Reports of Cases

OPINION OF ADVOCATE GENERAL
RICHARD DE LA TOUR
delivered on 22 April 2021 [1]

Case C-30/20

RH
v
AB Volvo,
Volvo Group Trucks Central Europe GmbH,
Volvo Lastvagnar AB,
Volvo Group España SA

(Request for a preliminary ruling from the Juzgado de lo Mercantil nº 2 de Madrid (Commercial Court No 2, Madrid, Spain))

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EU) No 1215/2012 – Special jurisdiction – Article 7(2) – Jurisdiction in matters relating to tort, delict or quasi-delict – Place where the harmful event occurred – Place where the damage occurred – Claim for compensation for harm caused by a cartel found to be contrary to Article 101 TFEU and Article 53 of the Agreement on the European Economic Area – Direct designation of the court having jurisdiction – Place where the assets were purchased – Place where registered office is located – Option for Member States to centralise jurisdiction)

I. Introduction

1. This request for a preliminary ruling by the Juzgado de lo Mercantil nº 2 de Madrid (Commercial Court No 2, Madrid, Spain) concerns the interpretation of Article 7(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. [2]

2. The request has been made in an action taken by RH, established in Cordoba (Spain), for compensation for the harm allegedly caused to it by an infringement of Article 101 TFEU and Article 53 of the Agreement on the European Economic Area of 2 May 1992, [3] against four companies in the Volvo group, three of whose registered offices are situated in Member States other than the Kingdom of Spain.

1 Original language: French.

2 OJ 2012 L 351, p. 1.

3 OJ 1994 L 1, p. 3; 'the EEA Agreement'.

3. The Court is asked to clarify whether Article 7(2) of Regulation No 1215/2012 directly designates the court having jurisdiction, without reference to the domestic rules of Member States.

4. Whilst it seems possible to deduce the answer to that question from certain decisions of the Court and, more particularly, its most recent decisions in matters relating to tort, delict or quasi-delict, it appears, inter alia in view of the doubts expressed by the referring court, that that answer should be expanded upon in relation to three other, closely related points.

5. The objectives of legal certainty and effectiveness on the part of the complex body of litigation relating to compensation for damage caused by anticompetitive practices warrant the provision to national courts of useful clarification as regards the designation of the court having territorial jurisdiction and as regards the coexistence of a number of connecting factors adopted in the decisions of the Court. The issue of the freedom of Member States to centralise the handling of that litigation in specialist courts, raised by some of them in their written observations, will also require examination on this occasion.

6. I will thus set out the reasons which lead me to consider, essentially, that:

– Article 7(2) of Regulation No 1215/2012 determines both the international jurisdiction and the domestic jurisdiction of the court before which proceedings have been brought;

– in the circumstances of the case in the main proceedings, the court having territorial jurisdiction is the court in whose jurisdiction the place where the assets at issue were purchased is located, and

– Member States have the option, as part of the organisation of their courts, to choose to centralise the handling of disputes relating to anticompetitive practices in certain specialist courts, subject to compliance with the principles of equivalence and effectiveness.

II. Regulation No 1215/2012

7. Recitals 15, 16 and 34 of Regulation No 1215/2012 are worded as follows:

‘(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant’s domicile. Jurisdiction should always be available on this ground[,] save in a few well-defined situations in which the subject matter of the dispute or the autonomy of the parties warrants a different connecting 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.

(16) In addition to the defendant’s domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.

…

(34) Continuity between the … Convention [of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters,[4] as amended by the successive conventions relating to the accession of new Member States to that convention,[5] Council] Regulation (EC) No 44/2001 [of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,[6]] and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation by the Court of Justice of the European Union of [that] Convention and of the Regulations replacing it.'

8. In Chapter I of Regulation No 1215/2012, entitled 'Scope and definitions', Article 1(1) provides:

'This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. …'

9. Chapter II of that regulation, entitled 'Jurisdiction', contains in Section 1, relating to 'general provisions', Articles 4 to 6.

10. Article 4(1) of that regulation provides:

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

11. According to Article 5(1) of Regulation No 1215/2012:

'Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.'

12. Section 2 of that chapter, entitled 'Special jurisdiction', comprises Articles 7 to 9.

13. Article 7(2) of Regulation No 1215/2012 is worded as follows:

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

…

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur'.

14. Article 26(1) of that regulation, which appears in Chapter II of Section 7, entitled 'Prorogation of jurisdiction', provides:

'Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 24.'

4 OJ 1972 L 299, p. 32.

5 'The Brussels Convention'.

6 OJ 2001 L 12, p. 1.

III. Facts of the dispute in the main proceedings and the question referred for a preliminary ruling

15. As is apparent from the case file before the Court, RH, which is established in Cordoba, purchased for its road transport business, between 2004 and 2009, five trucks from a dealership of Volvo Group España SA. Ownership of one of the trucks was transferred to RH in 2008 after having been the subject of a leasing agreement.

16. On 19 July 2016, the European Commission adopted the decision relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39824 – Trucks) (C(2016) 4673 final), a summary of which was published in the *Official Journal of the European Union* of 6 April 2017.[7]

17. By that decision, the Commission found that there was a cartel between fifteen truck manufacturers, including AB Volvo, Volvo Lastvagnar AB and Volvo Group Trucks Central Europe GmbH, between 17 January 1997 and 18 January 2011, concerning 2 categories of product, namely trucks weighing between 6 and 16 tonnes (medium trucks) and trucks weighing more than 16 tonnes (heavy trucks), whether rigid trucks or tractor trucks.

18. According to that decision,[8] 'the infringement consisted of collusive arrangements on pricing and gross price increases in the [European Economic Area (EEA)] for trucks[,] and the timing and the passing on of costs for the introduction of emission technologies for medium and heavy trucks required by [the] EURO 3 to 6 standards. The addressees' headquarters were directly involved in the discussion of prices, price increases and the introduction of new emission standards until 2004. From at least August 2002 onwards, discussions took place via German subsidiaries which, to varying degrees, reported to their Headquarters. The exchange was operated both on a multilateral and on a bilateral level. These collusive arrangements included agreements and/or concerted practices on pricing and gross price increases in order to align gross prices in the EEA and the timing and the passing on of costs for the introduction of emission technologies required by [the] EURO 3 to 6 standards. The infringement covered the entire EEA and lasted from 17 January 1997 until 18 January 2011.'

19. Consequently, the Commission imposed fines on all the entities involved, including Volvo, Volvo Lastvagnar and Volvo Group Trucks Central Europe, with the exception of one entity, which was granted immunity.[9]

20. RH sued Volvo, Volvo Lastvagnar and Volvo Group Trucks Central Europe, as well as the Spanish subsidiary of those parent companies, Volvo Group España ('the Volvo companies').

21. The Volvo companies contested only the international jurisdiction[10] of the referring court. They invoked Article 7(2) of Regulation No 1215/2012 and the case-law of the Court, from which they argued that it follows that the jurisdiction criterion set down in that article, namely the 'place where the harmful event occurred or may occur', is a concept of EU law and that it refers to the

7 OJ 2017 C 108, p. 6; 'the truck cartel decision'.

8 Paragraphs 9 to 11.

9 See paragraph 15 of the truck cartel decision. According to the information provided by the Commission, in 2019 (https://ec.europa.eu/competition/cartels/statistics/statistics.pdf, p. 3), the total amount of those fines was the highest of those set since 1969.

10 The referring court emphasised that the defendants did not question its territorial jurisdiction, meaning that they must be understood to have tacitly accepted its jurisdiction under Article 56 of the Ley de Enjuiciamiento Civil 1/2000 (Civil Procedure Law 1/2000) of 7 January 2000 (BOE No 7, of 8 January 2000, p. 575).

place where the event giving rise to the damage occurred, which, in this case, is the place where the truck cartel was formed. They also argue that it cannot be taken to mean the place where the applicant is domiciled and it is situated outside Spain, in other Member States.

22. The referring court points out that, according to settled case-law of the Court, the international jurisdiction of a Spanish court could be justified in view of the place where the damage occurred. It recalls that that is the place where the victim has its registered office, according to the judgment of 21 May 2015, *CDC Hydrogen Peroxide*.[11] It adds that, in the judgment of 29 July 2019, *Tibor-Trans*,[12] which related to an action brought in Hungary against another member of the same cartel, which was identical to that brought by RH, the Court decided that, 'where the market affected by the anticompetitive conduct is in the Member State on whose territory the alleged damage is purported to have occurred, that Member State must be regarded as the place where the damage occurred for the purposes of applying Article 7(2) of Regulation No 1215/2012'.[13]

23. The referring court expresses doubts as to whether that case-law refers to the international jurisdiction of the courts of the Member State in which the damage occurred, or whether it also directly establishes local territorial jurisdiction within that Member State.

24. It explains that, according to the settled case-law of the Tribunal Supremo (Supreme Court, Spain),[14] the rule established in Article 7(2) of Regulation No 1215/2012 is not a rule of local territorial jurisdiction. Therefore, in the absence of any specific national rule determining the territorial jurisdiction of a court in private competition actions, the appropriate jurisdiction rules are those governing unfair competition cases, established in Article 52(1)(12) of the Civil Procedure Law 1/2000. Consequently, the court having jurisdiction is the court for the place where the damage occurred, namely that where the vehicle was purchased or the leasing agreement was signed.

25. The referring court takes the view that Article 7(2) of Regulation No 1215/2012 could be interpreted in the same way as that adopted by the Court in its case-law on jurisdiction in matters relating to a contract. In the judgments of 3 May 2007, *Color Drack*,[15] and of 9 July 2009, *Rehder*,[16] the Court decided that Article 5(1)(b) of Regulation No 44/2001 designates the court having jurisdiction directly, without reference to the domestic rules of the Member States. If that is the case, jurisdiction lies with the place where the cartel victim's registered office is located.

26. In those circumstances, the Juzgado de lo Mercantil nº 2 de Madrid (Commercial Court No 2, Madrid) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Should Article 7(2) of Regulation [No 1215/2012], which establishes 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', be

11 C-352/13, EU:C:2015:335; 'the judgment in *CDC Hydrogen Peroxide*' (paragraphs 52 and 53).

12 C-451/18, EU:C:2019:635; 'the judgment in *Tibor-Trans*'.

13 The judgment in *Tibor-Trans* (paragraph 33).

14 The referring court cites the order of the Tribunal Supremo, Sala de lo Civil (Supreme Court, Civil Chamber, Spain) of 26 February 2019, No 262/2018, and recent identical decisions, including those of 8 and 15 October 2019. The Spanish Government also cites decision No 262/2018, but other decisions of the same court too, namely the decisions of 7 May 2019, No 16/2019, of 9 July 2019, No 100/2019, and of 4 February 2020, No 266/2019.

