Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

21 May 2015 * [i]

(Reference for a preliminary ruling — Area of freedom, security and justice — Judicial cooperation in civil and commercial matters — Regulation (EC) No 44/2001 — Special jurisdiction — Article 6(1) — Action, brought against several defendants domiciled in various Member States and which have participated in a cartel found to be contrary to Article 81 EC and Article 53 of the Agreement on the European Economic Area, seeking an order for the defendants to pay damages jointly and severally and for disclosure of information — Jurisdiction of the court seised with regard to the other defendants — Withdrawal of the action in relation to the defendant domiciled in the Member State of the court seised — Jurisdiction in tort, delict or quasi-delict — Article 5(3) — Jurisdiction clauses — Article 23 — Effective enforcement of the prohibition of anti-competitive agreements, decisions and concerted practices)

In Case C-352/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Dortmund (Germany), made by decision of 29 April 2013, received at the Court on 26 June 2013, in the proceedings

Cartel Damage Claims (CDC) Hydrogen Peroxide SA

v

Akzo Nobel NV,

Solvay SA/NV,

Kemira Oyj,

FMC Foret SA,

intervening parties:

Evonik Degussa GmbH,

Chemoxal SA,

Edison SpA,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, K. Jürimäe, J. Malenovský, M. Safjan (Rapporteur) and A. Prechal, Judges,

* Language of the case: German.

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Cartel Damage Claims (CDC) Hydrogen Peroxide SA, by T. Funke, Rechtsanwalt,

– Akzo Nobel NV, by M. Blaum and T. Paul, Rechtsanwälte,

– Solvay SA/NV, by M. Klusmann and T. Kreifels, Rechtsanwälte,

– Kemira Oyj, by U. Börger and R. Lahme, Rechtsanwälte,

– FMC Foret SA, by B. Uphoff, solicitor, and S. Woitz, Rechtsanwalt,

– Evonik Degussa GmbH, by C. Steinle and S. Wilske, Rechtsanwälte,

– Edison SpA, by A. Rinne and T. Mühlbach, Rechtsanwälte,

– the French Government, by D. Colas and J. Bousin, acting as Agents,

– the European Commission, by A.-M. Rouchaud-Joët, M. Wilderspin and G. Meessen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 December 2014,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 5(3), 6(1) and 23 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

2 The request has been made in proceedings between Cartel Damage Claims (CDC) Hydrogen Peroxide SA ('CDC'), domiciled in Brussels (Belgium), and Akzo Nobel NV, Solvay SA/NV, Kemira Oyj and FMC Foret SA, domiciled in Member States other than the Federal Republic of Germany, concerning the applicant's action for damages brought by virtue of claims for damages which were directly or indirectly transferred to it by 71 undertakings having allegedly suffered loss as a result of an infringement of Article 81 EC and Article 53 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3) ('the EEA Agreement').

Legal context

3 Recitals 2, 11, 12, 14 and 15 in the preamble to Regulation No 44/2001 state:

'(2) Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States bound by this Regulation are essential.

…

(11) The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

(12) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice.

…

(14) The autonomy of the parties to a contract, other than an insurance, consumer or employment contract, where only limited autonomy to determine the courts having jurisdiction is allowed, must be respected subject to the exclusive grounds of jurisdiction laid down in this Regulation.

(15) In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States. ...'

4 Articles 2 to 31 of that regulation, which appear under Chapter II thereof, contain rules on jurisdiction.

5 Section 1 of that chapter, entitled 'General Provisions', contains Article 2(1), which is worded as follows:

'Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'

6 Article 5(3) of Regulation No 44/2001 provides that a person domiciled in a Member State may be sued in another Member State 'in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur'.

7 Article 6(1) of that regulation states:

'A person domiciled in a Member State may also be sued:

(1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine those applications together to avoid the risk of irreconcilable judgments resulting from separate proceedings.'

8 Article 23(1) of Regulation No 44/2001, which appears in Section 7 of Chapter II, entitled 'Prorogation of jurisdiction', provides:

'If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either:

(a) in writing or evidenced in writing; or

(b) in a form which accords with practices which the parties have established between themselves; or

(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

9 CDC, a company governed by Belgian law domiciled in Brussels, was established for the purpose of pursuing, both judicially and extra-judicially, claims for damages of undertakings affected by a cartel. By application of 16 March 2009, it brought an action for damages before the referring court against six chemical undertakings which, with the exception of the intervening party and former defendant, Evonik Degussa GmbH ('Evonik Degussa'), which has its seat in Essen (Germany), were domiciled in five Member States other than the Federal Republic of Germany.

