



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

	Competition law	Consumer law	Judicial Cooperation
Matters	source of damage	type of damage, victims	cross border source and type of
Doesn't matter	victims, cross border	source of damage, cross border	damage, victims

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

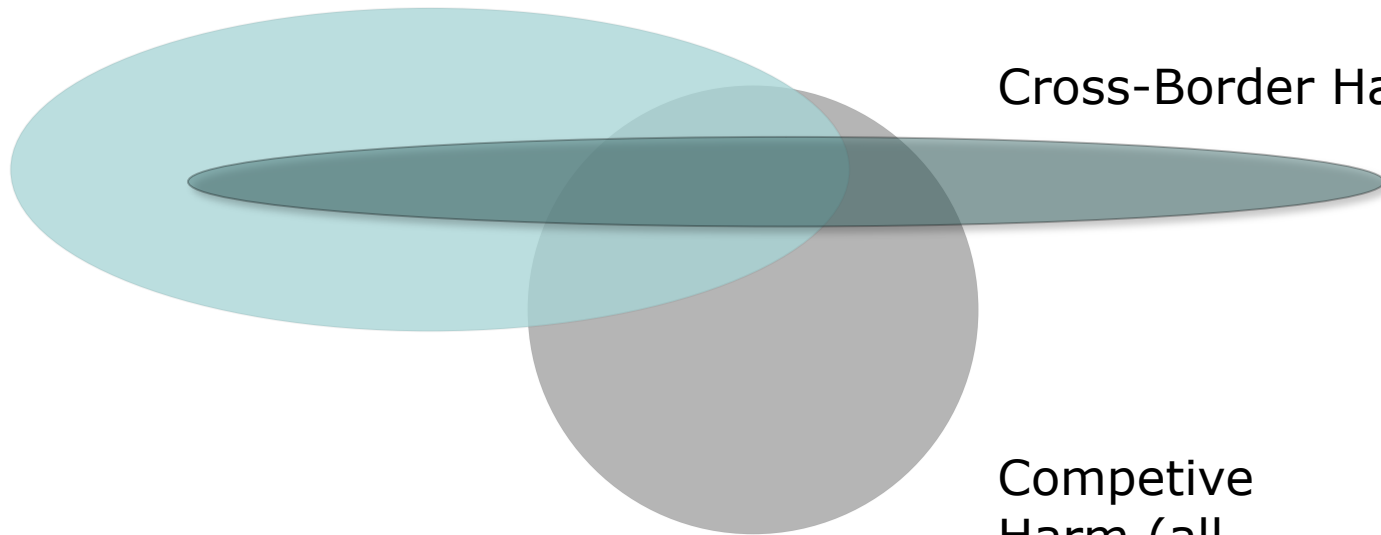
- Scope
 - What type(s) of harm?
 - Who will have access to collective redress?
- Degree of harmonisation
- Legislative technique
 - One or several instrument?
 - Directive or regulation?
 - Legislative tools


Scope

Consumer
Harm (all
sources)

Cross-Border Harm

Competitive
Harm (all
victims)



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- 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)