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Once more unto the breach! Setting the starting date for Limitation Periods in Competition Law Damages Claims. A comment to AG Medina's Opinion in the Nissan Iberia Case

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Limitation periods are a gating item that determines if a claim will go forward. When arguing (and counter arguing) if a competition law damages claim is time-barred, the parties usually focus on the moment the period started running (i.e. the *dies a quo*) rather than the duration of the period or whether it was correctly interrupted or suspended.

This is precisely the topic that Advocate General Medina ("**AG Medina**") tackled on her Opinion delivered on 3 April 2025 in the Nissan Iberia request for a preliminary ruling submitted to the Court of Justice of the European Union ("**ECJ**") by the Commercial Court No 1 of Zaragoza (*Juzgado de lo Mercantil n.º 1 de Zaragoza*) (case C-21/24). This is the fifth request for a preliminary ruling concerning limitation periods in Competition law damages claims—the previous ones where replied in the rulings in *Cogeco* (case C-637/17), *Volvo & DAF* (case C-267/20), and *Heureka* (case C-605/21 with a note by Mariya Serafimova), and the order in *Deutsche Bank* (joined cases C-198 and 199/22).

Background

On 23 July 2015, the *Comisión Nacional de los Mercados y la Competencia* (the "**CNMC**" – the Spanish Competition Authority) adopted a decision in case S/0482/13 Fabricantes de Automóviles. The CNMC found that 21 car original equipment manufacturers (including Nissan Iberia, S.A.—"**Nissan**") and two consultancy firms shared confidential and commercially sensitive information, and infringed articles 1 of *Ley 15/2007, de 7 de julio, de Defensa de la Competencia* ("**LDC**", the Spanish competition law act), and 101 of the Treaty on the Functioning of the European Union ("**TFEU**").

The full text was published on the CNMC's website on 15 September 2015. The CNMC had previously issued a press release on 28 July 2015 including the description of the conduct itself, the names of the infringers, the market affected, and the overall duration and geographic scope of the infringement. Concerning Nissan, the CNMC's decision was confirmed by the National High Court (*Audiencia Nacional*) in December 2019 and the Supreme Court (*Tribunal Supremo*) in June 2021.

The claimant filed a damages claim against Nissan in March 2023 arguing that they paid an overcharge when acquiring a Nissan car allegedly affected by the anticompetitive conduct (see note by Julia Suderow on this litigation). The claimant relied on the CNMC's decision, considered that the *dies a quo* had to be set on the day of the Supreme Court's decision in 2021 and the five-year limitation period of article 74 LDC—which transposes article 10 of Directive 2014/104—was applicable.

Nissan counter-argued that the claim was time-barred, because the one-year limitation period of article 1968 of the *Código Civil* (Spanish Civil Code) applied to this case and set the *dies a quo* as of 15 September 2015. According to Nissan, with the CNMC's decision full text, the press release and the media coverage, the claimant was aware (or could have reasonably been aware) of this information, and could have filed the claim (or, at least, started to interrupt the limitation period) without waiting for the decision to be final.

According to the application, the referring court had already issued several judgments concluding that the claim is time-barred because (a) more than 40 claims were filed in 2019; and (b) the main Spanish consumer association (the *Organización de Consumidores y Usuarios*) filed on behalf of its members judicial conciliation requests in 2016 and 2017. However, the position of the court of appeal of Zaragoza (*Audiencia Provincial de Zaragoza*) was that the *dies a quo* was set on the day the decision was final following the Supreme Court's judgment.

The questions

The referring court asked the ECJ the following questions:

1. Is there a legal basis under EU law to distinguish between the right, and the obligation, to bring a damages claim for an infringement of competition law?
2. To file such damages claim, should the claimant wait until the national competition authority's decision is final (after the judicial review) or could the limitation period start running if the decision is published with the information concerning the infringement (the conduct, the duration and the products affected) and the identity of the infringers?
3. If national competition authority's decisions are only published in the authority's website, should this publication be treated as an equivalent to the publication of a European Commission's ("**EU**") decision in the Official Journal of the EU ("**OJ**") for the purposes of establishing the *dies a quo* of the limitation period?

The Opinion of AG Medina: main findings

AG Medina begins appraising the applicability *ratione temporis* of Directive 2014/104. Since Nissan's conduct and the CNMC's decision precede the deadline for the transposition, AG Medina concludes that Directive 2014/104 is not applicable, and she relies on article 101 TFEU instead (paras. 19-22). After concluding that the first question was hypothetical (paras. 23-27) and recalling that private enforcement of competition law aims at achieving the goals of compensation and deterrence (para. 35), AG Medina examines the second and third questions together.