10 In support of its action, in which CDC seeks to have the defendants in the main proceedings ordered to pay damages jointly and severally and to provide disclosure, that undertaking relies on Commission Decision 2006/903/EC of 3 May 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement against Akzo Nobel NV, Akzo Nobel Chemicals Holding AB, EKA Chemicals AB, Degussa AG, Edison SpA, FMC Corporation, FMC Foret S.A., Kemira OYJ, L'Air Liquide SA, Chemoxal SA, Snia SpA, Caffaro Srl, Solvay SA/NV, Solvay Solexis SpA, Total SA, Elf Aquitaine SA and Arkema SA (Case COMP/F/C.38.620 — Hydrogen Peroxide and perborate) (OJ 2006 L 353, p. 54), in which the European Commission found that, in connection with hydrogen peroxide and sodium perborate, the defendants in the main proceedings and other undertakings participated in a single and continuous infringement of the prohibition of cartel agreements provided for in Article 81 EC and Article 53 of the EEA Agreement. According to that decision, the infringement started on 31 January 1994 at the latest and lasted at least until 31 December 2000. It consisted principally in exchanging important and confidential market and/or company-relevant information, limiting and/or controlling production, allocating markets and customers and fixing and monitoring prices as part of multilateral and/or bilateral meetings and telephone conversations held at regular and irregular intervals mainly in Belgium, Germany and France.

11 In that regard, CDC invokes agreements concerning the transfer of claims for damages entered into with 32 undertakings domiciled in 13 different Member States of the European Union or of the European Economic Area ('the EEA'), some of which undertakings had previously concluded similar transfer agreements with 39 other undertakings. The undertakings at issue operate in the industrial pulp and paper processing industry. The applicant submits that, from 1994 to 2006, those undertakings purchased substantial quantities of hydrogen peroxide in various EU and EEA Member States, some undertakings having supplied hydrogen peroxide to plants in several EU Member States. According to the defendants in the main proceedings, some of the contracts of sale included agreements on arbitration and jurisdiction.

12 In September 2009, CDC withdrew its action against Evonik Degussa following a settlement with that undertaking. In late 2009, the remaining defendants in the main proceedings joined the former defendant and the firms Chemoxal SA and Edison S.p.A. to the proceedings. Relying on various agreements on arbitration and jurisdiction provided for in some of the sales contracts by which they were bound to the undertakings allegedly victims of the defendants' cartel agreements, the defendants in the main proceedings contended that the referring court had no jurisdiction to hear and determine the case.

13 In that context, the referring court considers that it could have international jurisdiction only by virtue of Articles 5(3) and 6(1) of Regulation No 44/2001. If the conditions for such jurisdiction were satisfied, CDC would be free to sue the defendants in the main proceedings before one of the courts deemed to have jurisdiction in accordance with those provisions, provided that the jurisdiction of those courts is not validly excluded in accordance with Article 23 of Regulation No 44/2001 or by an arbitration agreement.

14 In those circumstances the Landgericht Dortmund decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is Article 6(1) of [Regulation No 44/2001] to be interpreted as meaning that, in the case of an action in which a defendant domiciled in the same State as the court and other defendants domiciled in other Member States … are together the subject of an application for disclosure and damages on account of a single and continuous infringement of Article 81 EC/Article 101 TFEU and Article 53 of the EEA Agreement which has been established by the … Commission and committed in several Member States and in which the defendants have participated in different places and at different times, it is expedient to hear and determine those applications together to avoid the risk of irreconcilable judgments resulting from separate proceedings?

Is it significant in this regard if the action against the defendant domiciled in the same State as the court is withdrawn after having been served on all the defendants, before the expiry of the periods prescribed by the court for lodging a defence and before the start of the first hearing?

