



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

15 July 2021 *

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Jurisdiction and enforcement of judgments in civil and commercial matters – Regulation (EU) No 1215/2012 – Article 7(2) – Jurisdiction in matters relating to tort, delict or quasi-delict – Place where the damage occurred – Cartel declared contrary to Article 101 TFEU and Article 53 of the Agreement on the European Economic Area – Determination of international and territorial jurisdiction – Centralisation of jurisdiction in favour of a specialised court)

In Case C-30/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Mercantil n.º 2 de Madrid (Commercial Court No 2, Madrid, Spain), made by decision of 23 December 2019, received at the Court on 22 January 2020, in the proceedings

RH

v

AB Volvo,

Volvo Group Trucks Central Europe GmbH,

Volvo Lastvagnar AB,

Volvo Group España SA,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, L. Bay Larsen, C. Toader, M. Safjan (Rapporteur) and N. Jääskinen, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Spanish.

after considering the observations submitted on behalf of:

- AB Volvo, Volvo Group Trucks Central Europe GmbH, Volvo Lastvagnar AB and Volvo Group España SA, by R. Murillo Tapia and N. Gómez Bernardo, abogados,
- the Spanish Government, by S. Centeno Huerta and J. Rodríguez de la Rúa Puig, acting as Agents,
- the French Government, by A.-L. Desjonquères, N. Vincent and A. Daniel, acting as Agents,
- the Netherlands Government, by M. Bulterman and J. Langer, acting as Agents,
- the European Commission, by M. Heller and C. Urraca Caviedes, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 April 2021,

gives the following

Judgment

- 1 This request for a preliminary ruling 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 (OJ 2012 L 351, p. 1).
- 2 The request has been made in proceedings between RH, of the one part, and AB Volvo, Volvo Group Trucks Central Europe GmbH, Volvo Lastvagnar AB et Volvo Group España SA, of the other, concerning the payment of damages for the loss sustained by RH as a result of the anti-competitive practices of the defendant companies in the main proceedings, which were penalised by the European Commission under Article 101 TFEU and Article 53 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3, ‘the EEA Agreement’).

Legal context

- 3 Recitals 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 (OJ 1972 L 299, p. 32)], [Council] Regulation (EC) No 44/2001 [of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1)] 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 1968 convention] and of the Regulations replacing it.'

4 Chapter II of Regulation No 1215/2012, entitled 'Jurisdiction', contains, inter alia, Section 1 entitled 'General provisions' and Section 2 entitled 'Special jurisdiction'. Article 4(1) of that regulation, which is included in Section 1, provides:

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

5 Article 5(1) of Regulation No 1215/2012, also included in Section 1, provides:

'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.'

6 Article 7 of Regulation No 1215/2012, which is included in Section 2 of Chapter II of that regulation, states:

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

(1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

...

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

...'

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

7 RH is an undertaking domiciled in Cordoba (Spain), where between 2004 and 2009 it purchased five trucks from a Volvo Group España dealer. The first of those trucks was initially the subject of a leasing agreement before being purchased by RH in 2008.

- 8 On 19 July 2016, the Commission adopted decision C(2016) 4673 final relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39824 – Trucks) (OJ 2017 C 108, p. 6, ‘the decision of 19 July 2016’).
- 9 By that decision, the Commission found there to be a cartel in which 15 international truck manufacturers had participated, including Volvo, Volvo Group Trucks Central Europe and Volvo Lastvagnar, in respect of two product categories, namely trucks weighing between 6 and 16 tonnes and trucks weighing more than 16 tonnes, whether rigid trucks or tractor trucks.
- 10 The Commission found that the infringement of Article 101 TFEU covered the entire European Economic Area (EEA) and lasted from 17 January 1997 until 18 January 2011. Consequently, it imposed fines on all participating entities, with the exception of an entity which had, following a leniency procedure, benefited from total immunity.
- 11 RH brought an action for damages against Volvo (Gothenburg, Sweden), Volvo Group Trucks Central Europe (Ismaning, Germany), Volvo Lastvagnar (Gothenburg) and Volvo Group España (Madrid, Spain), in support of which it claims to have suffered loss in that it purchased the five vehicles referred to above by paying an additional cost due to the collusive arrangements penalised by the Commission.
- 12 Although RH purchased the vehicles in Cordoba and is domiciled in that city, it brought its action before the Juzgado de lo Mercantil n.º 2 de Madrid (Commercial Court No 2, Madrid, Spain). The referring court states that the defendants in the main proceedings have not challenged its territorial jurisdiction with the result that, under national law, they must be deemed to have tacitly accepted the jurisdiction of that court.
- 13 The defendants have, however, contested international jurisdiction, contending that the ‘place where the harmful event occurred or may occur’, referred to in Article 7(2) of Regulation No 1215/2012, is the place of the event giving rise to the loss, in this case the place where the truck cartel was concluded, and not where the applicant in the main proceedings is domiciled. Since the cartel was concluded in other Member States of the European Union, the defendants contend that the Spanish courts do not have jurisdiction.
- 14 According to the referring court, there are serious doubts as to how Article 7(2) of Regulation No 1215/2012 should be interpreted.
- 15 In that regard, it notes that, in accordance with the judgment of 21 May 2015, *CDC Hydrogen Peroxide* (C-352/13, EU:C:2015:335, paragraph 56), in the case of an action for damages brought against defendants domiciled in various Member States, and on the basis of a single and continuous infringement of Article 101 TFEU and Article 53 of the EEA Agreement which has been established by the Commission, and in which the defendants participated in several Member States at different times and in different places, the harmful event occurred in relation to each alleged victim on an individual basis; each of the victims can choose to bring an action before the courts of the place in which the cartel was definitively concluded or, as the case may be, the place in which one agreement in particular was concluded which is identifiable as the sole causal event giving rise to the loss allegedly suffered, or before the courts of the place where its own registered office is located.
- 16 According to the referring court, it is, therefore, possible to sue the defendants in the main proceedings in Spanish territory, in view of the place where RH has its registered office.

