



Reports of Cases

Case C-637/17

Cogeco Communications Inc.

v

Sport TV Portugal SA and Others

(Request for a preliminary ruling from the Tribunal Judicial da Comarca de Lisboa)

Judgment of the Court (Second Chamber), 28 March 2019

(Reference for a preliminary ruling — Article 102 TFEU — Principles of equivalence and effectiveness — Directive 2014/104/EU — Article 9(1) — Article 10(2) to (4) — Articles 21 and 22 — Actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union — Effects of national decisions — Limitation periods — Transposition — Temporal application)

1. *Competition — EU rules — Application by national courts — Action for compensation of the damage caused by infringements of the rules on competition — Directive 2014/104 — Implementation — Scope ratione temporis*
(European Parliament and Council Directive 2014/104, Arts. 21 and 22)

(see paragraphs 25-30)

2. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Identification of the relevant aspects of EU law — Reformulation of the questions*
(Art. 267 TFEU)

(see paragraph 35)

3. *Dominant position — Abuse — Prohibition — Direct effect — Right of individuals to claim compensation for damage suffered — Detailed rules for exercising that right — Causal link — Application of national law — Conditions — Observance of the principle of equivalence of the detailed rules for exercising a right under EU law and those for exercising a right under the national legal system — Observance of the principle of effectiveness of EU law*
(Art. 102 TFEU)

(see paragraphs 38-44)

4. *Dominant position — Abuse — Prohibition — Direct effect — Right of individuals to claim compensation for damage suffered — Detailed rules for exercising that right —*

Limitation periods — National legislation laying down a limitation period of three years without the possibility of suspension or interruption — Unlawful (Art. 102 TFEU)

(see paragraphs 45-55)

5. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits — Clearly irrelevant questions and hypothetical questions put in a context not permitting a useful answer — Questions bearing no relation to the subject matter of the case in the main proceedings (Art. 267 TFEU)*

(see paragraphs 57-60)

Résumé

In the judgment in *Cogeco Communications* (C-637/17), delivered on 28 March 2019, the Court ruled on a request for a preliminary ruling concerning Directive 2014/104¹ 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, Article 102 TFEU and the principles equivalence and effectiveness. The dispute in the main proceedings concerns an action for compensation of the harm that Cogeco Communications Inc. suffered as a result of the company Sport TV Portugal's anticompetitive practices. The action was brought, on 27 February 2015, after a decision of the Competition Authority by which Sport TV Portugal was ordered to pay a fine for abusing its dominant position on the premium sports TV channels market between 2006 and 2011.

The Portuguese law on non-contractual liability applicable to the dispute in the main proceedings provides, however, for a limitation period of three years which, according to Sport TV Portugal, began to run as soon as Cogeco Communications had available to it all the necessary information to assess whether or not it had a right to compensation, in which case the action in the present case would be time-barred. Directive 2014/104 contains, inter alia, provisions on limitation in the context of actions for damages on account of an infringement of competition law, but it had not yet been transposed into the Portuguese legal order when the action was brought. The outcome of the dispute thus depending on the applicability of Directive 2014/104, the referring court formulated a request for a preliminary ruling in that regard.

As regards the application *ratione temporis* of Directive 2014/104, the Court held that, where the Member States have decided that the provisions of their domestic legal system transposing the procedural provisions of that directive are not applicable to actions for damages brought before the date of entry into force of those national provisions, actions brought after 26 December 2014 but before the date of expiry of the period prescribed for the transposition of that directive remain governed solely by the national procedural rules that were already in force before the transposition of the directive. The same applies a fortiori to the national provisions adopted pursuant to Article 21 of Directive 2014/104 by the Member States in order to comply with the substantive provisions thereof, in so far as, as is apparent from the wording of Article 22(1) of that directive,

¹ 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 (OJ 2014 L 349, p. 1, 'Directive 2014/104').

such national provisions must not apply retroactively. In those circumstances, the Court held that Directive 2014/104 must be interpreted as not applying to the dispute in the main proceedings.

Thus, in the absence of EU rules governing actions for damages on account of an infringement of competition law, it is for the domestic legal system of each Member State to lay down the detailed rules governing the exercise of the right to claim compensation for the harm resulting from an abuse of dominant position, including those on limitation periods, provided that the principles of equivalence and effectiveness are observed. Those rules must not jeopardise the effective application of Article 102 TFEU.

In that regard, account must be taken of the specificities of competition law cases and in particular of the fact that the bringing of actions for damages on account of infringements of EU competition law requires, in principle, a complex factual and economic analysis.

Applying the principle of effectiveness, the Court held that if the limitation period, which starts to run before the completion of the proceedings following which a final decision is made by the national competition authority or by a review court, is too short in relation to the duration of these proceedings and cannot be suspended or interrupted during the course of such proceedings, it is not inconceivable that that limitation period may expire even before those proceedings are completed. Thus, such a limitation period may render the exercise of the right to bring actions for compensation based on a final decision finding an infringement of EU competition rules practically impossible or excessively difficult. Therefore, the Court ruled that Article 102 TFEU and the principle of effectiveness must be interpreted as precluding national legislation providing for such a limitation period.