Skadden

RESPONSE TO

COMMISSION STAFF WORKING DOCUMENT

PUBLIC CONSULTATION:

Towards a Coherent European Approach to Collective Redress

April 30, 2011

I. *Introduction*

The Antitrust and Competition Group of Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden Antitrust") appreciates the opportunity to comment on the Commission Staff's public consultation towards a coherent European approach to collective redress.[1] We recognize that this topic is an important one for the Commission, and has been previously considered, inter alia, in DG Competition's 2005 Green Paper[2] and the Commission's 2008 White Paper,[3] and now in the 2011 Consultation.

The particular focus of our comments pertains to the 2011 Consultation's objective that "[a]ny European approach" must "avoid from the outset the risk of abusive litigation."[4] Indeed, in its press release accompanying the 2011 Consultation, the Commission specifically states that "[it] firmly opposes introducing 'class actions' along the US model into the EU legal order, or creating incentives for abusive litigation."[5] We accordingly direct our comments to some of the pitfalls of the US model conducive to abusive litigation that should be avoided in any European model (*see* Questions 20-24), as well as to the related questions regarding the funding of actions that likewise could be conducive to abusive litigation (*see* Questions 25-28). At the outset, we wish to make clear that we are not commenting on whether, in fact, a European-wide model of collective redress (particularly for damages) is necessary, appropriate, or within the legislative purview of the Commission.

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1 Commission of the European Communities, Staff Working Document, Public Consultation: Towards a Coherent European Approach to Collective Redress, SEC (2011) 173 final (Feb. 4, 2011) (*hereinafter* 2011 Consultation).

2 Commission of the European Communities, Green Paper on Damages Actions for Breach of the EC Antitrust Rules, COM (2005) 672 final (Dec. 19, 2005) (*hereinafter* 2005 Green Paper).

3 Commission of the European Communities, White Paper on Damages Actions for Breach of the EC Antitrust Rules, COM (2008) 165 final (Apr. 2, 2008) (*hereinafter* 2008 White Paper).

4 2011 Consultation, § 3.4, Point 21, at p.9.

5 Press Release, European Commission, Commission seeks opinions on the future for collective actions in Europe (Feb. 4, 2011).

Skadden Antitrust has extensive experience litigating antitrust "class actions" in the United States – generally defending corporate interests. We therefore believe we are well-positioned to comment on the US litigation culture, and to identify the various litigation abuses encountered in the US class-action system that Europe risks importing from the US, notwithstanding its express goal of avoiding this result. At its core, based on our experience in the United States, if there is any economic incentive, the US plaintiffs' class-action "industry" will find a way to exploit the features of the system, whether individually or in combination, and whether substantively or procedurally.

II. *General Background on the US Antitrust Class-Action "Litigation Industry"*

Many characteristics of the US antitrust class-action system, collectively and individually, have led to a culture of litigation that includes various litigation abuses. These litigation abuses are particularly the result of certain characteristics that incentivize, and make it possible, for plaintiffs' lawyers to bring weak, unmeritorious, and/or overbroad lawsuits. Such lawsuits often result in what may fairly be characterized as "blackmail" settlements that are unrelated to, or disproportionate to, the merits of the underlying action, yet result from the defendants' wish to avoid the costs, distraction, and risk inherent in an "opt-out," antitrust class action. Specifically, under the US system:

1. there are weak limits on the standing of plaintiffs to bring class-action lawsuits;

2. the opt-out mechanism subjects defendants to massive potential damages exposure by the mere filing of a putative, class-action lawsuit;

3. treble damages result in overcompensation (i.e., punitive damages);

4. joint and several liability with no right of contribution increases the stakes for defendants exponentially;

5. contingency fees and the lack of a "loser-pays" rule make it financially rewarding to bring class-action

antitrust lawsuits without the concomitant risk of bringing unmeritorious, weak, and/or overbroad actions;

6. wide-ranging discovery raises defendants' costs, diverts management time and attention, and risks "fishing expeditions"; and

7. jury trials often make the risk of proceeding to a verdict too high, especially in light of the automatic trebling of any damages award.

