

CLIENT ALERT

Second Landmark EU Judgment on Antitrust Damages Actions Extends Limitation Periods to the Benefit of Claimants

Apr.04.2019

On March 28, the European Court of Justice (CJEU) issued another landmark judgment – the second in just two weeks – extending the rights of claimants to seek damages for violations of EU antitrust rules. The Court held that national limitation rules must be set aside where they deprive claimants of an effective ability to pursue a claim for antitrust damages. That will be the case where the limitation period (i) starts to run before the claimant is aware of the identity of the infringer and/or (ii) is not suspended during an investigation by the antitrust authorities. The judgment also appears to imply that the more claimant-friendly limitation rules under the EU Damages Directive should apply to all new claims.

Following a complaint filed in 2009 by a Portuguese cable company, Cabovisao, the Portuguese Competition Authority found in June 2013 that discriminatory pricing by Sport TV, a provider of premium sports TV channels, constituted an abuse of dominance contrary to Article 102 TFEU and national law. On February 27, 2015, Cogeco, a shareholder of Cabovisao which had distributed Sport TV, filed a claim for damages. Sport TV argued that Cogeco's claim was statute barred.

Portuguese law provides for a three year limitation period running from the date on which the claimant becomes aware of its right to bring an action. That period runs whether or not the claimant is aware of the identity of the infringer and is not suspended during competition authority investigations or court appeals. In contrast, the EU Damages Directive provides for a five year limitation period. That period starts to run only once the claimant knows, or should know, the identity of the infringer and is suspended during competition authority proceedings and subsequent appeals. EU Member States were obliged to adopt national law implementing the Directive by December 27, 2016. However, Portugal adopted implementing legislation only on June 5, 2018.

In a reference for a preliminary ruling, the Portuguese court asked the CJEU whether (i) the Damages Directive applied to Cogeco's claim or whether (ii) EU law otherwise required the three year Portuguese limitation period to be set aside.

The CJEU held that the Directive was not applicable, since Cogeco's claim was brought before both the entry into force of the Portuguese implementing legislation - which did not provide for retroactive implementation - and before the expiry of the transposition period of the Directive on December 27, 2016.

However, the CJEU also found that the three year Portuguese limitation period was incompatible with EU law. Under the EU law principle of effectiveness, any national rule that makes the exercise of a claimant's EU rights practically impossible or excessively difficult has to be set aside. For a claimant to bring an action for damages under Article 102 TFEU, it is indispensable that he knows the identity of the person liable for the infringement. Similarly, a short limitation period that is not suspended during the proceedings of a competition authority or subsequent review by a court could frustrate the ability of an injured party to bring a claim. The Portuguese limitation rules failed on both counts and therefore had to be set aside.

This is the second markedly pro-claimant decision taken by the Second Chamber of the CJEU in a matter of weeks (see [here](#)). Taken together, they appear to mark a significant shift in the court's attitude.

The full decision is available [here](#).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Sean-Paul Brankin

Partner – Brussels

Phone: +32.2.282.1830

Email: sbrankin@crowell.com

Marieke Van Nieuwenborgh

Associate – Brussels

Phone: +32.2.282.4083

Email: mvannieuwenborgh@crowell.com