

International Comparative Legal Guides

Competition Litigation 2026

A practical cross-border resource to inform legal minds

18th Edition

Contributing Editors:

Euan Burrows White & Case LLP

Anna Morfey Ashurst LLP



iclg

Expert Analysis Chapters

1

Evidence Trumps Inference and Presumption
Euan Burrows, Marlin Heitmann & Sally Staunton, White & Case LLP

8

Private Enforcement of EU Competition Law: Recent Developments
Frédéric Louis, Anne Vallery, Cormac O'Daly & Édouard Bruc, Wilmer Cutler Pickering Hale and Dorr LLP

Q&A Chapters

16

Australia
Sar Katdare, Morgan Blaschke-Broad, Dean Baker & Lara So, Johnson Winter Slattery

23

China
Shaosong Sun & Yue Guan, Guantao Law Firm

34

Cyprus
Michael Kyriakides, Eleni Neoptoleμου & Jomana Nayed, Harris Kyriakides

42

Ecuador
Gilberto Alfonso Gutiérrez Perdomo & Bridney Taíz Ripalda Quirola, MGR Abogados y Auditores

52

England & Wales
Anna Morfey, Tim West, Max Strasberg & India Case, Ashurst LLP

71

France
Alexandre Glatz & Thibaut Marcerou, Osborne Clarke SELAS

80

Germany
Dr. Martin Buntscheck, Dr. Tatjana Mühlbach, Dr. Andreas Boos & Eva Grünwald, BUNTSCHECK Rechtsanwalts-gesellschaft mbH

88

Indonesia
Aris Budi Prasetyo, Kevin Sidharta, Elsie Hakim & Giffy Pardede, AGI Legal

96

Malaysia
Penny Wong Sook Kuan, Rahmat Lim & Partners

103

Moldova
Carolina Parcalab, ACI Partners

108

Pakistan
Syed Shayan Ahmed & Ahmed Magsi, Liaquat Merchant Associates

114

Portugal
Miguel Gorjão-Henriques, Mafalda Ferreira Santos, Alberto Saavedra & Nuno Temudo Vieira, Sérvulo & Associados

124

Serbia
Vuk Leković & Vasilije Bošković, Gecić Law

130

Singapore
Daren Shiau & Elsa Chen, Allen & Gledhill LLP

137

Slovakia
Tomáš Mareta, Marek Holka & Andrej Katrušín, Čechová & Partners

145

Slovenia
Eva Škufca, Škufca Law

151

Sweden
Helena Selander, Pontus Scherp & Fredrik Norburg, Norburg & Scherp Advokatbyrå AB

158

USA
Todd Stenerson, Rachel Mossman Zieminski, Brian Hauser & Kristyn Hansen, A&O Shearman

Private Enforcement of EU Competition Law: Recent Developments



Frédéric Louis



Anne Vallery



Cormac O'Daly



Édouard Bruc

Wilmer Cutler Pickering Hale and Dorr LLP

1. Introduction

The European Union ('EU') is witnessing a marked rise in private enforcement of competition law. Cartel damages actions in the EU have seen an eightfold cumulative growth over the past decade.¹ Directive 2014/104 ('**Damages Directive**') has obviously played a central role in this.² Looking ahead, the recent national transpositions of Directive 2020/1828 ('**Representative Actions Directive**'), many of which have extended the Directive's scope to include competition infringements, are expected to further accelerate this growth.³

What particularly stands out in the last 12 months is the diversity of claims and the significant sums potentially at stake. For example, Booking.com is being sued by more than 10,000 hotels because of its best parity clauses, with the claims potentially reaching into the billions.⁴ Similarly, FIFA faces a multibillion-euro class action for alleged financial loss caused to footballers by its transfer regulations.⁵ Google likewise could be liable for up to €900 million in a newly launched follow-on class action.⁶ All of these new antitrust proceedings have been filed before Dutch courts and are backed by third-party litigation funding, underscoring how profitable and less uncertain such investments appear to have become.⁷ As evidenced below, the Netherlands is to date the preferred forum for claimants, thanks to its well-established collective redress regime and limited statutory control over litigation fees.⁸

As regards litigation funding, after the European Parliament's 2022 resolution urging the European Commission ('**Commission**') to propose a directive regulating third-party litigation funding, the Commission has recently published a 700-page mapping study examining the practice across Member States, which appears to be largely unregulated.⁹ However, no formal legislative proposal has yet been tabled.

Turning to recent judicial developments, the European Court of Justice ('**ECJ**') and its Advocates General ('**AG**') have continued to exhibit a claimant-friendly stance. That tendency is best illustrated by rulings on limitation periods, where EU judges routinely rely on the Damages Directive, even where it is not formally applicable. Similarly, the ECJ has frequently invoked the principle of full effectiveness of EU law to rely on other parts of the Damages Directive, with the result that, in practice, it sometimes matters little to a case whether that Directive is even temporally applicable.¹⁰

While few judgments were handed down between 2024 and 2025, several influential AG opinions were issued and these are very often followed by the ECJ.¹¹ Among others, these opinions have dealt with the calculation of time limits (see section 2 below) and the appropriate legal standard for pre-litigation disclosure (see section 3 below). Jurisdictional issues have been

in the spotlight, with important questions on the extent to which claimants could rely on the notion of undertaking to anchor their claims in a single forum (see section 4 below). Importantly, for the first time, the Court and its AG have weighed the importance of national collective redress regimes under EU law, be this in terms of determining the competent court or ensuring the effectiveness of competition law (see section 5 below).

