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ANALYSIS

Competition and European Union Law

The limitation period as an insurmountable barrier in the private enforcement of unfair competition law with public implications

Supreme Court judgment no. 1189/2026 of 17 July defines the statute of limitations applicable to actions for damages for infringements of Article 7 of the Competition Act 1989 (now Article 3 of the Competition Act 2007), excluding these from the scope of the Damages Directive.

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1. Introduction and background

§ 1. ***Supreme Court judgment no. 1189/2026,*** dated 17 July, in the case of *FREMAP v. DICONSAL*, reporting (associate) judge Fernando Cerdá Albero (ECLI: ES:TS:2026:3187), resolves appeal no. 5576/2022 lodged by FREMAP (mutual society) against Madrid ***Provincial Court judgment no. 161/2022***, dated 14 March (ECLI:ES:APM:2022:3689), which had upheld the civil liability claim filed by Diagnóstico y Control de Salud Laboral S.L. (DICONSAL) in the amount of 953,410.79 euros plus interest.

§ 2. The central issue in the dispute is the determination of the statute of limitations applicable to an action for damages for a infringement of Article 7 of the ***Competition Act 16/1989 of 17 July*** ("LDC 1989"), that is, an act of unfair competition which, by significantly distorting free competition, affects the public interest[1].

§ 3. The background of the case is as follows:

a) DICONSAL, a company member of ASPA (association of external workplace hazard prevention service providers), lodged a complaint with the Spanish Competition Authority regarding actions taken between 2002 and 2005 by several mutual societies for work-related injuries and illnesses (MATEPSS), including FREMAP. The reported behaviour consisted of the use of Social Security's own resources, insider information, and below-cost rates in the workplace hazard prevention services market, which allegedly distorted competition in that market. On 18 March 2008, the Board of the Spanish Competition Authority shelved the complaint, taking the view that the subsequent regulatory adjustments made by Royal Decree no. 688/2005 rendered a penalty decision unnecessary. The decision to shelve the case was subsequently affirmed by the *Audiencia Nacional*.

b) The Supreme Court (Third Chamber), in its ***judgment of 4 March 2014, ECLI:ES:TS:2014:784,*** found it proven that the MATEPSS had engaged in joint actions constituting a infringement of Article 7 LDC 1989, that is, acts of unfair competition that significantly distorted free competition and affected the public interest.

c) On 29 February 2016, DICONSAL filed a civil liability claim against FREMAP in the courts of first instance, which was dismissed for lack of subject-matter jurisdiction. On 10 September 2018 — following the entry into force of the amendment[2] of the Competition Act

[1] Similarly, the current ***Competition Act 15/2007 of 3 July*** (Competition Act) regulates these infringements in Article 3.

[2] This amendment was made by Title II of ***Royal Decree-law no. 9/2017, of 26 May, transposing European Union directives in the financial, commercial, and healthcare sectors, as well as regarding the posting of workers,*** published in the *Official Journal of Spain* no. 126 of 27 May 2017.

to incorporate the Damages Directive[3] into Spanish law — DICONSAL filed a new claim seeking a declaration that FREMAP was liable for infringement of Article 7 LDC 1989 and an order requiring FREMAP to pay, jointly and severally, 953,410.79 euros plus interest.

d) Madrid Business Court no. 3 issued Judgment no. 425/2020 on 2 December, dismissing the claim in its entirety on the grounds that the limitation period had expired. The court held that, since the action arose from an act of unfair competition — and not from an antitrust violation in the strict sense — the statute of limitations provisions of the Unfair Competition Act[4] applied: one year from the date the action could have been brought and the person with standing to sue became aware of the infringement, and, in any event, three years from the commission of the act. According to the court, the date from which the limitation period started to run had to be no later than 2008 (when the Spanish Competition Authority shelved the complaint, a decision later affirmed by the *Audiencia Nacional*). At that time, DICONSAL was already aware of the facts and the alleged persons liable; therefore, the action, brought in 2016 (even if before a court lacking subject-matter jurisdiction), was clearly time-barred.

