Collective Redress in Multiple Perspectives
the challenges of integrating competition law, consumer law and the construction of a European judicial area

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3 perspectives

- **Competition law: private enforcement**
  - Source of coherence: cause of damage

- **Consumer law**
  - Source of coherence
    - Type of damage: mass damage – diffuse harm
    - Type of victims: consumers

- **European judicial area**
  - Source of coherence
    - Aim: improving access to justice in cross-border cases
<table>
<thead>
<tr>
<th>Matters</th>
<th>Competition law</th>
<th>Consumer law</th>
<th>Judicial Cooperation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>source of damage</td>
<td>type of damage, victims</td>
<td>cross border</td>
</tr>
<tr>
<td>Doesn't matter</td>
<td>victims, cross border</td>
<td>source of damage, victims</td>
<td>cross border victims</td>
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</tbody>
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Towards a Coherent Approach to Collective Redress?

- Political will
- What is at stake: a new dimension to the “Economic Constitution”
  - Balance of (private) powers among undertakings
  - Balance of (private) powers between undertakings and consumers
    - Collective redress: give effect to this dimension
3 challenges

- **Scope**
  - What type(s) of harm?
  - Who will have access to collective redress?

- **Degree of harmonisation**

- **Legislative technique**
  - One or several instrument?
  - Directive or regulation?
  - Legislative tools
Scope

Consumer Harm (all sources)

Cross-Border Harm

Competitive Harm (all victims)
How to square the circle?
- Can *Manfredi* be reconciled with consumer-only perspective?
- If not: several instruments?
- Consultation paper not helpful (Q 5)

Policy argument for broad scope
- EU instrument(s) will represent a major change for some legal systems
  - Better done in one go
Degree of harmonisation

- **Reasons for minimum harmonisation**
  - Many recent national laws on collective redress
  - Time for experiments
  - Perspective of DG comp and DG Sanco

- **Risks of minimum harmonisation**
  E.g.: who should be able to bring action? certain entities only? (Q 22)
  - Not-for-profit only (DG comp’s project)
    - Funding of consumers association will be crucial
    - Should EU law provide for a funding mechanism?
    - Why not let (regulated) private entities represent victims? – e.g. minimum percentage of gains to be transferred to victims
● Obtaining recognition as a qualified entity (DG comp’s project, environment project)

➢ Need for procedural harmonisation

○ Rights of entity in case of refusal
○ Deadlines
○ Role of national judges (Q 24): harmonisation of rules on standing?
Legislative technique

○ One or several instruments?
  ● Challenge re: scope => several instruments
  ● Towards a class action package?
    ○ Framework directive
    ○ Sectoral instruments (dir. or reg.)
○ **Type of instrument**
  - Differing legislative habits
    - DG Comp project: directive
    - DG Sanco: probably directive
    - DG Justice: mostly regulations*
Legislative tools

- Mutual recognition
  - Typical of judicial cooperation
  - Useful of qualified entities

- Forms
  - Typical of judicial cooperation
  - Facilitates access to justice in cross border cases
(Provisional) conclusion

- Integrating multiple perspectives creates multiple challenges
  - Defining scope of instrument
  - Choosing degree of harmonisation
  - Choosing the right legislative tools

- Consultation paper
  - Doesn’t deal with all issues
  - But very open

To be continued...
Annex

Types of instruments- Judicial cooperation

- Regulations
  - on conflicts of laws/jurisdiction and suppressing exequatur
  - creating uniform procedures for cross border cases
    - European Order for Payment Procedure (Reg. 1896/2006)
    - European Small Claims Procedure (Reg. 861/2007)

- Directives
  - Legal aid (Dir. 2003/8/EC)
  - Mediation (Dir. 2008/52/EC)