2. Starting Point for Limitation Period in Follow-on Actions Based on National Decisions: AG Medina's Opinion

On 23 July 2015, the *Comisión Nacional de los Mercados y la Competencia* ('**CNMC**'), the Spanish competition authority, sanctioned 21 car manufacturers, including Nissan, along with two consultancy firms, for engaging in an anticompetitive information exchange.¹² Five days later, a press release was issued, and on 15 September 2015, the full decision was published on the CNMC's website. In 2021, after a series of appeals, the Spanish Supreme Court upheld the CNMC Decision.¹³

In 2023, eight years after the publication of the CNMC Decision, a consumer filed a follow-on damages claim against Nissan Iberia SA. While relying on the CNMC Decision, the claimant considered that the starting point (i.e. *dies a quo*) for calculating the limitation period should be the date of the Spanish Supreme Court's judgment. Nissan argued that the claim was time-barred under the one-year limitation period in the Spanish Civil Code,¹⁴ with the *dies a quo* accordingly being 15 September 2015, the date on which the CNMC Decision was first made public. In Nissan's view, it was not necessary for the CNMC Decision to be final – as in upheld by the Spanish Supreme Court – for the time limit to begin to run.¹⁵

On 3 April 2025, AG Medina delivered her non-binding Opinion in response to a preliminary reference from the Commercial Court of Zaragoza, further clarifying the case law on limitation periods, which has undergone significant refinement in recent years (see section 2 of last year's chapter at <https://www.wilmerhale.com/en/insights/publications/20240930-private-enforcement-of-eu-competition-law-recent-developments>).

AG Medina first noted that the Damages Directive did not apply *ratione temporis* to this case. Applying the ECJ's test set forth in *Heureka*,¹⁶ she noted that, as per the referring court, the limitation period began in 2015 before Spain's transposition of the Damages Directive, and that the infringement relevant to the case ended in 2013, well before the 2016 transposition deadline.¹⁷ Accordingly, the referring court's questions had to be assessed exclusively under Article 101 of the Treaty on the Functioning of the European Union ('**TFEU**'), construed through the lens of the principle of effectiveness.¹⁸

The AG then turned to the central issue, namely whether, under EU law, the starting point of the limitation period is postponed until the decision of the national competition authority ('NCA') becomes 'final', or whether it begins upon publication of the NCA's decision.¹⁹

In considering the question, she reiterated that the *dies a quo* only begins once (i) the infringement has ceased, and (ii) the claimant knew, or could reasonably have been expected to know, the information necessary for bringing an action for damages.²⁰ In this case, given that the infringement ended in 2013, only the second, more subjective condition concerning the claimant's knowledge was relevant.

Importantly, the AG recalled that the standard for assessing that knowledge threshold depends on whether the action is stand-alone or follow-on. Stand-alone actions are harder to bring because they do not rely on prior public enforcement.²¹ Unlike follow-on actions, they do not benefit from the legal presumptions attached to NCA/Commission infringement decisions.²² In AG Medina's view, the 'relationship' between an infringement decision and the starting date of the limitation period warrants a different interpretation for follow-on actions.²³ This notably underpinned the ECJ's *Heureka* ruling, which held that, once the infringement has ceased, the *dies a quo* for follow-on actions based on a Commission decision starts, in principle, from the date of publication of the summary of that decision in the *Official Journal of the European Union*.²⁴ Transposed to this case, the action against Nissan would, as a result, have been out of time.

However, AG Medina suggested a further refinement: distinguishing between follow-on actions based on Commission decisions, as in *Heureka*, and those based on NCA decisions.²⁵ She substantiated this further distinction by reference to several considerations:

- NCA decisions do not benefit from the presumption of legality of Commission decisions, which are binding on national courts, under Article 16(1) Regulation (EC) No. 1/2003.²⁶
- In *Heureka*, the ECJ's Grand Chamber contrasted the binding nature of Commission decisions with NCA decisions, which have probative value 'only where those decisions are final' under Article 9 of the Damages Directive.²⁷
- The existence of an infringement, the harm, the causal link between them, and the identity of the infringer(s) may change following national judicial review.²⁸ This lack of 'complete and authoritative information' often compels claimants to seek the suspension or interruption of the limitation period, which is costly and time-consuming.²⁹ Claimants also face the risk of adverse costs consequences if unsuccessful or partially unsuccessful as a result of changes resulting from judicial review.³⁰ In the AG's view, this risked jeopardising the full effectiveness of Article 101 TFEU.³¹
- Specifically, under Spanish law, the publication of the CNMC Decision on the CNMC website does not affect its validity.³² Since this website is not an official government gazette, she considered that it cannot be equated with publication of a Commission decision in the *Official Journal of the European Union*.³³

As a consequence, AG Medina recommended postponing the starting date of the limitation period until NCA decisions become final. This was chiefly based on the lack of binding effects against cartellists of non-final NCA decisions, in contrast to Commission decisions.³⁴ For AG Medina, this temporary uncertainty is at odds with the idea that national remedies must be 'accessible, prompt, and reasonably cost

effective' for claimants.³⁵ She reasoned that any alternative would unfairly put the injured party in a significantly less favourable position than that of the infringer.³⁶ Given the foregoing, she opined that the ECJ should give precedence to a solution that would more likely allow the action to proceed.³⁷ On 4 September 2025, the ECJ followed the AG's Opinion and held that the required knowledge only arises when the decision becomes final, provided that the judgment having that effect is freely accessible to the general public and the date of its publication is clearly indicated.³⁸

3. Pre-Litigation Disclosure of Documents: Opinion in *Meliá Hotels*

In *Meliá Hotels International SA v. Associação Ius Omnibus*, AG Szpunar built on the *PACCAR* judgment, which dealt with disclosure under the Damages Directive (see analysis at <https://www.mondaq.com/uk/cartels-monopolies/1377674/private-enforcement-of-eu-competition-law-recent-developments>).³⁹ His Opinion focused on Article 5(1) of the Damages Directive, concerning the disclosure of evidence and whether that provision can be invoked before bringing an action on the merits. In this case, the claimant, a Portuguese consumer protection association, filed a pre-collective action request to access internal documents held by Meliá Hotels International SA. For the claimant, the aim of such pre-litigation disclosure was essentially to enable better framing of a prospective damages claim.⁴⁰

AG Szpunar's answer was clear-cut: Article 5(8) of the Damages Directive explicitly allows national rules to provide for wider disclosure of evidence, such as at the pre-litigation stage under Portuguese law.⁴¹ The next question was whether the conditions allowing such disclosure under Article 5(1) were also met. This provision authorises disclosure orders only if claimants have substantiated the 'plausibility' of their claim for damages by presenting sufficient 'reasonably available' facts and evidence.⁴²

