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Verbond van
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Belgique

Private enforcement – the business community's viewpoint

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Private enforcement – the *Belgian* business community's viewpoint

- e.g. fault requirement

Preliminary remarks:

- competition law to harmonise important aspects of Member States' tort law and procedural law?
- legal basis?



Improvements with respect to the Green Paper:

The Commission now rejects:

- discovery
- opt-out
- multiple damages
- contingency fees
- punitive damages



Main concern about the White Paper: collective redress mechanisms

Commissioner Kuneva: studies on the appropriateness of introducing collective redress mechanisms into the EU

No class actions *stricto sensu*, but two collective redress mechanisms for competition law:

- representative actions
- opt-in collective actions



Objections to collective redress mechanisms

Legal arguments:

- against basic principles (personal interest for bringing an action)
- court log-jams
- plaintiffs can always join together



Socioeconomic arguments:

- huge risks for companies
- exorbitant claims
- publicity surrounding such cases
- procedures 'hijacked' by law firms or interest groups
- objective = pressure on companies
- litigation culture



- Introduction of new collective redress mechanisms likely to lead to the adoption of other aspects of the US litigation system
- No guarantee that these features will not be included in national legislation
- FEB: promotion and reinforcement of alternative dispute resolution mechanisms (ADRs)



Access to evidence: disclosure *inter partes*

- No discovery(?)
- What is meant by “categories of evidence”?
- Belgian law: Articles 870, 871 and 877 of the Judicial Code
- Legal privilege: Akzo case



Damages

Full compensation

All punitive aspects excluded?

Cost of damages actions

Claimant, even if unsuccessful, would not have to bear all costs incurred by the other party

→ development of improper actions



Conclusion

- the European model
- find the right balance
- opening a Pandora's box: Member States might adopt more far-reaching rules
- FEB in favour of a competition culture, but against a litigation culture