Do consumer associations have universal *locus standi*?

On the subject of two orders issued by the Provincial Court of Barcelona regarding the 'car cartel'

This paper defends the position contrary to the universalisation of representative standing under Article 11 of the Civil Procedure Act.

ÁNGEL CARRASCO PERERA
Professor of Civil Law, University of Castilla-La Mancha
Academic counsel, Gómez-Acebo & Pombo

1. The situation giving rise to the dispute

At the root of the judicial development under discussion is the questionable *locus standi* (standing) of consumer and user organisations to bring representative actions for damages in claims arising from the *car cartel.* Various orders issued by companies courts judges in Barcelona had rejected the existence of such standing in light of Article 11 of the Civil Procedure Act (LEC) because these organisations could only bring representative actions for collective and diffuse harm when the infringed rule had the specific purpose of defending consumers and users. This is not the case with competition law, which is not based, either in whole or in part, on the protection of consumer-related interests per se. The cartelised price would not be a matter for consumer sales, but a failure of the market as a whole.

However, in cases 8955 and 8956/2025, the prestigious Fifteenth Chamber of the Provincial Court rules, as reported by the seasoned judge Mr Garnica Martín, to the contrary. The Chamber cites as prece-

dents its own doctrine in judgments of 28 May 2025 and 26 January 2018 and in other orders prior to the present ones.

The *enormous impact* of this new doctrine, which will not be limited to antitrust claims, should be noted. Environmental claims, market rule violations, unfair competition, collusion, healthcare and hospital claims, corporate class actions, etc. are all waiting in the wings. And, most striking of all, it may not even be claims for compensation in the strict sense, but rather *actions for injunction to restrain, which always include claims for quiet title and invalidation.*

2. The doctrine established by the Provincial Court and criticisms to the same

The Court's reasoning is as follows:

- Firstly, the representative ("collective") standing granted by Article 7(3) of the Judiciary Act ("collective interests", "group of concerned parties", entities "legally qualified to defend them") is not subject to any restriction by reason of the subject matter. I find this assertion unfounded because, except for "groups of concerned parties" as such, the rest of the provision refers to the rules on standing in procedural laws.

- Secondly, it is also not "clear" that these restrictions on consumer-related interests arise from Article 11 LEC, even though the provision is based on the collective protection of consumers and users. It does not follow from Article 11 that standing is limited to "actions based on consumer and user legislation", which would be "substantially cross-cutting". There are two distinct propositions in this view that are not adequately separated. *It is clear that rules that are not nominally consumer-related may contain a specifically consumer-related protection purpose,* perhaps alongside other objectives. However, this does not mean that the standing provided for in Article 11 can be used to promote the collective protection of interests that are not exclusively consumer-related. *Exclusively,* because if they are simply 'general', consumers will not be included in the scope of protection as such, but as part of citizenry as a whole.

- Thirdly, this representative standing "is not only found in consumer legislation itself," but also in other laws, such as the Standard Terms of Contract Act; the Contracts Concluded Outside Commercial Establishments Act 26/1991; the Package Tours Act 21/1995 [repealed]; the Timeshare Act 42/1998 [repealed]; the Medicinal Products Act [also repealed], in which Articles 120 and 121 regulate injunctions to restrain; the Television Broadcasting Act 25/1994 [repealed]; the Consumer Credit Act 7/1995 [repealed]; the Advertising Act 34/1988; the Unfair Competition Act; the Information Society Services and E-Commerce Act 34/2002; and the Sale of Consumer Goods (Warranties) Act 23/2003 [repealed]. "All these laws grant standing to consumer and user associations, even though it is highly debatable whether we can classify these laws as consumer laws".

This set of laws is not homogeneous. Not all of them say the same thing; thus, Act 24/2002 grants consumer associations standing to bring actions for injunction to restrain, but nothing more, and very clearly only "against conduct contrary to this law that harms the collective or diffuse interests of consumers" (Art. 30(1)). *Most of the laws listed in the Provincial Court's orders are consumer-related, even in their title*, and are implementations of *exclusively consumer-related* European directives. Also, actions for injunction to restrain and for damages are not on the same level: an injunction to restrain is an abstract and indivisible claim, while damages are strictly speaking collective and divisible. These actions are *difficult to collectivise*, which explains the special regime contained in Articles 6(1)(7), 6(1)(8), 11, 15, 221 and 519(1) LEC. None of these procedural specificities would make sense if they were to be applied to abstract indivisible claims. Nor would it be possible for such provisions to be used (by consumer associations) to serve non-consumer-related interests. Neither the 'call' to proceedings regulated by Article 15 nor the selective enforceability of Article 519 would be factually possible. These provisions would collapse if collective defence were to be made available to *a class of all classes.*

The standing in an action for declaration of injunction to restrain is different from that in an action for damages

- Fourthly, of all the aforementioned laws, the Provincial Court "highlights", and rightly so, the provisions contained in the Unfair Competition Act (LCD). However, there is some oversight in the selection of and commentary on the laws. Article 33(3)(b) LCD does not prove what is intended, but rather the opposite, namely that these entities are "collectively" qualified only to bring actions for injunction to restrain or restore. Consumer associations are also qualified to bring actions for redress, but (only) "in accordance with the provisions of Article 11(2) of Act 1/2000", which brings us back to the beginning of the issue and not to its resolution. Also, following its restructuring by Act 29/2009, the Unfair Competition Act has become, to a large extent, a consumer law. And it could always be argued that the standing of consumer associations is limited to harm suffered by consumers, not by competitors.