According to the AG, this standard of proof does not require claimants to demonstrate that harm is more likely than not.⁴³ In the AG's Opinion, such a balance of probabilities typically governs the merits.⁴⁴ He also considered that proof of an infringement alone is insufficient, even in follow-on actions.⁴⁵ Instead, he stated that claimants must show that the hypothesis that all three conditions governing liability – infringement, harm, and causation – are met is 'reasonably acceptable', given the facts and evidence reasonably available to them.⁴⁶ In the AG's Opinion, this more relaxed standard could be satisfied even with partial or incomplete information.⁴⁷ AG Szpunar further stressed that such a standard applies uniformly, irrespective of whether the infringement is vertical or horizontal, by object or by effect, and regardless of whether the Commission decision was adopted through a settlement procedure.⁴⁸

4. Jurisdictional Issues and the Notion of Undertaking

Following the landmark rulings in *Skanska* and *Sumal*, the incorporation of the notion of undertaking into private enforcement prompted novel claims seeking to invoke the concept at the jurisdictional stage.⁴⁹ Last year, such efforts proved unsuccessful (see <https://www.wilmerhale.com/en/insights/publications/20240930-private-enforcement-of-eu-competition-law-recent-developments>). However, this year's attempts, which focus on the parent-subsidiary relationship, were more successful.

4.1 Anchor defendant and Akzo presumption

In *Athenian Brewery SA and Heineken NV* (*Athenian Brewery and Heineken*), the ECJ was asked to clarify the extent to which the presumption of decisive influence between a parent company and its subsidiary established in *Akzo* could be invoked at the jurisdictional stage to anchor a claim against a subsidiary, when the anchoring (parent company) defendant was not itself an addressee of the Commission's infringement decision.⁵⁰

The case arose from follow-on proceedings brought in the Netherlands by a Greek brewery seeking damages from Heineken NV and its Greek subsidiary, Athenian Brewery SA, for the abuse of a dominant position committed by the subsidiary.⁵¹ The claim against Heineken NV was premised on the presumption that where a parent company holds all or nearly all of the capital in a subsidiary, in this case 98.8%, the two entities form part of the same undertaking for the purposes of competition law (*Akzo presumption*) and thus the claim may be brought in the country of the parent company.⁵²

To establish jurisdiction, the claimant invoked Article 8(1) of Regulation No. 1215/2012 (*Brussels I bis Regulation*),⁵³ which permits multiple defendants to be sued in the courts of one defendant's domicile (the anchor defendant), provided the claims are closely connected and adjudicating them together avoids the risk of irreconcilable judgments.⁵⁴

Drawing on recent case law, notably *Sumal*,⁵⁵ the ECJ reaffirmed that the autonomous concept of a 'single economic unit' or undertaking is relevant at the jurisdictional stage. For competition law purposes, the parent and the subsidiary should be regarded as 'run as one'.⁵⁶ Thus, the ECJ concluded that since Article 8(1) of the *Brussels I bis Regulation* is applicable to co-cartelists based on a shared factual and legal matrix, it applies with greater force within a single economic unit.⁵⁷

The ECJ ruled that the fact that the joint and several liability of the two entities is not established in an NCA/Commission decision, does not preclude such a finding.⁵⁸ This was particularly true for NCA decisions, which are not binding across Member States (unlike Commission decisions), increasing the risk of irreconcilable judgments – precisely what Article 8(1) seeks to prevent.⁵⁹

For the ECJ, this was in keeping with the principles of legal certainty and foreseeability.⁶⁰ Under competition law, it is the undertaking that is liable, not the corporate entities. Accordingly, a parent company or its subsidiary 'may reasonably foresee' that, in the event of a competition infringement committed by one of them, it may be sued before the courts of the Member State in which the other is domiciled.⁶¹ In those circumstances, the ECJ considered that national courts may rely on the *Akzo* presumption, i.e. the rebuttable presumption that a parent company holding all or almost all of the capital of a subsidiary exercises decisive influence over it and is thus part of the same undertaking, to apply Article 8(1) of the *Brussels I bis Regulation*. Defendants still retain the theoretical right to rebut the *Akzo* presumption by presenting 'firm' evidence to the contrary.⁶²

In retrospect, the ECJ's answer was foreseeable, particularly in light of its reasoning in *Skanska*.⁶³ Building on its decades-long effort to grant competition law claims privileged status over practically all other civil claims in Europe, the ECJ is more than willing to use the undertaking concept to tear the last remaining shreds of the corporate veil to facilitate forum shopping and empower claimants to more readily bring claims in claimant-friendly jurisdictions with well-developed anti-trust litigation regimes, such as the Netherlands. This does

not bode well for defendants. Although the *Akzo* presumption is, in theory, rebuttable, the prospect of overturning it is largely illusory.

4.2 Anchoring claims in international follow-on proceedings: AG Kokott's Opinion

The ECJ has the chance to build on its reasoning in *Athenian Brewery and Heineken* as it addresses other Dutch preliminary references in *Electricity & Water Authority of the Government of Bahrain and Smurfit*, which raise analogous jurisdictional issues.⁶⁴ AG Kokott issued her Opinion in these cases in April 2025,⁶⁵ which may be particularly persuasive given that the ECJ endorsed her analysis in *Athenian Brewery and Heineken*.

In a single Opinion on the two preliminary references, AG Kokott examined two sets of follow-on proceedings concerning: (i) the *Power Cables* cartel;⁶⁶ and (ii) the *Cardboard Sheet* cartel.⁶⁷ Both involved companies registered across Europe. For present purposes, what matters is that in both cases only one defendant was domiciled in Amsterdam. The remaining defendants, although domiciled elsewhere, belonged to the same corporate groups allegedly involved in the respective infringements.⁶⁸

This prompted the Amsterdam Court of Appeal to refer many procedural questions concerning the interpretation of Article 8(1) of the *Brussels I bis Regulation* to the ECJ, notably the close connection test, the foreseeability principle, the merits of the claim, or the legal significance of the roles played by the anchor defendant and the co-defendants in the cartel.⁶⁹

