to abuse without necessarily achieving effective redress. It will also conflict with many Member States' policies aimed at minimising judicial proceedings.

Regulating civil procedure law is within the Member States' competence. Changing legal frameworks in Member States is a complex undertaking that requires a thorough assessment of the possible impact it will have on national legal systems' internal balances. Whilst being supportive of effective redress for genuine loss resulting from antitrust infringements, we do not believe that it can be best achieved through more litigation.

In addition, we do not understand the apparent rush at a time when collective redress mechanisms are still being assessed by DG SANCO in a parallel initiative, as well as DG MARKT in yet another initiative on the issue which is sector-specific. This consultation finished on 1 March and its findings are not yet known. There is a strong risk that DG Competition's proposal will set a precedent that will prejudice the conclusion of DG SANCO's initiative. This is exacerbated by the fact that there has not been sufficient time to appreciate the functioning of legislative measures addressing similar issues, such as the Small Claims Procedure and the Mediation Directive.

We have concerns that this type of initiative is being undertaken now, with imminent changes over the coming months in both the European Commission and European Parliament.

We therefore call upon the European Commission to avoid adopting in haste a measure that will have such a major impact on the legislative frameworks of the 27 Member States and could introduce in the EU a litigation culture that is alien to European legal traditions.

-----ENDS-----