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Norwegian response to the Green Paper on Consumer Collective Redress

Reference is made to Document COM (2008) 794 final on Green Paper on Consumer Collective Redress dated 27. November 2008.

Norway welcomes the Commission initiative to discuss how to facilitate adequate redress in situations where a large number of consumers have been harmed by the same or a similar practice of a trader. We would also like to express our satisfaction with the consultation process, which confirms the Commission's declared intention of involving all interested parties.

The Commission initiative raises the issue of the EEA relevance of any legislative measures adopted at Community level and the incorporation of any such EEA relevant measures into the EEA Agreement. A final position on EEA relevance can be adopted only when the content of and the legal basis for such legislative measures have been clarified. In general the civil procedural law is not regarded as EEA relevant.

Not anticipating the conclusion on the EEA relevance, Norway would like to submit general comments to the green paper. The Norwegian response reflects the main view of different Norwegian ministries. Other interested parties in Norway have been encouraged to give their comments directly to the Commission.

The Commission discusses four different options that could make redress more affordable and easily accessible to consumers.

Like 13 European Member States, Norway has provisions on class action in place *(Act*

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of 17 June 2005 no 90 relating to and in (Dispute Act), chapter 35). (An English version of the Act is enclosed to this letter.) We believe that establishing a cooperation network group among national entities that have the power to bring a collective redress action before the national court, would make it easier for foreign consumers to join a class action initiated in another Member State. It is preferable that power to bring such cases before the court (group representatives) is given to both consumer organisations and to the group members, cf. Section 35-3 in the Dispute Act.

The options put forward in point 46 (self-regulatory measures for the business) and 47 (awareness-raising of consumers) are in our opinion essential elements to improve collective consumer redress. Such actions should therefore be considered carried out regardless of which option is chosen in the further work.

In the following we will give some remarks to different ideas in option 3 and 4:

Option 3 – mix of policy instruments
Extending the scope of national small claims procedure by including mass claims is not an option we support. Provisions on small claims procedure allows a simplified trial and quick handling court procedures. Issues to be considered in cases that can result in a class action are often complicated, both factually and legally, and a summary procedure would therefore rarely be applicable in these cases.

We oppose the idea of extending the scope of the Consumer Protection Cooperation Regulation (CPC-Regulation) to include a power whereby the competent authority, after the finding of an intra-community infringement, could require the trader to compensate consumers whose interests have been harmed. Issues on liability for compensation should be considered by the ordinary courts of law. In any case we assume that the legal basis of such power for the authorities has to be placed in a different, and more appropriate, regulation/directive than in the CPC-Regulation, or regulated at national level.

Option 4 – judicial collective redress procedure
Should the Commission follow up the idea of preparing an EU measure to ensure that a collective redress judicial mechanism exists in all Member States, we agree that elements that encourage a litigation culture, such as punitive damages and contingency fee, must be avoided.

In point 54 the Commission states that it is important to determine the group of action (opt-in or opt-out procedure). In the Norwegian Dispute Act the principle rule is opt-in, cf. Section 35-6. The opt-out alternative only applies if each claim involves amounts or interests that are so small that it must be assumed that a considerable majority of the claims would not be brought as individual actions, and are not deemed to raise issues that need to be heard individually, cf. Section 35-7. According to Section 35-12 the group representative is liable for legal costs. In the case of a lost trial, class members in

opt-in actions are liable towards the class representative for a maximum amount set by the court. Members in opt-out actions are not liable for legal costs.

Several elements to hinder unmeritorious claims are mentioned in the green paper point 52. We assume that the best way to prevent such claims is through a good and efficient regulation combined with a liability for class members (group representative) in the case of a lost trial. An important element is to empower the judge to decide whether a collective claim can be brought before the court or should be rejected as unmeritorious, cf. the dispute act Section 35-4.

Yours sincerely,

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Hilde Merethe Berg

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The Norwegian Ministry of Justice and the Police
The Norwegian Ministry of Transport and Communications
The EFTA -Secretariat