2. Is Article 5(3) of Regulation … No 44/2001 to be interpreted as meaning that, in the case of an action for disclosure and damages brought against defendants domiciled in a number of Member States … on account of a single and continuous infringement of Article 81 EC/Article 101 TFEU and Article 53 of the EEA Agreement which has been established by the European Commission and committed in several Member States and in which the defendants have participated in different places and at different times, the harmful event occurred in relation to each defendant and in relation to all heads of damage claimed or the overall loss in those Member States in which cartel agreements were concluded and implemented?

3. In the case of actions for damages for infringement of the prohibition of agreements, decisions and concerted practices contained in Article 81 EC/Article 101 TFEU and Article 53 of the EEA Agreement, does the requirement of effective enforcement of the prohibition of agreements, decisions and concerted practices laid down in [EU] law allow account to be taken of arbitration and jurisdiction clauses contained in contracts for the supply of goods, where this has the effect of excluding the jurisdiction of a court with international jurisdiction under Article 5(3) and/or Article 6(1) of Regulation … No 44/2001 in relation to all the defendants and/or all or some of the claims brought?'

Consideration of the questions referred

The first question

15 By its first question, the referring court asks, in essence, whether Article 6(1) of Regulation No 44/2001 must be interpreted as meaning that it may, under that provision, be expedient to hear and determine applications together to avoid the risk of irreconcilable judgments resulting from separate proceedings in the case of an action for damages, and for disclosure in that regard, brought jointly against undertakings which have participated in different places and at different times in a single and continuous infringement, as found by a decision of the Commission, of the prohibition of anti-competitive agreements, decisions and concerted practices provided for in EU law, even where the applicant has withdrawn its action against the sole co-defendant domiciled in the same State as the court seised.

16 In order to answer that question, it should be borne in mind from the outset that Article 6(1) of Regulation No 44/2001 must be interpreted independently, by reference to its scheme and purpose (see judgment in *Reisch Montage*, C-103/05, EU:C:2006:471, paragraph 29).

17 The rule of jurisdiction laid down in Article 6(1) provides that a person may, where he is one of a number of defendants, be sued in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings (judgments in *Painer*, C-145/10, EU:C:2011:798, paragraph 73, and in *Sapir and Others*, C-645/11, EU:C:2013:228, paragraph 40).

18 That special rule, because it derogates from the principle stated in Article 2 of Regulation No 44/2001 that jurisdiction is based on the defendant's domicile, must be strictly interpreted and cannot be given an interpretation going beyond the cases expressly envisaged by that regulation (see judgment in *Painer*, C-145/10, EU:C:2011:798, paragraph 74).

19 In accordance with recitals 12 and 15 in the preamble to Regulation No 44/2001, that rule of jurisdiction meets the wish to facilitate the sound administration of justice, to minimise the possibility of concurrent proceedings and thus to avoid irreconcilable outcomes if cases are decided separately (judgment in *Painer*, C-145/10, EU:C:2011:798, paragraph 77).

20 Therefore, in order for Article 6(1) of Regulation No 44/2001 to apply, it is necessary to ascertain whether, between various claims brought by the same applicant against various defendants, there is a connection of such a kind that it is expedient to determine those actions together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings (see judgments in *Freeport*, C-98/06, EU:C:2007:595, paragraph 39, and in *Sapir and Others*, C-645/11, EU:C:2013:228, paragraph 42). In that regard, in order for judgments to be regarded as irreconcilable, it is not sufficient that there be a divergence in the outcome of the dispute, but that divergence must also arise in the context of the same situation of fact and law (see judgments in *Freeport*, C-98/06, EU:C:2007:595, paragraph 40; *Painer*, C-145/10, EU:C:2011:798, paragraph 79; and in *Sapir and Others*, C-645/11, EU:C:2013:228, paragraph 43).

21 The requirement that the same situation of fact and law must arise is satisfied in circumstances such as those of the case in the main proceedings. Despite the fact that the defendants in the main proceedings participated in the implementation of the cartel at issue by concluding and performing contracts under it, in different places and at different times, according to Decision 2006/903 upon which the claims in the main proceedings are based, the cartel agreement amounted to a single and continuous

infringement of Article 101 TFEU and Article 53 of the EEA Agreement. That decision does not, however, determine the requirements for holding the defendants liable in tort, jointly and severally as the case may be, since this is to be determined by the national law of each Member State.

