**PART I: SETTING THE SCENE**

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**Link:** JustCompetition – Training Module – Part I

One aspect of the damages directive is that it has implications that change the nature of proceedings both in Common Law and in Civil Law.

15 years ago, Competition Law Competence lay with national bodies for national law and with the European Commission for public enforcement.

And then came the change brought about by Regulation 1/2003, Article 15 of which deals with cooperation with national courts.

And you have regulation 1 of 2003 in the packs.

Regulation 1 of 2003 was designed to take both public and private enforcement down to the level of the Member States in cooperation with the European Commission.

But it became clear that in most Member States, private enforcement had not taken off and most private enforcement cases took place in Germany, the Netherlands or the United Kingdom.

And so, in 2004, after Regulation 1 of 2003, there was a report by Ashurst, a law firm, on private enforcement.

That led in 2005 to a Green Paper, in 2008 a White Paper and it was very controversial, people did not want an American style litigation culture and so the Commission's proposals in the following year, in 2009, were withdrawn and it wasn't until 2013 that the Commission's proposal which led to the new Directive came out.

Now, the new Directive was designed to promote private enforcement, to level a playing field in some ways, to approximate the law between Member States and to introduce a higher degree of legal certainty for parties.

Now, president Junker has made one of his goals of his presidency the Europeanization of Competition Law.

In other words, he is expecting us all, in all the Member States to try to be more European in the way in which we do Competition Law.

And transposition of the Damages Directive is one element in achieving that goal.

Now, in some ways, the Damages Directive will make a country like the United Kingdom less attractive to litigants than it is at the moment. Why?

For a start, we have the possibility of punitive damages at the moment. And what that means is, as a matter of Public Policy, if an infringer has behaved very badly, we can, at the moment, impose extra damages to punish the infringer.

There are going to be more limits on disclosure in Common Law than there have been, but disclosure is going to be a greater feature in the Civil Law countries.

And lastly, there is a significant modification of joint and several liability, which we'll come onto later on.

You'll also see on the list the Brussels' Regulation recast, that's the regulation which deals with which court has jurisdiction when and where you should bring your action.

And that becomes important when you begin to consider the infringements which involve companies from different countries, actions in different countries, damage incurred in different countries and questions of domicile.

And then you've got the communication on quantifying damages and that will become more relevant in Bucharest when we have the second part of this series.

So, what are the principal themes of the new Directive?

Well, the first is very straight forward, it is the right to full compensation and that may seem very obvious but it underlies the changes which have been brought in the Damages Directive and which will be transposed in each Member State because it is thought that up until now it has not been easy for damaged parties to get full compensation.

The principles of effectiveness and equivalence are about trying to ensure that courts in Member States do give effect to European Law and that national laws and procedures and the way in which the process happens really means that people get their just deserts - both the victim, on the one hand, getting damages and the infringer, on the other hand, paying up.

Now, equivalence is about what happens in each Member State, given the way in which we do things at the moment.

So there's got to be this combination which makes the Damages Directive effective.

What it means is that in each country is going to have to be tailored to the way in which you operate.

On the other hand, the way in which each of us operates has got to be tailored to making the Damages Directive work. And part of that is the principle of sincere cooperation.

Now, already in the Regulation 1/ 2003 where there was cooperation with national courts, and what now happens is a bit of a change in the relationship between courts and competition authorities.

In the past, much of the relationship in most Member States has been public enforcement by the Competition Authority, followed by a damages action, or by an appeal, or both. What happens now is that a private party may start a stand-alone or hybrid action – a hybrid action is where there is both a public and private enforcement taking place simultaneously.

And so, the relationship between the court and the competition authority at national and European level becomes one of needing to inform each other and, in some cases, to seek help from each other.

The fourth line here is "Proportionality".

We have had cases in which the cost of the proceedings has been an order of magnitude larger than the damages eventually awarded.

Now, this is - how should I put it - not a good thing. And this brings us to the importance of robust case

management.

