Reports of Cases

OPINION OF ADVOCATE GENERAL
EMILIOU
delivered on 8 February 2024[1]

Case C-425/22

MOL Magyar Olaj- és Gázipari Nyrt.
v
Mercedes-Benz Group AG

(Request for a preliminary ruling from the Kúria (Supreme Court, Hungary))

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EU) No 1215/2012 – Jurisdiction in matters relating to tort, delict or quasi-delict – Action for damages for infringements of competition law – Harm suffered by subsidiaries – Place where the harmful event occurred – Registered office of the parent company – Economic unit)

I. Introduction

1. In 2016, the European Commission adopted a decision concluding that, by colluding on gross list pricing for medium trucks and heavy trucks, several undertakings – including Mercedes-Benz Group AG ('the defendant') – had infringed the prohibition laid down in, inter alia, Article 101 TFEU.[2] That decision has led to a series of actions for damages, some of which gave rise to references for a preliminary ruling in which the Court was asked to clarify the proper interpretation of the jurisdictional rules of Regulation (EU) No 1215/2012[3] to ascertain which courts could be seised by such actions.[4]

2. The present request has arisen in a similar context and seeks the interpretation of that regulation as regards whether, in essence, a parent company can rely on the competition law concept of an *economic unit* in order to establish the jurisdiction of the courts where it has its registered seat to hear and determine its claim for damages for the harm suffered by its subsidiaries.

3. More specifically, MOL Magyar Olaj- és Gázipari Nyrt. ('the applicant'), established in Hungary, has a controlling interest in the companies belonging to the MOL group which are established in various Member States. Those subsidiaries have purchased trucks indirectly from

1 Original language: English.

2 Decision of 19 July 2016 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39824 – Trucks) (C(2016) 4673 final) (OJ 2017 C 108, p. 6, 'the Commission Decision').

3 Regulation 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).

4 Judgments of 15 July 2021, *Volvo and Others* (C-30/20, EU:C:2021:604, 'the judgment in *Volvo*'), and of 29 July 2019, *Tibor-Trans* (C-451/18, EU:C:2019:635, 'the judgment in *Tibor-Trans*').

the defendant at prices which were allegedly distorted due to the infringement of competition law established in the Commission Decision referred to above. In the main proceedings, the applicant is requesting the Hungarian courts to grant an order against the defendant, domiciled in Germany, for compensation in respect of the difference paid in excess, due to the infringement of competition rules.

4. Pursuant to Regulation No 1215/2012, the determination of jurisdiction is governed by the general rule of the *defendant*'s domicile.[5] That rule has several exceptions, including one which is applicable to tort actions (such as that at issue in the main proceedings), whereby jurisdiction can also be attributed to the courts of, inter alia, the place where the alleged damage occurred.[6]

5. Both the first-instance and second-instance courts found that that special jurisdictional rule could not, however, be applied in the main proceedings and that the Hungarian courts therefore did not have the international jurisdiction to hear and to determine the applicant's claim. In a nutshell, this was because the trucks in question had not been purchased by the applicant, but by its subsidiaries (who were, in fact, the entities which had suffered harm in the form of the artificially increased prices). In those circumstances, the Kúria (Supreme Court, Hungary) now seeks clarification as to whether such jurisdiction may be established on the basis of the fact that the applicant's registered office is located in Hungary. It also asks whether the fact that some of the subsidiaries concerned were not yet part of the applicant's group at the time when the trucks in question were purchased is relevant to this assessment.

6. The referring court's enquiry appears to be based on the applicant's assertion that the applicant's registered office is the place in which the harm was ultimately suffered, since the applicant and the affected subsidiaries belong to the same *economic unit*.

7. As I will explain in more detail in this Opinion, that concept has been developed in competition law and applied, inter alia, to enhance its enforcement. It has been invoked in particular, for the purpose of *attributing liability* to a defendant for infringement that has, in fact, been committed by another (legal) person, provided that both companies form part of the same economic unit. In that respect, the central question which arises in the present case is whether that concept can also be invoked to *establish jurisdiction* in relation to a claim for damages, irrespective of whether the applicant is the (legal) person that initially suffered the underlying harm.