AG Kokott first addressed the notion of undertaking under both top-down and bottom-up scenarios. As regards the liability of the parent company for the subsidiary's action – i.e. bottom-up – as discussed above, claimants can make use of the *Akzo* presumption, so that both may be treated as a single undertaking.⁷⁰ In top-down cases, she noted that liability flows from the parent company to the subsidiary; claimants must also prove a 'specific link' between the economic activity of that subsidiary and the subject matter of the parent company's infringement.⁷¹ On that basis, AG Kokott opined that an intermediate holding company, which merely manages and holds shares, can exhibit the required specific link with the competition infringement for which its parent company is held liable.⁷² She stated that this was the case where a subsidiary of the intermediate holding company, on which the holding company itself exerts a decisive influence, pursues an economic activity linked to the infringement.⁷³ In this regard, a direct sale of cartelised products by a subsidiary or sub-sub-sidiary to claimants is not required.⁷⁴ Instead, an economic link suffices: e.g. involvement in producing the cartelised products or the fact that the infringement concerned the same products as those that the subsidiary sold.⁷⁵

Next, the AG reiterated the ECJ's holding in *Athenian Brewery and Heineken*. Article 8(1) of the *Brussels I bis Regulation* allows claims to be anchored against multiple undertakings alleged to have participated in the same infringement, even where their involvement occurred at different times or in different locations.⁷⁶ She continued that this principle likewise applies where claims are brought against a parent company and its subsidiary forming a single economic unit,⁷⁷ and the fact that the companies concerned are not designated in the NCA/Commission decision does not exclude the possibility of a 'close connection'.⁷⁸

Turning to whether the claim's prospects of success ought to be assessed at the jurisdictional stage, AG Kokott observed that neither the admissibility nor the merits of the claim should be examined under Article 8(1); only the relevant connecting factors with the jurisdiction were pertinent.⁷⁹ However, she

recalled that the general principle of abuse of rights still operates as a limiting principle.⁸⁰ To guard against misuse of the anchor defendant mechanism, judges may therefore strike out claims where it is firmly evidenced that claimants have artificially satisfied or prolonged the satisfaction of Article 8(1) conditions.⁸¹ For that to be the case, however, it is not enough that the claim against the anchor defendant *could* be unfounded.⁸² Rather, the claim must be manifestly unfounded or contrived or be devoid of any real interest to the claimant at the time of its initiation.⁸³ This jurisdictional plausibility check (*'manifestly unfounded'*) is interesting and could amount to an abbreviated merits review.

Applying this standard, AG Kokott first concentrated on the fact that some claimants were in the Gulf States and outside the EU, leading the referring court to assume that the damage suffered by them occurred there. She reasoned that, under principles of private international law, it was not excluded that those claimants could assert damages under Article 101 TFEU.⁸⁴ She added that these claimants could potentially fulfil the conditions of infringement, damage, and causal link.⁸⁵ The AG recalled that the ECJ had not ruled on whether damages claims could be brought if the damage occurred in a third country.⁸⁶ Consequently, she found that the claim could not be considered manifestly unfounded in the context of the examination of jurisdiction.⁸⁷ The AG also recalled that, in the context of Article 8(1), invoking the notion of undertaking – as in *Athenian Brewery and Heineken* – was not abusive.⁸⁸

AG Kokott dismissed the co-defendants' unforeseeability arguments. In her view, under Article 8(1), it is not necessary for a co-defendant to have specifically foreseen being sued in the anchor defendant's forum.⁸⁹ Rather, abstract foreseeability was sufficient: that is, reasonably predictable for a well-informed defendant, given the economic and legal interdependence and the common participation in a cartel.⁹⁰

Lastly, according to the AG, under Article 8(1) of the Brussels I *bis* Regulation, only a defendant domiciled in the judicial district of the court seised can be an anchor defendant, since that provision directly governs not only international but also territorial jurisdiction.⁹¹ This, in principle, does not preclude an internal reference to another court in the same Member State.⁹²

Seen together, these procedural answers go a long way towards facilitating consolidation of claims in a claimant-friendly forum. Should the ECJ follow the Opinion, requirements of a sufficient link in a bottom-up situation or foreseeability would be rendered a dead letter, as one would be hard pressed to find facts that would not meet the Opinion's proposed relaxed standards. By comparison, this stance is not fully aligned with that of the English courts, which still entertain *forum non conveniens* arguments.⁹³

5. Collective Redress Under EU Competition Law

In its first substantive engagement with collective redress under EU competition law, the ECJ has clarified the framework for claim assignment models in light of national procedural autonomy and EU principles (see section 5.2 below), and, following AG Campos Sánchez-Bordona's Opinion, is now expected to rule on the territorial reach of collective antitrust proceedings in the digital age (see section 5.1 below).

5.1 Tort claims and jurisdiction: the Apple App Store Opinion

Two foundations (*Stichting Right to Consumer Justice* and *Stichting App Stores Claims*) filed damages claims against

Apple before the District Court of Amsterdam, alleging abuse of dominance because of Apple's allegedly excessive 30% commission on in-app purchases. Apple maintained that the District Court of Amsterdam only had jurisdiction as regards users residing within its district. For all other users residing elsewhere in the Netherlands, Apple contended that the Amsterdam court lacked international and territorial jurisdiction under Article 7(2) of the Brussels I *bis* Regulation.⁹⁴

Article 7(2) of that Regulation allows tort claims to be brought before the courts of the place where the harmful event occurred or the damage was suffered.⁹⁵ The Amsterdam court questioned, via a preliminary reference, whether, in the context of an online platform accessible globally, the users' domicile could serve as a relevant connecting factor, especially for collective actions initiated by representative entities.⁹⁶

AG Campos Sánchez-Bordona noted that, for each customer, it would not be possible to determine where the event giving rise to the damage occurred, i.e. the precise place where the sale of apps through the countrywide App Store took place.⁹⁷ He thus proposed a *'location fiction'*: iOS users whose Apple ID indicates a Dutch domicile should be presumed to have made their purchases within the Netherlands.