You have had experience, particularly in Finland, of the need for robust case management and, how do you deal with these cases in a way that ensures that the principal beneficiaries are not the lawyers.

So, what are we not covering? Well, we are not covering EU jurisprudence on infringement, we are not covering EU jurisprudence on investigation.

But one of the tasks that courts are going to have is understanding better how competition authorities do investigate and the implications of that for the evidence that they gather. Why is that?

Because they may be asked to disclose it and if the courts have no idea what a competition authority is doing then they may have difficulty in understanding what request should be made and what request should be resisted.

We're not going to deal with the jurisprudence on the scope of decisions. That's been one of the issues in private actions, that when a competition authority makes a decision, or reaches a settlement, there is a conflict of interests between the parties involved in making that decision quick and effective, and the potential rights of those who are victims to claim damages.

In other words, damages are not at the forefront of the consideration of the competition authority, though, they may well be at the forefront in the consideration of those who have infringed the law.

The second part of this is going to be in Bucharest and so there will be matters there, more details on evidence, and on causation and quantification, which we will deal with there [in Bucharest].

Nor are we going to deal with the recommendation on collective actions and settlements.

By now, Member States are meant to have done something about the recommendation on that, but that has not been made substantive European Law.

In the United Kingdom, for example, our new law does allow both collective actions and collective settlements on an opt-in and opt-out sense.

It may be worth... Ah! My wife took one look at the Competition Law Handbook. This is not a textbook, this is the material that competition law judges in the UK need to do their weight training and to refer to in Competition Law and as you see it's quite thick and when you get to the very end of it, you get to the guide to how to do proceedings in the UK. So, there's quite a lot of material there.

So, continuing to set the scene. Who has the right to this full compensation? And we'll be getting on to this in greater detail with Liam.

But basically it was designed to be anyone, anyone including individuals who may be consumers, undertakings.

So, any natural legal person, that's what this is about and it is worthwhile reading the recitals, as well as the articles, to get a flavour of what is going on in the Directive.

It's irrespective of contractual relationships.

So, for example, I was part of a collective action in California, following the cartel imposing fuels surcharges on transatlantic flights.

When I claimed my damages, my claim was rejected on the grounds that somebody had already claimed, notably, my travel agent.

Now, my travel agent had simply passed on the cost to me and that raises the whole question of the passing-through defence, which we'll come to later on.

But that's an example of asking yourself the question 'Does it matter who made a contract with whom?'

And the answer is: under the Damages Directive, it doesn't matter.

You can be a victim, even though you were not in a contractual relationship with the infringer. So, we will return to the practicalities of that later on.

Full Compensation for what?

Well, what's interesting about this aspect of the Directive is what it doesn't say.

What is envisaged when you read the recitals is that this is an area where thinking will develop.

Why is that? It's because actually understanding what matters in terms of how a victim has suffered can be quite a complicated economic and legal question.

So, you'll see that three areas are named: Actual Loss, Loss of Profit, and Interest.

Now, they are important because in some jurisdictions, the concept of damage may be limited to exclude one or more of those.

And so, further developments are envisaged. But those further developments should not, in the Directive, go on to overcompensation.

Now, what might be overcompensation? Punitive damages would be overcompensation.

So, if we take an example: Diana is a wicked monopolist who has abused her dominant position. In consequence of that, she overcharged my company by 20%.

So, the actual loss is the sales, 20%. That's how straightforward it looks, but, in fact, because I had to raise my prices, demand for my product was reduced and so, there was a loss of profit on the profit I would have made, had I not been overcharged, had I not had to raise my prices, I could have sold more.

And what is more, it has taken seven years for this case to come to trial and to reach a decision.

And so, I have lost all the interest, both on my actual loss and my profit in the meantime.

How those matters will develop, it will be very interesting to see.

But if her behaviour has been really wicked, then, in the English system, assuming she hasn't been punished by the National Competition Authority, we can award additional damages because her behavior was so bad. Now, that, under the Damages Directive, would be overcompensation, because it's the payment to the victim of an amount which they have not lost.

