

## The Cogeco Case: The First Preliminary Ruling on the Private Enforcement Directive\*

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ABSTRACT: In March this year, the European Court of Justice (hereinafter “CJ”) answered the first preliminary question regarding the Private Enforcement Directive (“Directive”).<sup>1</sup> One might expect this decision<sup>2</sup> to remain relevant for the next few years, as it sheds some light on the rather intricate issue of the Directive’s temporal application. The CJ explains what rules are applicable to actions for damages regarding infringements which occurred prior either to the Directive’s adoption or to its implementation in the respective Member States. The case is also of major interest since it illustrates the role that the principle of effectiveness can play when applied alongside Articles 101 or 102 of the Treaty on the Functioning of the European Union (“TFEU”).<sup>3</sup> Finally, albeit not expressly addressed, the case is also of interest regarding the controversial issue of parent company liability in private enforcement, where it represents a novelty in the Portuguese legal order.

KEYWORDS: Damages Directive, private enforcement, temporal scope, limitation periods, principle of effectiveness

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\* Date of reception: 30 April 2019. Date of acceptance: 2 August 2019.

DOI: <https://doi.org/10.7559/mclawreview.2019.1827>.

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<sup>1</sup> 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, [2014] OJ L 349, 1–19.

<sup>2</sup> Judgment of 28 March 2019, *Cogeco Communications Inc v. Sport TV Portugal SA et al.*, C-637/17, EU:C:2019:263.

<sup>3</sup> This case deals only with article 102 but the consequences that can be derived regarding the principle of effectiveness can also be applied to infringements of article 101.