15 C-386/05, EU:C:2007:262.

16 C-204/08, EU:C:2009:439.

interpreted as establishing only the international jurisdiction of the courts of the Member State for the aforesaid place, meaning that the national court with territorial jurisdiction within that State is to be determined by reference to domestic rules of procedure, or should it be interpreted as a combined rule which, therefore, directly determines both international jurisdiction and national territorial jurisdiction, without any need to refer to domestic regulation?'

27. Written observations were submitted to the Court by the Volvo companies, the Spanish, French and Netherlands Governments and the Commission.

28. The hearing, which was initially set to be held on 17 December 2020, was cancelled on account of the health crisis and the question which had been posed for oral response was converted into a question for written response and supplemented by other questions. The Volvo companies, the Spanish Government and the Commission responded to those questions within the prescribed periods.

IV. Analysis

A. The admissibility

29. The Volvo companies contended that the request for a preliminary ruling is inadmissible on the ground that the answer to the question posed by the referring court is obvious.

30. According to settled case-law of the Court, in the context of the cooperation between the Court and national courts provided for in Article 267 TFEU, first, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling. Secondly, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance, unless they have no connection with the main action. [17]

31. In this case, the referring court set out precisely the grounds for its uncertainty as regards its territorial jurisdiction, which justified its request for a preliminary ruling. They are based on the absence of an express decision of the Court in a matter relating to tort, delict or quasi-delict as regards the scope of Article 7(2) of Regulation No 1215/2012, and the settled case-law of the Tribunal Supremo (Supreme Court), according to which that provision does not preclude the application of domestic rules of jurisdiction.

32. In those circumstances, the question posed by the referring court is, in my view, admissible.

[17] See, inter alia, judgments of 14 February 2019, *Milivojević* (C-630/17, EU:C:2019:123, paragraphs 47 and 48), and of 9 July 2020, *Verein für Konsumenteninformation* (C-343/19, EU:C:2020:534; 'the judgment in *Verein für Konsumenteninformation*'; paragraph 19).

B. Substance

33. By its question, the referring court asks whether Article 7(2) of Regulation No 1215/2012 must be interpreted as determining, in matters relating to tort, delict or quasi-delict, not only the international jurisdiction of the courts of the Member State in which the connecting factor laid down by that provision is situated, but also the territorial jurisdiction of the courts of that State.

1. Introductory remarks

34. In support of its request for a preliminary ruling, the referring court recalled, correctly, that, in an factual context identical to that of the case in the main proceedings, namely the truck cartel, the Court ruled in the judgment in *Tibor-Trans* on the question of the jurisdiction of the court before which an action had been brought for compensation for harm caused by infringement of competition law. Similarly, it pointed out that the Court's answer, in that judgment, does not expressly relate to the 'combined' nature of the rule of jurisdiction laid down in Article 7(2) of Regulation No 1215/2012, unlike the decisions given in matters relating to a contract, namely the judgments of 3 May 2007, *Color Drack*, [18] and of 9 July 2009, *Rehder*. [19]

35. I note, first, that this is not the only instance of this new question. [20] It would seem, therefore, that a more precise interpretation of the provisions of Regulation No 1215/2012 is expected by national courts. Secondly, consideration should, I believe, be given to answering the referring court in the light of the judgments in *Verein für Konsumenteninformation* and of 24 November 2020, *Wikingerhof*, [21] which were given after the question was referred to the Court.

36. For those reasons, my analysis will be devoted, first of all, to the question posed in relation to the scope of the rule of jurisdiction laid down in Article 7(2) of Regulation No 1215/2012. Thereafter, I will set out considerations which aim to clarify the criteria for the determination of the court having territorial jurisdiction. Finally, I will examine the suggestion of the French Government and the Commission relating to the option for Member States to choose to organise courts in a way which centralises the handling of certain litigation in specialist courts.

37. For the purposes of the examination of all of those points, I would point out by way of reminder that, in accordance with settled case-law of the Court, in so far as Regulation No 1215/2012 repeals and replaces Regulation No 44/2001, which itself replaced the Brussels Convention, the Court's interpretation of the provisions of the latter legal instruments also applies to Regulation No 1215/2012 whenever those provisions may be regarded as 'equivalent'. [22] That is the case with Article 5(3) of that convention and Regulation No 44/2001, on the one hand, and Article 7(2) of Regulation No 1215/2012, on the other. [23]

18 C-386/05, EU:C:2007:262.

19 C-204/08, EU:C:2009:439.

20 See, inter alia, the *Allianz Elementar Versicherung* case (C-652/20), currently pending before the Court.

21 C-59/19, EU:C:2020:950; 'the judgment in *Wikingerhof*'.

22 See the judgment in *Verein für Konsumenteninformation* (paragraph 22 and the case-law cited).

23 See the judgment in *Wikingerhof* (paragraph 20 and the case-law cited). It is also useful to specify that Article 4 and Article 7(1) of Regulation No 1215/2012 correspond to Article 2 and Article 5(1) respectively of Regulation No 44/2001.

2. Determination of both international and domestic jurisdiction

38. I am of the opinion that it has been easy to dispel the uncertainty expressed by the referring court, as regards the purpose of Article 7(2) of Regulation No 1215/2012, since the judgment in *Wikingerhof* was given. The Court held that '*the court* having jurisdiction under [Article 7(2)] of [that regulation], namely … that of the market affected by the alleged anticompetitive conduct, is the most appropriate for ruling'. [24]

39. Consequently, I take the view, like all the parties to the case and interested parties that lodged written observations with the Court and the Advocates General who have expressed a view on this question incidentally in previous cases, [25] that it can be expressly stated that the purpose of Article 7(2) of Regulation No 1215/2012 is to govern the jurisdiction of the courts not only between Member States but also domestically, with other procedural issues continuing to be governed by the law of the Member State in which the court before which proceedings have been brought is situated. [26]

40. Thus, it might be sufficient to point out, first, as in the judgment of 9 July 2009, *Rehder*, [27] given in a matter relating to a contract, regarding the provisions of Regulation No 44/2001, that factors of the same nature as those on which the Court relied in order to arrive at the interpretation set out in the judgment of 3 May 2007, *Color Drack*, [28] are valid with regard to the equivalent rules of special jurisdiction in Regulation No 1215/2012 on account of their origin, their objectives and their place in the scheme established by that regulation. Secondly, those grounds have led the Court to interpret the rules of jurisdiction in matters relating to maintenance obligations in the same way.

41. However, in order to promote understanding of how the provisions of Regulation No 1215/2012 work together as a whole, it appears to me that it is appropriate to provide details of the factors of assistance in interpreting Article 7(2) of that regulation taking into consideration not only its wording but also the scheme which it establishes and the purpose which it pursues. [29]

24 See the judgment in *Wikingerhof* (paragraph 37 and the case-law cited). Emphasis added. In that regard, it is appropriate to point out the difference in wording in comparison with that of the judgment in *Tibor-Trans*, to which the referring court referred. Paragraph 34 of that judgment contains the phrases 'the courts of the Member State in which the affected market is located' and 'the courts having jurisdiction over the place where [the] conduct [of an economic operator] distorted the rules governing healthy competition', taken from the judgment of 5 July 2018, *flyLAL-Lithuanian Airlines* (C-27/17, EU:C:2018:533; 'the judgment in *flyLAL-Lithuanian Airlines*'; paragraph 40), which is cited there.

25 See, inter alia, Opinions of Advocate General Jääskinen in *Melzer* (C-228/11, EU:C:2012:766, point 34), and of Advocate General Campos Sánchez-Bordona in *Verein für Konsumenteninformation* (C-343/19, EU:C:2020:253, point 74), and in *Vereniging van Effectenbezitters* (C-709/19, EU:C:2020:1056, point 18).

26 See, also to that effect, Thode, R., 'Art. 7 [Besondere Gerichtsstände]', *Beck'scher Online-Kommentar ZPO, Brüssel Ia-VO*, C.H. Beck, Munich, 2020, paragraph 6.

27 C-204/08, EU:C:2009:439, paragraph 36.

28 C-386/05, EU:C:2007:262.

29 See the judgment in *Wikingerhof* (first sentence of paragraph 25 and the case-law cited).

42. First, regarding the wording of Article 7(2) of Regulation No 1215/2012, there are lessons to be learned from comparing it with that of Article 4(1) of that regulation. That article refers to 'the courts' of the Member State in which persons being sued are domiciled. That general term determines the jurisdiction of the courts of a Member State, taken as a whole. [30] The designation of the court having territorial jurisdiction is therefore governed by national rules.

43. In contrast, in Article 7 of Regulation No 1215/2012, with the exception of Article 7(6), the EU legislature used the phrase 'in the courts *for the place*' [31] or 'in the court' since it is an option open to the claimant, based on a specific place, by way of exception to the general rule of jurisdiction, [32] according to the subject of the claim. Thus, in matters relating to tort, delict or quasi-delict, the criterion set down in Article 7(2) of that regulation is 'the place where the harmful event occurred or may occur'. Similarly, under Article 7(1)(a) of that regulation, the defendant may be sued 'in the courts for the place of performance of the obligation in question'.

44. Secondly, it must be pointed out that the scheme instituted by Regulation No 1215/2012, which allows the claimant to rely on one of the rules of special jurisdiction laid down by that regulation, is in the nature of a derogation [33] inasmuch as it is reserved for certain matters or intended to protect a weak party.

45. Thirdly, it should be emphasised that the formulation of those rules of special jurisdiction is justified, as explained in recital 16 of Regulation No 1215/2012, by the legislature's aim of permitting a court of a Member State to be chosen on the basis of the place with which the dispute has a particular connection and with a view to facilitating the sound administration of justice. [34] Those principles have consistently guided the Court in interpreting the rules of special jurisdiction with a view to recognising suitable connecting factors in order to unify the rules of conflict of jurisdiction [35] and designate the most appropriate court to rule.

46. That analysis is supported by P. Jenard's report relating to the Brussels Convention, [36] whose analysis is confirmed in P. Schlosser's report on the Convention on the Association of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Brussels Convention and to the Protocol on its interpretation by the Court of Justice. [37]

30 See, also, in relation to exclusive jurisdiction, judgment of 28 April 2009, *Apostolides* (C-420/07, EU:C:2009:271, paragraphs 48 and 50). Thus, the Court held that Article 22 of Regulation No 44/2001, equivalent to Article 24 of Regulation No 1215/2012, which contains a mandatory and exhaustive list of the grounds of exclusive international jurisdiction of the Member States, merely designates the Member State whose courts have jurisdiction *ratione materiae* but does not allocate jurisdiction within the Member State concerned and that it is for each Member State to determine the organisation of its own courts. The Court added that the *forum rei sitae* rule provided for in Article 22(1) of Regulation No 44/2001 concerns the international jurisdiction of the courts of the Member States and not their domestic jurisdiction.