22 As regards, finally, the risk of irreconcilable judgments resulting from separate proceedings, since the requirements for holding those participating in an unlawful cartel liable in tort may differ between the various national laws, there would be a risk of irreconcilable judgments if actions were brought before the courts of various Member States by a party allegedly adversely affected by a cartel.

23 Nevertheless, the Court points out that, even in the case where various laws are, by virtue of the rules of private international law of the court seised, applicable to the actions for damages brought by CDC against the defendants in the main proceedings, such a difference in legal basis does not, in itself, preclude the application of Article 6(1) of Regulation No 44/2001, provided that it was foreseeable by the defendants that they might be sued in the Member State where at least one of them is domiciled (see judgement in *Painer*, C-145/10, EU:C:2011:798, paragraph 84).

24 That latter condition is fulfilled in the case of a binding decision of the Commission finding there to have been a single infringement of EU law and, on the basis of that finding, holding each participant liable for the loss resulting from the tortious actions of those participating in the infringement. In those circumstances, the participants could have expected to be sued in the courts of a Member State in which one of them is domiciled.

25 It must therefore be considered that determining separately actions for damages against several undertakings domiciled in different Member States which, contrary to EU competition law, participated in a single and continuous cartel may lead to irreconcilable judgments within the meaning of Article 6(1) of Regulation No 44/2001.

26 That said, it remains to be considered to what extent the applicant's withdrawal of its action against the sole co-defendant domiciled in the same Member State as the court seised is capable of rendering the rule of jurisdiction provided for in Article 6(1) of Regulation No 44/2001 inapplicable.

27 According to settled case-law, that rule cannot be interpreted as allowing an applicant to make a claim against a number of defendants for the sole purpose of removing one of them from the jurisdiction of the courts of the Member State in which that defendant is domiciled (judgments in *Reisch Montage*, C-103/05, EU:C:2006:471, paragraph 32, and in *Painer*, C-145/10, EU:C:2011:798, paragraph 78).

28 The Court has nevertheless stated that, where claims brought against various defendants are connected within the meaning of Article 6(1) of Regulation No 44/2001 when the proceedings are instituted, the rule of jurisdiction laid down in that provision is applicable without there being any further need to establish separately that the claims were not brought with the sole object of ousting the jurisdiction of the courts of the Member State where one of the defendants is domiciled (see judgment in *Freeport*, C-98/06, EU:C:2007:595, paragraph 54).

29 It follows that where, when proceedings are instituted, claims are connected within the meaning of Article 6(1) of Regulation No 44/2001, the court seised of the case can find that the rule of jurisdiction laid down in that provision has potentially been circumvented only where there is firm evidence to support the conclusion that the applicant artificially fulfilled, or prolonged the fulfilment of, that provision's applicability.

30 In the case in the main proceedings, some of the parties allege that, before the action in the proceedings was brought, an out-of-court settlement was reached between the applicant in the main proceedings and Evonik Degussa, whose seat is in Germany, and that the parties purposefully delayed

the formal conclusion of that settlement until proceedings had been instituted, for the sole purpose of securing the jurisdiction of the court seised of the case as against the other defendants in the main proceedings.

31 In order to be able to exclude the applicability of the rule of jurisdiction laid down in Article 6(1) of Regulation No 44/2001, an allegation of that nature must nevertheless be supported by firm evidence that, at the time that proceedings were instituted, the parties concerned had colluded to artificially fulfil, or prolong the fulfilment of, that provision's applicability.

32 Although it is for the court seised of the case to assess such evidence, it must nevertheless be made clear that simply holding negotiations with a view to concluding an out-of-court settlement does not in itself prove such collusion. However, it would be otherwise if it transpired that such a settlement had, in fact, been concluded, but that it had been concealed in order to create the impression that the conditions of application of Article 6(1) of Regulation No 44/2001 had been fulfilled.

33 In the light of the above, the answer to the first question is that Article 6(1) of Regulation No 44/2001 must be interpreted as meaning that the rule on centralisation of jurisdiction in the case of several defendants, as established in that provision, can apply in the case of an action for damages, and for disclosure in that regard, brought jointly against undertakings which have participated in different places and at different times in a single and continuous infringement, which has been established by a decision of the Commission, of the prohibition of anti-competitive agreements, decisions and concerted practices provided for under EU law, even where the applicant has withdrawn its action against the sole co-defendant domiciled in the same State as the court seised, unless it is found that, at the time the proceedings were instituted, the applicant and that defendant had colluded to artificially fulfil, or prolong the fulfilment of, that provision's applicability.