Even if this is accepted, however, no single connecting factor anchors the proceedings to a specific district court.⁹⁸ To address this, the AG suggested that the relevant connecting factor should be the user's place of residence or establishment in the Netherlands, disregarding his or her actual physical location in that country at the time of each sale. For the AG, this made good sense as the App Store's terms and conditions include a clause conferring jurisdiction on the courts of the user's place of residence.⁹⁹ For the same reasons, he argued that the place where the damage was suffered (*locus damni*) – rather than where the harmful event occurred (*locus delicti commissi*) – should also be tied to the user's domicile within the affected market.¹⁰⁰

Crucially, the AG also addressed for the first time the impact of representative actions on jurisdiction, firmly rejecting the notion that the recently implemented Representative Actions Directive alters, without explicit language to this effect, the criteria for jurisdiction under Article 7(2) of the Brussels I *bis* Regulation.¹⁰¹

Lastly, the AG recalled that national rules allowing consolidation of multiple related cases before a single court, as permitted under Dutch law, do not violate EU law, provided such a concentration best serves the sound administration of justice.¹⁰² The AG, however, rejected broader proposals to confer jurisdiction based on the representative entity's seat or to consider all courts within a Member State as territorially competent, stressing the need for predictability and proximity.¹⁰³

In sum, contrary to claimants' expectations, the AG proposed that, in the context of nationwide claims, unless a single national court has exclusive jurisdiction, multiple claims may be filed before different domestic courts (which, under certain circumstances, could be consolidated thereafter).¹⁰⁴

5.2 Limitations to the assignment of damages claims and principle of effectiveness

In *ASG 2 Ausgleichsgesellschaft für die Sägeindustrie Nordrhein-Westfalen GmbH ('ASG 2') v. Land Nordrhein-Westfalen*, the ECJ, sitting as a Grand Chamber, had its first opportunity to clarify how national collective redress mechanisms should interact with EU competition law and the right to effective judicial protection.¹⁰⁵

The dispute originated from a stand-alone action brought against the German Land Nordrhein-Westfalen (*'Land'*).¹⁰⁶

The claimant, ASG 2, was not a direct victim of the alleged infringement but a provider of legal services acting under an assignment model. It aggregated claims from 32 sawmills and pursued the action in its own name and at its own expense in exchange for a success fee.¹⁰⁷ The Land challenged ASG 2's standing, arguing that German law forbids such an assignment model.¹⁰⁸ The Dortmund Regional Court asked the ECJ whether EU law precludes a national interpretation that bars alleged cartel victims from bringing a group action in a stand-alone context.¹⁰⁹

After recalling that individuals have a right to full compensation, as enshrined in Article 3(1) of Damages Directive,¹¹⁰ the ECJ noted that Article 2(4) thereof envisages the possibility that a damages action may be brought either directly or by a third person to whom the right of the alleged injured party to seek compensation has been assigned.¹¹¹

According to the ECJ, while this provision allows claim assignments, Member States retain discretion over whether to allow such mechanisms.¹¹² The ECJ recalled that that freedom is curbed by the EU principles of equivalence and effectiveness. Specifically, to uphold effectiveness, national procedural rules must not render the exercise of the right to full compensation 'practically impossible or excessively difficult'.¹¹³ Although the referring court raised concerns that the complexity and procedural costs of individual actions may discourage victims from suing,¹¹⁴ the ECJ observed that those factors alone are insufficient to render such actions practically impossible or excessively difficult.¹¹⁵ The ECJ continued that the referring court could only reach such a conclusion if, upon a thorough assessment of all legal and factual circumstances, the referring court identified specific elements of national law that effectively preclude such actions.¹¹⁶

The ECJ noted the existence of other 'conceivable alternatives' under German law, such as: (i) assignment of claims in the form of genuine factoring, i.e. not a mere fiduciary transfer but a full transfer of a third-party claim in return for immediate payment to the assignor; and (ii) *litis consortium*, whereby multiple applicants jointly bring an action to facilitate shared evaluations and expert assessments of their respective losses.¹¹⁷ It thus underscored that the principle of effectiveness demands a thoughtful, case-specific analysis.

The Grand Chamber has thus crafted an EU-based right to collective redress, although this will only be available when there is no other effective avenue for victims to obtain compensation.¹¹⁸

Acknowledgment

The authors would like to thank Benjamin Roitman, an associate at Wilmer Cutler Pickering Hale and Dorr LLP in Brussels, for his contribution to this chapter. He is a French-qualified lawyer specialising in EU and French competition law. Mr Roitman advises clients on a wide range of antitrust matters, including merger control, abuse of dominance, and cartel investigations. Mr Roitman's practice also covers digital regulation and the intersection of competition law with data and technology. He has worked on complex multi-jurisdictional cases and high-stakes litigation before French and European institutions, across various sectors including technology, luxury goods, online gambling, and energy.

Tel: +32 2 285 49 03

Email: benjamin.roitman@wilmerhale.com

Endnotes

- 1 See for further details, Jean-François Laborde, Cartel damages actions in Europe: How courts have assessed cartel overcharges, July 2025, *Concurrences* No. 7-2025.
- 2 Directive 2014/104/EU 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 [2014] OJ L 349.
- 3 Many countries that already had a competition class action regime have superimposed the Representative Actions Directive's framework onto their existing regimes. Germany and Austria, however, have created an entirely new competition class action regime. See Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC [2020] OJ L 409.
- 4 Mark Frary, Class action suit filed against Booking.com in Europe (*PhocusWire*, 2 June 2025); see <https://www.phocuswire.com/class-action-filed-against-booking-europe>
- 5 Bethan John, FIFA threatened with multibillion-euro antitrust lawsuit (*Global Competition Review*, 4 August 2025); see https://globalcompetitionreview.com/article/fifa-threatened-multibillion-euro-antitrust-lawsuit?utm_source=FIFA%2Bthreatened%2Bwith%2Bmultibillion-euro%2Bantitrust%2Blawsuit&utm_medium=email&utm_campaign=GCR%2BAAlerts
- 6 In Germany, Google's rival, Idealo, has significantly expanded its abuse of dominance claim, now seeking €3.3 billion in damages for alleged anticompetitive conduct. See Rashid Baxter, Google sued in new Shopping claim (*Global Competition Review*, 4 April 2025), <https://globalcompetitionreview.com/article/google-sued-in-new-shopping-claim>; and Francesca McClimont, German Google Shopping claim skyrockets to €3.3 billion (*Global Competition Review*, 20 February 2025), <https://globalcompetitionreview.com/article/german-google-shopping-claim-skyrockets-eu33-billion>
- 7 In the *Booking.com* case, under the terms of the agreement, the funder will receive a refund of twice the litigation costs, plus 30% of the awarded damages (see *Stichting Hotel Claims Alliance*, Main Brochure on the collective damage action by European hotels against Booking.com, https://www.nihf.co.uk/wp-content/uploads/2025/06/2.-Main-Brochure-Collective-action-against-Booking.com_.pdf)
- 8 Portugal has also attracted a growing number of class actions, with around €54.8 billion in claims. See Ulrike Barth, European Class Actions Hit New Heights from Quantity to Complexity (*Law.com*, 12 August 2025). See also, Francesca McClimont, Ius Omnibus plots amended class action against major banks (*Global Competition Review*, 13 August 2025), <https://globalcompetitionreview.com/article/ius-omnibus-plots-amended-class-action-against-major-banks>
- 9 European Parliament resolution of 13 September 2022 with recommendations to the Commission on Responsible private funding of litigation (2020/2130(INL)). See European Commission DG Justice and Consumers, Mapping Third Party Litigation Funding in the European Union, 21 March 2025, https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/civil-justice/civil-and-commercial-law/third-party-litigation-funding-tplf_en
- 10 E.g. *Heureka*, Case C-605/21, EU:C:2024:324, paras 54–55 and 86; *Cogeco*, Case C-637/17, EU:C:2019:263, para. 55; *Tráficos Manuel Ferrer*, Case C-312/21, EU:C:2023:99, para. 61.
- 11 A 2016 study that measured the influence of AG opinions on the judgments of the Court found that the ECJ is approximately 67% more likely to deliver a particular outcome if that was the opinion

