

Collective Redress: Commission seeks views on settling large scale consumer complaints

The European Commission has published a Green Paper on Consumer Collective Redress on how to facilitate redress in situations where large numbers of consumers have been harmed by a single trader's practice which is in breach of consumer law. Violations of consumer rules could include overcharging consumers - through hidden charges or overbilling - misleading advertising on websites, or failing to provide compulsory information on financial products. These kinds of illegal practices, if they occur to a large number of consumers, can cause considerable damage to consumers, generate unfair competition and distort markets. The Green Paper identifies barriers to effective consumer redress in terms of access, effectiveness and affordability and presents various options to close the gaps identified. The options set out in the Green Paper seek to ensure that consumers who are victims of illegal commercial practices can get compensated for their losses, while avoiding unfounded claims. Comments on the Green Paper can be submitted until 1 March 2009.

EU Consumer Commissioner Meglena Kuneva said: "Consumers who are victims of illegal activities, such as overcharging, misleading advertising or outright scams, have a right to compensation. Currently, particularly where there are small scattered claims, this right is often theoretical because of the obstacles to exercising it in practice. There is a justice gap, a welfare gap and there are black holes in our redress system that is leaving consumers with nowhere to go. The present situation is clearly unsatisfactory. We must find a way to make the basic right to consumer redress a reality for more people."

The current situation

As mass consumer markets expand in size and even become cross-border, very large numbers of consumers can be harmed by the same or a similar practice of a trader. The effect of a malpractice can be so widespread as to distort markets. For example, UK banks are under investigation for having systematically imposed excessive charges on hundreds of thousands of consumers whose accounts became overdrawn¹. A group of consumers in Portugal took action against a telecom company which had charged its 3 million clients a 'start up fee'. Following their joint complaint, the Lisbon Court ruled that the charge was illegal and had to be refunded to the clients. The compensation awarded to consumers has been in the order of 70 million Euros.

¹ http://www.ofc.gov.uk/advice_and_resources/resource_base/market-studies/current/personal/personal-test-case

The problem

Consumers can always go to court to obtain individual redress. Mass claims could then in principle be resolved with a large number of individual claims. However, studies carried out by the Commission indicate that currently when consumers affected by a malpractice want to pursue a case, they face substantial barriers² in terms of access, effectiveness and affordability.

Since, where it exists, collective redress can potentially provide a useful complementary means of reducing consumer detriment, the Green Paper focuses on collective redress as a tool that could help solve the problems that consumers face in obtaining redress for mass claims both in national and cross-border contexts. 76% of consumers would be more willing to defend their rights in court if they could join together with other consumers.

Strengthening the ability of consumers to access effective redress has several advantages:

- it ensures that consumers harmed by illegal commercial malpractice are compensated for their losses;
- it enhances the overall level of respect for EU law by discouraging companies from engaging in illegal activities which give them an unfair competitive advantage against other operators;

In the Green Paper several options are put forward for debate. (1) no immediate action, (2) co-operation between Member States extending national collective redress systems to consumers from other Member States without a collective redress mechanism, (3) a mix of policy instruments to strengthen consumer redress (including collective consumer alternative dispute mechanisms, a power for national enforcement authorities to request traders to compensate consumers and extending small claims to deal with mass claims), (4) binding or non binding measures for a collective redress judicial procedure to exist in all Member States. A combination of different elements from these options is also open to consideration.

Background

Studies and surveys conducted for the Commission indicate that obstacles for consumers, including particularly high costs, risk of litigation, complex and lengthy procedures, mean that, one out of five European consumers will not go to court to seek redress for claims less than 1000 Euros. Half say they will not go to court to seek redress for less than 200 Euros. Only 13 Member States currently have in place different national systems providing the possibility of collective redress for consumers. The evidence is that these national mechanisms have only been applied in a few cases in recent years. For example, only four in ten million people every year have participated in redress actions in Germany, while the collective redress scheme in Portugal reached the most people in a single case.

² Cf. Study regarding the problems faced by consumers in obtaining redress for infringements of consumer protection legislation, and the economic consequences of such problems (Problem Study), p.42, http://ec.europa.eu/consumers/redress_cons/collective_redress_en.htm

The Green Paper:

http://ec.europa.eu/consumers/redress_cons/collective_redress_en.htm

Comments should be sent by 1st March 2009 to:

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See MEMO/08/741; [MEMO/05/489](#)

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