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A Clearer Path for the Proportionality Assessment in Cartel Damages Disclosure Claims in the EU – Advocate General Szpunar before the European Court of Justice in Case C-286/24 Meliá Hotels International v Associação Ius Omnibus

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I. Executive Summary

The opinion delivered on 12 June 2025 by Advocate General Maciej Szpunar ("**AG**") before the European Court of Justice ("**ECJ**") in Case C-286/24 Meliá Hotels International v Associação Ius Omnibus has a clarifying effect in the still relatively new regime of private enforcement of cartel law with regard to the handling of trade secrets, in particular regarding the requirements for the disclosure of evidence prior to the initiation of legal action for damages, and the related challenges with regard to the disclosure and protection of trade secrets.

II. Facts of the case

By decision of 21 February 2020, the European Commission found that Meliá Hotels International had infringed Article 101 TFEU and Article 53 of the EEA Agreement. Meliá had treated consumers differently on the basis of their nationality or country of residence, resulting in a restriction on active and passive sales of hotel accommodation. As a result of their co-operation, the fine imposed on Meliá was reduced.

Associação Ius Omnibus, a Portuguese consumer rights organisation, filed a special action for disclosure of documents in Meliá's possession. These documents were deemed necessary to determine and prove the extent and effects of the anti-competitive behaviour and the harm caused to consumers. This disclosure was to precede a possible collective action for damages.

The court of first instance ruled in favour of Ius Omnibus, and the court of appeal upheld this ruling (para. 67). Subsequently, Meliá lodged an extraordinary appeal with the Supremo Tribunal de Justiça (Supreme Court, Portugal), which resulted in the proceedings being stayed and the referral of the following questions to the ECJ for a preliminary ruling:

1. Does Article 5(1) of Directive 2014/104 apply to an action for access to evidence prior to an action for damages within the meaning of Article 2(4) of that directive?

If the answer to that question is in the affirmative:

2. Does the requirement of plausibility of harm arising from Article 5(1) of Directive 2014/104 always require the applicant to show that, in the particular case, harm to the consumers represented – in this case consumers resident in Portugal – is more likely than the opposite?[1]
3. Can the national courts base the criterion of the plausibility of the harm under Article 5(1) of Directive 2014/104 solely on the existence of a decision of the competent competition authorities? In particular, how does the fact that it is a decision in settlement proceedings concerning an intended vertical infringement of European competition law affect this assessment?

III. Key points of the opinion in relation to the disclosure of trade secrets

1. *The temporal applicability of the disclosure rules*

The AG's opinion suggests that even though Directive 2014/104/EU primarily addresses requests for disclosure of evidence within the context of a damages action, such a request made procedurally before the damages action is initiated may still fall under the directive's scope (paras. 22, 28). In certain scenarios, it can be assumed that such an application is made in the context of a damages action or contingent upon the initiation of such an action. This is typically the case when a damages action must be filed in anticipation of sanctions, either shortly after the submission of a disclosure request, where the credibility of the damages claim is assessed, or within a brief period following the approval of the request.

2. *Costs and scope of the disclosure claim as decisive criteria of proportionality*

The proportionality assessment began with an examination of whether Associação Ius Omnibus had sufficiently demonstrated the plausibility of its claim for damages. The AG emphasised that the disclosure of evidence must be proportionate. This means that the national courts must weigh up whether disclosure is proportionate to the legitimate interests of the parties. In particular, the scope and costs of disclosure and the avoidance of an untargeted search for information must be taken into account. If the evidence to be disclosed contains confidential information, appropriate protective measures must be taken to protect this information (para. 3, 35).