Why do it as a matter of public policy? Well, the public policy concern there is that the law should be enforced and it rewards the private enforcer for the time and trouble it takes them to bring an action.

Now, part of the difficulty that arises under the Damages Directive is 'Why should a claimant bother?'

Are they likely to win? Is it likely to cost them a lot of money? What happens if they lose? Now, this is an area which is not dealt with by the Directive.

The whole issue of legal costs and insurance costs and awarded costs and how cases are funded and whether you are allowed to bring a contingent fee case, it is not covered in the Damages Directive, and so, that's going to be a matter for national law.

However, if in a Member State, you make it so impossible for claimants to bring in action, then that's not giving effect to the Directive.

And so, there's a real challenge for each Member State: 'How do you ensure access to justice, particularly for the smaller parties?'

And that takes us back to Proportionality.

It is how do we enable the system to work, in a way that does ensure that there is full compensation and does see actions being brought successfully.

Background: when the study was done, 21 Member States hadn't had a successful follow-on Damages action.

Now, that may be because nobody had suffered any damage. On the other hand, it may be because it was not easy to bring a claim in the Member State.

Now, part of this is what happens when you feel aggrieved? What do you do?

Do you go to the National Competition Authority? Do you write a letter to the Commission?

What is the nature of the proceeding? And how ready are the local lawyers to bring a claim?

Now, if you go to Germany, many local lawyers will be very ready to bring a claim because they know how to do it, there have been a number of claims, many of them have been successful so, it's a natural part of life.

In London, plenty of lawyers, ready, willing and able to bring your damages actions.

But in many Member States it's not just a question of alerting the judiciary, it's a matter of alerting the lawyers.

It isn't all wonderful. Even in the United Kingdom surveys have shown that many companies still haven't really got to grips with what competition law is about.

We have companies that come before us saying they didn't realize there was any other way of doing bids rather than rigging them.

That's what they thought you did – you ring up your competitors, see what the prices should be and, if necessary, persuade Liam that he needs to put in the bid and if he loses you will compensate him. And that's how you bid, isn't it?

Now, there is a huge educational task, not just with the judges, but with the lawyers and with our industries, in persuading them that competition law matters.

So, "Effectiveness and Equivalence". And this is recital (11).

So, national rules have got to observe the principles and I suppose part of ... Ah!

I have some of this on my iPad now but I thought you should see it on paper.

Part of this is about substantive law, part of this is about procedural law and part of this is about guidance to parties and guidance to judges.

And I believe that part of the process in which we are engaged, both here in this room, and then later in the world of online communication is working out some aspects of best practice – that the matters that don't get into the rules, but will get into the way in which judges receive, manage and decide cases.

That's because not everything is a matter of rules and a lot of things are matters of day to day practice and you've all had that in your experience already.

So, guidance is going to be an ongoing part of this process and part of the feedback that we need to give to the Commission is what help can your guidance give to the judges.

Quite a lot of what the Commission does it is not Hard Law, it's Soft Law.

It is, for example, like a guidance on how you quantify damages, how you use economic evidence, how you make a decision when the information before you is incomplete.

Now, that ability to deal with incomplete evidence is part of not making it excessively difficult or practically impossible to exercise the Right to Compensation.

Now for a moment, I want you to put yourself into the Court of Appeal above you and to ask yourself the question: What do these words mean?

When I am considering what happened in the Court of First Instance. Did they make it excessively difficult? Did they make it practically impossible?

What allowances did the judge make for Proportionality?

And this, to me, is going to be one of the very fascinating things: how do we make these cases possible?

We watched with interest what's been happening in Finland, in Wood, with all these cases – how do we make these cases practically possible?

So, that's going to be quite a big question.

Now, if we go back to the Regulation 1 / 2003, and you turn to Article 2.

Article 2 looks very short and to the point. Remember that the articles got renumbered so, for 81 and 82 we read 101 and 102.