The second question

34 By its second question, the referring court asks whether Article 5(3) of Regulation No 44/2001 is to be interpreted as meaning that, in the case of an action for damages brought against defendants domiciled in various Member States on grounds of a single and continuous infringement, as found by the Commission, of Article 101 TFEU and Article 53 of the EEA Agreement in which the defendants participated in several Member States, at different times and in different places, the harmful event occurred in relation to each defendant and in relation to all damages claimed in those Member States in which cartel agreements were concluded and implemented.

35 Given that the circumstances of the present case are characterised by the consolidation of a number of potential claims for damages brought by the applicant in the main proceedings which had been assigned to the applicant by several undertakings allegedly victims of the Hydrogen Peroxide cartel, it should be pointed out from the outset that the transfer of claims by the initial creditor cannot, by itself, have an impact on the determination of the court having jurisdiction under Article 5(3) of Regulation No 44/2001 (judgment in *ÖFAB*, C-147/12, EU:C:2013:490, paragraph 58).

36 It follows that the location of the harmful event must be assessed for each claim for damages independently of any subsequent assignment or consolidation.

37 In that regard, the Court notes that Article 5(3) of Regulation No 44/2001 must be interpreted independently and strictly (judgment in *Kolassa*, C-375/13, EU:C:2015:37, paragraph 43).

38 The fact remains that the expression 'place where the harmful event occurred or may occur' Article 5(3) of Regulation No 44/2001 is intended to cover both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the applicant, in the courts for either of those places (judgments in *Melzer*, C-228/11, EU:C:2013:305, paragraph 25, and in *Kolassa*, C-375/13, EU:C:2015:37, paragraph 45).

39 In accordance with settled case-law, the rule of special jurisdiction laid down in Article 5(3) of that regulation is based on the existence of a particularly close linking factor between the dispute and the courts of the place where the harmful event occurred or may occur, which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings (judgments in *Melzer*, C-228/11, EU:C:2013:305, paragraph 26, and in *Hi Hotel HCF*, C-387/12, EU:C:2014:215, paragraph 28).

40 In matters relating to tort and delict and quasi-delict, the courts for the place where the harmful event occurred or may occur are usually the most appropriate for deciding the case, in particular on the grounds of proximity and ease of taking evidence (judgment in *Melzer*, C-228/11, EU:C:2013:305, paragraph 27).

41 The identification of one of the linking factors recognised by the case-law referred to in paragraph 38 above must therefore make it possible to establish the jurisdiction of the court objectively best placed to determine whether the elements that constitute liability do in fact exist, from which it follows that only the court within whose jurisdiction the relevant linking factor is situated may validly be seised (judgments in *Coty Germany*, C-360/12, EU:C:2014:1318, paragraph 48, and in *Kolassa*, C-375/13, EU:C:2015:37, paragraph 47).

42 It needs to be examined, in the circumstances of the case in the main proceedings, where the linking factors capable of establishing the jurisdiction of the court in matters relating to tort and delict and quasi-delict lie.

The place of the causal event

43 With regard to the place of the causal event, it must be pointed out at the outset that, in circumstances such as those in the present case, the buyers were supplied by various participants in the cartel within the scope of their contractual relations. However, the event giving rise to the alleged loss did not consist in a potential breach of contractual obligations, but in a restriction of the buyer's freedom of contract as a result of that cartel in the sense that that restriction prevented the buyer from being supplied at a price determined by the rules of supply and demand.

44 In those circumstances, the place of a causal event of loss consisting in additional costs that a buyer had to pay because a cartel has distorted market prices can be identified, in the abstract, as the place of the conclusion of the cartel. Once concluded, the participants in a cartel ensure through action or forbearance that there is no competition and that prices are distorted. Where the place of a cartel's conclusion is known, it would be consistent with the aims outlined in paragraph 39 above for the courts of that place to have jurisdiction.