31 Emphasis added.

32 See, in that regard, Gaudemet-Tallon, H. and Ancel, M.-E., *Compétence et exécution des jugements en Europe, Règlements 44/2001 et 1215/2012, Conventions de Bruxelles (1968) et de Lugano (1998 et 2007)*, 6th ed., Librairie générale de droit et de jurisprudence, collection 'Droit des affaires', Paris, 2018, paragraph 180, pp. 246 and 247. See, by way of comparison, other provisions of Regulation No 1215/2012 which refer to the court for a place, namely Article 11(1)(b) and Article 12, relating to insurance, Article 18(1), relating to a contract concluded by a consumer, and Article 21(1)(b), relating to individual contracts of employment.

33 See judgment of 14 February 2019, *Milivojević* (C-630/17, EU:C:2019:123, paragraph 81), and the judgment in *Wikingerhof* (paragraphs 26 and 27).

34 See, by way of reminder of the settled case-law of the Court on jurisdiction in matters relating to tort, delict or quasi-delict, the judgments in *Verein für Konsumenteninformation* (paragraph 38), and in *Wikingerhof* (paragraph 28 and the case-law cited).

35 See judgment of 3 May 2007, *Color Drack* (C-386/05, EU:C:2007:262, paragraph 30).

36 Report on the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1979 C 59, p. 1), in particular, p. 22.

37 OJ 1979 C 59, p. 71, in particular, p. 98, paragraph 81(bb).

47. In those circumstances and as could already be deduced from the reasoning of previous judgments of the Court, both in matters relating to a contract [38] and in matters relating to maintenance obligations, [39] there is no doubt that Article 7(2) of Regulation No 1215/2012 directly designates the court having jurisdiction, [40] in view of the objectives pursued by that regulation.

48. Such an answer, since it requires a court of a Member State before which proceedings have been brought on the basis of Article 7(2) of Regulation No 1215/2012 not to apply domestic rules of territorial jurisdiction, should, I believe, especially on account of the development of the case-law of the Court on jurisdiction in case of breach of competition law, be supplemented by further details as to the place where the alleged damage occurred [41] and as to the specific designation of the court having special jurisdiction.

3. Determination of the place where the alleged damage occurred and designation of the court having jurisdiction

49. In the statement of reasons for the request for a preliminary ruling, the referring court referred to the judgments in *CDC Hydrogen Peroxide* [42] and in *Tibor-Trans*, relating to the determination of the court having jurisdiction to rule on actions for compensation for harm caused by cartels penalised by the Commission, [43] without distinguishing between those judgments, whereas two different damage locations were adopted by the Court and the facts of the case in the main proceedings required that a parallel be drawn with the second judgment.

50. Consequently, I believe that the Court thus has the opportunity to provide all necessary clarification for national courts on the impact of the judgment in *Tibor-Trans*, in the light of the judgments in *Verein für Konsumenteninformation* and in *Wikingerhof*, given by the Court after the request for a preliminary ruling was made. The Court should also specify whether a number of jurisdiction criteria may be adopted in order to attain the objective which warrants their existence, namely to give priority to a close connection with the dispute.

(a) The judgment in Tibor-Trans

51. Even though the judgment in *Tibor-Trans* was given in an almost identical context to that of the dispute in the main proceedings, it is worth providing details of its analysis in a number of respects.

38 See, regarding the second indent of Article 7(1)(b) of Regulation No 1215/2012, judgment of 15 June 2017, *Kareda* (C-249/16, EU:C:2017:472, paragraph 46).

39 See judgment of 18 December 2014, *Sanders and Huber* (C-400/13 and C-408/13, EU:C:2014:2461; 'the judgment in *Sanders and Huber*'; paragraph 30 and the case-law cited).

40 See, in that regard, details appearing in the judgment in *CDC Hydrogen Peroxide* (paragraph 55).

41 The Court, in its case-law concerning the concept of the 'place where the harmful event occurred', has held that it is intended to cover both the place where the damage occurred and the place of the event giving rise to it, with the result that the defendant may be sued, at the option of the applicant, in the courts for either of those places (see the judgment in *Verein für Konsumenteninformation*, paragraph 23 and the case-law cited), which assumes that those places are not the same (see, inter alia, judgment of 30 November 1976, *Bier*, 21/76, EU:C:1976:166, paragraphs 24 and 25).

42 See, for a detailed account of that case, points 100 and 101 of this Opinion.

43 See point 22 of this Opinion.

52. First, as in the case in the main proceedings, in the case which gave rise to the judgment in *Tibor-Trans*, an action had been brought before the referring court seeking compensation for damage which consisted of additional costs incurred on account of the artificially high prices applied to trucks, caused by the same anticompetitive practices.

53. Whilst, in the case which gave rise to the judgment in *Tibor-Trans*, the applicant company had chosen to direct its action against only one of the participants in the cartel at issue, from which it had not obtained its supplies, [44] in the present case, RH sued, amongst other companies responsible for the cartel at issue, a number of those companies established outside Spain, from which the trucks, manufactured by them, had not been directly purchased. Moreover, RH sued the Spanish subsidiary of those companies, [45] on which the Spanish motor vehicle dealership from which RH obtained its supplies is dependent, as can be deduced from the documents in the case file. [46]

54. Secondly, in the case which gave rise to the judgment in *Tibor-Trans*, the referring court was uncertain as to the applicability by analogy of the judgment in *CDC Hydrogen Peroxide*, in which the Court had identified the court for the place where the applicant company's registered office was located as that having jurisdiction, on account of the absence of a direct contractual relationship between the parties and the obligation not to accept a rule of jurisdiction favouring the *forum actoris*. [47]

55. The Court ruled that 'Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that, in an action for compensation for damage caused by an infringement of Article 101 TFEU, consisting, inter alia, of collusive arrangements on pricing and gross price increases for trucks, "the place where the harmful event occurred" covers, in a situation such as that at issue in the main proceedings, the place where the market which is affected by that infringement is located, that is to say, the place where the market prices were distorted and in which the victim claims to have suffered that damage, even where the action is directed against a participant in the cartel at issue with whom that victim had not established contractual relations'. [48]

56. *Regarding the determination of the damage*, the Court pointed out that 'the damage alleged in the case in the main proceedings results essentially from the additional costs incurred because of artificially high prices and, therefore, appears to be the immediate consequence of an infringement pursuant to Article 101 TFEU and thus constitutes direct damage which, in principle, provides a basis for the jurisdiction of the courts of the Member State in which it occurred'. [49]

44 See the judgment in *Tibor-Trans* (paragraph 36).

45 I would emphasise that the referring court's doubts do not relate to the decision to sue the Spanish subsidiary. In that regard, like the Spanish Government, I would add that the Court will shortly decide (*Sumal* case (C-882/19)) the question of whether, in private actions for compensation for the damage suffered by a victim of an anticompetitive practice established by the Commission, in this case, in the truck cartel decision, that victim is entitled to claim compensation for that harm not from the parent company specifically referred to in the Commission's decision, but from the subsidiaries which are part of the same group of companies, on the basis of the competition law doctrine of the single economic unit (see Opinion of Advocate General Pitruzzella in *Sumal* (C-882/19, EU:C:2021:293)).

46 It is not apparent from the case file before the Court that, as in the case which gave rise to the judgment in *Tibor-Trans* (see paragraph 30), Spanish dealerships passed on the costs of the increase in prices to the ultimate purchasers. The absence of proceedings brought by or against direct purchasers suggests that practices were uniform.

47 See the judgment in *Tibor-Trans* (paragraph 19).

48 The judgment in *Tibor-Trans* (paragraph 37).

49 The judgment in *Tibor-Trans* (paragraph 31).

57. *Regarding the location of the direct damage suffered*, the Court decided that 'where the market affected by the anticompetitive conduct is in the Member State on whose territory the alleged damage is purported to have occurred, that Member State must be regarded as the place where the damage occurred for the purposes of applying Article 7(2) of Regulation No 1215/2012'. [50]

58. In support of that decision, the Court cited paragraph 40 of the judgment in *flyLAL-Lithuanian Airlines*. Consequently, I would point out, first, that, in a case involving a pricing cartel of the same nature and which was penalised in the same circumstances as the cartel which formed the basis of the action for damages in the judgment in *CDC Hydrogen Peroxide*, [51] the Court extended the approach which it had adopted in a case in which a national competition council had found that there had been abuse of a dominant position and an anticompetitive agreement was alleged. [52] Secondly, that approach is based on the alignment of two elements, namely the place where the market affected is located and that where the alleged damage is purported to have occurred. [53]

59. More generally, in the judgment in *Tibor-Trans*, the numerous other references to the judgment in *flyLAL-Lithuanian Airlines* are representative of the development of the case-law of the Court with a view to harmonising the factors providing a connection with the place where the direct damage suffered occurred, whether it takes the form of additional costs incurred when making purchases [54] or loss of sales, [55] and without distinguishing according to whether or not the anticompetitive conduct has been the subject of a finding by an earlier decision of an authority. [56]

60. That line of case-law, which favours reference to the market affected by the anticompetitive practices for which compensation is sought before a court, has very recently been confirmed in the judgment in *Wikingerhof*, in which the Court ruled that an action seeking an injunction against certain practices implemented in the context of the contractual relationship between the applicant and the defendant, based on an allegation of abuse of a dominant position by the latter, in breach of competition law, is a matter relating to tort, delict or quasi-delict within the meaning of Article 7(2) of Regulation No 1215/2012. [57]

61. The Court found that, in the circumstances of the case at issue in the main proceedings, 'the court having jurisdiction under [Article 7(2)] of Regulation No 1215/2012, namely … that of the market affected by the alleged anticompetitive conduct, is the most appropriate for ruling on the main issue of whether that allegation is well founded, particularly *in terms of gathering and assessing the relevant evidence in that regard*'. [58]

50 The judgment in *Tibor-Trans* (paragraph 33).

51 See the judgment in *CDC Hydrogen Peroxide* (paragraph 10).

52 See the judgment in *flyLAL-Lithuanian Airlines* (paragraphs 20 and 34).

53 See, on the effect of the absence of alignment, point 95 of this Opinion.

54 See the judgments in *CDC Hydrogen Peroxide* (paragraph 52), and in *Tibor-Trans* (paragraph 26).

55 See the judgment in *flyLAL-Lithuanian Airlines* (paragraph 36).

56 On the right for any person considering that it has been harmed by an infringement of the rules of competition law to claim compensation for the harm suffered, which is independent of an earlier finding of such an infringement by a competition authority, see point 67 and footnote 68 of this Opinion. See, also, recitals 3, 12 and 13 of 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 (OJ 2014 L 349, p. 1).