[reading] "The burden of proving an infringement shall rest on the party or authority alleging the infringement".

It's just a few words.

But the problem facing a claimant is that the claimant does not have the investigatory powers accorded to the Commission and to a National Competition Authority when they are conducting an investigation in public enforcement.

In other words, there is a significant asymmetry of information between the claimant and the defendant and that's particularly true where you've had a cartel.

Now, the problem with the cartel is that some cartel operators keep detailed notes, send emails saying 'we must be careful because we are operating a cartel', but others are more careful.

Some are very careful.

In some cases it's quite difficult to tell whether there was a cartel and how it was operating.

Sometimes it's only when you begin to examine the diaries and realize that the sales managers of all the companies seem to be attending the same golf tournament or golf instruction on regular occasions, through their diaries, that you begin to have evidence of collusion taking place.

Sometimes, the evidence will lie in handwritten notes, which are not easy to interpret, but you have got to get hold of those notes.

Now, if you are the National Competition Authority, you can exercise your powers and go and visit the premises, you can seize documents, you can, with judicial control, enter premises, domestic premises, you can seize computers and you can do a great deal of analysis.

And provided you abide by the proper rules of procedure, your evidence will be admissible.

If you don't abide by the proper rules of procedure, your evidence will be inadmissible, as we've discovered in various cases.

So, the task resting with the judge here is to consider the burden of proof, but also to ask: 'How does the claimant get the appropriate evidence?' and 'What order should I make for disclosure of evidence by the defendants to enable the claimants to substantiate their claim?'.

Again, this is going to be a very practical question: 'What sort of prima facie case you need to start in order to activate disclosure under the Directive as transposed into National Law?'

So, that's where recitals 14 and 15 come in. They talk about this asymmetry of the evidence.

And the asymmetry will continue not only into the basic matter of infringement, but causation, and may go on to how you assess the quantification of damages.

The problem here is Proportionality – that you've got this balance between opening the box and getting out all the evidence and not making it so impossible that it requires many, many days of legal time.

We've been discussing with the Commission on behalf of the Association and National Competition Authorities in the Netherlands, Germany, France and the United Kingdom, the whole issue of the amount of time taken to get access to the file and in the worst cases this was hundreds of man-hours in the authority and hundreds of man-hours in private practice legal time.

So, you've got very real issues here in case management of how do you get the balance between getting the evidence before you and spending too much time and effort on obtaining that evidence.

Now, one aspect of the Directive, and here we're in Chapter 2 of the Directive and back to article 15(1), the Cooperation one, is where you get the evidence from.

Well, obviously the parties are before you. But the other obvious places to get evidence are from the Competition Authorities and also from third parties.

And in a complex market, where you've got multiple tiers.

So, if you take my market, you've got petrol companies raising the prices of fuel, the airline companies adding the fuel surcharges, the travel agents buying the tickets and then there's me, the consumer, paying for the ticket and flying with the airline.

Some of the evidence is going to be in the hands of other parties.

So, the principle of cooperation applies, and this takes you to the fundamental aspects of the Treaty of Lisbon, and the need for us all to cooperate together in making this work.

Now, one aspect about articles 101 and 102 is there's an effect on trade between Member States.

Now, there's a nice philosophical question about 'can you have an effect on trade between Member States when actually everything is happening in one Member State?' You know: can you hear the sound of one hand clapping?

The answer is there are legal precedents to saying there is an effect between Member States even in some cases where everything appears to happen in one Member State.

But in many cases, there will be a real effect that you can see because things had happened or had effects in more than one Member State.

And there, you've got to think in your minds – Cooperation – 'Do I need to involve both my own National Competition Authority and other National Competition Authorities who may have part of the action?'

Now, one of the interesting things that happened here is that Eddy De Smijter's Unit, which deals with private enforcement, is now also the unit responsible for the European Competition Network.

And so, part of the practical work in this is working with that part of DG Comp in working out how, in practice, courts operate between Member States when they need the help of more than one National Competition Authority and how that's coordinated.