45 That conclusion is, however, not relevant in circumstances such as those in the main proceedings where, according to the findings of the Commission as set out in the order for reference, it is not possible to identify a single place where the cartel at issue was concluded since the cartel consisted of a number of collusive agreements concluded during various meetings and discussions which took place in various places in the European Union.

46 The above considerations are without prejudice to a situation in which, among several agreements that, as a whole, amounted to the unlawful cartel at issue, there was one in particular which was the sole causal event giving rise to the loss allegedly inflicted on a buyer. In that case, the courts in whose jurisdiction that particular agreement was concluded would have jurisdiction to adjudicate on the loss thereby inflicted upon that buyer.

47 In the latter case, as well as in that in which the referring court were to find that the cartel at issue in the main proceedings was nevertheless definitively concluded in its jurisdiction, the issue still needs to be addressed as to whether several participants in that cartel can be sued before the same court.

48 The Court has indeed held on another set of facts that Article 5(3) of Regulation No 44/2001 does not allow the courts of the place where a harmful event occurred which is imputed to one of the presumed perpetrators of damage, who is not a party to the dispute, to take jurisdiction in an action against another presumed perpetrator of that damage who has not acted within the jurisdiction of that court (judgment in *Melzer*, C-228/11, EU:C:2013:305, paragraph 41).

49 However, in circumstances such as those in the main proceedings, there is no reason for preventing several perpetrators from being sued together before the same court.

50 It follows that jurisdiction by virtue of Article 5(3) of Regulation No 44/2001 to adjudicate, on the basis of the causal event and with regard to all of the perpetrators of an unlawful cartel which allegedly resulted in loss, depends upon the identification, in the jurisdiction of the court seised of the matter, of a specific event during which either that cartel was definitively concluded or one agreement in particular was made which was the sole causal event giving rise to the loss allegedly inflicted on a buyer.

The place where the damage occurred

51 As outlined in paragraph 41 above, the identification of the place where the damage occurred must make it possible to establish the jurisdiction of the courts objectively best placed to determine whether the constitutive elements that found the liability of the person sued are in fact fulfilled.

52 According to the settled case-law of the Court, the place where the damage occurred is the place where the alleged damage actually manifests itself (see judgment in *Zuid-Chemie*, C-189/08, EU:C:2009:475, paragraph 27). As for loss consisting in additional costs incurred because of artificially high prices, such as the price of the hydrogen peroxide supplied by the cartel at issue in the main proceedings, that place is identifiable only for each alleged victim taken individually and is located, in general, at that victim's registered office.

53 That place fully guarantees the efficacious conduct of potential proceedings, given that the assessment of a claim for damages for loss allegedly inflicted upon a specific undertaking as a result of an unlawful cartel, as already found by the Commission in a binding decision, essentially depends on factors specifically relating to the situation of that undertaking. In those circumstances, the courts in whose jurisdiction that undertaking has its registered office are manifestly best suited to adjudicate such a claim.

54 Those courts, as identified, have jurisdiction to hear an action brought either against any one of the participants in the cartel or against several of them for the whole of the loss inflicted upon that undertaking as a result of additional costs that it had to pay to be supplied with products covered by the cartel concerned.

55 However, given that the jurisdiction of the court seised of the matter by virtue of the place where the loss occurred is limited to the loss suffered by the undertaking whose registered office is located in its jurisdiction, an applicant such as CDC, who has consolidated several undertakings' potential claims for damages, would therefore, in accordance with the case-law set out in paragraph 35 above, need to bring separate actions for the loss suffered by each of those undertakings before the courts with jurisdiction for their respective registered offices.

56 In the light of the above, the answer to the second question is that Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that, in the case of an action for damages brought against defendants domiciled in various Member States as a result of a single and continuous infringement of Article 101 TFEU and Article 53 of the EEA Agreement, which has been established by the Commission, in which the defendants participated in several Member States, at different times and in different places, the harmful event occurred in relation to each alleged victim on an individual basis and each of the victims can, by virtue of Article 5(3), choose to bring an action before the courts of the place in which the cartel was definitively concluded or, as the case may be, the place in which one agreement in particular was concluded which is identifiable as the sole causal event giving rise to the loss allegedly suffered, or before the courts of the place where its own registered office is located.

