FEDMA GENERAL ASSEMBLY MEETING

ACQUIS REVIEW AND UNFAIR COMMERCIAL PRACTICES DIRECTIVE

16 APRIL 2008

SPEECH

It is a pleasure for me to be here today to address the FEDMA general assembly.

These are exciting times for the world of direct and interactive marketing. Technological development continues to forge ahead and consumer behaviour continues to evolve. Consumers become more and more digital natives.

At the same time, EU legislation - once meant to increase the possibilities for cross border sales - does not reflect any longer market realities.

Indeed, most of the EU consumer legislation that has been in place for 10 to even 20 years. It were the first attempts to provide a set of consumer protection rules applicable throughout the Union.

But because this legislation was based on <u>minimum harmonisation</u>. Transposition across the Member States has varied widely.

This divergence in national rules is problematic…

- Problematic for companies because they have to adapt their sales methods, conditions and practices to each individual national market.

- Problematic for consumers because they feel unsure and insecure about their rights. As a result they do not make use of the full range of possibilities offered by the Internal market.

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The first important step towards solving this problem has already been taken and more is ahead. The Unfair Commercial Practices (UCP) Directive is now in force, being implemented in almost all Member States.

The UCP provides both consumers and traders with a single European set of common rules which apply to virtually all unfair "business to consumer" commercial practices in the EU, replacing the *pot pourri* of national legislation and court rulings.

Allow me to mention briefly some of the new concepts of the Directive. In the past, the concept and definition of what constitutes "unfair commercial practices" varied among the Member States.

The Directive has introduced a new general prohibition against unfair commercial practices. This will help to ensure that it stands the test of time even in fast evolving environments such as on-line markets.

The Directive also designates misleading and aggressive practices as specific categories of unfair practices.

More specifically, it contains a "black list" of commercial practices which are banned in all circumstances.

This black list facilitates enforcement and contributes to legal certainty. It is now clear to traders which commercial practices are allowed, and which are not.

Traders benefit from the simplicity and convenience of following one set of rules across Europe instead of having to take into account a large number of different national regimes. Harmonisation considerably increases certainty and reduce legal costs.

In addition, the efficient control of rogue traders will also be a considerable advantage to legitimate businesses.

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How is the Directive being implemented in practice ? Two years after its adoption, the Member States have enacted (or some of them are still enacting) UCP national transposition laws.

This poses a number of challenges. These arise above all from the significant legal impact of full harmonisation in an area previously characterised by considerable differences in national policy, style, and enforcement techniques.

Proper enforcement has become a mantra to me. I therefore have made enforcement one of the key priorities of my mandate as consumer Commissioner.

In order to ensure that traders can operate in a simplified and predictable regulatory environment, and be subject to the same rules across the EU, it is very important that transposition is effected in an adequate manner.

National authorities and enforcers play a key role in contributing to uniform implementation and coherent enforcement of the Directive right across the EU.

The UCP can only turn out to be a true European success story if maximum coherence in the implementation of the new

rules is achieved across the 27 EU Member States. This will require co-ordinated action by all actors involved.

I have therefore instructed my services to continue to provide guidance in areas such as the new concepts of the Directive. In these areas there is a particular risk of divergent interpretation and application of the Directive in the Member States. We need to avoid this and will remain vigilant.

However, also the role of business associations remains crucial. You are well placed in helping the Commission to identify any possible national deviations from the spirit of the Directive.

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Let me now say a few words on what I consider to be the "plat de résistance" of my mandate : the review of the consumer acquis : where are we and where do we go from here?

I described in my introduction how the current consumer acquis became disconnected with modern market realities. Minimum harmonisation as well as certain legal inconsistencies further increased the need to harmonise certain key elements of Consumer Contract Law.

Since the beginning of my mandate, I heard repeatedly the call from business stakeholders to revolutionise the competitive situation for businesses selling cross border. I intend to answer that call.

If the on-going work on the impact assessment proceeds according to schedule, I intend to propose to the College of Commissioners the adoption of a proposal for a new Directive on Consumer Contractual Rights in the autumn of 2008.