This is an area where most of us don't have much experience and so, it would be interesting to see how it works out.

Going back to the burden of proof, one of the bids of evidence you can have particularly in a follow-on action is the decision of your own National Competition Authority, of the Commission or another National Competition Authority and the one draft of the Directive said you had to obey by that – that was very controversial because there was a spectrum of attitudes across the judiciaries.

And I can remember very startled what happened in Brussels when we had a meeting on this aspect of the

draft Directive.

At one end you had Germany, which is already prepared to apply the decision of another National Competition Authority in awarding damages and at the other end you had Denmark, who do not even accept a decision of their own National Competition Authority, let alone another National Competition Authority.

And what you will see in the Directive is the compromise that was reached.

And so, the courts will have to assess the weight that they give to a decision by a Competition Authority, in relation to the matters at hand.

Now, earlier on, I talked about scope, and one of the issues that comes up is that quite often the scope of what's happening in the National Competition Authority and the scope of the claim are not identical, they are mismatched.

And that gives rise to what's called a hybrid action, where part of the action is a stand-alone action, and part of the action is a follow-on action.

So, Cooperation is not entirely entire. What do I mean by that?

In the Directive, there are some constraints on what you can get from a Competition Authority.

Now, part of that has to do with public policy on leniency. Now, leniency is dealt with in Article 6.

And what was very clear in designing the Damages Directive was that public enforcement still takes priority.

And a vital part of public enforcement is getting people to make leniency applications.

In other words, to have people who are ready to 'blow the whistle' because they get some advantage from doing so.

Now, I'm not at the moment going into the rather complex benefits that a leniency applicant gains in private enforcement from being the leniency applicant.

That's quite a complicated question.

You may for a moment imagine yourself in private practice and faced with all this.

If you've got an infringing client, you are likely to want your infringing client either to be the leniency applicant or to seek a settlement which minimizes the risk.

And then the question will come: What of the correspondent which relates to that leniency application and settlement should as matter of public policy be revealed and that`s what is dealt with in the Directive.

So, there are some constraints.

That then relates to what I mentioned earlier on about joint and several liability and limitations on liability and that's quite significant.

I also mentioned Settlement and one of the interesting aspects, for example of the United Kingdom regime, is the concept of bringing a collective settlement before the court.

Many parties would be well advised to settle. And one of the questions is 'What is the impact of the

settlement, either with the Competition Authority or between parties who have been damaged and some infringers?'

Now, the difficulty about a cartel is that you end up with a matrix of actions.

So, if Helena and Rita and Liam are the claimants and Ramona and Eleanor and Nora are the defendants, then you may end up with a 3x3 matrix.

In other words, technically, 9 separate claims. They may all be heard together, but technically they are 9 separate claims.

You may also have actions taking place for contribution between the defendants, trying to work out who has to pay what to whom.

And the Directive has a certain amount to say about that.

So, Recital (23) warns us that we're unlikely to get a full picture and we're going to have to be proportionate. This is a bit disappointing but there it is.

Now, the implication of that in Recital (46), in the Article 17(1) is that courts must be empowered to estimate.

In other words, part of making it less than impossible is that we are going to have to be confident and competent and have the courage to pluck a number and award it.

Now, we're helped in that regard by there being a rebuttable presumption of harm from cartels.

If there's abuse as I thought I had with Diana, a wicked monopolist overcharging me, then the harm is there.

One of my economist friends says that it's not worth running a cartel for a 10% increase in prices, you've got to at least run it for a 20% increase in prices – Isn't there with those who wanted some numbers put in? Why didn't we have a rebuttable presumption of 20%?

We don't have that. We have a rebuttable presumption of harm, unquantified.

But what it means is the burden of proof shifts to the defendant, to demonstrate that there was no harm.

Now, if you take my travel agent, actually the travel agent suffered no immediate actual loss because they passed on the fuel surcharge to me – you could see it separately itemized on the ticket.

But they could still claim for loss of profit – 'we would have sold more tickets, had prices not been so high'.