The third question

57 By its third question, the referring court asks, in essence, whether Article 23(1) of Regulation No 44/2001 and the requirement of effective enforcement of the prohibition of cartel agreements in EU law must, in the case of actions for damages for an infringement of Article 101 TFEU and Article 53 of the EEA Agreement, be interpreted as allowing account to be taken of jurisdiction clauses contained in contracts for the supply of goods where this has the effect of excluding the jurisdiction of a court with international jurisdiction under Article 5(3) and/or Article 6(1) of that regulation.

58 Before assessing that question, it must be made clear that, with regard to certain terms derogating from otherwise applicable rules allegedly contained in the contracts at issue but which do not fall within the scope of application of Regulation No 44/2001, the Court does not have sufficient information at its disposal in order to provide a useful answer to the referring court.

59 With regard to the terms at issue in the third question which fall within the scope of that regulation, it is to be observed that, in the context of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, signed in Brussels on 27 September 1968 (OJ 1972, L 299, p. 32), the Court has stated that, by concluding an agreement on the choice of court under Article 17 of the Brussels Convention, the parties may derogate, not only from the general jurisdiction under Article 2 thereof, but also from the special jurisdiction laid down in Articles 5 and 6 of that convention (see judgment in *Estasis Saloti di Colzani*, 24/76, EU:C:1976:177, paragraph 7).

60 Since the interpretation given by the Court in respect of the provisions of that convention is also valid for those of Regulation No 44/2001 whenever the provisions of those instruments may be regarded as equivalent, it must be found that such is the case as regards the first paragraph of Article 17 of the Brussels Convention and Article 23(1) of Regulation No 44/2001, which are drafted in almost identical terms (judgment in *Refcomp*, C-543/10, EU:C:2013:62, paragraphs 19 and 20).

61 It must therefore be concluded that the court seised of a matter can, in principle, be bound by a jurisdiction clause derogating from the rules of jurisdiction laid down in Articles 5 and 6 of Regulation No 44/2001 which was concluded by the parties under Article 23(1) of that regulation.

62 That conclusion cannot be called into question by the requirement of effective enforcement of the prohibition of cartel agreements. First, the Court has already held that the substantive rules applicable to the substance of a case must not affect the validity of a jurisdiction clause agreed in accordance with Article 17 of the Brussels Convention (see, to that effect, judgment in *Castelletti*, C-159/97, EU:C:1999:142, paragraph 51). In accordance with the case-law referred to in paragraph 60 above, that interpretation is also relevant to Article 23 of Regulation No 44/2001.

63 Second, it must be considered that the court seised of the matter cannot, without undermining the aim of Regulation No 44/2001, refuse to take into account a jurisdiction clause which has satisfied the requirements of Article 23 of that regulation solely on the ground that it considers that the court with jurisdiction under that clause would not give full effect to the requirement of effective enforcement of the prohibition of cartel agreements by not allowing a victim of the cartel to obtain full compensation for the loss it suffered. On the contrary, it must be considered that the system of legal remedies in each Member State, together with the preliminary ruling procedure provided for in Article 267 TFEU, affords a sufficient guarantee to individuals in that respect (see, by analogy, judgment in *Renault*, C-38/98, EU:C:2000:225, paragraph 23).

64 In a case such as that in the main proceedings, the court before which the action is brought must, nevertheless, ensure that the clauses at issue actually bind the applicant in the main proceedings before examining the requirements of form laid down in Article 23 of Regulation No 44/2001. As the Court has already made clear, a jurisdiction clause incorporated in a contract may, in principle, produce effects only in the relations between the parties who have given their agreement to the conclusion of that contract. In order for a third party to rely on such a clause it is, in principle, necessary that the third party has given his consent to that effect (judgment in *Refcomp*, C-543/10, EU:C:2013:62, paragraph 29).

65 Only where a party not privy to the original contract had succeeded to an original contracting party's rights and obligations in accordance with national substantive law as established by the application of the rules of private international law of the court seised of the matter could that third party nevertheless be bound by a jurisdiction clause to which it had not agreed (see, to that effect, judgment in *Coreck*, C-387/98, EU:C:2000:606, paragraphs 24, 25 and 30).

66 If the applicant to the main proceedings did prove to be bound by the clauses at issue, it would be necessary to ascertain whether they did, in fact, derogate from the referring court's jurisdiction as far as the case in the main proceedings is concerned.