The characteristics of the US system set out above – individually and especially collectively, give plaintiffs' lawyers both the incentive and the ability to leverage weak or unmeritorious cases into substantial, often unwarranted, settlements. It is important for the Commission to understand, however, that avoiding the *particular* characteristics of the US system will not necessarily avoid giving the plaintiffs' bar the financial incentive and ability to bring unmeritorious lawsuits in Europe with the purpose and effect of reaching unwarranted financial settlements from which the plaintiffs' attorneys reap large fees. The involvement of US plaintiffs' attorneys in any European-wide collective redress system would depend not on whether such a system is the same as or mimics certain aspects of the US system, but rather on whether any system put in place would provide the incentive and mechanism to reap financial rewards regardless of the merits (or lack thereof) of an action for collective redress.

III. *Negative Aspects of the US Antitrust Class-Action System*

1. Weak limits on the standing of plaintiffs to bring opt-out class-actions contribute to a system that enables plaintiffs' attorneys to subject a defendant to tremendous financial exposure.

The Commission correctly notes in the 2011 Consultation that the US class action system broadly permits standing such that "virtually anybody can bring an action on behalf of an open class of injured parties."[6]

[6] European Commission, Towards a Coherent European Approach to Collective Redress: Next Steps, Joint Information Note, SEC (2010) 1192 (October 5, 2010), ¶ 17.

Under the US system, a single "named" plaintiff or handful of "named" plaintiffs may bring a suit on behalf of a designated class or classes of potentially thousands – or millions – of other purported class members, with the immediate effect of exposing defendants to massive damages in the aggregate regardless of the merits of the underlying claims.

The same plaintiffs' attorneys tend to be repeat players in antitrust class-action lawsuits. Also, the "named" plaintiffs generally are not actively in control of the action, but instead are primarily directed and controlled by the class-action attorneys. Thus, the nominal plaintiffs essentially are a vehicle for entrepreneurial attorneys to bring an action that can then be leveraged to force large settlements with defendants who cannot afford (or wish to avoid) the cost, time, distraction, and tremendous financial exposure inherent in an open-ended opt-out class action, regardless of whether or not the action is weak or strong, broad or narrow, meritorious or unmeritorious.

2. The opt-out mechanism subjects defendants to massive potential damages exposure by the mere filing of a putative class-action lawsuit.

As noted above, the opt-out mechanism promotes a system wherein plaintiffs' attorneys have substantial economic incentive – and the ability – to bring class actions without regard to the strengths of their underlying claims. Such suits expose defendants to tremendous damages in the aggregate by the mere filing a putative antitrust class action. In fact, the opt-out system has the ability to magnify the litigation to the point that it no longer matters to the defendant whether the claim is meritorious or not.

In the 2011 Consultation, the Commission suggests exploring "whether the role of national public bodies (like the Ombudsman) and/or private representative organisations in the enforcement of EU law could be strengthened . . . ."[7] In turn, in its 2008 White Paper, the Commission considered two alternative forms of collective redress. First, the Commission proposed representative actions in which "qualified entities" such as state bodies, trade associations, or consumer rights groups bring

[7] 2011 Consultation, § 2, Point 13, at p.5.

actions on behalf of identified or, in some cases, "identifiable" individuals.[8] The representative entities would be either officially designated in advance, or certified on an ad hoc basis to bring claims specific to a particular violation of law. Secondly, the Commission proposed a system under which plaintiffs could bring collective redress actions, but only through an express "opt-in" mechanism.[9]

With respect to representative actions, we note that giving standing to a private entity – even a not-for-profit entity – may nevertheless raise the specter of abusive or unmeritorious litigation. First, a trade association or consumer organization, even as a not-for-profit entity, may still have a motive to bring actions for the purpose of raising revenue. In addition, such organizations may have non-financial agendas and/or motives for bringing collective actions that are not consistent with the Commission's goal of avoiding abusive litigation. As we have noted with respect to the US system, it is not the *particular* characteristics of the US system, but rather the incentive and ability *underlying* that system.

We also note with respect to representative actions that, to the extent (as proposed in the 2008 White Paper) a representative action could encompass the claims not only of identified but also of "identifiable" individuals, it would present the same risk of abusive litigation as the opt-out system in the United States. Such a system would allow a collective action to sweep up the claims of literally countless unnamed persons who have not affirmatively signed onto the litigation. This in turn would create the financial *ability* for the representatives to generate tremendous pressure on a defendant or defendants to settle in light of the magnified claims for damages from thousands or millions of additional unidentified persons – a pressure that is entirely independent of the merits of a claim.