- of the AG. See Carlos Arrebola, Ana Julia Mauricio and Héctor Jiménez Portilla, An Econometric Analysis of the Influence of the Advocate General on the Court of Justice of the European Union, [2016] 5(1), *Cambridge Journal of Comparative and International Law*. This study is not limited to competition law or merger cases, however, and includes non-contested and routine cases.
- 12 CNMC Decision, *Fabricantes de automóviles*, 23 July 2015, No. S/0482/13; see https://www.cnmc.es/sites/default/files/685749_1.pdf
- 13 The CNMC Decision was upheld by the National High Court (*Audiencia Nacional*, ES:AN:2019:5028; see <https://www.poderjudicial.es/search/AN/openDocument/694343693b732229/20200312>) in December 2019 and the Supreme Court on 7 June 2021 (*Tribunal Supremo*, ES:TS:2021:2439; see <https://www.poderjudicial.es/search/AN/openDocument/92dbbd798e9264c4/20210628>).
- 14 Article 1968 of the Spanish Civil Code.
- 15 Opinion of AG Medina in *CP v. Nissan Iberia, S.A.*, Case C-21/24, ('**Opinion in Nissan Iberia**'), EU:C:2025:248, para. 10.
- 16 *Heureka*, Case C-605/21, EU:C:2024:324, paras 49–50.
- 17 Opinion in *Nissan Iberia*, paras 19–21.
- 18 *Ibid.* para. 22.
- 19 For the sake of completeness, AG Medina deemed that the first hypothetical preliminary question asked by the national court was inadmissible.
- 20 Opinion in *Nissan Iberia*, para. 41; *Heureka*, Case C-605/21, EU:C:2024:324, para. 55 and the case law cited.
- 21 Opinion in *Nissan Iberia*, para. 46.
- 22 *Ibid.* para. 47.
- 23 *Ibid.* para. 48: 'it is only in the context of follow-on actions that the question of the relationship between the decision of a competent competition authority and the dies a quo of the limitation period becomes relevant'.
- 24 *Ibid.* para. 55; *Heureka*, Case C-605/21, EU:C:2024:324, para. 78.
- 25 Opinion in *Nissan Iberia*, para. 56.
- 26 *Ibid.* para. 56; Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 of the TFEU [2003] OJ L 1; *Heureka*, Case C-605/21, EU:C:2024:324, paras 73–74.
- 27 It states that: 'Member States shall ensure that an infringement of competition law found by a final decision of a national competition authority or by a review court is deemed to be irrefutably established for the purposes of an action for damages brought before their national courts under Article 101 or 102 TFEU or under national competition law.' Opinion in *Nissan Iberia*, para. 56.
- 28 *Ibid.* para. 62.
- 29 *Ibid.* para. 63.
- 30 *Ibid.* para. 63. The AG highlighted that the ECJ held in *Tráficos Manuel Ferrer* that if a claimant is unsuccessful in part, 'it is reasonable for him or her to bear his or her own costs, or at least part of them, as well as part of the common costs' (Case C-312/21, EU:C:2023:99, para. 47).
- 31 *Ibid.* para. 63.
- 32 *Ibid.* para. 93.
- 33 *Ibid.* para. 93. Publication on the CNMC website is, however, provided for in Article 23 of the Spanish Royal Decree 261/2008 of 22 February approving the Competition Defence Regulations, much like Commission decisions under Article 30 of Regulation (EC) 1/2003. The logic behind the suggested distinction seems, therefore, questionable.
- 34 *Ibid.* paras 67–72.
- 35 *Ibid.* para. 74.
- 36 *Ibid.* para. 73.
- 37 *Ibid.* para. 75.
- 38 *CP v. Nissan Iberia SA*, Case C-21/24, EU:C:2025:659, paras 67, 75 and 82.
- 39 Opinion of AG Szpunar in *PACCAR*, Case C-163/21, EU:C:2022:286.
- 40 Opinion of AG Szpunar in *Meliá Hotels International SA v. Associação Omnibus*, Case C-286/24, EU:C:2025:436, para. 10. This case followed the Commission's sanctioning of Meliá for engaging in illegal discriminatory restrictions (European Commission, *Holiday Pricing*, 21 February 2020, C(2020) 893 final, AT.40528).
- 41 *Ibid.* paras 31–34.
- 42 *Ibid.* para. 35. See also, Recital 16 of the Damages Directive.
- 43 *Ibid.* para. 75.
- 44 *Ibid.* para. 82.
- 45 *Ibid.* para. 45.
- 46 *Ibid.* paras 76–82.
- 47 *Ibid.* paras 76 and 84–87.
- 48 *Ibid.* paras 36 and 44–62. A finding that a by-object restriction exists does not mean that harm has been caused to a specific person or that there is a causal link between that restriction and that harm (para. 53). At the same time, a by-object restriction concerns conduct causing a high degree of harm to competition. Such a degree of harm is, in conjunction with other facts and evidence, relevant for the purposes of establishing the plausibility of a claim for damages (para. 57).
- 49 *Skanska*, Case C-724/17, EU:C:2019:204; *Sumal*, Case C-882/19, EU:C:2021:800.
- 50 *Athenian Brewery SA and Heineken NV*, Case C-393/23, EU:C:2025:85, para. 17.
- 51 In 2014, the Hellenic Competition Commission found that Athenian Brewery SA had committed a single and continuous infringement of Article 102 TFEU and Greek competition law (Hellenic Competition Commission, *Beer*, 19 September 2014, No. 590/2014); see https://www.epant.gr/files/2014/apofaseis/590_2014.pdf
- 52 *Akzo*, Case C-97/08 P, EU:C:2009:536, para. 60; *Athenian Brewery and Heineken*, para. 11.
- 53 Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) [2012] OJ L 351.
- 54 See also, recital 16 of the Brussels I bis Regulation; *Athenian Brewery and Heineken*, paras 19–20.
- 55 *Sumal*, Case C-882/19, EU:C:2021:800, paras 43–44. The concept of economic unit under EU competition law allows for joint and several liability among entities forming a single undertaking.
- 56 Opinion of AG Kokott in *Athenian Brewery SA and Heineken NV*, Case C-393/23, EU:C:2024:798, paras 25–26.
- 57 *Athenian Brewery and Heineken*, para. 27.
- 58 *Ibid.* para. 30.
- 59 *Ibid.* paras 31–32.
- 60 *Ibid.* paras 33–35.
- 61 *Ibid.* para. 35.
- 62 *Ibid.* paras 46–47.
- 63 See, e.g. Édouard Bruc, *Establishing Jurisdiction for Damages Claims: The Bone, the Spacecraft and the Apes* [2021] 12(10)