57 See the judgment in *Wikingerhof* (paragraphs 36 and 38).

58 The judgment in *Wikingerhof* (paragraph 37). Emphasis added.

62. I note, first, that, in the judgment in *Wikingerhof*, the Court attached particular importance to that statement on the location of the harmful event which occurred or may occur, since it was asked about the applicability of Article 7(2) of Regulation No 1215/2012 according to the classification of the applicant's claims [59] and not about the determination of one of the jurisdiction criteria based on that article. [60]

63. Secondly, it appears to me that there are lessons to be learned from the references, in paragraph 37 of the judgment in *Wikingerhof*, to the judgments in *Tibor-Trans* and in *Verein für Konsumenteninformation* in order to justify, by analogy, the Court's decision as regards jurisdiction.

(b) Justification for choosing the place where the market affected is located for the purposes of establishing the location of the damage

64. In paragraph 34 of the judgment in *Tibor-Trans*, to which the judgment in *Wikingerhof* refers, [61] which must be read in conjunction with paragraphs 33 and 35 of the judgment in *Tibor-Trans*, the Court found that the choice of the *place where the affected market is located*, in which the victim claims to have suffered damage, arises from the need to *look for the court which is best placed* to assess actions for damages based on an act restricting competition, to *ensure that such a rule is predictable* for the economic operator in question and to *satisfy the requirement of consistency with the law applicable* to such actions for damages. [62]

65. In paragraph 38 of the judgment in *Verein für Konsumenteninformation*, to which the judgment in *Wikingerhof* also refers, [63] the Court justified the interpretation which led it to hold that *the place where the damage occurred is that where the vehicle in question was purchased* [64] as being 'also consistent with the objectives of proximity and of the sound administration of justice, referred to in recital 16 of Regulation No 1215/2012, in so far as, *in order to determine the amount of the damage suffered*, the national court may be required to *assess the market conditions in the Member State where that vehicle was purchased*. The courts of that Member State are likely to have *best access to the evidence* needed to carry out those assessments'. [65]

66. In those three judgments, the development of the justification for the connecting factor adopted by the Court shows, I believe, that the distinctive feature of competition litigation was taken into consideration in concrete terms. In case of unlawful conduct affecting an economic market, easier access to the evidence needed for the assessment of the conditions of that market and of the consequences of that conduct contributes to the efficacious conduct of proceedings. [66] It is therefore a determining factor in the choice of the most appropriate court to guarantee

59 See the judgment in *Wikingerhof* (paragraphs 33 to 35).

60 In that regard, see Opinion of Advocate General Saugmandsgaard Øe in *Wikingerhof* (C-59/19, EU:C:2020:688, footnote 20).

61 Paragraph 34 of the judgment in *Tibor-Trans* reproduces in part paragraph 40 of the judgment in *flyLAL-Lithuanian Airlines*.

62 Paragraph 35 of the judgment in *Tibor-Trans* refers to recital 7 and Article 6(3)(a) of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ 2007 L 199, p. 40). That article, which applied from 11 January 2009, provides that the law applicable to actions for damages based on a restriction of competition is to be the law of the country where the market is, or is likely to be, affected.

63 That paragraph referred to paragraph 34 of the judgment in *Tibor-Trans*.

64 See the judgment in *Verein für Konsumenteninformation* (paragraph 35).

65 Emphasis added.

66 See the judgments in *CDC Hydrogen Peroxide* (paragraph 53) and in *flyLAL-Lithuanian Airlines* (paragraph 27 and the case-law cited on tortious liability).

compliance with the rules governing healthy competition, which involves penalising anything which has an adverse effect on such competition and guaranteeing the effectiveness of the victim's right to protection.

67. Thus, the case-law of the Court, restated on the basis of such practical evidential considerations, must be viewed in a context the importance of which has very recently been emphasised.[67] The Court's case-law continues to contribute to the implementation of competition law and, especially, the private phase of the application of Article 101 TFEU,[68] inasmuch as it promotes the development and consolidation of actions for compensation brought before national courts.[69] In that regard, it must be emphasised that the Court tasked those courts with safeguarding that law, which strengthens the working of the EU competition rules.[70] In addition, the Court has specified that actions for damages for infringement of EU competition rules, brought before national courts, are an integral part of the system for enforcement of those rules, which are intended to punish anticompetitive behaviour on the part of undertakings and to deter them from engaging in such conduct.[71]

68. Finally, the complementary nature of the actions of the competition authorities of the Member States and the national courts was established by Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.[72] Moreover, for the purposes of governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, Directive 2014/104 defined new procedural and substantive rules, which were to be transposed in all Member States by 27 December 2016.[73]

69. However, whilst those standards aim to allow undertakings which have been harmed to be fully compensated, by laying down, inter alia, rules of evidence intended to surmount the significant difficulties presented by the conditions for liability in terms of the body of litigation relating to compensation for harm under competition law, they nevertheless do not lay down any specific provisions relating to jurisdiction.

67 See Report from the Commission on the implementation of Directive 2014/104 (SWD(2020) 338 final), available online at the following address: https://ec.europa.eu/competition/antitrust/actionsdamages/report_on_damages_directive_implementation_en.pdf, and the presentation of that report by Ronzano, A., 'Damages: the European Commission publishes a transitional report on the assessment of the 2014 Damages Directive and its transposition by Member States (Directive 2014/104/EU)', *Concurrences*, Institut de droit de la concurrence, Paris, No 1, 2021, and Commission press release: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2413.

68 The Court held that the full effectiveness of Article 101 TFEU and, in particular, the practical effect of the prohibition laid down in Article 101(1) would be put at risk if it were not open to any individual to claim damages for loss caused to him by a contract or by conduct liable to restrict or distort competition (judgment of 20 September 2001, *Courage and Crehan*, C-453/99, EU:C:2001:465, paragraph 26) where there is a causal relationship between the harm suffered and an agreement or practice prohibited under Article 101 TFEU (judgment of 14 March 2019, *Skanska Industrial Solutions and Others*, C-724/17, EU:C:2019:204, paragraphs 25 and 26 and the case-law cited).

69 See report from the Commission cited in footnote 67 of this Opinion, in which it notes that, after the adoption of Directive 2014/104, the number of private actions before national courts for compensation for damage following infringements of competition rules went from around 50 cases at the beginning of 2014 to 239 in 2019.
See, also, Wurmnest, W., 'Forum Shopping bei Kartellschadensersatzklagen und die Kartellschadensersatzrichtlinie', *Neue Zeitschrift für Kartellrecht*, C.H. Beck, Munich, No 2, 2017, section III(2)(c) and footnote 64.

70 See judgments of 30 January 1974, *BRT and Société belge des auteurs, compositeurs et éditeurs* (127/73, EU:C:1974:6, paragraphs 15 and 16), and of 20 September 2001, *Courage and Crehan* (C-453/99, EU:C:2001:465, paragraph 25).

71 See judgments of 14 March 2019, *Skanska Industrial Solutions and Others* (C-724/17, EU:C:2019:204, paragraph 45), and, by analogy, of 21 January 2021, *Whiteland Import Export* (C-308/19, EU:C:2021:47, paragraph 56).

72 OJ 2003 L 1, p. 1. See recital 7 and Article 6 of that regulation. See, also, regarding the modernisation of the rules and procedures relating to the application of Articles 101 and 102 TFEU, effected by Regulation No 1/2003, Opinion of Advocate General Pitruzzella in *Whiteland Import Export* (C-308/19, EU:C:2020:639, point 50).

73 See report from the Commission cited in footnote 67 of this Opinion. The Commission points out in that report that the transposition of Directive 2014/104 was late in 21 Member States and that the number of cases in which the transposed directive has been applied by national courts is not yet sufficient. It emphasises that the average period between the beginning of an anticompetitive practice and the judicial decision awarding damages is 13 years. See, also, point 108 of this Opinion.

70. Consequently, whilst, in principle, the determination, by the Court in the judgment in *Tibor-Trans*, of the place where the damage occurred as being the place where the market which is affected by the infringement is located, that is to say, the place where the market prices were distorted and in which the victim claims to have suffered damage,[74] is suited to the context which I have just described for the purposes of determining which courts have international jurisdiction,[75] it seems to me that that location is not precise enough to designate the court having territorial jurisdiction in the Member State concerned.[76] In my view, in the light of other judgments of the Court, that constitutes a source of legal uncertainty when choosing the jurisdiction option available to the claimant which is laid down in Article 7(2) of Regulation No 1215/2012.[77]

71. It appears to me, therefore, that it is appropriate that the Court's answer to the issues raised by the referring court, which should, on account of the circumstances of the case in the main proceedings, be in line with the judgment in *Tibor-Trans*, be supplemented on that point in order that national courts may have an answer which goes beyond the strict scope of the case which warranted the request for a preliminary ruling. The number of proceedings which could be brought due to the extent of the cartel at issue must also be taken into consideration.

(c) Precise location of the alleged damage in the market affected for the purposes of designating the court having jurisdiction

72. *In the judgment in* flyLAL-Lithuanian Airlines, *which forms the basis of the judgment in* Tibor-Trans, the Court held that 'in the context of an action seeking compensation for damage caused by anticompetitive conduct, the "place where the harmful event occurred" covers, in a situation such as that at issue in the main proceedings, inter alia, the place where the loss of income consisting in loss of sales occurred, that is to say, the place of the market which is affected by that conduct and on which the victim claims to have suffered those losses'.[78]

73. The precise location of the alleged damage could easily be deduced from that interpretation. The dispute arose from the anticompetitive conduct of an economic operator in the market in which the victim of that conduct, an airline, conducted the main part of its activities, namely the operation of flights to and from Vilnius (Lithuania), capital of the Member State where that company was established. The Court found that that was the 'main market affected'.[79]

74. Moreover, in paragraph 40 of the judgment in *flyLAL-Lithuanian Airlines*, the Court pointed out that that approach is based on the alignment of two elements, namely the place where the market affected by practices which distorted competition is located and that where the alleged damage caused by those practices occurred. In that sense, this guarantees that jurisdiction is

74 See paragraphs 33 and 37 of that judgment.

75 See point 39 of this Opinion.

76 That view is shared by the Commission in its response to the Court's written questions. See, more generally, on the difficulty of establishing the location of the infringement in question, Ancel, M.-E., 'Un an de droit international privé du commerce électronique', *Communication Commerce électronique*, LexisNexis, Paris, 2021, No 1, paragraph 4.

77 See, in that regard, Heuzé, V., Mayer, P. and Remy, B., *Droit international privé*, 12th ed., Librairie générale de droit et de jurisprudence, Paris, 2019, paragraph 296, pp. 203 and 204.
See, also, regarding the casuistry of the case-law of the Court, Thode, R., op. cit., paragraphs 93 and 95a.

