

**Consumers' Law and Competition Law: A desirable effective  
approach .....**  
**After Directive EU 2014/104 on damages actions for  
infringements on Competition Law**

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# The market



## Competition Law and the objective of consumers' welfare

- TFEU provisions based on Competition Law principles:
  - Protecting free competition among operators: Art.101 TFEU and Art. 102 TFEU
  - Maintenance market structures
- However, there are some market distortions that fall out Competition Law public enforcement
  - TFEU provisions on consumers' protection: art. 12, 169 and 114.3 TFEU

Market distortions as a common element in  
Consumer Law and Competition law: Different  
approach and remedies

## Market distortions and Law: How does Law protect consumers?

- Contract Law
- The limits of Contract Law in consumer matters (I):
  - Unfair business to consumer commercial practices
    - ✓ Unfair or non-diligent behavior of businesses against consumers
      - Acts "without taking into account fair market practices and the general principle of good faith in the framework of the businesses commercial activity"
    - ✓ Unfair typified acts: EU legislation: *EU Directive 2005/29 concerning unfair business-to-consumer commercial practices in the internal market; EU Directive 2006/114 concerning misleading advertising practices and comparative advertising*
    - ✓ Procedural rules and actions to protect consumers against unfair acts: Unfair Competition Act (UCA) and Civil Procedure Act (CPA).
      - An example on the Spanish jurisdiction

# Market distortions and Law: How does Law protect consumers?

- “Dieselgate” case. Court consequences (Spanish jurisdiction)

- Decision: Commercial Court num.1 Madrid. Date 25/01/2021. ECLI:ES:JMM:2021:4.
- Active Standing: Consumers association: OCU (33 UCA, 11 CPA) - 7,642 consumers represented
- Claim: Unfair act contrary to the Good Faith General Clause and misleading act against consumers ( 4, 5 UCA)
- Spanish Procedural Law Art. 11 CPA
- Admission of the petitum
- **Decision rejected Madrid 2nd instance Court, 22/06/2023**



## Market distortions and Law: How does Law protect consumers?

- The limits of contract law in consumer matters (II):
  - Standard contracts with unfair terms while contracting with consumers.
    - ✓ Unfair terms in consumer contracts: The weak position of the consumer and the imbalance on rights and duties of the parties.
    - ✓ *Directive 93/13 EEC on unfair terms in commercial contracts*. Purposes common to other EU policies (recitals 1, 2, 4 & 6):
      - The **achievement of an internal market** in the EU.
      - To **avoid market distortion** in the procurement of goods and services.
      - To **avoid deterrence in contracting** that would lead to a decrease in fair competition between companies located in different MS.
      - Fight against **abusive clauses** as an element that can generate an **imbalance between rights and obligations between the consumer and the professional**.

## Market distortions and Law: How does Law protect consumers?

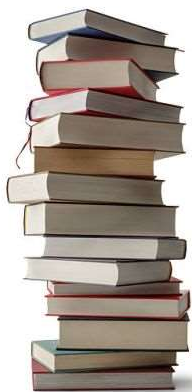
- ✓ Directive 93/13 on unfair commercial terms, EUCJ case law on the Directive interpretation and functions of the internal courts:
  - Good faith principle, assessment of the structural imbalance between the consumer and the professional, impact of the clause in the contract. The requirement of transparency.
    - EUCJ, 14 March 2013, *Aziz v Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)*, C-415/11; EUCJ 30 April 2014, *Kásler and Káslerné Rábai*, C-26/13; ECJ, 26 March 2019, *Abanca Corporación Bancaria and Bankia*, C-70/17 and C-179/17; EUCJ, 3 March 2020, *Gómez del Moral Guasch v Bankia, S. A.*, case C-125/18 [...]
    - **EUCJ 16 July 2020, *Caixabank & Banco Bilbao Vizcaya Argentaria*, Case C224/19 -and C259/19-**.



## Market distortions and Private enforcement of Competition Law

- General principles recognized to *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*:
  - The function of deterrence against anticompetitive behaviors.
  - The removal of market distortion.
  - The application of the principle of effectiveness of Competition Law.

# Market distortions and Private enforcement of Competition Law: Examples, legal actions Spanish jurisdiction



# Market distortions and Private enforcement of Competition Law

Case	Date	Decision contents
<b>EUCJ Courage C-453/99</b>	20/09/2001	Right to claim damages due to an infringement of Competition Law
<b>EUCJ Manfredi C-295/04 to C-298/04</b>	13/07/2006	Scope of the right of full redress
<b>EUCJ Tibor Trans C-451/18</b>	29/07/2019	Applicable law
<b>EUCJ Volvo and others C-30/20</b>	15/07/2021	Determination of international and territorial jurisdiction
<b>EUCJ Skanska C-724/17</b>	14/03/2019	Liability in a company succession
<b>EUCJ Sumal C-882/19</b>	06/10/2021	Passive standing /affiliate not infringer
<b>EUCJ Volvo Daff C-267/20</b>	22/06/2022	Limitation period / Scope of the Directive: temporal and material application
<b>EUCJ AD v PACCAR C-163/21</b>	10/11/2022	Disclosure of evidence. Cartel victim: Weak party; asymmetry of information
<b>EUCJ Regiojet C-57/21</b>	12/01/2023	Disclosure of evidence in a CA file (NCA/EC). Relation between arts. 5 and 6 Directive. Possible Abuse of a dominant position, victim: Weak party in the proceedings; asymmetry of information.
<b>EUCJ Tráficos MF case C-312/21</b>	16/02/2023	Procedural costs and right of full redress; disclosure of evidence and damages estimation done by Courts. Cartel victim: Structural imbalance; weak party.

# Market distortions and Private enforcement of Competition Law

- *EUCJ Sumal*

- Obstacles on beginning proceedings to claim damages
- Passive standing of a subsidiary not considered infringer in a cartel decision (material EU Competition Law)
- Similarities between the aims of Directive 93/13-Directive 2014/104: Deterrent function of these claims; prevent market distortion; full application of European Law.

- *EUCJ Tráficos MF*

- When the right of full compensation is practically impossible or excessively difficult to obtain?
- The structural imbalance in the damages proceedings, the weak party and the asymmetry of information. Private enforcement: Similarities with the aims of Directive 93/13 and its case law.
- Access to evidence.

# Consumer Law and Private enforcement of Competition Law: Towards a legislative policy framework

- EU Consumer case Law as a mirror to defend collective redress in Private enforcement of Competition Law.
- Some measures taken by the Spanish Courts in order to decrease the imbalance between parties in Private Enforcement (following the EUCJ rulings):
  - Access to evidence:
    - ✓ New categories of evidence
    - ✓ Data rooms practice to exchange and obtain information
- Some proposals towards a legislative policy framework in Spain
  - Consolidation of proceedings into joint litigation (Spanish CPA).
  - The witness procedure or witness judgement (excluded).
  - General internal rules on collective redress (CPA few success).
  - EU Directive 2020/1828 of 25 November 2020 on representative actions for the protection of the collective interests of consumers (pending incorporation to the Spanish jurisdiction).

Thank you !!