- JECLAP, pp. 727, 733: 'any artificial distinction within the notion of undertaking between the addressee of the decision and a non-addressee subsidiary should be swept away. However, in the case of a non-addressee, it necessitates to *inter alia* demonstrate decisive influence, economic continuity, or more prosaically, to rely on '100 per cent shares' presumption [...] the necessity to demonstrate that the subsidiary is indeed part of the same economic unit [...] in most cases through presumptions should not be a hurdle'.
- 64 Opinion of AG Kokott in *Electricity & Water Authority of the Government of Bahrain and Smurfit Kappa Europe BV ('Opinion in EWGB')*, Joined Cases C-672/23 and C-673/23, EU:C:2025:243, paras 1–3.
- 65 *Ibid.*
- 66 European Commission, *Power Cables*, 2 April 2014, C(2014) 2139 final, AT.39610.
- 67 Italian Competition Authority, *Prezzi del cartone ondulato*, 17 July 2019, ICA No. 27849, case 1805.
- 68 Opinion in *EWGB*, paras 7 and 13.
- 69 *Ibid.* para. 17.
- 70 *Ibid.* paras 25–27.
- 71 *Ibid.* para. 30. E.g. *Sumal*, Case C-882/19, EU:C:2021:800, para. 52: 'in circumstances such as those at issue in the main proceedings, the victim should in principle establish that the anticompetitive agreement concluded by the parent company, for which it has been punished, concerns the same products as those marketed by the subsidiary'.
- 72 Opinion in *EWGB*, paras 59–67.
- 73 *Ibid.* paras 66–67.
- 74 *Ibid.* para. 74.
- 75 *Ibid.* para. 74.
- 76 *Ibid.* para. 32.
- 77 *Ibid.* para. 33.
- 78 *Ibid.* para. 75.
- 79 *Ibid.* para. 36.
- 80 *CDC Hydrogen Peroxide*, Case C-352/13, EU:C:2015:335, para. 27 and the case law cited.
- 81 Opinion in *EWGB*, para. 37.
- 82 *Ibid.* para. 38.
- 83 *Ibid.* para. 38.
- 84 *Ibid.* para. 46.
- 85 *Ibid.* paras 48–50.
- 86 *Ibid.* para. 53.
- 87 *Ibid.* para. 54.
- 88 *Ibid.* paras 56–58.
- 89 *Ibid.* para. 82.
- 90 *Ibid.* paras 82–85.
- 91 *Ibid.* para. 98.
- 92 *Ibid.* para. 98.
- 93 The ECJ rejected the doctrine in *Andrew Owusu* (Case C-281/02, EU:C:2005:120). E.g. *Vauxhall Motors Limited and Others v. Denso Automotive UK Ltd and Others* [2025] EWHC 213 (Ch); *Asda Stores Limited and Others v. Bremnes Seashore AS and Others* [2025] CAT 14.
- 94 Opinion of AG Campos Sánchez-Bordona in *Stichting Right to Consumer Justice, Stichting App Stores Claims v. Apple Distribution International Ltd, Apple Inc. ('Opinion in Apple App Store')*, Case C-34/24, EU:C:2025:212, para. 26.
- 95 Opinion in *Apple App Store*, para. 38.
- 96 *Ibid.* para. 32.
- 97 *Ibid.* para. 54.
- 98 *Ibid.* para. 60.
- 99 *Ibid.* para. 74 and footnote 45.
- 100 *Ibid.* paras 81–85.
- 101 *Ibid.* para. 103.
- 102 *Ibid.* para. 141.
- 103 *Ibid.* paras 115–119 and 123.
- 104 See Rashid Baxter, AG Sánchez-Bordona: Dutch court should hear Apple mass lawsuits (*Global Competition Review*, 27 March 2025): 'App Store Claims Foundation [advisor said] [...] that the AG's opinion could renew calls to introduce a specialist antitrust court in the Netherlands to remove arguments around the jurisdiction of regional courts to hear antitrust claims'. See <https://globalcompetitionreview.com/article/ag-sanchez-bordona-dutch-court-should-hear-apple-mass-lawsuits>
- 105 *Ausgleichsgesellschaft für die Sägeindustrie Nordrhein-Westfalen GmbH v. Land Nordrhein-Westfalen*, Case C-253/23, EU:C:2025:40.
- 106 *Ibid.* The action followed an investigation by the German Competition Authority, which concluded with commitments in 2009 (*ibid.* paras 18–20).
- 107 *Ibid.* para. 22.
- 108 *Ibid.* paras 24–26.
- 109 *Ibid.* paras 36–48. The ECJ dismissed the Dortmund Regional Court's question on follow-on actions as inadmissible, finding it unrelated to the dispute. The case did not qualify as a follow-on action, since the German competition authority's commitment decision did not establish liability.
- 110 *Ibid.* paras 60–65. See also, *Courage and Crehan*, C-453/99, EU:C:2001:465, para. 26.
- 111 *Ibid.* para. 68.
- 112 *Ibid.* paras 69–70.
- 113 *Ibid.* para. 73.
- 114 *Ibid.* para. 77.
- 115 *Ibid.* para. 86.
- 116 *Ibid.* para. 86.
- 117 *Ibid.* para. 80.
- 118 *Ibid.* para. 94.