78 The judgment in *flyLAL-Lithuanian Airlines* (paragraph 43).

79 See the judgment in *flyLAL-Lithuanian Airlines* (paragraphs 38 and 39).

limited to the harm suffered in a single Member State and that there is a connection between the prejudice to the general interest and that affecting the interests of the undertaking or, more generally, private interests.

75. However, since the market affected was that in which the victim conducted the main part of its sales activities in respect of flights and it had suffered a loss of income, [80] that requirement of alignment was necessarily fulfilled. [81] That requirement had to lead, in concrete terms, to the designation of the court having territorial jurisdiction as being the court for the place where the undertaking which was a victim of the anticompetitive practices is established, [82] on account of the nature of the alleged damage.

76. *In the judgment in* Tibor-Trans, reasoning similar to that used in the judgment in *flyLAL-Lithuanian Airlines* was adopted. The Court was able to find that there was a connection between the market affected by the infringement and that where the victim claimed to have incurred additional cost because, as in the case in the main proceedings, the market affected by the truck pricing cartel is that of the Member State in which the undertaking which was a victim of that cartel purchased vehicles, through a dealership established in the same State, which is also the State where it carries on its transport business. [83]

77. Thus, in the judgment in *Tibor-Trans*, the Court adopted, as the place where the damage occurred, the 'place where the market prices were distorted and in which the victim claims to have suffered … damage', [84] and not the place where the additional cost was incurred, [85] which could have been based on a direct adaptation of paragraph 43 of the judgment in *flyLAL-Lithuanian Airlines*, [86] without, however, specifying that that was the place where the damage occurred. [87]

78. It must be noted, first, that the court having territorial jurisdiction in the Member State designated in this way is not clearly identifiable, unlike what the Court decided in the judgment in *CDC Hydrogen Peroxide*, in a similar case of infringement penalised by the Commission, namely adopting, as the connecting factor, the place where the injured party's registered office is located.

80 See the judgment in *flyLAL-Lithuanian Airlines* (paragraph 39).

81 See, regarding damage coincidentally suffered in the market because damage is caused to the market, analysis of Farnoux, E., *Les considérations substantielles dans le règlement de la compétence internationale des juridictions: réflexions autour de la matière délictuelle*, Volume I, doctoral thesis defended on 20 October 2017, paragraph 303. In that regard, he states, correctly in my view, that 'the proposition could even be reversed: as the market consists of the relationships between the economic operators, it is because those relationships are affected (certain operators suffer damage in the market) that the market is affected. Ultimately, the effect on the market can be seen as the damage caused to the victims (undefined), given that the victim (defined) that claims compensation is necessarily one of the victims (undefined)'.

82 See, also to that effect, regarding the impact of the judgment in *Wikingerhof*, from which, inter alia, Ronzano, A., deduced that 'a hotel using the platform Booking.com may, in principle, bring proceedings against Booking.com before a court of the Member State in which that hotel is established in order to bring to an end a possible abuse of a dominant position, even though the practices which are thus the subject of complaint are implemented within the context of a contractual relationship', 'Competence: The Court of Justice of the European Union rules that an action for damages based on a legal obligation to refrain from abusing a dominant position is a matter relating to tort within the meaning of the Brussels I bis Regulation (*Wikingerhof/Booking*)', *Concurrences*, Institut de droit de la concurrence, Paris, No 1, 2021.

83 See the judgment in *Tibor-Trans* (paragraphs 12, 30 and 33).

84 The judgment in *Tibor-Trans* (paragraph 37).

85 See, in that regard, same observation in the Opinion of Advocate General Campos Sánchez-Bordona in *Verein für Konsumenteninformation* (C-343/19, EU:C:2020:253, point 52). By way of comparison, see the judgment in *Tibor-Trans* (paragraphs 31 and 33), from which it follows that the place where the damage occurred is in the Member State in which the market affected by the infringement at issue is located, on whose territory the damage arising from the incurrence of additional costs occurred.

86 See point 72 of this Opinion.

87 See, also by way of comparison, paragraph 55 of the judgment in *CDC Hydrogen Peroxide*, and paragraph 40 of the judgment in *Verein für Konsumenteninformation*.

79. Secondly, in order to go beyond the factual context in which the question has been referred to the Court, account must be taken of the variety of circumstances in which damage may be suffered in case of a pricing cartel, which constitutes a major difference to cases where the conduct of an economic activity is adversely affected. Especially in the vehicle sales and transport sector, the place where the market affected by the anticompetitive practices leading to additional costs is located does not necessarily correspond to that where the assets at issue were purchased or where the ultimate purchaser carries on business, unlike the situation of the direct purchaser.

80. For those reasons, and in the light of the principle that the concept of the 'place where the harmful event occurred' must be interpreted in a strict manner, [88] the criteria for identifying the court before which the claimant may bring proceedings should be made clear.

81. To that end, like the Volvo companies, the Spanish Government and the Commission, I invite the Court to draw a parallel with the judgment in *Verein für Konsumenteninformation* on the grounds that that judgment was given in a case which has a number of points in common with the case in the main proceedings and the case which gave rise to the judgment in *Tibor-Trans*, and that it follows on from the latter judgment. [89] The action at issue sought compensation for the harm caused by the purchase, from a third party, of vehicles at a price higher than their actual value [90] on account of unlawful conduct on the part of their manufacturers. [91]

82. The Court decided that the damage suffered by the final purchaser, which is neither indirect nor purely financial, occurs when the vehicle at issue is purchased from a third party. [92] That factor constitutes the only relevant connecting factor, on account of there being a connection to a tangible asset which justifies not looking for other specific circumstances as in the cases in which financial investments had led to a reduction in the assets of the persons concerned. [93]

83. Thus, first, it is now clear that, in case of material damage which results from the loss in value of an asset, [94] which is therefore not purely financial damage, the place where the damage occurs is that where that asset is purchased. [95]

84. Moreover, the fact from which the material damage stems is *that* the purchaser received, in return for *the payment made to purchase the asset at issue*, with the disclosure of the unlawful conduct of the manufacturer of that asset, an asset which has a lower value. [96]

88 See the judgments in *flyLAL-Lithuanian Airlines* (paragraph 26), and in *Verein für Konsumenteninformation* (paragraph 26).

89 See paragraphs 38 and 39 of the judgment in *Verein für Konsumenteninformation*, whose references to paragraphs 34 and 35 of the judgment in *Tibor-Trans* help to clarify their meaning.

90 See the judgment in *Verein für Konsumenteninformation* (paragraph 30).

91 See the judgment in *Verein für Konsumenteninformation* (paragraphs 29, 34 and 37).

92 See the judgment in *Verein für Konsumenteninformation* (paragraphs 35, 37 to 39).

93 See the judgment in *Verein für Konsumenteninformation* (paragraph 33).

94 That term understood in a wide sense covers scenarios involving artificially high prices.

95 See the judgment in *Verein für Konsumenteninformation* (paragraph 35). Consequently, the criteria mentioned in the request for a preliminary ruling in the case which gave rise to the judgment in *Verein für Konsumenteninformation* (paragraphs 10 and 12), such as the place of conclusion of the contract or delivery of the vehicle, must be regarded as having been rejected. For an analysis of those criteria, see Opinion of Advocate General Campos Sánchez-Bordona in *Verein für Konsumenteninformation* (C-343/19, EU:C:2020:253, footnote 31 in relation to the place where the obligation was incurred and, for the place of delivery, points 78 and 79). On the latter issue, see, also, judgment of 27 October 1998, *Réunion européenne and Others* (C-51/97, EU:C:1998:509, paragraphs 33 and 34). In that judgment, the Court rejected the place of final delivery. Regarding the place of performance of the contract, see Opinion of Advocate General Jääskinen in *CDC Hydrogen Peroxide* (C-352/13, EU:C:2014:2443, point 50).

96 See the judgment in *Verein für Konsumenteninformation* (paragraph 34).

85. Secondly, the circumstances of the case in the main proceedings justify consideration of the meaning of the term 'purchase' since RH had concluded leasing agreements under which it became the owner of the trucks.

86. The fact that the claim for compensation is based on competition law justifies, I believe, an economic approach [97] to the concept of 'purchase' where it takes the form of the recording on the asset side of the balance sheet of an asset which is the subject of a leasing agreement.

87. In that sense, I share the opinion expressed by Advocate General Campos Sánchez-Bordona according to which 'the correct starting point is … the act pursuant to which the product became part of the person concerned's assets and caused the damage. The place where the damage occurred is the place where that transaction was concluded'. [98]

88. The place of the transaction could thus be understood in a wide sense as being the place where agreement was reached on the asset and the price, [99] and not that where the price was paid [100] or the asset was made available, which may happen in other places, subsequent to that agreement. [101]

89. The requirement of predictability [102] with regard to the defendant appears to me to be respected since, from the defendant's point of view, the place used is the place where the asset is marketed, in this case, a vehicle dealership or any other intermediary tasked with selling the vehicles, regardless of any transfer of ownership in the legal sense.

90. The requirement of sound administration of justice is equally respected on account of the major interest which there may be in the fact that the court has jurisdiction also to examine the potential claims of the intermediary tasked with the transaction on the same basis or the question of the potential passing on of the additional costs by that intermediary to the downstream purchaser, which is a recurrent defence. [103]

91. The objectives of Regulation No 1215/2012, as clarified by the Court in the most recent judgments as regards the need to provide the best conditions for the satisfaction of the evidential requirements in the disputes at issue, [104] appear to me also to be achieved by the designation of the place where the damage occurred as being at the place of the transaction, in the absence of other specific circumstances where there is no transfer of ownership.

97 See, in that respect, regarding special jurisdiction in matters relating to a contract based on the determination of the principal place of delivery on the basis of economic criteria, judgment of 3 May 2007, *Color Drack* (C-386/05, EU:C:2007:262, paragraphs 40 and 45). See, also, Opinion of Advocate General Campos Sánchez-Bordona in *Verein für Konsumenteninformation* (C-343/19, EU:C:2020:253, point 36), according to which 'the purchase of an item contributes to the assets of which that item becomes part a value which is at least equivalent to the outgoing value (which, in the case of a purchase, is represented by the price paid for the item)'.

98 Opinion of Advocate General Campos Sánchez-Bordona in *Verein für Konsumenteninformation* (C-343/19, EU:C:2020:253, point 74). See, regarding the term 'transaction', Article 101(1)(a) TFEU (which expressly uses that term in certain language versions other than the English version, which uses 'trading').

99 The phrases 'place where the contractual obligation arose' or 'place where the sale price was fixed', arising from the judgment of 16 June 2016, *Universal Music International Holding* (C-12/15, EU:C:2016:449, paragraphs 30 and 31 respectively), could also be used.