e) DICONSAL appealed the first-instance judgment, and the Provincial Court overturned it and upheld the claim in its entirety. The appellate ruling held that the infringement of Article 7 LDC 1989 constituted an antitrust violation; that Article 13 of that law was applicable (which required a final and conclusive penalty decision in order to bring an action for damages based on the unlawfulness of acts prohibited by that law); and that, therefore, the *starting point* for the one-year statute of limitations provided for in Article 1968(2) of the Civil Code for claims in tort was the date of the aforementioned Supreme Court (Third Chamber) judgment, which, in 2014, had for the first time declared an LDC 1989 infringement. Consequently, the Madrid Provincial Court held that the action brought in February 2016 was not barred by the statute of limitations.

f) FREMAP lodged an appeal on four grounds: 1) infringement of Article 7 LDC 1989 regarding the legal nature of the infringement; 2) infringement of Article 35 of the Unfair Competition Act concerning the statute of limitations in relation to Article 32(1)(5) thereof, due to the incorrect application of Article 13 LDC 1989; 3) infringement of Article 1902 of the Civil Code by imposing liability without fault; and 4) infringement of Article 1137 of the Civil Code due to the erro-

[3] *Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 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* ("Damages Directive").

[4] *Unfair Competition Act 3/1991 of 10 January*.

neous application of joint and several liability under Article 73 of the Competition Act. Following a motion to set aside the proceedings — the appeal was initially rejected but was ultimately allowed by order of 11 December 2024 — the First Chamber upheld the first and second grounds, rendering it unnecessary to examine the third and fourth grounds.

2. The Supreme Court's ruling regarding the action for damages as a result of acts of unfair competition, even when such acts may affect the public interest

§ 14. *The ratio decidendi of the judgment is structured in two steps:*

- § 4*a*. First, the Supreme Court determines that the infringement of Article 7 LDC1989 — actions by the MATEPSS that distorted competition in the market for prevention services — *does not constitute an antitrust violation in the strict sense* (Arts. 1 and 6 LDC 1989; Arts. 1 and 2 of the Competition Act; Arts. 101 and 102 of the Treaty on the Functioning of the European Union or TFEU) — *but rather an act of unfair competition which, because it significantly affects the public interest, may be investigated and sanctioned by competition authorities*.

The Supreme Court bases its ruling on the evolution of the law: Article 13 LDC 1989, which laid down the requirement of a prior administrative decision as a prerequisite for a civil action for damages, referred only to "acts prohibited by this Act", that is, to collusive behaviour (Art. 1) and abuse of a dominant position (Art. 6 — although the ruling erroneously refers to Article 3 LDC 1989—), not to the acts described in Article 7 (distortion of competition through unfair practices).

For its part, the current Competition Act confirms this distinction: the first additional provision assigns to business courts jurisdiction over civil matters arising from Articles 1 and 2 of the Competition Act (and Arts. 101 and 102 TFEU), without mentioning Article 3. And, more importantly, Article 71(2)(a) of that law (introduced by Royal Decree-law no. 9/2017 to transpose the Damages Directive) defines "a infringement of competition law as any infringement of Articles 101 and 102 of the Treaty on the Functioning of the European Union or of Articles 1 and 2 of this law," thereby excluding Article 3. The explanatory notes to Royal Decree-law no. 9/2017 (heading III, paragraph 8)[5] expressly confirms

[5] The explanatory notes state the following (emphasis added): "By incorporating this new Title VI into the Competition Act no. 15/2007 of 3 July, the aim is also to extend the new regulations to claims for damages caused by violations of Articles 1 and 2 of that law that do not affect trade among the Member States of the Union and that, therefore, do not fall within the scope of Articles 101 and 102 of the Treaty on the Functioning of the European Union, *unlike acts of unfair competition that, by distorting free competition, affect the public interest, since these are subject to a specific regime under Competition Act 3/1991 of 10 January*".

that acts of unfair competition that distort competition and affect the public interest "are subject to a specific regime under the Unfair Competition Act 3/1991 of 10 January" and fall outside the scope of the new Title VI on antitrust damages.

- § *4b*. Second, *by characterising the violation as an act of unfair competition — rather than an antitrust violation — the Supreme Court concluded that the prior administrative decision provision of Article 13 LDC 1989 did not apply*. The action for damages was always that provided for in Article 32(1)(5) of the Unfair Competition Act, subject to the limitation period in Article 35(I) (or Art. 21, applicable *ratione temporis*): one year from the time the action could have been brought and the claimant became aware of the person who committed the act of unfair competition, and in any event, three years from the commission of the act. The court finds that, at the latest, such knowledge arose with the judgment of 4 March 2014, and the claim was filed on 29 February 2016 (erroneously with the courts of first instance), after the one-year period had already elapsed.