67 In that regard, it is for the national court to interpret the clause conferring jurisdiction invoked before it in order to determine which disputes fall within its scope (judgments in *Powell Duffryn*, C-214/89, EU:C:1992:115, paragraph 37, and in *Benincasa*, C-269/95, EU:C:1997:337, paragraph 31).

68 A jurisdiction clause can concern only disputes which have arisen or which may arise in connection with a particular legal relationship, which limits the scope of an agreement conferring jurisdiction solely to disputes which arise from the legal relationship in connection with which the agreement was entered into. The purpose of that requirement is to avoid a party being taken by surprise by the assignment of jurisdiction to a given forum as regards all disputes which may arise out of its relationship with the other party to the contract and stem from a relationship other than that in connection with which the agreement conferring jurisdiction was made (see, to that effect, judgment in *Powell Duffryn*, C-214/89, EU:C:1992:115, paragraph 31).

69 In the light of that purpose, the referring court must, in particular, regard a clause which abstractly refers to all disputes arising from contractual relationships as not extending to a dispute relating to the tortious liability that one party allegedly incurred as a result of its participation in an unlawful cartel.

70 Given that the undertaking which suffered the loss could not reasonably foresee such litigation at the time that it agreed to the jurisdiction clause and that that undertaking had no knowledge of the unlawful cartel at that time, such litigation cannot be regarded as stemming from a contractual relationship. Such a clause would not therefore have validly derogated from the referring court's jurisdiction.

71 By contrast, where a clause refers to disputes in connection with liability incurred as a result of an infringement of competition law and designates the courts of a Member State other than the Member State of the referring court, the latter ought to decline its own jurisdiction, even where that clause entails disregarding the special rules of jurisdiction laid down in Articles 5 and/or 6 of Regulation No 44/2001.

72 Consequently, the answer to the third question is that Article 23(1) of Regulation No 44/2001 must be interpreted as allowing, in the case of actions for damages for an infringement of Article 101 TFEU and Article 53 of the EEA Agreement, account to be taken of jurisdiction clauses contained in contracts for the supply of goods, even if the effect thereof is a derogation from the rules on international jurisdiction provided for in Article 5(3) and/or Article 6(1) of that regulation, provided that those clauses refer to disputes concerning liability incurred as a result of an infringement of competition law.

Costs

73 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

1. **Article 6(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the rule on centralisation of jurisdiction in the case of several defendants, as established in that provision, can apply in the case of an action for damages, and for disclosure in that regard, brought jointly against undertakings which have participated in different places and at different times in a single and continuous infringement, which has been established by a decision of the European Commission, of the prohibition of anti-competitive agreements, decisions and concerted practices provided for under EU law, even where the applicant has withdrawn its action against the sole co-defendant domiciled in the same State as the court seised, unless it is found that, at the time the proceedings were instituted, the applicant and that defendant had colluded to artificially fulfil, or prolong the fulfilment of, that provision's applicability.**

2. **Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that, in the case of an action for damages brought against defendants domiciled in various Member States as a result of a single and continuous infringement of Article 101 TFEU and Article 53 of the Agreement on the European Economic Area of 2 May 1992, which has been established by the European Commission, in which the defendants participated in several Member States, at different times and in different places, the harmful event occurred in relation to each alleged victim on an individual basis and each of the victims can, by virtue of Article 5(3), choose to bring an action before the courts of the place in which the cartel was definitively concluded or, as the case may be, the place in which one agreement in particular was concluded which is identifiable as the sole causal event giving rise to the loss allegedly suffered, or before the courts of the place where its own registered office is located.**

3. **Article 23(1) of Regulation No 44/2001 must be interpreted as allowing, in the case of actions for damages for an infringement of Article 101 TFEU and Article 53 of the Agreement on the European Economic Area of 2 May 1992, account to be taken of jurisdiction clauses contained in contracts for the supply of goods, even if the effect thereof is a derogation from the rules on international jurisdiction provided for in Article 5(3) and/or Article 6(1) of that regulation, provided that those clauses refer to disputes concerning liability incurred as a result of an infringement of competition law.**

[Signatures]

i — The wording of paragraph 69 of this document has been modified after it was first put online.