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The Court of Justice of the European Union clarifies the requirements for accessing evidence prior to bringing an action for damages arising from a breach of competition law

1. Background

On 29 January 2026, the Court of Justice of the European Union (“**CJEU**”) delivered its judgment (the “**Judgment**”) in Case C-286/24 (*Meliá Hotels International*), which ruled on three preliminary questions referred by the Supreme Court of Portugal concerning the interpretation of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (the “**Directive**”).

The request for a preliminary ruling was made in the context of proceedings that arose from European Commission (the “**Commission**”) Decision C(2020) 893 final, adopted in Case AT.40528-Meliá (*Holiday Pricing*) (the “**Decision**”).

In the Decision, the Commission found that during the period from 1 January 2014 to 31 December 2015, Meliá Hotel International (“**Meliá**”) had infringed Article 101 of the Treaty on the Functioning of the European Union (the “**TFEU**”) and Article 53 of the Agreement on the European Economic Area (the “**EEA**”), by implementing, through contracts, vertical practices that differentiated between consumers on the basis of their nationality or country of residence, thereby restricting active and passive sales of hotel accommodation.

The association *Ius Omnibus* (“**Ius Omnibus**”) brought a declaratory action seeking the disclosure of documents which it considered necessary to prove, firstly, the scope and effects of the conduct identified in the Decision and, secondly, the possible harm caused by that conduct. The objective of this was to enable *Ius Omnibus* to assess the merits of bringing a collective action for damages against Meliá.

2. Preliminary questions referred and the CJEU’s ruling: requirements for accessing evidence prior to bringing an action for damages arising from a breach of competition law

The questions referred for a preliminary ruling and the ruling adopted by the CJEU in this regard were as follows:

- i) Must Article 5(1) of the Directive be interpreted as applying to a prior action for access to evidence before bringing an action for damages, within the meaning of Article 2(4) of the Directive, where such an action is provided for under national law?¹

As a starting point, the CJEU clarified that it was not necessary to assess whether the Directive obliges Member States to provide for the possibility of requesting access to sources of evidence before bringing an action for damages, since Portuguese law (which was applicable to the main proceedings) explicitly provides for such a possibility.

This distinction is relevant to Spanish law, as Spanish procedural legislation, and more specifically, Article 283 *bis e*) of Law 1/2000 on Civil Procedure (“**LEC**”), also provides that measures to access sources of evidence may be requested *before the commencement of proceedings*.

¹ This question was reformulated by the CJEU. The original wording of this question by the referring court was as follows: “Is Article 5(1) of Directive [2014/104] applicable to an action for access to evidence prior to the bringing of an action for damages within the meaning of [point 4 of Article 2] of that directive?”

In view of the above, the CJEU declared that the provisions contained in Article 5(1) of the Directive must be applied, in an equivalent manner, both to actions for damages *strictu sensu* and to preliminary actions provided for under national law to obtain access to sources of evidence. Thus, the information asymmetry that typically arises in this type of litigation can be remedied, and the effective application of European Union (“EU”) law is ensured.

The CJEU also held that, precisely because of the need to apply this equivalent treatment, paragraphs 2 and 3 of Article 5 of the Directive require that requests for access to sources of evidence be granted by balancing the interests of all parties involved, upholding the principle of proportionality and avoiding indiscriminate searches for information.

- ii) Must Article 5(1) of the Directive be interpreted as meaning that a Commission decision which finds that there has been an infringement of EU competition law in the form of a vertical restriction by object is sufficient to establish the viability of an action for damages? Is the answer to this question affected by the fact that such a decision was adopted at the conclusion of a settlement procedure?²

This second question referred for a preliminary ruling focused on the requirement established in Article 5(1) of the Directive, which provides that an applicant seeking access to evidence must relate to facts that are “sufficient” to support the plausibility of its claim for damages.

More specifically, the CJEU was called upon to rule on the significance, for the purposes of establishing the viability of the action for damages, of the fact that the Commission had already adopted a decision declaring that the conduct on which the action for damages was based constituted an infringement of EU competition law.

To address this issue, the CJEU noted that two important distinguishing features were present in the case under consideration. The first was that the Decision was adopted in the context of a vertical, rather than a horizontal, restriction. And the second was that the Decision was adopted in settlement proceedings.

Regarding the issue that the Decision was adopted in the context of a vertical restriction, the CJEU noted that the prospects of the success of an action for damages depend on the fulfilment of three conditions, namely: (i) an infringement of EU competition law; (ii) the existence of damage; and (iii) a causal link between the two preceding elements.

On this basis, the CJEU noted that the existence of a Commission decision which finds that there has been an infringement of Article 101 of the TFEU obliges national courts to refrain from adopting rulings that are incompatible with the Commission’s decision. This is the case even if that Commission decision has not yet become final.

Consequently, the existence of a Commission decision that concludes that there has been an infringement of Article 101 of the TFEU allows the national court to conclude that there is sufficient probability that an infringement of EU competition law has occurred.

However, as noted above, such probability relates only to one of the three elements that must be established to establish the viability of an action for damages. Consequently, an application that requests access to evidence would still need to establish the likelihood of damage and the causal link.