But you've got that – there you have rebuttable presumption of harm.

Now, 17(3) says there are two things: (a) the Commission can and actually has provided guidance on how you quantify harm.

The reality of big cases is you're probably going to have a lot of economists then trying to help you.

In a small case, you probably won't have a lot of economists trying to help you.

So, the judges will have to work hard on their own to make good sense of the evidence before them.

But what you can do, in this new environment, is seek help from the National Competition Authority.

So, the judges are not on their own, they can go to the National Competition Authority and say 'I've got this problem – How do I deal with it?'

You've got economists. In the case of the Competition Appeal Tribunal in the UK, we do have economists of the court, but in many cases, people don't have economists and you can call on the National Competition Authority for help.

And that's all part of the need for Sincere Cooperation.

Sincere Cooperation between public and private enforcement,

Sincere Cooperation between the courts and the Competition Authorities at each level and in each Member State.

Now, to do that means being ready to tell each other what's going on.

So, for example, in our proceedings, when you file your claim, that has to go to the National Competition Authority, which is elsewhere in our building, in fact, that's not very far away and you could deliver both notes at once.

So, that puts the National Competition Authority on notice. The Bundeskartellamt in Germany have already had that proceedings, so, a case brought in a land-gericht, in Germany, the Bundeskartellamt are informed and then they can decide what they want to do.

Now, the reality is that they may already know about it or they may not know about it.

They may already have made a decision on whether to investigate or they may not have done it.

In some cases, the same cartel or the same abusive behaviour may have given rise to investigations in more than one Member State, it may have given rise to legal proceedings in more than one Member State.

And that takes us back to two situations: 'What you do when you know what's going on?' and 'What happens when cases involving the same infringement are again in more than one Member State?'

And that invokes the Brussels' regulation as recast and you then have to decide who stays, what, when.

Now, one of the issues that arises in 'staying' proceedings is whether you 'stay' everything or whether you allow some aspects to continue.

Aspects that may need to continue are where, in a particular Member State, one of the remedies sort is an immediate interlocutory injunction – in other words, an immediate order by the court that something is stopped.

You may also have a situation in which you need to safeguard the evidence and in which you may want to make an order to restrain parties from destroying evidence or indeed to hand over evidence. So, you don't automatically want to 'stay' proceedings.

One of the difficulties is what happens to the limitation period if there is a public enforcement investigation going on – and I'm not going into detail on that, but that has to be in the back of your mind.

So, part of what's going to happen is developing new relationships with National Competition Authorities.

Now, one of the issues for judiciaries and National Competition Authorities is 'Has the time come to talk to each other?'

We realize, if I take the UK as an example, that our National Competition Authority is going to have to be ready, as the Bundeskartellamt already is, to receive these claims.

So, you should ask yourself the questions: 'In my Member State, is the National Competition Authority ready to receive the claim?', 'Who is going to deal with it?',

'Who is going to liaise with us?', 'What are the contact numbers?', 'Where is it going?', 'Who do we inform?', 'Who informs us?'.

So, one of the things that we are thinking about doing is having a dialogue – now, that dialogue will probably have to be on the record.

In other words, it may take place in our building, in our conference room, but we may have to publish a transcript of what is said, so that parties do not feel aggrieved that anything has happened behind closed doors.

So, this is going to be an interesting matter of transparency – How do we relate in a way that observes proper procedural pending?

And we are thinking about that and I realized that in each Member State that has to be thought about – one of the things that we should be talking to at Eddy De Smijter's about is encouraging members of the Competition Network from the National Competition Authority side to think about that.

Now, in England and Wales, that's fairly easy because we know all the judges who could deal with Competition Law.

It's much more complicated for us in Scotland, where all sort of judges might do it and it's the same in many Member States.

In some member states it's very clear who could deal with Competition Law, in other Member States it's very unclear or it's very plural, lots of judges could do it.