At a minimum, the use of trade associations or consumer groups as representative entities would tend to avoid the "abusive litigation" risks of the opt-out class-action device only if such entities were strictly regulated. Thus, if certification requirements for these organizations are not clearly defined and rigorously monitored – including court review and

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[8] 2008 White Paper, § 2.1, at p.4.

[9] *Id.*

authorization to bring a specific case – there is the danger that such entities would bring unmeritorious suits and/or that "representative entities" would be formed and controlled by others (e.g., plaintiffs' attorneys) in order to gain access to the collective redress device as a means to pursue economic or other non-merits-based interests. Such an "end-run" move could result in importing various abusive features from the US class-action system – or other features with the same end result – into Europe, albeit through a different vehicle than the US-style opt-out mechanism.

A related danger would be if the Commission were to put in place rules for the cross-border recognition and enforcement of judgments that would result in the creation of "magnet jurisdictions" whereby the courts of certain Member States would be more lax in certifying various representative entities for collective-redress actions. Such Member States could thereby attract the private plaintiffs' attorneys as an entry point for all of their suits.

The 2008 White Paper also proposed an opt-in system as a possible collective redress mechanism.[10] It seems to us that an opt-in system would be less likely to result in the kinds of abusive practices the US opt-out system has wrought. However, an opt-in system may also lead to abusive litigation unless strict safeguards are present, and any such system would need to carefully consider whether specific safeguards are available to avoid giving plaintiffs' attorneys the incentive and the ability to bring unmeritorious actions. Such safeguards would presumably include, but not be limited to, maintaining without exceptions the loser-pays rule prevalent in Member States as well as the prohibition of attorney contingency fees.[11]

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[10] *Id.*

[11] It appears to us that the loser-pays principle is a very important mechanism for preventing abusive litigation, and we would strongly urge the Commission to maintain the principle universally for any European system of collective action. While it is important and prudent to expect that defendants guilty of infringing EU law bear the costs of litigation that seeks the cessation of, or compensation for, such infringements, basic fairness dictates that defendants adjudged not guilty should not bear these expenses and should be entitled to indemnification for enduring the unsuccessful claim. By forcing potential litigants to confront the possibility that they would be liable, not only for their own costs but also for those of an opposing party should their claim fail, the loser-pays principle ensures that potential litigants will

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Ultimately, we are leery of any European-wide collective redress system for damages in which a private person would have standing to bring an action for collective redress. A representative action or an opt-in action appears to present less risk of abuse than the US opt-out system, but the creativity of the US plaintiffs' bar to exploit *any* system that presents *any* incentive or ability to bring unmeritorious or weak cases suggests the need for a system that gives standing to bring a collective-redress damages action only to a public, governmental entity. For example, the use of public bodies akin to the Finnish Ombudsman may present far less risk of litigation abuse than traditional private class actions or representative actions. Designated public officials are much less likely to be financially motivated to bring suit than private attorneys, and would be more likely to promote the interests of injured parties as opposed to the financial self-interests of attorneys or the policy agendas of private representative entities.

3. Treble damages result in overcompensation (i.e., are punitive).

The Commission has recognized that it must avoid adopting a system that extends compensation beyond what we understand to be the "compensatory" role of European tort law. Under the US system, plaintiffs in antitrust class actions are entitled to an award of treble damages. The Commission proposed for consideration in its 2005 Green Paper a rule that would permit double damages.[12] The 2008 White Paper abandoned this proposal, because, as the Commission has stated, it believes punitive damages would be part of a legal scheme of redress that "increase[s] the risk of abusive litigation to an extent which is not compatible with the European legal tradition."[13] We agree, and encourage the Commission to maintain its focus on the tradition of only compensating victims for the actual harm suffered.

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carefully consider their potential for success prior to commencing a claim. Thus, the loser-pays principle eliminates the possibility that a "nothing to lose" attitude will inform a potential litigant's actions. As the Commission has stated, the loser-pays principle "plays an important function in filtering out unmeritorious cases." *See* 2008 White Paper, § 2.8, at p.9.

[12] 2005 Green Paper, § 2.3, Option 16, at p.7.