3. *Disclosure of evidence and trade secrets subject to protective measures*

A key issue in the proceedings was establishing the conditions under which trade secrets can be protected during the disclosure of evidence. The AG emphasized that national courts must consider the legitimate interests of all involved parties and third parties when ordering evidence disclosure. It is crucial for courts to assess whether the evidence contains confidential information and to ensure appropriate precautions are in place to protect this information (paras. 3, 35). Consequently, national courts are required to ensure that such information is disclosed only to the extent necessary for adjudicating the case. The AG outlined that national courts have the responsibility to protect business secrets through two main options: (i) implementing confidentiality measures or (ii)

restricting access to certain information. However, the AG did not provide a detailed evaluation of these specific measures or their precise nature in a comparative context. The European Commission's Communication on the protection of confidential information by national courts in private enforcement of EU competition law, dated 22 July 2020, offers further guidance on the envisaged confidentiality measures.

4. *Plausibility of the claim for damages*

While an order from authority finding an infringement of competition law relieves the court dealing with an application for disclosure of evidence of the obligation to examine whether the infringement is plausible in the light of the factual circumstances and the available evidence (para. 45), the unlawfulness of the alleged behaviour is only one of the prerequisites for liability for an infringement of competition law.

With regards to the question of the degree of plausibility of the damages claims (question 3), the AG stated that a decision finding an infringement of competition law itself is not sufficient to establish the plausibility of a claim for damages. Additionally, the fact that this decision concerns a vertical restraint by object and was issued in the context of settlement proceedings does not alter this assessment (para. 62). Instead, the onus is on the plaintiff to provide sufficient evidence to support their claim in a plausible manner, using facts and evidence that are reasonably accessible (paras. 36, 43). The AG notes that this criterion should therefore also be able to be fulfilled in the case of incomplete information (para. 84). In any case, it is imperative to demonstrate that the conditions giving rise to liability are more likely to be fulfilled than the opposite (para. 87).[2]

Finally, in the context of the application for disclosure of evidence under Article 5(1) of Directive 2014/104/EU, the requisite degree of plausibility must also be demonstrated by the applicant in relation to the existence of harm and a direct causal link between that harm and the infringement in question (para. 54). To be consistent with recital 15 of Directive 2014/104/EU, the required degree of plausibility must not be too strict, as this would weaken the effectiveness of the competition rules (para. 82).

IV. Conclusion

Further to previous cases such as C-25/21 Repsol Comercial de Productos Petrolíferos and C-163/21 PACCAR, the AG's opinion in case C-286/24 Meliá Hotels International v Associação Ius Omnibus adds more clarity with regard to the disclosure claims under the Directive 2014/104/EU and elaborates the role of trade secrets and the in the context of private enforcement of competition law.

Besides the need to carefully weigh up the interests of all parties involved and the importance of appropriate protective measures for confidential information which, however, have not been discussed in more detail, a decision finding an infringement of competition law is insufficient to establish the plausibility of a claim for damages. Notwithstanding the fact that the decision pertains to a vertical restraint by object and was issued in the context of settlement proceedings, this assessment remains unchanged. At the same time, it once again underscores the role of national courts in interpreting and applying Directive 2014/104/EU in a manner that balances the interests

of claimants and defendants by ensuring that the disclosure of evidence in competition law cases is proportionate and adequately protects confidential information. For this, the AG provides clear guidance on proportionality and is setting out the necessary safeguards for the disclosure of evidence, highlighting that the plausibility of a claim for damages must be supported by concrete facts and evidence. This is particularly important as companies are increasingly concerned that the disclosure of trade secrets in the context of cartel damages claims could jeopardise their competitive position.

[1] In its written observations, Meliá argued that Article 5(1) of Directive 2014/104/EU requires a degree of probability that goes beyond the mere possibility of the existence of harm. The AG understood the third question to encompass both the harm and the link between that harm and the alleged conduct and reformulated it to the effect that, by that question, the referring court seeks to ascertain whether, in order to support the plausibility of a claim for damages under Article 5(1) of Directive 2014/104/EU, it must be shown that it is more likely than not that the conditions for liability for an infringement of competition law are met.

[2] The AG interpreted the third question as referring to both the damage and the link between that damage and the alleged conduct. They reformulated the question to clarify that the referring court is seeking to establish whether, to substantiate a claim for damages under Article 5(1) of Directive 2014/104/EU, it is necessary to demonstrate that the conditions for liability for an infringement of competition law are more likely than not to be met.

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