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Who is "Anyone"? And: Is that the question?

St Martin's Conference 2018, Brno

Anita Lukaschek, Baker&McKenzie

Damages Directive 2014/104/EU

"This Directive sets out certain rules necessary to ensure that anyone who has suffered harm caused by an infringement of competition law […] can effectively exercise the right to claim full compensation for that harm from that undertaking or association."

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ECJ Landmark Ruling *Courage/Crehan*

"The full effectiveness of Article 85 of the Treaty [now: Article 101 TFEU] and, in particular, the practical effect of the prohibition laid down in Article 85 (1) [now: Article 101 (1) TFEU] would be put at risk if it were not open to any individual to claim damages for loss caused to him by a contract oy by conduct liable to restrict or distort competition."

ECJ 20 September 2001, Case C-453/99, *Courage/Crehan*, para 26

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Austrian Preliminary Ruling Case N° 1 - "Umbrella Claims"

"Article 101 TFEU must be interpreted as meaning that it precludes the interpretation and application of domestic legislation enacted by a Member Sate which categorically excludes, for legal reasons any civil liability of undertakings belonging to a cartel for loss resulting from the fact that an under-taking not party to the cartel, having regard to the practices of the cartel, set its prices higher than would otherwise have been expected under competitive conditions."

ECJ 5 June 2014, Case C-557/12, KONE et al

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Austrian Preliminary Ruling N° 2 (pending)

Case C-435/18

"[Is it] necessary that compensation for losses may also be claimed […] by persons who are not active as suppliers or customers on the relevant product and geographic market affected by a cartel, but who grant loans to buyers of the products offered on the market affected by the cartel under preferential terms as funding bodies […], and whose loss lies in the fact that the loan amount granted as a percentage of the product costs was higher than what it would have been without the cartel agreement, which means that they were unable profitably to invest those amounts?"

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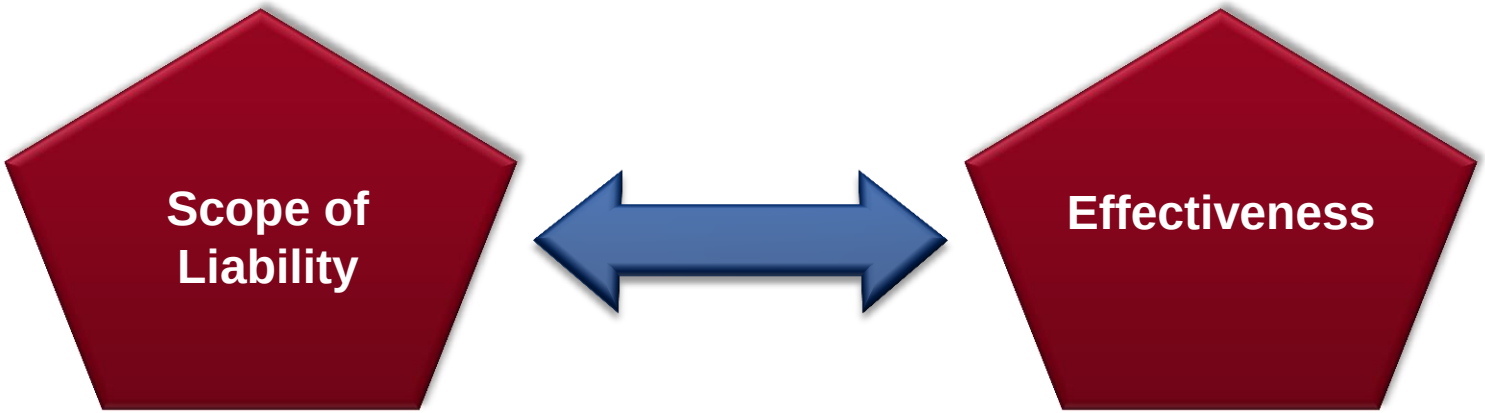
What is this essentially about?



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Scope of Liability

“In the absence of Community rules […] it is for the domestic legal system of each Member Sate to lay down the detailed rules governing the exercise of the right to claim compensation for the harm resulting from an agreement or practice prohibited under Article 101 TFEU, including those on the application of the concept of "causal relationship", provided that the principles of equivalence and effectiveness are observed […]".

ECJ 13 July 2006, Joined Cases C-295/04 to C-298/04, *Manfredi*, para 64

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Damages Directive 2014/104/EU, recital 11

“Where Member States provide other conditions for compensation under national law, such as imputability, adequacy or culpability, they should be able to maintain such conditions in so far as they comply with the case-law of the Court of Justice, the principles of effectiveness and equivalence and this Directive"

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Scope of liability: Possible Concepts

"BUT FOR" CAUSAL LINK

CONDITIO SINE QUA NON

ADEQUATE CAUSAL LINK

SUFFICIENTLY DIRECT CAUSAL NEXUS

LEGAL CAUSATION

FORESEEABILITY

IMPUTABLITY

RECHTSWIDRIGKEITS-ZUSAMMENHANG

BETROFFENHEIT

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"Anyone"…

„… but not for everything…“

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