[13] 2011 Consultation, § 3.4, Point 21, at p.9.

4. Joint and several liability with no right of contribution increases the stakes for defendants exponentially.

Under the US system, joint and several liability with no right of contribution increases the exposure for defendants exponentially. We do not understand the Commission to be considering adopting these aspects of the US system, and strongly believe that is the correct position.

5. Contingency fees form the bedrock of the US class-action "industry."

In our experience, the bedrock of the US class-action "industry" is the contingency fee system. Particularly in light of the lack of a loser-pays principle in the US, American plaintiffs and class-action attorneys have the incentive (or at least no disincentive) to bring putative class actions solely on the basis of those actions' settlement value, without the need to take into account significant countervailing costs imposed for a "failed" action, particularly a failed unmeritorious or weak action. Due to the extraordinary expense defendants must incur to successfully defend a lawsuit, defendants often find it prudent to settle claims, even meritless and ultimately unsupportable ones. By making attorney compensation contingent on the value of a settlement or judgment (or at least on the amount of time spent by the plaintiffs' attorneys prosecuting a case), contingency fee arrangements provide attorneys with incentives to make litigation as expensive and time-consuming as possible for defendants.

It appears to us that third-party litigation funding ("TPLF") – in the context of collective-redress actions for damages – may present a similar financial incentive to bring unmeritorious actions. While this is a controversial area, and there is no uniformity of views, it could be argued that TPLF entities may find it worthwhile to invest in a lawsuit even if it has little merit if the potential recovery is sufficiently high; circumstances which may occur particularly in the context of collective redress actions aggregating a large number of individual claims. In particular, TPLF entities tend to carry *portfolios of lawsuits* through which the costs of unsuccessful litigations can be offset with, and subsidized by, recoveries from unrelated successful claims. A TPLF entity would need only obtain a large settlement in one of several weak, unmeritorious, and/or overbroad lawsuits to make funding a weak action viable. Proponents of TPLF, on the other hand, would note that TPLF, including in the collective redress

context, can provide funding to pursue meritorious claims that individuals and SMEs with limited resources would not be able to pursue without such funding.[14]

Ultimately, the lesson of the U.S. experience with contingency fees is that permitting anyone, whether or not an attorney, to "invest" in a claimant's case – and thereby take a direct (or indirect) pecuniary interest in the way the claim is prosecuted – can be harmful to the administration of civil justice and lead to litigation abuses. This potential for abuse should be carefully considered by the Commission.

6. Wide-ranging discovery raises defendants' costs and risks "fishing expeditions."

The 2011 Consultation states that the "wide-ranging discovery procedure for procuring evidence" that the US federal courts follow should be limited under any European collective redress measures.[15] We agree. In our experience, US class-action counsel often use the broad discovery mechanism available to them to pursue excessively broad discovery requests and to engage in what are colloquially known as "fishing expeditions." Such fishing expeditions can be used in various abusive ways. First, they can be used to increase the defendant's costs, both by increasing the defendant's financial expenditures and by forcing management to spend more time focused upon discovery and less time focused upon managing their business. In addition, fishing-expedition discovery can serve another, equally abusive purpose; namely, to collect more information than is necessary to support the claim(s) in the existing action, in order to expand the substantive or geographic scope of an existing case or to build a new case unrelated to the claims of the one already filed.

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[14] We have observed that plaintiffs' law firms have been increasingly forming close relationships with TPLF entities. Such relationships could give plaintiffs' lawyers a direct or indirect stake in the outcome of collective redress actions for damages. We would suggest that this practice should be considered by the Commission in formulating its views as to possible abuses arising out of such relationships.

[15] 2011 Consultation, § 3.4, Point 21, at p.9.

Overbroad discovery by plaintiffs is often used to increase the pressure on defendants to accept a settlement without regard to, or disproportionate to, the merits of the underlying case. While such pressure is understandable in a context where plaintiffs' attorneys seek redress for clients with meritorious claims, we have noticed that all too often plaintiffs with weak, unmeritorious, and/or overbroad cases – precisely the types of cases that the Commission wishes to avoid – will use the time, cost, distraction, and risk of overbroad discovery as a method for pressuring defendants to settle their claims.