Distinction between stand-alone and follow-on actions

AG Medina distinguishes between stand-alone actions, where no previous infringement decision by a competition authority exists, and follow-on actions, where an existing decision is relied upon. In follow-on claims, the injured party does not need to prove the infringement, as the decision of the competition authority provides the necessary evidence (paras. 44-47). According to AG Medina, the relationship between the decision of the competition authority and the *dies a quo* of the limitation period is crucial in follow-on actions (para. 48). Thus, she focuses the analysis on this group of claims.

Is the solution in the Heureka judgment directly transposable?

AG Medina recalls that the ECJ in *Heureka* concluded that the limitation period starts from the date of publication of the summary of the EC decision in the OJ, irrespective of whether the decision has become final, because of the presumption of legality of EC decisions and their binding effect on national courts (para. 56). AG Medina examines if this ruling could be applied to the Nissan case. She concludes that it cannot because, from an EU law perspective, national competition authorities' decisions do not have the same probative value as EC decisions (para. 59 and 94).

Transposing Heureka to Nissan: information sufficient to bring a damages claim

According to AG Medina, if the CNMC's decision has been subject to appeal, the facts and participation in the alleged infringement may be contested by the review court (para. 62). On that basis, AG Medina argues that the injured party has incomplete and insufficient information to file the claim while judicial review of the CNMC's decision is ongoing (para. 62), and starting the claim then could have two negative consequences. Firstly, it could lead to the need to suspend the damages claim proceeding, which the Opinion considers as potentially costly and time-consuming. Secondly, the claimant faces a risk of failing in the damages claim if the judicial review process results in a modification of the scope of the infringement, and paying judicial costs (paras. 63-64).

Transposing Heureka to Nissan: Acts and documents enjoying the presumption of legality

The acts of EU institutions are presumed lawful until they are annulled or withdrawn (para. 68). In contrast, according to AG Medina, under Spanish law, the finding of an infringement by the CNMC is not binding on national courts until the decision becomes final; until then, it merely serves as an indication of the infringement (para. 72). According to AG Medina's interpretation of Spanish law, CNMC decisions are suspended automatically when the addressee announces its intention to seek judicial review, while the suspension of the private proceedings until the judicial review concludes is not automatic (para. 76 y 83). AG Medina, following the *pro actione* principle, concludes that the *dies a quo* should be established once the CNMC decision has become final (paras 75 and 78). In her Opinion, this ensures legal certainty and the effectiveness of follow-on damages claims (para. 84).

Transposing Heureka to Nissan: Acts and documents with probative value before national courts

EU law attaches different probative value to EC decisions and national competition authority decisions based on the binding nature of EU institution decisions and the primacy of EU law. EC decisions (*ex* article 16(1) of Regulation 1/2003) are binding on national courts, whereas national decisions have probative value only when final (*ex* article 9(1) of Directive 2014/104) (paras. 86-87). In AG Medina's view, the differences are "*substantive and impact the essence of the rights of the parties*" (para. 89). Likewise, AG Medina argues that the publication of the CNMC's decision on its website cannot equate with the publication of a summary decision in the OJ because it is not akin to a governmental gazette (para. 93), and publishing it is not a requirement for the decision to be valid of legally effective (para. 92).

Conclusion

AG Medina encourages the ECJ "*to adopt an approach which is* inspired by the spirit *of the judgment in Heureka, but – contrary to the Commission's approach – not one that would simply 'copy and paste' that approach in the present case*" (para. 90). She suggests the ECJ to answer the questions ruling that article 101 TFEU and the principle of effectiveness do not preclude setting the *dies a quo* for competition law damages claims when the CNMC's decision becomes final after, where appropriate, its confirmation by the review courts (para. 96).

Comment

The *Nissan* case is of utmost importance for damages claims in Spain in cases where Directive 2014/104 is not applicable *ratione temporis*. Currently, there are two lines of rulings regarding limitation periods: those who argue that the *dies a quo* needs to be set on the day the CNMC's decision is published; and those setting it on the day the final review court judgment is published. The *Heureka* judgment set the balance in favour of the former, whereas AG Medina's Opinion represents a change that may alter some courts' line of reasoning.

In my opinion, AG Medina's Opinion is not flawless, and some misunderstandings are analysed below.

Firstly, AG Medina replies to a question different from the one referred to the ECJ. The referring court asks the ECJ (with an albeit unclear wording) if a knowledge-based *dies a quo* complies with EU Law or, on the contrary, if it should be based on an objective element (i.e. when the decision becomes final). AG Medina confirms what is obvious, but she fails to reply what the Commercial Court No 1 of Zaragoza actually enquires.