100 See, to that effect, judgment of 16 June 2016, *Universal Music International Holding* (C-12/15, EU:C:2016:449, paragraphs 32 and 39). See, also, judgment of 9 July 2009, *Rehder* (C-204/08, EU:C:2009:439, paragraph 39).

101 On a comparable note, see judgment of 16 June 2016, *Universal Music International Holding* (C-12/15, EU:C:2016:449, paragraph 38).

102 On compliance with that requirement, which should be put into context, and the taking into consideration of a finding of unlawful conduct, see Racine, J.-B., 'Le forum actoris en droit international privé', *Droit international privé, années 2016-2018*, éditions Pedone, collection 'Travaux du Comité français de droit international privé', Paris, 2019, paragraphs 79, p. 68, and 57, p. 57, respectively.

103 See Amaro, R. and Laborde, J.-F., *La réparation des préjudices causés par les pratiques anticoncurrentielles, recueil de décisions commentées*, 2nd ed., Institut de droit de la concurrence, Paris, 2020, paragraph 245, p. 147. On the importance of that question, as evidenced by the work of the Commission, see footnote 67 of this Opinion.

104 See point 66 of this Opinion. See, also, judgment of 16 June 2016, *Universal Music International Holding* (C-12/15, EU:C:2016:449, paragraph 27 and the case-law cited).

92. Unlike the disputes in which the purely financial damage alleged justifies the use of a number of specific factors to make up for the absence of a connection to a tangible asset, the connection with the place of the transaction is sufficient, in principle, to designate the court which is objectively best placed to analyse the constituent elements of the defendant's liability. [105]

93. Consequently, identifying the court having jurisdiction as being the court for the place where the artificially highly priced trucks were purchased meets the evidential requirements of the dispute where the victim claims to have suffered harm linked to the additional cost of trucks in a place in the market affected, which is that where it carries on business, for the same reasons as those adopted in the judgment in *Verein für Konsumenteninformation*. [106] In this case, that applies to RH.

94. Therefore, at the end of this first part of my analysis relating to the designation of the court having jurisdiction in the market affected by anticompetitive practices, I propose that the Court find that the court having jurisdiction to hear an action for compensation for the harm caused as a result of additional costs incurred by a party injured by a pricing cartel is, *in principle*, the court for the place where the assets at issue were purchased.

95. However, as I have already outlined, [107] it is necessary, I believe, to exclude from that finding the situation in which the place where the alleged damage occurred does not correspond to the place where the victim of the practices which distorted prices carries on business, [108] for example, where vehicles are purchased in several Member States or in multiple supply points in the same Member State or even where they are purchased from a seller established outside the market affected. [109]

96. Whilst the conditions for analysis of the market(s) affected are identical at the place of each of the transactions in such market(s), the situation is different for the assessment of the harm suffered by the claimant, direct victim of the damage. [110] By definition, the analysis could be more difficult if the court having jurisdiction was not the court in whose jurisdiction the economic activity of the injured party is conducted. As the Court has already emphasised, where there is a binding finding of an unlawful cartel, that assessment is the essential role of the court before which a claim has been brought for compensation for the damage resulting from that cartel. [111]

97. In those circumstances, I am of the opinion that the question of whether it may still be appropriate to rely on a connection with the place where the registered office of the undertaking which has been harmed is located, used by the Court in specific circumstances, [112] is worthy of further consideration.

105 See the judgment in *Verein für Konsumenteninformation* (paragraph 33 and the case-law cited).

106 See paragraph 38 of that judgment.

107 See point 79 of this Opinion.

108 Like the Spanish Government in its response to the Court's written questions.

109 See, more generally, on the specific nature of actions for damages in cases of infringements of European competition rules which concern various Member States, Gaudemet-Tallon, H. and Ancel, M.-E., op. cit., paragraph 235, p. 357. Regarding the multiple places of purchase which may be connected with the takeover of companies, see, by way of illustration, factual circumstances referred to in paragraph 14 of the judgment in *Tibor-Trans*.

110 Regarding the damage suffered by an indirect victim, which occurred at a different place from the damage caused to the direct victim that initially suffered harm, which cannot establish jurisdiction, see, inter alia, judgments in *Tibor-Trans* (paragraph 29 and the case-law cited), and in *Verein für Konsumenteninformation* (paragraph 27 and the case-law cited).

111 See the judgment in *CDC Hydrogen Peroxide* (paragraphs 53 and 54).

112 See points 100 and 101 of this Opinion.

(d) Location of the damage at the place where the injured party's registered office is located

98. Certain circumstances, I believe, in view of the objective of proximity set in Regulation No 1215/2012, [113] provide a sound basis on which to argue that the connecting factor of the place where the registered office of the victim of anticompetitive practices is located may still be relevant in order to guarantee the effective handling of these actions for compensation, which are complex by nature [114] and in terms of their subject matter in cases of infringements which are highly dispersed geographically. [115]

99. In practice, I do not see how that objective of proximity, which now appears in very concrete terms in the case-law of the Court, [116] would be met by the choice of a connecting factor which would oblige an undertaking which had purchased a number of trucks in various Member States to bring an action before the court in whose jurisdiction each place of purchase was situated and if, in addition, the undertaking which had been harmed did not carry on business there. [117] Moreover, the rules on related actions, laid down in Article 30 of Regulation No 1215/2012, do not offer a satisfactory solution, on account of the condition set in Article 30(2), since it has been found that a court may rule only in respect of the damage done in its jurisdiction. [118]

100. In those circumstances, the decision of the Court in the judgment in *CDC Hydrogen Peroxide* is worthy of renewed attention. The case which gave rise to that judgment involved claims for compensation for all of the damage caused by a hydrogen peroxide pricing cartel in several Member States, at different times and in different places, [119] found to have existed by the Commission, [120] to undertakings operating *in the industrial pulp and paper processing industry*

113 In my view, compliance with the requirement of predictability does not pose a problem, since, from the point of view of the defendants, members of the cartel, the markets affected by the cartel are known, as are the places where the direct and indirect purchasers carry on business, given the products at issue. In addition, I share the point of view expressed by Racine, J.-B., op. cit., paragraph 79, p. 68, according to which that requirement must not lead to the favouring of the perpetrator of unlawful acts. Finally, in the judgment in *Verein für Konsumenteninformation*, the Court gave priority to the objective of proximity. (See, by way of comparison, points 78 and 79 of the Opinion of Advocate General Campos Sánchez-Bordona in that case (C-343/19, EU:C:2020:253)).

114 See point 108 and footnote 118 of this Opinion. See, also, judgment of 21 January 2021, *Whiteland Import Export* (C-308/19, EU:C:2021:47, paragraph 51 and, by analogy, paragraphs 52, 53 and 65).

115 See, in that regard, submissions made to the Court by Advocate General Jääskinen in *CDC Hydrogen Peroxide* (C-352/13, EU:C:2014:2443, points 47 and 50).

116 See points 66 and 67 of this Opinion. In my view, the level of proximity is necessarily variable. See, in that regard, Farnoux, E., op. cit., paragraphs 163 and 164.

117 See, regarding the fact that the harm suffered by the victim which is to be assessed is linked to the business of the victim and the market in which it operates, Amaro, R. and Laborde, J.-F., op. cit., paragraph 289, p. 167, and illustration paragraph 460, pp. 248 and 249. See, also, questions relating to the determination of the amount of purchases (paragraph 442, p. 239) and the passing on of additional costs (paragraph 457, p. 246).

118 See Gaudemet-Tallon, H. and Ancel, M.-E., op. cit., paragraphs 236 and 237, pp. 358-360. See, in that regard, judgment of 7 March 1995, *Shevill and Others* (C-68/93, EU:C:1995:61, paragraph 33). See, however, the judgment in *CDC Hydrogen Peroxide* (paragraph 54). The Court held that the courts for the place where the registered office is located have jurisdiction 'for the whole of the loss inflicted … as a result of additional costs', either in respect of any one of the participants in the cartel or in respect of several of them. On the simplification carried out by the Court, approved by Amaro, R., see 'Actions privées en matière de pratiques anticoncurrentielles – Aspects internationaux: juridiction compétente, loi applicable (droit international privé européen)', *JurisClasseur Concurrence – Consommation*, LexisNexis, Paris, 2015, Issue 318 of 14 September 2015, paragraph 26. See, also, regarding the diversity of harmful consequences, Amaro, R. and Laborde, J.-F., op. cit., paragraph 90, pp. 59 and 60.

119 See the judgment in *CDC Hydrogen Peroxide* (paragraph 56).

120 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 SA, 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). The Commission found that, regarding hydrogen peroxide and sodium perborate, the defendants in the main proceedings and other undertakings participated in a single and continuous infringement and thus breached the prohibition on cartels referred to in Article 81 EC (now 101 TFEU) and in Article 53 of the EEA Agreement.

and which, from 1994 to 2006, purchased substantial quantities of *hydrogen peroxide* in *various* EU and EEA *Member States*. Moreover, for some of them, the hydrogen peroxide was supplied to plants in several EU Member States. [121]

101. In those circumstances, characterised by there being multiple places of purchase in different markets affected by the cartel at issue, the Court held that the courts in whose jurisdiction the applicant undertaking has its registered office 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. [122] In paragraph 52 of that judgment, the Court had found that the place where the damage actually manifests itself, in the case of loss consisting of those additional costs, is located, 'in general', at that undertaking's registered office.

102. Consequently, first, the interpretation adopted in the judgment in *CDC Hydrogen Peroxide* appears to me to be reconcilable with the interpretation in the judgments given subsequently where the place where the market affected by the distortion of competition was located corresponded to that where the damage in the form of additional cost or loss of sales occurred, namely both the judgment in *flyLAL-Lithuanian Airlines* and the judgment in *Tibor-Trans*, since, in the case which gave rise to that judgment, the vehicles had been purchased in a single Member State, that in which the victim conducted its business. [123] In other words, if the necessity for proximity justifies the prioritisation of the *forum actoris*, I do not see a problem with that. [124]

103. Secondly, regarding the place where the registered office or principal place of business is located, as defined in Article 63(1) of Regulation No 1215/2012, that place must have a close connection with the place where the damage occurred. [125] More precisely, the business conducted in that place, linked to the dispute, should be the reason for the transaction on which the claim for damages in respect of the harm is based. I am also of the opinion that the place where the business of the undertaking is affected or the place from which the business is operated is decisive.

