Value of non-final administrative decisions in stand-alone antitrust damages actions

Madrid, November 2023

Four months ago the Barcelona Court of Appeal (BCA) issued a ruling¹ on the probative value of non-final decisions of competition authorities in stand-alone damages actions.

Two companies brought a damages action before a commercial court of Barcelona against three cable manufacturers² that had been sanctioned by the Spanish competition authority (SCA) in 2017³ because of their involvement in a price fixing and market sharing cartel in the low and medium voltage cable market.

The defendants alleged that the SCA's resolution had been appealed before the National Court (*Audiencia Nacional*) and therefore was not final. The commercial court ordered a stay of the proceedings until the decision became final as, otherwise, "efforts would be unnecessarily duplicated and there could be contradictory rulings in different jurisdictions".

The claimants appealed this order and the BCA reversed it and directed the commercial court to resume the proceedings for the following reasons:

- An infringement of competition law found in a final decision is irrefutably established for the purposes of a damages action. However, this does not mean that civil courts need a final decision of the competition authorities to hear a damages action.
- Should civil courts have to declare a stay of proceedings until the competition authority's relevant decision becomes final, stand-alone actions would be rendered useless.
- Non-final decisions of the competition authorities can be a means of evidence of the infringement.

Although follow-on actions are more *popular*, in certain circumstances it may be advisable or even necessary to go for a stand-alone action and this ruling is good in that it reminds that non-final decisions by competition authorities are evidence -a strong one, we should say- of the anticompetitive practice and its effects.

¹ Order of the BCA 83/2023 dated 5 July 2023.

² And against the parent companies of two of them.

³ Resolution of the SCA of 21 November 2017 (file S/DC/0562/15 CABLES BT/MT).