The aim would be that the Framework Directive would incorporate at least four existing directives into one fully harmonised, coherent legislative instrument.

This new legislation would contribute towards boosting cross-border trade by driving down the costs of doing business and improving consumer confidence.

This proposal for Framework Directive will be the result of a long preparatory process. It started with a broad public consultation initiated by the publication of a Green Paper in 2006. There were a large number of meetings with different interested parties and, right now, a comprehensive impact assessment.

Let me take this opportunity to thank FEDMA for its active contribution during the different steps of this process. Your input has been of great value to the Commission.

Only by having a clear picture of the reality of the activities of EU businesses today, can we propose a piece of legislation that is properly fit for purpose. The purpose being to truly contribute to the creation of a properly functioning, common retail market.

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It is still too early to enter into details what the new Directive might include. First we have to wait for the outcome of the Impact Assessment.

I would, however, like to focus on a few issues of particular interest in this process. These are all are important towards facilitating life for business:

1. First, **information requirements**. What information must be provided before and after the conclusion of the contract?

Today the requirements vary both between the different directives and between the Member States (due to "gold plating").

In this context simplification is the key word.

Our starting point is that by aligning, as far as possible, the information that must be given in a distance, off-premises and an on premises context, matters should become much clearer.

We also have to keep in mind that different means of communication may set limits in what way and to what extent information may be given. The right balance needs to be struck between pragmatism to facilitate business and legitimate requirements of consumer protection.

2. Second the **right of withdrawal**. This is currently a jungle for business. There are different lengths of "cooling off periods" depending on the means of sales and the Member State in question. Sometimes there are detailed rules; and sometimes no rules regarding the modalities for exercising the right of withdrawal.

Sometimes there is a right to impose a cost on the consumer for returning the good; and sometimes not.

Thus, there is clearly a need for a detailed, common set of rules within the EU regarding the cooling off-period.

Businesses and consumers should know which rights and obligations they have, no matter where they are and with whom they trade. Currently, there is no legal certainty, no consumer confidence. We need to address this issue.

3. Third, delivery and passing of the risk. At what point in time is a good considered to be delivered when the parties did not specifically agree on that aspect? And who stands the risk of damage or loss at different points in time – the business or the consumer?

Again different rules apply in different Member States. They put both the seller and the consumer in a difficult situation if for example an ordered item gets lost or destroyed between the passing of the order and arrival at the purchaser's address.

4. And fourth, unfair contract terms. A major difficulty for small businesses in particular concerns the different contract terms requirements across the Member States.

Today there is a non-binding list in the Unfair Contract Terms Directive indicating those contract terms that may be unfair.

During the public consultation, a number of respondents supported the introduction of black and grey lists with unfair contract terms, that is to say one list with contract terms forbidden throughout the EU in all circumstances (black) and one with terms forbidden if not shown that they are acceptable in that particular situation (grey).

The idea would be that businesses would not have to turn to expensive legal counselling or take other measures to adapt their conditions to different markets.

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These are some examples of issues being investigated during the Impact assessment, and which may be included in a future proposal.

I attach great importance to the fact that the Impact Assessment is a solid, evidence based piece of work. It should therefore as much as possible quantify and where possible even monetise costs and benefits to business in relation to a possible proposal for a framework Directive.

As you can see we are talking about basic cornerstone issues for the sale of goods and services within the EU.

And for business, harmonisation in this field is particularly important in the light of the **Rome I regulation**, about to enter into force.

As you may know, according to that regulation, businesses would have to adapt to the consumer protection legislation of the country where the consumer has his habitual residence.

With 27 different consumer legislations it will be a costly and cumbersome exercise for a company to adapt its sales policy

and contract terms depending on where the consumer comes from.

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Let me conclude by stating my firm belief that a new proposal together with the proper application of the UCP will provide strong incentives for cross-border B2C sales and will boost European competitiveness.

We find ourselves at a truly **pivotal moment** – taking firm strides towards a properly functioning Internal Retail Market, to the benefit of **both consumers and business.**

Thank you.

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