II. Legal framework

8. Recital 15 of Regulation No 1215/2012 states that 'the rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile …'.

9. Pursuant to recital 16 of Regulation No 1215/2012 '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 …'.

[5] Article 4(1) of Regulation No 1215/2012 states that 'subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State'.

[6] Article 7(2) of Regulation No 1215/2012 provides that a person domiciled in a Member State may be sued in another Member State, 'in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur'. See also, for example, the judgment in *Volvo*, paragraph 29.

10. Chapter II of Regulation No 1215/2012 contains rules on jurisdiction. Section 1 of that chapter lays down general provisions, including Article 4(1) which states that 'subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State'.

11. Pursuant to Article 5(1) which forms part of the same section: '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 [Chapter II].'

12. Section 2 of Chapter II of Regulation No 1215/2012 concerns 'special jurisdiction'. It contains, inter alia, Article 7(2) pursuant to which 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'.

III. Facts, national proceedings and the questions referred

13. In its decision of 19 July 2016, the Commission found that, by colluding on gross list pricing for medium trucks and heavy trucks in the European Economic Area (EEA), the defendant, having its seat in Germany, together with other companies, had participated in a cartel between 17 January 1997 and 18 January 2011, which constituted a continuous infringement of the prohibition laid down in Article 101 TFEU and in Article 53 of the Agreement on the European Economic Area.[7] The Commission concluded that the infringement covered the entire EEA.

14. The applicant is a company established in Hungary. It has a controlling interest in companies belonging to the MOL group. It is either the majority shareholder or holds another form of exclusive controlling power over a number of companies, such as MOLTRANS, established in Hungary; INA, established in Croatia; Panta and Nelsa, established in Italy; ROTH, established in Austria; and SLOVNAFT, established in Slovakia. During the infringement period identified by the Commission Decision, those subsidiaries purchased indirectly, either as owners or under a financial leasing arrangement, 71 trucks from the defendant in several Member States.

15. The applicant requested, before the Fővárosi Törvényszék (Budapest High Court, Hungary) ('the first-instance court'), that the defendant be ordered to pay EUR 530 851 with interest and costs, arguing that this was the amount that its subsidiaries had overpaid as a consequence of the anticompetitive conduct established in the Commission Decision. Relying on the concept of an economic unit, it asserted the subsidiaries' claims for damages against the defendant. For that purpose, it sought to establish the jurisdiction of the Hungarian courts based on Article 7(2) of Regulation No 1215/2012, claiming that its registered office, as the centre of the group's economic and financial interests, was the place where the harmful event, within the meaning of that provision, had ultimately occurred.

16. The defendant objected on the ground that the Hungarian courts lacked jurisdiction.

17. The first-instance court upheld that objection and observed that the special jurisdictional rule under Article 7(2) of Regulation No 1215/2012 must be interpreted strictly and may be applied only if there is a particularly close link between the court seised and the subject matter of the dispute. It found that it was not the applicant that had paid the artificially increased prices but its

[7] I note that this decision was addressed, inter alia, to Daimler AG, which appears to be the name under which the defendant was known previously, as the applicant in essence observes.

subsidiaries (which were, therefore, harmed by the distortion of competition at issue). By contrast, the damage suffered by the applicant was purely financial, which does not enable its registered office to be treated as the place where the damage occurred, within the meaning of Article 7(2) of Regulation No 1215/2012, and cannot lead to the jurisdiction of the Hungarian court being established.

18. That position was confirmed on appeal by an order of the Fővárosi Ítélőtábla (Budapest Regional Court of Appeal, Hungary) ('the 'second-instance court'). That court stated that in accordance with the Court's case-law, the economic unit theory is applicable solely for establishing liability for the infringement of competition law and that, in essence, it does not apply to the injured party for the purpose of allocating jurisdiction. By reference to the Court's judgment in *CDC Hydrogen Peroxide*,[8] it added that jurisdiction under Article 7(2) of Regulation No 1215/2012 must be determined by reference to the registered office of the company which has suffered the loss and not the registered office of its parent company.

19. The applicant appealed on a point of law before the Kúria (Supreme Court), the referring court. It claimed that the order adopted by the second-instance court should be set aside and that the proceedings should continue before the courts previously seised. It submitted, in essence, that the economic unit theory is relevant for the purpose of assuming jurisdiction in the present context and, as the sole controlling company of the group, it is directly concerned with the operations, at a profit or at a loss, of the companies within the group.