Secondly, AG Medina argues that injured parties have two set of claims: stand-alone or follow-on claims. However, under Directive 2014/104 and the prior national regimes applicable *ratione temporis* there is only one claim for damages that arises from the underlying anticompetitive behaviour, regardless of how behaviour is proved. The existence of a proceeding before a competition authority does not render follow-on claims as a specific action, notwithstanding its

evidentiary impact concerning the elements of the claim. Indeed, in any damages claims arising from competition law infringements, the *dies a quo* is to be set following the requirements outlined by the ECJ in *Heureka* (para. 59) or *Volvo & DAF* (para. 61): when the claimant knows (or is expected to know) the information necessary to bring a damages claim (subjective element) once the infringement finishes (objective element). Therefore, in spite of having the chance to take profit of the competition authorities' work, potential claimants only have one damages claim.

Thirdly, the ECJ recalled that limitation periods are more than just the *dies a quo* and the period itself. The assessment of their compliance with the principle of effectiveness needs to take into account the possibility to suspend it or interrupt it according to national law as well (*Cogeco*, para. 53). In para. 51 of *Volvo & DAF*, the ECJ seemed to acknowledge that the one-year limitation period complied with the principle of effectiveness without appraising the rules to interrupt it. I believe that taking the latter into account would not change the outcome of the ECJ's analysis in *Volvo & DAF*. In Spanish law, a simple email or letter with acknowledgement of receipt (which is neither costly nor time-consuming) is enough to interrupt the limitation period, and the clock will tick again from scratch.

Fourthly, the ECJ ruled in *Volvo & DAF* (para. 64) and *Deutsche Bank* (para. 44) that the *dies a quo* can be set before the publishing of a summary of the EC decision in the OJ if the claimant has the information necessary to bring the claim before then because, for example, the claimant is privy to the details of that case. Given that the ECJ accepted that the *dies a quo* depends on the claimant's access to such information, there are no grounds to conclude that the limitation period cannot start running when the CNMC publishes the text of an infringement decision shortly after its adoption with all the information concerning the infringement, and the addressees' identity. AG Medina suggests the ECJ to move from a knowledge-based to a probative value-based criterion—paired with legal certainty when it is not an EC decision. In my opinion, the ECJ would have to justify such a change since it runs against the legal tradition of Member States where limitation periods start running upon knowledge.

Fifthly, AG Medina seems to have misunderstood Spanish law applicable to CNMC's decisions and their judicial review. According to article 90(3) of Law 39/2015, of 1 October, on the common administrative procedure of public authorities ("**Law 39/2015**"), infringement decisions are enforceable unless the addressee requests the suspension to the review court. It is up to the latter to grant such suspension as an interim measure, but it is not obliged to do so. Furthermore, article 39(1) of Law 39/2015 states that acts of public authorities (including CNMC's decisions) are enforceable and presumed valid. Thus, but for the binding effect, this provision mirrors article 16(1) of Regulation 1/2003.

Lastly, the publication of CNMC's decision (like EC decisions) follows a legal mandate (article 69 LDC and article 23 of the Defence of Competition Regulation). It has the same informative nature as the publication of the summary of the EC decision in the OJ (if not more, given that CNMC decisions are published in full instead of in summary form). Both CNMC and EC decisions are individually notified to the addressees and the publication is not a requirement for their effectiveness and validity under EU nor Spanish law. In light of these considerations and their informative effect, there are no specific reasons why the publishing of the full (but redacted) CNMC's decision in its website cannot have the same effect to set the *dies a quo* as the publication of a summary of the EC decision in the OJ.

Final thoughts

In her Opinion, AG Medina asks the ECJ to change its case law regarding limitation periods and the criteria to set the *dies a quo* for competition law damages claims (publication v. finality) depending on the competition authority that issues the decision. This is based on a specific reading of Spanish law that does not properly consider that the Spanish rules on limitation periods are knowledge-based and do not run against the principle of effectiveness; and the validity of CNMC decisions, despite not being covered by article 16 of Regulation 1/2003.

The parties to the case, the governments, the EC and the Advocate General have laid down their arguments. Now, it is up to the ECJ to render a judgment either following AG Medina or addressing these misunderstandings.

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Disclaimer: The author is part of the team defending an addressee of the CNMC's decision in case S/0482/13 Fabricantes de Automóviles *(not Nissan Iberia). The views expressed are those of the author and not necessarily those of Uría Menéndez or any of its clients.*

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