We believe that the key to preventing abusive discovery from occurring in Europe is to have strict rules with strong court oversight. Such rules and oversight would not necessarily require a European-wide mechanism, but could also be at the Member State level. Though injured parties should be entitled to have reasonable discovery in order to obtain evidence to attempt to prove their claims, such claims even in meritorious cases should not come at the expense of potentially numerous unmeritorious damages cases, regardless of the forum in which they are filed.

7. Jury trials make the risk of proceeding to a verdict too high, in light of the *automatic* trebling of any damages award and the award of plaintiffs' attorneys' fees and costs.

We do not understand the Commission to be considering the introduction of jury trials in any European-wide legal system. Thus, we will not comment on this aspect of the US legal system, other than that the uncertain outcome of jury trials does indeed provide plaintiffs and their counsel with the ability to exert pressure on a defendant to settle regardless of the underlying merits of the case.

IV. *Some Positive Aspects of the US System*

In addition to the "negative" characteristics of the US opt-out class-action system discussed above that tend to encourage abusive litigation practices, we also wish to note that the US legal system has a number of positive aspects that would be worthwhile to consider not only in

a European-wide context, but also at the Member State level.[16] While there are many such aspects, we will limit our comments below to just three: (i) procedural rules that act as a screening mechanism by which the court ensures that an action has the appropriate characteristics to be brought as a class action, including predominance of questions of liability and damages that can be established through *common proof* as to each allegedly harmed party; (ii) a multi-district procedure to consolidate and/or coordinate in one court all lawsuits with the same claims for pre-trial matters, including discovery; and (iii) mechanisms for early disposition of weak or unmeritorious cases.

A. Procedural mechanisms by which US courts screen purported class actions to ensure such actions meet the necessary prerequisites for class certification.

The US system includes procedural rules that set out a screening procedure pursuant to which the court must determine whether a purported class action meets the necessary prerequisites to be certified to proceed collectively. In particular, Rule 23 of the Federal Rules of Civil Procedure provides that named plaintiffs may sue "as representative parties on behalf of all [class] members only if" they meet the following requirements:

(1) "numerosity" (i.e., there are so many members of the class that proceeding individually would be impractical) (Rule 23(a)(1));

(2) "commonality" (i.e., "there are questions of law or fact common to the class") (Rule 23(a)(2));

(3) "typicality" (i.e., the parties' claims or defenses are typical of those of the class) (Rule 23(a)(3));

[16] *See* 2011 Consultation, § 3.4, Question 20, at p.10 ("How could the legitimate interests of all parties adequately be safeguarded in (injunctive and/or compensatory) collective redress actions? Which safeguards existing in Member States or in third countries do you consider particularly successful in limiting abusive litigation?").

(4) "adequacy" (i.e., "the representative parties will fairly and adequately represent the interests of the class" – generally focusing on the experience of plaintiffs' class counsel) (Rule 23(a)(4)); and, most importantly for purported class damages actions,

(5) "predominance" (i.e., the class must be sufficiently cohesive such that common questions of law and fact predominate over individual questions of law and fact; in particular liability and damages as to all class members must be capable of being proven by *common* proof); (Rule 23(b)(3)).

In the US, the first four prerequisites set out above nominally perform an important gate-keeping function, but in practice are relatively easily met. The fifth prerequisite, however, is often a heated battleground as to whether a purported class action should be certified. While until recently US courts often certified antitrust class actions perfunctorily because the case law was interpreted to prohibit an inquiry into the "merits" of an underlying action at the class certification stage of the litigation, the current trend in the US courts is to permit – indeed to require – a rigorous analysis of whether the predominance element is met.[17] All of the above elements should be considered as part of a screening mechanism to prevent inappropriate actions from proceeding collectively, whether at the Member State or European-wide level.