- 17 Subsequently, as regards specifically the truck cartel that was penalised by the Commission in its decision of 19 July 2016, the referring court also notes that the Court held, in the judgment of 29 July 2019, *Tibor-Trans* (C-451/18, EU:C:2019:635, paragraph 33) 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, it must be considered that the place where the damage occurred, for the purposes of applying Article 7(2) of Regulation No 1215/2012, is in that Member State.
- 18 The referring court is uncertain, however, whether the case-law set out in the preceding paragraph of the present judgment 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. In other words, it is necessary to establish whether Article 7(2) of Regulation No 1215/2012 constitutes a rule which strictly concerns international jurisdiction or whether it is a dual or combined rule which also operates as a rule on local territorial jurisdiction.
- 19 According to the referring court, national case-law and EU case-law do not enable that doubt to be dispelled.
- 20 In those circumstances the Juzgado de lo Mercantil n.º 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 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?’

Admissibility

- 21 The defendants in the main proceedings have argued that the request is inadmissible on the ground that the answer to the question put by the referring court is clear.
- 22 It must, however, be borne in mind that, in accordance with the settled case-law of the Court, questions referred for a preliminary ruling by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 9 July 2020, *Verein für Konsumenteninformation*, C-343/19, EU:C:2020:534, paragraph 19).

- 23 Furthermore, in order to be admissible, a request for a preliminary ruling must contain, in addition to the text of the questions referred for a preliminary ruling, the information required by Article 94(a) to (c) of the Rules of Procedure of the Court, namely, in essence, the factual and legislative context of the dispute in the main proceedings and a minimum of explanation of the reasons for the choice of the provisions of EU law which the national court seeks to have interpreted and of the link it establishes between those provisions and the national legislation applicable to the dispute brought before it (order of 16 March 2021, *DS (Equine hoof care)* (C-557/20, not published, EU:C:2021:204) paragraph 21 and the case-law cited).
- 24 Thus, the fact that the question put by the referring court may be clearly answered, even if established, is not in any case liable to affect the admissibility of the request for a preliminary ruling.
- 25 In the present case, the referring court has set out precisely why, in the factual and legal context of the dispute in the main proceedings, and having regard to the case-law of the Court of Justice, on the one hand, and of the Tribunal Supremo (Supreme Court, Spain), on the other, it is important for the Court to clarify the scope of Article 7(2) of Regulation No 1215/2012.
- 26 The question referred for a preliminary ruling must, therefore, be declared admissible.

Consideration of the question referred

- 27 By its question, the referring court asks, in essence, whether Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that, within the market affected by collusive arrangements on the fixing and increase in the prices of goods, either the court within whose jurisdiction the undertaking claiming to be harmed purchased the goods affected by those arrangements or, in the case of purchases made by that undertaking in several places, the court within whose jurisdiction that undertaking's registered office is situated, has international and territorial jurisdiction, in terms of the place where the damage occurred, over an action for compensation for the damage caused by those arrangements contrary to Article 101 TFEU.
- 28 As a preliminary point, it must be noted that in so far as Regulation No 1215/2012 repeals and replaces Regulation No 44/2001 which has itself replaced the Convention of 27 September 1968 on jurisdiction and enforcement of judgments in civil and commercial matters, as amended by successive conventions on the accession of new Member States to that 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' (see judgment of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraph 23 and the case-law cited).
- 29 That is the case of, first, Article 5(3) of Regulation No 44/2001 and, secondly, Article 7(2) of Regulation No 1215/2012, in respect of which provisions the Court has repeatedly held that the concept of the 'place where the harmful event occurred', within the meaning of those provisions, is intended to cover both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the applicant, in the courts for either of those places (see, to that effect, judgment of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraph 25 and the case-law cited).
- 30 It is apparent from the order for reference that, in the present case, the referring court seeks to identify the place where the damage occurred.