104. Thirdly, the extent of the places where damage occurs, which characterises anticompetitive activities in the internal market, [126] and the development of transactions concluded via the Internet [127] support a decision to identify the registered office as the place where the damage occurred. In that regard, it appears to me to be conceivable for a certain consistency to be sought with the case-law of the Court which takes account of the scale of the infringements of rights carried out in the context of the Internet. [128] The Court has stated that that option of a person who considers that his rights have been infringed to bring an action before the courts of the

121 See the judgment in *CDC Hydrogen Peroxide* (paragraph 11).

122 See the judgment in *CDC Hydrogen Peroxide* (paragraphs 53 and 54).

123 See point 76 of this Opinion.

124 See, to that effect, Racine, J.-B., op. cit., paragraphs 62 to 64, pp. 59 and 60. See, also, Heuzé, V., Mayer, P. and Remy, B., op. cit., paragraph 297, pp. 204 and 205.

125 On a comparable note, see the judgment of 9 July 2009, *Rehder* (C-204/08, EU:C:2009:439, paragraph 39).

126 See, regarding the effects of globalisation, Special Report of the European Court of Auditors No 24/2020, entitled 'The Commission's EU merger control and antitrust proceedings: a need to scale up market oversight', available online at the following address: https://www.eca.europa.eu/Lists/ECADocuments/SR20_24/SR_Competition_policy_EN.pdf and press release: https://www.eca.europa.eu/Lists/ECADocuments/INSR20_24/INSR_Competition_policy_EN.pdf.

127 That situation is mentioned in the Commission's response to the Court's written questions.

128 See judgments of 25 October 2011, *eDate Advertising and Others* (C-509/09 and C-161/10, EU:C:2011:685, paragraphs 47 to 50), and of 17 October 2017, *Bolagsupplysningen and Ilsjan* (C-194/16, EU:C:2017:766, paragraph 32). The Court held that, in the event of an alleged infringement of personality rights by means of content placed online on a website, the person who considers that his rights have been infringed must have the option of bringing an action for damages before the courts of the Member State in which the centre of his interests is based, which the publisher of the content at issue is in a position to know at the time at which it is placed online. See, regarding the analysis of the loss of materiality of at least part of the dispute, Farnoux, E., op. cit., paragraph 291.

Member State in which his centre of interests is located for all the alleged damage is justified in the interests of the sound administration of justice and not specifically for the purposes of protecting the applicant. [129]

105. Fourthly, in matters relating to competitive practices, the risk that abusive proceedings, which are assumed to be easier to bring at the place where the injured party's registered office (or domicile) is located, may be successful, which partly justifies the decision to give priority to the place where the defendant is domiciled, [130] does not appear to me to be insurmountable. Account must be taken of the fact that, in the majority of cases, the action for compensation is based on a prior finding of infringement of competition law. [131]

106. In addition, it appears to me that the suggestions in legal literature that it should be possible to bring proceedings before the court for the place where the claimant's registered office is located must be taken into consideration since they are based on the observation that multiple markets are affected [132] or on the risk that proceedings may be brought before the courts of a Member State affected by an international cartel in which none of the parties to the dispute is established [133] or on the putting into context of the objective of identifying an identical connecting factor, namely the market affected, for conflict of laws and jurisdiction. [134]

107. More generally, I am also very interested by the suggestion that the central theme of the determination of jurisdiction be defined as the facilitation of satisfactory compensation for unlawful acts or infringements of fundamental principles. [135] That suggestion reflects the idea that the strengthening of the effective exercise of rights in those particular areas contributes to the implementation of general prevention policies.

108. It follows from all of those considerations that two criteria for establishing the location of damage in order to determine jurisdiction appear to me to be capable of coexisting, regarding actions for compensation for anticompetitive practices, on account of the objective of proximity which must be satisfied and, more precisely, the objective of providing easier access to evidence. Such a solution makes it possible to ensure consistency with the objectives of Directive 2014/104, which includes numerous provisions relating to evidence on account of the difficulties in

129 Judgment of 17 October 2017, *Bolagsupplysningen and Ilsjan* (C-194/16, EU:C:2017:766, paragraph 38).

130 See Racine, J.-B., op. cit., paragraph 72, pp. 64 and 65. See comments of Amaro, R. and Laborde, J.-F., op. cit., relating to proof of fault in paragraph 249, p. 148.

131 See Laborde, J.-F., 'Cartel damages actions in Europe: How courts have assessed cartel overcharges (2019 ed.)', *Concurrences*, Institut de droit de la concurrence, Paris, No 4, 2019, in particular, p. 4. In 2019, of 239 cases originating in 13 Member States, 57% followed an infringement decision taken by a national authority, 40% followed a decision of the Commission and only 2% were isolated actions. (The majority of isolated cases correspond to civil actions brought before the French criminal courts.) The courts ruled on cartel damages actions which followed at least 63 infringement decisions. (Sometimes, an infringement decision penalises several cartels. Consequently, the number of cartels resulting in at least one case is slightly higher.)

132 See Idot, L., 'Le contentieux international des actions en réparation pour violation du droit de la concurrence: l'arrêt *CDC* revisité', *Revue critique de droit international privé*, Dalloz, Paris, 2019, No 3, pp. 786-815, in particular, paragraph 22.

133 See Idot, L., 'Contentieux en réparation pour violation du droit de la concurrence: de nouvelles précisions sur le lieu de matérialisation du dommage', *Revue critique de droit international privé*, Dalloz, Paris, 2020, No 1, pp. 129-138, in particular, paragraph 8.

134 See Amaro, R. and Thomas, B., 'Private enforcement of antitrust law in France (June 2019 – Nov. 2019)', *Concurrences*, Institut de droit de la concurrence, Paris, 2020, No 1, paragraph 35, 'second series of questions'.

135 See Racine, J.-B., op. cit., paragraphs 57, p. 57, and 70, p. 64.

collecting accounting and financial data on the undertakings and the market at issue,[136] and to contribute to the more effective resolution of disputes whose complexity is apparent from the documents drawn up by the Commission, designed as practical aids for national courts.[137]

109. In those circumstances, such an interpretation of the rules of jurisdiction appears to me to help to guarantee the effective judicial protection of EU competition law.[138]

110. At the end of my overall analysis relating to the determination of the place where the alleged damage occurred and the designation of the court having jurisdiction in the Member State in which that place is situated, I propose that the Court find that Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that, in an action for compensation for harm caused by an infringement of Article 101 TFEU consisting, inter alia, of collusive arrangements on fixing and increasing the prices of assets, the place where the damage occurred is situated in the Member State of the market affected by that infringement in which additional costs were incurred. The court having territorial jurisdiction is, in principle, the court in whose jurisdiction is located the place where those assets were purchased, by the undertaking carrying on business in the same Member State, which must be determined on the basis of economic criteria. If the place where the damage occurred does not correspond to that where the injured party carries on business, the action may be brought before the court in whose jurisdiction the injured party is established.

111. I will now explain the reasons which lead me to propose that the Court make it clear that the specific identification of the court, designated pursuant to Article 7(2) of Regulation No 1215/2012, is governed by domestic rules on the organisation of courts, which Member States are entitled to define with a view to potential specialisation by those courts.

4. Centralisation of jurisdiction

112. In the written observations which they submitted to the Court, the French Government and the Commission emphasise, in essence, that, whilst Article 7(2) of Regulation No 1215/2012 determines the international and territorial jurisdiction of the courts having jurisdiction to rule on cross-border disputes in matters relating to tort, delict or quasi-delict, it nevertheless falls to Member States alone, as part of the organisation of their courts, to define the jurisdiction of those courts and, inter alia, of those specialising in actions for damages for infringements of the provisions of competition law. In its response to the Court's written question on that point, the Spanish Government supports that analysis.

113. I am also of that opinion on account of the scheme instituted by Regulation No 1215/2012 and the specific nature of actions relating to compensation for damage caused by anticompetitive practices.[139]

136 See Amaro, R. and Laborde, J.-F., op. cit., paragraphs 144 and 145, pp. 85 and 86. See, also, judgment of 21 January 2021, *Whiteland Import Export* (C-308/19, EU:C:2021:47, paragraph 51).

137 See Practical guide on quantifying harm in actions for damages based on breaches of Article 101 or 102 [TFEU] (SWD(2013) 205), accompanying the Communication from the Commission on quantifying harm in actions for damages based on breaches of Article 101 or 102 [TFEU] (OJ 2013 C 167, p. 19), which focuses on additional cost, whilst the passing on of additional costs is dealt with in the Communication from the Commission entitled 'Guidelines for national courts on how to estimate the share of overcharge which was passed on to the indirect purchaser' (OJ 2019 C 267, p. 4).

138 In that regard, I refer to the introductory remarks of Advocate General Jääskinen in *CDC Hydrogen Peroxide* (C-352/13, EU:C:2014:2443, points 26, 27 and 32). See, also to the same effect, judgment of 21 January 2021, *Whiteland Import Export* (C-308/19, EU:C:2021:47, paragraph 53).

139 See point 108 of this Opinion.

(a) Systematic analysis

114. On certain aspects, it appears to me that it is possible to adopt reasoning by analogy with that used by the Court in the judgment in *Sanders and Huber*[140] and, to a lesser extent, in the judgment of 9 January 2015, *RG*.[141]

115. In the judgment in *Sanders and Huber*, the Court had been asked to rule on questions relating to a centralisation of judicial jurisdiction in matters relating to cross-border maintenance obligations in favour of a first-instance court established in the seat of the appeal court.[142]

116. The Court thus interpreted Article 3(b) of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations,[143] under which, in cross-border disputes relating to maintenance obligations, jurisdiction is to lie with the court for the 'place where the creditor is habitually resident'.

117. It is one of the provisions relating to the rules on jurisdiction which replaced those in Regulation No 44/2001, which follows on from the Brussels Convention.[144] The Court ruled that 'that provision, which determines both international and territorial jurisdiction, seeks to unify the rules of conflict of jurisdiction (see, to that effect, judgment in *Color Drack*, C-386/05, EU:C:2007:262, paragraph 30)'.[145]

118. In the judgment in *Sanders and Huber*, the Court found that, although the rules of conflict of jurisdiction have been harmonised by the determination of common connecting factors, the *specific* identification of the competent court remains a matter for the Member States, provided that the national legislation does not undermine the objectives of Regulation No 4/2009 or render it ineffective.[146]

119. The Court specified that the implementation of the objectives of proximity and the sound administration of justice does not imply that the Member States have to establish competent courts in each place[147] and that it is important that the court which has jurisdiction is the one which ensures a particularly close connection with the place where the maintenance creditor is habitually resident, referred to in Article 3(b) of Regulation No 4/2009.[148]

140 See, also, to that effect, Opinion of Advocate General Campos Sánchez-Bordona in *Vereniging van Effectenbezitters* (C-709/19, EU:C:2020:1056, point 94).

141 C-498/14 PPU, EU:C:2015:3.

142 See the judgment in *Sanders and Huber* (paragraphs 22 and 38). Specifically, the court which had jurisdiction, pursuant to the national provision at issue, was the Amtsgericht (Local Court, Germany) established in the seat of the Oberlandesgericht (Higher Regional Court, Germany) with territorial jurisdiction before which the creditor would, if necessary, have had to appear in appeal proceedings.