And the question is 'How, in each Member State, do you organize this liaison between the court and the National Competition Authority?' and 'What's the nature of the request?' and 'How do you focus a request?' and 'What sort of time is going to be taken in coming back?' – the Commission is used to getting requests and come back.

Now, the other people you may need to liaise with are the Courts in Luxembourg because when an appeal is taking place from a Commission decision, you may need to understand what is going on in Luxembourg.

Now, I have to tell you, from my personal experience – it's not always easy getting Luxembourg to explain to you the nature of the appeal that is taking place before the European Courts. Now, why does that matter?

It matters, because if liability is in question, then you don't have a final decision on which to conduct a follow-on Damages Action.

A final decision requires that all the appeal mechanisms have been exhausted.

However, if you got a cartel – again, imagine that the three of you who got a cartel, you two have appealed, Ramona has not appealed, then, Ramona is stuck with the decision and we can proceed in a follow-on action against her. But we can't yet proceed with a follow-on action against you two, but we may be able to start a stand-alone action; then what happens in that stand-alone action is in Subject 2 of the Consideration.

But what if they are only appealing against the level of the penalty and not against the finding of infringement?

And so there are a lot of questions that arise in simply trying to be sincere about cooperation.

So, how can we help each other? And that's really where, you know – at the moment I'm doing the talking and shortly Liam and Diana will be doing the talking – but each of you has your own experience and your own questions and your own doubts and part of this process, both here, in Brussels, in Bucharest and then on the internet is going to be raising the questions that come up, raising the doubts that come up, raising the practical problems that arise when cases are before us.

What I think it's going to happen over the next few years is that we should all have quite a lot to say to each other about the practicalities of applying the Damages Directive in our national circumstance.

Now, some of those questions may seem to us to be very national but, in fact, many of them will have echoes in other jurisdictions.

And so, part of this process between the judges and between the National Competition Authorities is 'How are we going to learn to do this really well?',

'How are we going to develop best practice, so that the experience of the parties before us is of an effective mechanism wherever they bring their case?'.

Now, of course, if this was a competitive market, we, in the UK, would want things to be so much more effective in the UK than they are anywhere else and all the business comes to us in London but that's not what this is about, this is about trying to ensure that every Member State has an effective regime.

"Highlighting Hazards".

I've already said that for us in the Common Law countries, there are various hazards in this Directive because they change the way in which we approach certain topics, disclosure, joint and several liability, being just two of them.

In each Member State, there are going to be different hazards, as people who are used to Civil Law claims in a National Regime encounter Civil Law claims under the Damages Directive.

Some of these hazards, we probably haven't recognized yet.

And part of the problem is going to be that the lawyers who are producing these claims are not used to making claims under this Directive.

They're used to making claims under National Law.

And so, we shouldn't be surprised if, in the early days, quite a lot of time is spent amending claims to bring

them into line with the New Damages Directive.

And that may require a little bit of understanding on both sides.

Now, your national law about when you're allowed to amend a claim would be your National Law.

But in the back of our minds, we should remember these rules about not making it impossible. So, we have got to try together to make it possible.

Now, so far I've talked about lawyers bringing claims.

But one of the other possibilities that we have been contemplating is that the claim may be brought by a litigant in person – a natural person or someone representing a legal person.

And again, in each jurisdiction we are going to have to work out how do we handle that situation when somebody wants to bring a claim themselves.

You may also need to have a special procedure for smaller enterprises.

We, in our new rules, have a fast track proceeding which follows the European recommendation for fast track proceedings for small and medium enterprises (SMEs).

There are rules which apply to it but it is designed to produce a smaller system which can deal, in quick time, with smaller claims.

Now, in each Member State, you will have your own national approach to that, but there is a European recommendation behind that – so, "national hazards".

There is also the responsibility on us to let the Commission know about the guidance they are giving, the Soft Law side:

'How can the Commission, with its resources, help the judges who are, on the whole, not so well resourced?'.

And that's a matter of cooperation and the Association of European Competition Law judges will try to facilitate that between the judges and the Commission.