- 31 It follows from the decision of 19 July 2016 that the infringement of Article 101 TFEU found, giving rise to the alleged damage, covered the entire EEA market and therefore entailed a distortion of competition in that market. In those circumstances, it must be found that the place where that damage occurred, for the purposes of applying Article 7(2) of Regulation No 1215/2012, is in that market, of which Spain forms part (see, by analogy, judgment of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraphs 32 and 33).
- 32 Determining the place where the damage occurred in such a manner satisfies, in particular, the requirement of consistency laid down in recital 7 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), in so far as, under Article 6(3)(a) of that regulation, the law applicable to actions for damages based on an act restricting competition is that of the country where the market is, or is likely to be, affected (judgment of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraph 35).
- 33 As regards the question of which court within the Member State thus identified has jurisdiction, it is clear from the very wording of Article 7(2) of Regulation No 1215/2012 that that provision confers directly and immediately both international and territorial jurisdiction on the courts for the place where the damage occurred. As the Advocate General observed in point 46 of his Opinion, that analysis is supported, in particular, by Mr P. Jenard's 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).
- 34 This means that the Member States may not apply criteria for the conferral of jurisdiction which differ from those deriving from Article 7(2). However, it must be stated that the delimitation of the court's jurisdiction within which the place where the damage occurred, within the meaning of that provision, is situated, is as a rule a matter for the organisational competence of the Member State to which that court belongs.
- 35 As the defendants in the main proceedings, the Spanish and French Governments and the Commission have noted, that provision does not preclude a Member State from deciding to confer a particular type of dispute to a single court, which therefore has exclusive jurisdiction irrespective of where the damage occurred within that Member State.
- 36 The Court has already stated that a centralisation of jurisdiction before a single specialised court may be justified in the interests of the sound administration of justice (see, to that effect, judgment of 18 December 2014, *Sanders and Huber*, C-400/13 and C-408/13, EU:C:2014:2461, paragraph 44).
- 37 As the Advocate General observed in point 128 of his Opinion, in the context of Article 7(2) of Regulation No 1215/2012, the technical complexity of the rules applicable to actions for damages for infringements of competition law provisions may also militate in favour of a centralisation of jurisdiction.
- 38 In the absence of such a specialised court, the identification of the place where the damage occurred in order to ascertain the court having jurisdiction within the Member States over an action for damages based on collusive arrangements contrary to Article 101 TFEU must be consistent with the objectives of proximity, predictability of the rules governing jurisdiction, and

of the sound administration of justice, referred to in recitals 15 and 16 of Regulation No 1215/2012 (see, to that effect, judgment of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraph 34).

- 39 It is apparent from the case-law of the Court that where goods are purchased which, following manipulation by their producer, are of lower value, the court having jurisdiction over an action for compensation for damage corresponding to the additional costs paid by the purchaser is that of the place where the goods are purchased (see, to that effect, judgment of 9 July 2020, *Verein für Konsumenteninformation*, C-343/19, EU:C:2020:534, paragraphs 37 and 40).
- 40 That approach must also be applied in a context such as that of the main proceedings, irrespective of whether the goods it issue were purchased directly or indirectly from the defendants, with immediate transfer of ownership or at the end of a leasing contract. However, it must be pointed out that that approach implies that the purchaser that has been harmed exclusively purchased goods affected by the collusive arrangements in question within the jurisdiction of a single court. Otherwise, it would not be possible to identify a single place of occurrence of damage with regard to the purchaser harmed.
- 41 In that regard, it should be borne in mind that, in the context of an action for compensation for damage caused by arrangements contrary to Article 101 TFEU, and consisting in additional costs incurred because of artificially high prices, the Court has held that the place where the damage occurred is identifiable only for each alleged victim taken individually and is located, in general, at that victim's registered office (see, to that effect, judgment of 21 May 2015, *CDC Hydrogen Peroxide*, C-352/13, EU:C:2015:335, paragraph 52).
- 42 In the case of purchases made in several places, to confer jurisdiction on the courts for the place where the undertaking harmed has its registered office is consistent with the requirement of predictability referred to in paragraph 38 above, since the defendants, members of the cartel, cannot be unaware of the fact that the purchasers of the goods in question are established within the market affected by the collusive practices. In addition, that conferral of jurisdiction is consistent with the objective of proximity, and the place of the registered office of the undertaking harmed fully guarantees the efficacious conduct of potential proceedings (see, to that effect, judgment of 21 May 2015, *CDC Hydrogen Peroxide*, C-352/13, EU:C:2015:335, paragraph 53).
- 43 In the light of all the foregoing considerations, the answer to the question referred is that Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that, within the market affected by collusive arrangements on the fixing and increase in the prices of goods, either the court within whose jurisdiction the undertaking claiming to be harmed purchased the goods affected by those arrangements or, in the case of purchases made by that undertaking in several places, the court within whose jurisdiction that undertaking's registered office is situated, has international and territorial jurisdiction, in terms of the place where the damage occurred, over an action for compensation for the damage caused by those arrangements contrary to Article 101 TFEU.

Costs

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

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

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, within the market affected by collusive arrangements on the fixing and increase in the prices of goods, either the court within whose jurisdiction the undertaking claiming to be harmed purchased the goods affected by those arrangements or, in the case of purchases made by that undertaking in several places, the court within whose jurisdiction that undertaking's registered office is situated, has international and territorial jurisdiction, in terms of the place where the damage occurred, over an action for compensation for the damage caused by those arrangements contrary to Article 101 TFEU.

[Signatures]