143 OJ 2009 L 7, p. 1.

144 See the judgment in *Sanders and Huber* (paragraph 23). Article 3(b) of Regulation No 4/2009 is worded in similar terms to those of the rules of 'special jurisdiction' in matters relating to maintenance obligations which appeared in Article 5(2) of the Brussels Convention and Article 5(2) of Regulation No 44/2001.

145 The judgment in *Sanders and Huber* (paragraph 30).

146 See the judgment in *Sanders and Huber* (paragraph 32 and the case-law cited). See, also, paragraph 22 of that judgment regarding the national legislation at issue. That legislation allocated territorial jurisdiction for disputes relating to maintenance obligations according to the presence or absence of foreign elements. For cross-border situations, there was a transfer of territorial jurisdiction to a court of first instance other than that to whose jurisdiction the party concerned was in principle subject on account of his place of residence.

147 See the judgment in *Sanders and Huber* (paragraph 35).

148 See the judgment in *Sanders and Huber* (paragraph 36).

120. In that regard, the Court took a positive view of the centralisation of jurisdiction, since, in matters relating to maintenance obligations, such an approach to the organisation of jurisdiction may promote the development of specific expertise which meets some of the objectives pursued by Regulation No 4/2009 and serves the proper administration of justice. [149]

121. Consequently, for the same reasons, it is sufficient, I believe, regarding Article 7(2) of Regulation No 1215/2012, to consider that the court before which proceedings have been brought accepts jurisdiction, on that basis, on account of the relevant connecting factor situated in its jurisdiction, [150] that is to say, in the part of the national territory throughout which it exercises its powers. [151] It is also a question of not making the geographic criterion a connecting factor, in the strict sense, which gives priority to proximity to the detriment of the sound administration of justice. [152]

122. However, in the judgment in *Sanders and Huber*, the Court held that, in case of a centralisation of jurisdiction, a specific examination of the situation in the Member State concerned is required in order to be sure that the national legislation does not render ineffective the regulation applicable to the dispute. [153]

123. That reservation was expressed again in the judgment of 9 January 2015, *RG*, [154] relating to the allocation to a specialised court of jurisdiction to examine questions of return or custody with respect to a child even though proceedings on the substance of parental responsibility with respect to the child had already been brought before a court or tribunal, [155] in the context of the examination of provisions relating to the determination of the national court having jurisdiction, which is a matter of choice for the Member States. It is interesting to note that, in that case, the objective that procedures should be expeditious, based on Regulation No 2201/2003, was used by the Court. [156]

149 See the judgment in *Sanders and Huber* (paragraphs 44 and 45).

150 On a comparable note, see the judgment of 16 May 2013, *Melzer* (C-228/11, EU:C:2013:305, paragraph 28). See, in a matter relating to a contract, judgment of 3 May 2007, *Color Drack* (C-386/05, EU:C:2007:262, paragraphs 37 and 44).

151 The jurisdiction of a court includes several localities or administrative bodies located across national territory. See, in that regard, Opinion of Advocate General Jääskinen in Joined Cases *Sanders and Huber* (C-400/13 and C-408/13, EU:C:2014:2171, points 55 and 56).

152 In paragraph 29 of the judgment in *Sanders and Huber*, the Court emphasised that 'the objective of the proper administration of justice must be seen not only from the point of view of optimising the organisation of courts, but also … from that of the interests of the litigant, whether claimant or defendant, who must be able to benefit, inter alia, from easier access to justice and predictable rules on jurisdiction'.

153 See paragraphs 32 and 46 of that judgment. See, by way of example of an analysis of compliance with the principle of effectiveness where litigation relating to agricultural aid was centralised in a court specialising in that matter, judgment of 27 June 2013, *Agrokonsulting-04* (C-93/12, EU:C:2013:432, paragraphs 50 to 58).

154 C-498/14 PPU, EU:C:2015:3, paragraphs 41 and 51.

155 The Court interpreted Article 11(7) and (8) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

156 See judgment of 9 January 2015, *RG* (C-498/14 PPU, EU:C:2015:3, paragraph 52).

124. However, in matters relating to breach of competition law, the legislative context in which a centralisation of jurisdiction is instituted in a Member State [157] is very different. It is necessary, I believe, to point out the absence of limits in matters relating to tort, delict or quasi-delict such as those resulting from the specific subject matter, inter alia, of Regulation No 4/2009 [158] and, regarding the case which gave rise to the judgment in *Sanders and Huber*, the particular details of the national legislation at issue in view of the objectives of that regulation. [159]

125. In that sense, I share the opinions previously expressed by other Advocates General on the autonomy of Member States relating to the centralisation of territorial jurisdiction, whether as a result of the allocation of substantive jurisdiction or otherwise, subject to there being no detriment to the practical effect of Regulation No 1215/2012 and to the principle of equivalence. [160]

126. Moreover, since the subject matter of the actions at issue plays a significant role in the Court's analysis, [161] it is appropriate to emphasise the elements which more specifically characterise the body of litigation relating to compensation for anticompetitive practices.

(b) Specific nature of actions for compensation for anticompetitive practices

127. First, it is appropriate to recall the absence of rules on the procedural requirements for the implementation of competition law actions, which justifies a finding that Member States, as part of the organisation of their courts, determine which court has jurisdiction *ratione materiae* and what is the extent of its jurisdiction, subject to compliance with the principles of equivalence [162] and effectiveness. [163]

128. Secondly, I consider, like the Commission, that account must be taken of the entry into force and transposition of Directive 2014/104 [164] and of the technical complexity of the rules applicable to actions for damages for infringements of the provisions of competition law. [165]

157 In that regard, the Commission stated, in its written observations, that, according to the information available to it, 'in Belgium, Germany, Greece, Spain, France, Italy, Portugal, Sweden and Slovakia, actions for damages are handled by specialist sections of the ordinary civil courts, whilst in Denmark, Lithuania, Latvia, Romania and the United Kingdom, they are handled by specialist courts'. See, regarding France, Italy and Ireland, further details provided by Riffault-Silk, J., 'Les actions privées en droit de la concurrence: obstacles de procédure et de fond', *Revue Lamy de la concurrence*, January/March 2006, No 6, pp. 84-90, in particular, p. 87. That article also states that, in other matters, Member States have been able to choose to centralise the substantive jurisdiction of courts, inter alia in matters relating to industrial property. For maritime law, see Opinion of Advocate General Jääskinen in Joined Cases *Sanders and Huber* (C-400/13 and C-408/13, EU:C:2014:2171, footnote 72).

158 That regulation arose from the desire to develop a specific instrument, distinct from Regulation No 44/2001, with a view to increasing the protection of maintenance creditors, regarded as the weaker party, especially in relation to the recognition and enforcement of decisions given in those matters. See the judgment in *Sanders and Huber* (paragraph 41), and Opinion of Advocate General Jääskinen in Joined Cases *Sanders and Huber* (C-400/13 and C-408/13, EU:C:2014:2171, points 38 and 40).

159 See footnote 146 of this Opinion and the judgment in *Sanders and Huber* (paragraph 46).

160 See Opinion of Advocate General Jääskinen in *CDC Hydrogen Peroxide* (C-352/13, EU:C:2014:2443, footnote 74), and, for considerations relating to various applicable instruments, Opinion of Advocate General Saugmandsgaard Øe in *Guaitoli and Others* (C-213/18, EU:C:2019:524, point 74 and footnotes 67 and 68).

161 See points 122 and 123 of this Opinion.

162 According to that principle, the detailed procedural rules governing actions for safeguarding an individual's rights under European Union law must be no less favourable than those governing similar, domestic actions; see, inter alia, judgment of 27 June 2013, *Agrokonsulting-04* (C-93/12, EU:C:2013:432, paragraph 36). In case of anticompetitive practices, this could involve actions brought on the basis of decisions of national authorities. See Blumann, C. and Dubouis, L., *Droit matériel de l'Union européenne*, 8th ed., Librairie générale de droit et de jurisprudence, Paris, 2019, paragraph 938, p. 665.

163 See, by way of reminder of those general principles for safeguarding rights which individuals derive directly from competition law, judgment of 13 July 2006, *Manfredi and Others* (C-295/04 to C-298/04, EU:C:2006:461, paragraphs 62 and 71 and the case-law cited). See, also, judgment of 21 January 2021, *Whiteland Import Export* (C-308/19, EU:C:2021:47, paragraph 46).

164 See point 68 of this Opinion.

165 See footnote 137 of this Opinion.

129. For those reasons, it appears to me to be essential that, to answer the referring court, the Court draw inspiration from the wording of the judgments of 16 May 2013, *Melzer*,[166] or in *CDC Hydrogen Peroxide*, relating to jurisdiction in matters relating to tort, delict or quasi-delict, in which the phrase 'the courts in whose jurisdiction' is used.

130. In the light of all of those considerations relating to the centralisation of court jurisdiction, I propose that the Court interpret Article 7(2) of Regulation No 1215/2012 as meaning that, whilst it determines the territorial jurisdiction at both international and domestic level of the courts having jurisdiction to rule on cross-border disputes in matters relating to tort, delict or quasi-delict, Member States have the option to choose to centralise the handling of those disputes before certain courts, as part of the organisation of their courts, subject to compliance with the principles of equivalence and effectiveness. In particular, in the field of competition law, Member States must ensure that the rules which they establish or apply do not prejudice the effective application of Articles 101 and 102 TFEU.

V. Conclusion

131. In the light of all of the foregoing considerations, I propose that the Court answer the question referred for a preliminary ruling by the Juzgado de lo Mercantil nº 2 de Madrid (Commercial Court No 2, Madrid, Spain) as follows:

Article 7(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that:

– it designates the court having jurisdiction in a Member State, in whose jurisdiction, inter alia, the direct damage occurred;

– in an action for compensation for harm caused by an infringement of Article 101 TFEU consisting, inter alia, of collusive arrangements on fixing and increasing the prices of assets, the place where the damage occurred is situated in the Member State of the market affected by that infringement in which additional costs were incurred. The court having territorial jurisdiction is, in principle, the court in whose jurisdiction is located the place where those assets were purchased, by the undertaking carrying on business in the same Member State, which must be determined on the basis of economic criteria. If the place where the damage occurred does not correspond to that where the injured party carries on business, the action may be brought before the court in whose jurisdiction the injured party is established; and

– Member States have the option to choose to centralise the handling of disputes before certain courts, as part of the organisation of their courts, subject to compliance with the principles of equivalence and effectiveness. In particular, in the field of competition law, Member States must ensure that the rules which they establish or apply do not prejudice the effective application of Articles 101 and 102 TFEU.

166 C-228/11, EU:C:2013:305.