§ 5. Furthermore, in any event, given that the unfair behaviour ended in 2005, the remedy was barred in 2008 upon the expiration of the maximum three-year period from the end of the behaviour (Art. 21 *in fine*; current Art. 35(I) *in fine*).

§ 6. The ruling allows the appeal on points of law, overturns the appellate court's decision, and affirms the lower court's judgment dismissing the case.

3. Practical significance of the judgment

§ 7. The first relevant issue is the distinction between antitrust violations, which are prohibited by the Competition Act in the strict sense — collusive behaviour (Art. 1) and abuse of a dominant position (Art. 2) — and acts of unfair competition that, by distorting competition, affect the public interest (Art. 3; formerly, Art. 7 LDC 1989). The judgment draws a clear distinction from the perspective of positive law: Article 7 LDC 1989 (or the current Article 3 of the Competition Act) does not punish collusive behaviour or abuse of a dominant position, but rather *constitutes a catch-all provision that subjects certain acts of unfair competition — which, due to their severity and scope, transcend the merely private interests of the affected competitors — to public competition law enforcement*. The nature of the violation is not altered by the fact that jurisdiction over it is attributed to administrative competition authorities. We believe the ruling is correct in *rejecting the conflation of the competent forum for administrative enforcement with the substantive nature of the violation*. All of this is without prejudice to the possible existence of behaviour falling under Article 3 of the Competition Act that occurs simultaneously with collusive practices under Article 1 or the abuse of a dominant position under Article 2; for example, joint or concerted actions by several entities or even an abuse of an individual or collective dominant position, which, in the case at hand, were rejected by the Spanish Competition Authority and on which the

Supreme Court (Third Chamber) did not rule in its 2014 judgment.

§ 8. *Classifying the behaviour as an act of unfair competition rather than an antitrust violation results in the inapplicability of the private enforcement regime under Title VI of the Competition Act* (Arts. 71 et seq., introduced by Royal Decree-law 9/2017 transposing the Damages Directive). This regime establishes a five-year limitation period beginning from the time the infringement ceased and the injured person became aware (or could reasonably have become aware) of the infringement, the harm caused, and the identity of the infringer (Art. 74). In contrast, the regime under the Unfair Competition Act (Art. 35) establishes a personal limitation period of one year "from the time the right to bring a claim could be brought and the person with standing to sue became aware of the person who committed the act of unfair competition" and a subject-matter limitation period of three years "from the time the behaviour ceased."

§ 9. Thus, the judgment has significant implications for future private enforcement litigation in the grey area between antitrust law and unfair competition law. First, it is clear that those harmed by behaviour falling under Article 3 of the Competition Act do not benefit from the damages regime set out in Title VI of that law — entitled "Compensation for harm caused by antitrust "—nor from its favourable procedural and substantive rules (presumption of harm, access to evidence, binding effect of penalty decisions). Second, the applicable limitation periods are those of the Unfair Competition Act (one year/three years), which requires victims to exercise extraordinary procedural diligence: they must file a claim as soon as they become aware of the unfair act and its perpetrator, without waiting for administrative or judicial decisions confirming the infringement.

4. Conclusions

§ 10. Supreme Court judgment no. 1189/2026 constitutes a landmark ruling defining the scope of application of the private antitrust enforcement regime in the Spanish legal system. Its main contributions can be summarised as follows:

a) The ruling draws a clear *distinction between antitrust violations* in the strict sense — *collusive behaviour (Art. 1) and abuse of a dominant position (Art. 2) — and acts of unfair competition affecting the public interest (Art. 3)*. Although this distinction has existed in positive law since LDC 1989, it had not previously been the subject of such an explicit ruling by the Supreme Court in civil proceedings.

b) The exclusion of Article 3 from the scope of Title VI of the Competition Act means that *victims of these unfair acts cannot benefit from the favourable procedural and substantive framework provided for the private enforcement of antitrust law.*

c) *The application of the statute of limitations under the Unfair Competition Act (one year from the time the infringer becomes known; three years from the end of the behaviour) requires enhanced procedural diligence on the part of the injured persons.* It is not possible to wait for an administrative authority or a judicial review court to declare the infringement: the limitation period begins to run from the time the injured person becomes aware of the perpetrator of the unfair act, regardless of whether any public proceedings are pending.