In this regard, Article 17(2) of the Damages Directive establishes a *iuris tantum* presumption that *infringements – by cartels – cause loss and damage*. In other words, the aforementioned presumption applies when the infringement of competition law has occurred between competitors. Put another way, the presumption of damage does not apply when the infringement of EU law has occurred in the context of a vertical restriction, namely, when the infringing conduct takes place between non-competing undertakings operating at different levels of the production or distribution chain.

² This question was reformulated by the CJEU. The original wording of this question by the referring court was as follows: “May national courts base the criterion as to the plausibility of [harm], under Article 5(1) of [Directive 2014/104], exclusively on the existence of a decision adopted by the competent competition authorities? In particular, what bearing would it have on this analysis if the decision in question were one adopted as part of a settlement procedure relating to a vertical infringement by object of EU competition law?”

Furthermore, although this question was submitted by the referring court as the third question, the CJEU agreed to answer it second, which is why it has been included in this order in this Legal Briefing.

Therefore, in cases of vertical restrictions, a claimant could not, in principle, rely on the presumption of damage under Article 17(2) of the Damages Directive, which would require them to demonstrate, in order to be granted access to evidence, a sufficient degree of probability regarding the existence of the damage and the causal link between it and the infringing conduct.

Furthermore, in the case analysed by the CJEU, this conclusion was supported by the fact that the Commission's Decision found the existence of a restriction of competition "by object", which does not necessarily mean that harm has been caused to a specific person or that there is a causal link between the infringing conduct and any harm the claimant may have suffered. This circumstance means that applicants must demonstrate a sufficient likelihood that the three aforementioned requirements have been met in order for their application for access to evidence to be successful.

Regarding the second distinction mentioned earlier, namely that the Decision was adopted in this case within the framework of a settlement procedure, the CJEU noted that this type of decision also allows for the establishment of an infringement of competition law.

However, the fact that the Decision was adopted in settlement proceedings does not invalidate the above conclusions, since an applicant for access to evidence would still be required to demonstrate the likelihood of harm, as well as the causal link between that harm and the infringement established in the Commission's Decision.

- iii) Must Article 5(1) of the Directive be interpreted as meaning that, in order to establish the viability of an action for damages within the meaning of that provision, it is necessary to prove that it is more likely than not that the conditions for liability for an infringement of competition law are met?³

To assess the viability of an action for damages, which a court must carry out in order to decide on the access to evidence, the CJEU started from the premise that *an obligation by which the claimant must establish ... that it is more likely than not that the conditions for liability for an infringement of competition law are met would constitute a strict legal requirement capable of unduly preventing the effective exercise of his or her right to compensation.*

On this basis, in order to establish the standard of viability of an action for damages that is required of an applicant seeking access to sources of evidence, the CJEU established two prerequisites.

The first prerequisite is that the proof of the requirements for the success of the action for damages, which must be provided by the applicant seeking access to evidence, must be "reasonably acceptable". Thus, when setting the standard for granting access to evidence, the CJEU opted for a considerably flexible criterion which, as is to be expected, will depend on the particular circumstances of each case.

The second requirement, closely linked to the first, is that when assessing whether the evidence of the requirements for the success of an action for damages is reasonably acceptable, a court must require a standard of proof *lower than that required for the purpose of establishing that the conditions for incurring substantive liability are satisfied.*

3. Conclusions and practical implications of the Judgment

The main conclusions that can be drawn from the Judgment are as follows:

- i) The provisions contained in Article 5(1) of the Directive must be applied, in an equivalent manner, both to actions for damages and to applications for access to sources of evidence that may be provided for under the national law of the Member States (as is the case, among others, in Spanish law).
- i) The existence of a Commission decision establishing an infringement of Article 101 of the TFEU allows a national court to conclude that the existence of an infringement of EU competition law has been sufficiently established. Nevertheless, applicants for access to evidence must demonstrate, in order for their application

³ This question was reformulated by the CJEU. The original wording of this question by the referring court was as follows: "Does the requirement as to the plausibility of [harm] laid down in Article 5(1) of [Directive 2014/104] always compel the applicant to demonstrate that, in the case at issue, harm is more likely to have been caused to the consumers represented, in this instance those resident in Portugal, than not?"

for access to evidence to succeed, a sufficient likelihood of the existence of damage and of a causal link between the damage and the infringing conduct.

- ii) The presumption of damage provided for in Article 17(2) of the Directive does not apply where the infringement of EU law has occurred in the context of a vertical restriction.
- iii) The standard of proof required of an applicant for access to evidence, regarding the requirements for an action for damages to succeed, is that these conditions must be met in a “reasonably acceptable” manner. Furthermore, in assessing this reasonableness, a lower standard of proof must be applied than that required, on the merits, for an action for damages to succeed.

The CJEU has provided new guidelines to enable national courts to rule on requests for access to evidence before bringing actions for damages that may be brought before them. However, these guidelines are quite flexible and their application may vary significantly depending on the particular circumstances of the specific case.

It appears that this new judgment will form part of the ongoing procedural debates concerning damages arising from competition infringements, where litigation and complexity are expected to continue to increase, both at national and European level.

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