- Fifthly, it is not correct to infer from Supreme Court Judgment no. 691/2021 that representative standing is rejected, as the appealed rulings do, but quite the contrary. With all due respect, the Provincial Court is mistaken. This Supreme Court judgment and other equivalent rulings do not extend the scope of representative standing, but rather *greatly* reduce it by restricting it to consumer interests that are not particularly sophisticated, to goods

and services of common and widespread use. It is true that the restrictive criterion of this judgment and others has been revoked (by imperative of a European ruling) by the Supreme Court judgment of 23 April 2025 (JUR 2025\90249), but the reasons for revocation are unrelated to the matter now under consideration.

- Sixthly, according to the Provincial Court, what must be considered is not whether the action for redress is based on the Competition Act, "but whether the act cited as causing harm, the purchase of a vehicle for private use, is an act of consumption". However, it should also be noted that *not all acts of purchasing vehicles covered by the cartel's liability* are acts of consumption. However, it is more important to remember that *not every act of consumption* needs to be regulated by consumer law, but it is necessary that representative standing be granted for the protection of this consumer interest regulated by a general rule. The position of the tenant of a residential property is a consumer position, even though the Urban Tenancy Act is not a consumer law. The position of the purchaser of vehicles in the Civil Code is not a consumer position (there is no regulatory bias affected by this condition) and neither is the Civil Code itself.

- Seventhly, the Provincial Court cites Constitutional Court judgments 73/ /2004, 219/2005 and 217/2007 in its support. However, the doctrine of these rulings has no bearing on the present dispute.

It is curious that the court rulings do not use the most powerful argument that could be found in the applicable legislation: the growing legal expansion of the scheme set out in Article 11 LEC. Article 11 *bis* of this law grants (among other diverse subjects) consumer associations standing "for the defence [it is not clear whether individual or collective] of the right to equal treatment and non-discrimination" and Article 11 *ter* does the same "for the defence of the rights and interests of persons who are victims of discrimination on grounds of sexual orientation and identity, gender expression or sexual characteristics". It is clear that this extension of the legal provision could also be interpreted as indicating that it is the need for specific legal coverage that makes the expansion possible.

3. Comments

As the doctrine contained in these proceedings is rather ambiguous, the reader could infer three different things from these judgments, namely:

— First: that a law that is not nominally consumer-related may eventually regulate or consider, in whole or in part, "the interests of consumers and users". This is obviously true and has no consequences under Article 11 LEC.

— Second: consumer associations are entitled to defend the interests of consumers and users within a broader scope of protection, but representative standing is always limited to individuals who are affected by this

general interest (*e.g.*, purchasers of cartelised vehicles), themselves consumers and users (a specific class of purchasers affected by the cartel), *even if the reason for general protection does not stem from their status as consumers, but from the existence of a prohibited cartel*, regardless of the impact this may have on consumers and users.

— Third: the associations referred to in Article 11 LEC are automatically qualified to defend general interests in civil proceedings if the interest is so general that *even* 'consumers' and 'users' in the *improper* sense [because a consumer in the proper sense must always be a contracting party] may feel concerned. This is the complicated scenario. Let us imagine "environmental damage".

For a collective or diffuse defence of a compensatory nature to be possible, the action must have caused harm to the members of the group (consumer-related or otherwise) uti singuli

A distinction must be made between declaratory or injunctive relief (Articles 53-54 of the Consumer and User Protection Act) and actions for damages. Although Article 53(3) of the law allows both to be combined, the conditions for bringing either action must be met. For a collective or diffuse defence of a compensatory nature to be possible, the action must have caused harm to the members of the group (consumer-related or otherwise) *uti singuli*. There can be no *class harm, which is indivisible*, nor is any harm to a collective interest (*e.g.*, the quality of river water) harm that *can be appropriated* by the class of citizens selected in Article 11 LEC. Articles 11 to 15 of this law provide for a consolidation of claims, which are always independent. Hence the very specific way of arbitrating the enforcement of an order to pay in Article 519(1) LEC.

This issue is of fundamental importance. Thus, in environmental lawsuits, "environmental damage" (damage "to the environment as such") is not divisible between private individuals; it is general damage, and therefore the standing to enforce a claim for monetary damages lies with the General Government and within its specific procedures, as is clear from the Environmental Liability Act 26/2007. Nor is there any representative civil standing to bring claims for redress in this regard.

In my opinion, consumer associations do not even have representative standing to bring actions for injunction to restrain against conduct that violates rules and regulations in general. Article 54(1) of the Consumer and User Protection Act precisely defines which sectors are covered by this standing. Outside of these sectors, a law must specifically grant this standing in a non-consumer context.

Returning to the car cartel, my view is that consumer and user associations do not even have standing to bring an indivisible action to *restrain the effects of the cartel.* And, as actions for injuntion to restrain become actions for declaration of invalidity when the 'practice' is incorporated into a 'clause', they will also not have standing to bring representative actions for declaration of part invalidity (for the 'surcharges'), because the *(cartelised) price clause* is not a non-negotiated clause within the meaning of Article 82 of the Consumers and Users Protection Act. The current version of the Competition Act does not recognise this standing.