Frédéric Louis is a partner at Wilmer Cutler Pickering Hale and Dorr LLP in Brussels. He focuses on all aspects of EU competition law, in particular, behavioural investigations (cartels and abuse of dominance), merger clearances and State Aid. In addition, he has extensive litigation experience, having represented clients in more than 150 proceedings before the European courts in Luxembourg. Mr Louis's litigation experience before the EU courts ranges across a broad array of issues (including freedom of commerce and constitutional issues) with a focus on competition litigation. Mr Louis has argued cases before the Grand Chamber of both the General Court and the ECJ. He also litigates and represents clients before Dutch, French and Belgian courts (including antitrust damages claims) and competition authorities.

Wilmer Cutler Pickering Hale and Dorr LLP

Bastion Tower, Place du Champ de Mars / Marsveldplein 5,
BE 1050 Brussels
Belgium

Tel: +32 2 285 49 53

Email: frederic.louis@wilmerhale.com

LinkedIn: www.linkedin.com/in/frederic-louis



Anne Vallery is a partner at Wilmer Cutler Pickering Hale and Dorr LLP in Brussels. She focuses on EU competition and regulatory law and has practised in Brussels since 1996, with a particular focus on technology, media and telecommunications and the digital economy sector. She has litigated numerous cases before the European Commission, European courts, national competition authorities, Brussels courts and other national courts. Ms Vallery has been involved in a host of major transatlantic cartel investigations and major abuse of dominance investigations. Ms Vallery has also been involved in numerous filings of mergers and joint ventures with the European Commission and national competition authorities, as well as State Aid litigation, damages litigation, and arbitration and telecoms matters.

Wilmer Cutler Pickering Hale and Dorr LLP

Bastion Tower, Place du Champ de Mars / Marsveldplein 5,
BE 1050 Brussels
Belgium

Tel: +32 2 285 49 58

Email: anne.vallery@wilmerhale.com

LinkedIn: www.linkedin.com/in/anne-vallery-63a0501



Cormac O'Daly is a partner at Wilmer Cutler Pickering Hale and Dorr LLP in London and Brussels. He advises on a wide range of EU and UK competition law issues. These include merger control, cartels and related litigation (before both EU and UK courts, including in numerous damages actions), licensing and other vertical and horizontal agreements, other potentially restrictive practices and alleged abuses of market power. Mr O'Daly's clients have ranged from software companies, hardware manufacturers, oil and gas producers, companies appealing fines imposed by the European Commission, companies seeking merger approval, and trade associations.

Wilmer Cutler Pickering Hale and Dorr LLP

49 Park Lane, London, W1K 1PS, United Kingdom /
Bastion Tower, Place du Champ de Mars / Marsveldplein 5
BE 1050 Brussels, Belgium

Tel: +44 20 7872 1534 / +32 2 285 49 18

Email: cormac.o'daly@wilmerhale.com

LinkedIn: www.linkedin.com/in/cormac-o'daly-06b6591a6



Édouard Bruc is a senior associate at Wilmer Cutler Pickering Hale and Dorr LLP in London and Brussels. His practice focuses primarily on antitrust and competition law and related regulatory litigation. He is a dual-qualified Solicitor in England and Wales and a Paris Bar *Avocat à la Cour*. Mr Bruc represents clients in abuse of dominance, cartel proceedings and damages actions. His practice covers a broad range of industries, including pharmaceutical, transport, digital, telecommunications, electricity and gas, and financial services. He has been involved in cases before various national regulatory authorities (the Competition and Markets Authority and European Commission) and arbitral tribunals, as well as before the UK Competition Appeal Tribunal, the EU Courts and the European Court of Human Rights.

Wilmer Cutler Pickering Hale and Dorr LLP

49 Park Lane, London, W1K 1PS, United Kingdom /
Bastion Tower, Place du Champ de Mars / Marsveldplein 5
BE 1050 Brussels, Belgium

Tel: +44 20 7872 1000 / +32 2 285 49 13

Email: edouard.bruc@wilmerhale.com

LinkedIn: www.linkedin.com/in/edouardbruc

WilmerHale is a leading, full-service international law firm with more than 1,000 lawyers located in 12 offices in the United States and Europe. Our lawyers work with a wide range of industries on issues often at the intersection of government, technology and business. WilmerHale has one of the leading antitrust and competition practices in the United States and Europe, with more than 50 years of experience and more than 60 competition lawyers. We have helped clients avoid fines and prison terms in many cartel investigations and successfully assisted clients in numerous private and government litigation cases. We have secured clearances for hundreds of mergers and joint ventures, including complex cases involving remedies in multiple jurisdictions worldwide.

www.wilmerhale.com

WILMERHALE® 



The **International Comparative Legal Guides** (ICLG) series brings key cross-border insights to legal practitioners worldwide, covering 58 practice areas.

Competition Litigation 2026 features two expert analysis chapters and 18 Q&A jurisdiction chapters covering key issues, including:

- Interim Remedies
- Final Remedies
- Evidence
- Justification / Defences
- Timing
- Settlement
- Costs
- Appeal
- Leniency
- Anticipated Reforms