B. The US multi-district procedure to consolidate and/or coordinate in one court all lawsuits with the same claims.

Another positive aspect of the US system that reduces potentially abusive litigation is its multi-district procedure to consolidate and/or coordinate in one court all lawsuits with the same claims for pre-trial matters, including discovery. Particularly after a public announcement of alleged unlawful conduct (antitrust or otherwise), plaintiffs' lawyers in the US typically file dozens of "copycat" complaints in courts throughout the

[17] *See In re Hydrogen Peroxide Antitrust Litigation*, 552 F.3d 305, 321-22 (3d Cir. 2008); *see also, e.g., Babineau v. Federal Express*, 576 F. 3d 1183, 1189-91 (11th Cir. 2009); *Robinson v. Texas Automobile Dealers Ass'n*, 387 F.3d 416, 420-22 (5th Cir. 2004).

country with one or two "named" plaintiffs each, alleging harm from the same alleged conduct. Under the Multi-District Litigation ("MDL") procedure, all such complaints are subject to consolidation by the Judicial Panel on Multidistrict Litigation ("JPML") into a single US district court for purposes of motions practice (e.g., motions to dismiss and motions for summary judgment), and for consolidated pretrial discovery. The MDL court also typically appoints one or a few "co-lead" plaintiffs counsel to prosecute the case rather than having a free-for-all with dozens of class plaintiffs' attorneys filing myriad motions and serving uncoordinated discovery requests on defendants.

As with the Rule 23 class screening mechanism, the MDL procedure provides an efficient way to proceed that allows defendants to defend themselves in one coordinated pre-trial proceeding. The MDL procedure also lessens the ability of plaintiffs' lawyers to subject defendants to defending multiple cases in multiple jurisdictions with inconsistent and overbroad discovery requests, multiple document productions, endless depositions, multiple experts, etc. The MDL mechanism likewise may be a useful concept to consolidate and coordinate overlapping actions in Member States.

C. US mechanisms to dispose of weak, unmeritorious, and/or overbroad claims at an early stage in a litigation.

The US system also has a number of procedural rules that provide for dismissal of unmeritorious claims at an early stage, prior to trial, regardless of whether such claims are brought on an individual or collective basis. Such rules could be useful for consideration by the Commission (or at the Member State level) as providing a type of "gatekeeper" mechanism. In particular, the US federal rules of civil procedure provide for the dismissal of a plaintiffs' claim(s), *prior to discovery,* for failure to state a claim.[18] In particular, a plaintiff's claims must be dismissed unless the plaintiff can show that its claims are "plausible."[19]

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[18] *See* Federal Rule of Civil Procedure 12(b).

[19] *See, e.g.*, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007); *Iqbal v. Ashcroft*, 129 S.Ct. 1937 (2009). In addition, to the extent a plaintiff's claims or pleadings are not only implausible, but are indeed frivolous, the US rules of civil procedure give the

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Further, even if a court finds that a plaintiff has stated a "plausible" claim based upon the detailed allegations of the complaint, after discovery the defendant (as well as the plaintiff) has another opportunity, prior to trial, to seek "summary judgment" dismissing claims when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[20]

Fundamentally, the disposition of a weak or unmeritorious case at as early a stage as possible saves the parties (both defendants and plaintiffs) from unnecessary cost and distraction, and, of particular relevance here, reduces the incentive and ability of plaintiffs' counsel to exert pressure on defendants to settle such cases for disproportionate amounts. Thus, this is another aspect of the US litigation system that the Commission may wish to consider as a safeguard to reducing the risk of abusive litigation.

V. *Conclusion*

As the Commission recognizes in the 2011 Consultation, it is important to study other systems and their characteristics, such as the US system, to avoid potential litigation abuses in any collective redress system. We submit that it is equally important to understand why the abuses have occurred. While the specific characteristics of the US opt-in system may be avoided, other characteristics could yield similar abuses. A key question is what financial incentives does the system create for plaintiffs' attorneys or other representatives that would bring actions, and what ability does it provide to force settlements disproportionate to the underlying merits of a claim. The US plaintiffs' class-action "industry" has proven time and again that plaintiffs' attorneys can and will exploit and leverage any substantive or procedural opening that is available to them. A system that is susceptible to abuse is not good for the government, businesses or, in the end, even the persons alleged to be harmed.

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court the discretion to impose sanctions on the attorney signing the pleadings or other papers. *See* Federal Rule of Civil Procedure 11.

[20] *See* Federal Rule of Civil Procedure 56*; Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

We appreciate being given the opportunity to submit comments, and trust that our comments will be helpful to the Commission in forming its views on whether, and how, to form an appropriate and coherent European approach to collective redress, particularly as to damages claims.[21] We stand ready to respond to any questions the Commission may have regarding our submission, or to further assist in the event the Commission would find it helpful.

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