20. In its reply, the defendant claimed that the applicant had not purchased any of the trucks impacted by the cartel, and, consequently, did not suffer any damage. Furthermore, it submitted that the economic unit theory is not applicable for determining jurisdiction and that such an approach is not supported by the Court's case-law.

21. In those circumstances, the Kúria (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Where a parent company brings an action for damages in respect of the anticompetitive conduct of another company in order to obtain compensation for the damage suffered as a result of that conduct solely by its subsidiaries, does the registered office of the parent company determine the forum of jurisdiction, as the place where the harmful event occurred for the purposes of Article 7(2) of [Regulation No 1215/2012]?

(2) Is the fact that, at the time of the purchases at issue in the proceedings, not all the subsidiaries belonged to the parent company's group of companies relevant for the purposes of the application of Article 7(2) of [Regulation No 1215/2012]?'

22. The applicant, the defendant, the Czech Government and the Commission have submitted written observations.

IV. Analysis

23. By its request for a preliminary ruling, the referring court first seeks to ascertain whether, where a parent company brings an action for damages for loss suffered solely by its subsidiaries, due to a collusive agreement on the fixing and increase in prices (thus, infringing Article 101

[8] Judgment of 21 May 2015, *CDC Hydrogen Peroxide* (C-352/13, EU:C:2015:335, 'the judgment in *CDC Hydrogen Peroxide*').

TFEU),[9] the jurisdiction of a court can be established on the basis of the fact that the parent company's registered office is the place where 'the harmful event occurred', within the meaning of Article 7(2) of Regulation No 1215/2012. Second, that court also wonders whether the answer to that question is affected by the fact that, at the time when the subsidiaries bought the goods in question, some of them were not yet part of the applicant's group.

24. Before addressing those questions (C), I will make introductory remarks on the special jurisdictional rule at issue and, in particular, on the nature of the harm that may lead to its application. (A). I will also recall the clarification that the Court has made concerning the connecting factors determining which court is to be seised in the specific context of actions for damages for breach of Article 101 TFEU (such as that pending before the referring court) (B).

A. The jurisdictional rule at issue and the nature of the harm

25. Within the EU legal sphere, the issue of which court has international jurisdiction to deal with a case involving a cross-border element is resolved according to the rules set out in Regulation No 1215/2012. As has already been briefly mentioned, the general rule established under that regulation is that of the domicile of the defendant.[10]

26. That rule has several exceptions in the form of special and exclusive rules of jurisdiction describing the situations in which the defendant may or must be sued in the courts of another Member State.

27. The present case concerns one of the rules of special jurisdiction, namely the rule laid down in Article 7(2) of Regulation No 1215/2012 which attributes (alternative, optional) jurisdiction, in matters relating to tort, delict or quasi-delict, to 'the courts for the place where the harmful event occurred or may occur'.

28. Starting with its judgment in *Bier* and throughout its subsequent case-law, the Court has interpreted the concept of 'place where the harmful event occurred' as covering two categories: first, the place of the relevant causal event (the place where the event that has given rise to the damage occurred); and second, the place where the damage occurred (the place where the damage has manifested itself).[11] Consequently, under Article 7(2) of Regulation No 1215/2012, the defendant may be sued in the courts of either of those places, depending on which one the applicant chooses.[12]

[9] It bears pointing out that Article 101(1) TFEU prohibits as incompatible with the internal market, inter alia, agreements between undertakings, which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition. See, to that effect, judgment of 21 December 2023, *International Skating Union* v *Commission* (C-124/21 P, EU:C:2023:1012, paragraph 97).

[10] See above, footnote 5 and recital 15 of Regulation No 1215/2012.

[11] Judgment of 30 November 1976, *Bier* (21/76, EU:C:1976:166, 'the judgment in *Bier*'. The legs of the '*Bier* formula' are generally presented in reverse order; however, for the purposes of this Opinion, it is more convenient to refer to them in the order used herein. The judgment in *Bier* concerned the equivalent rule of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), later replaced by 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). Pursuant to established case-law 'in so far as [Regulation No 1215/2012] repeals and replaces Regulation No 44/2001, which itself replaced the 1968 Brussels Convention, the Court's interpretation of the provisions of the latter two legal instruments also applies to Regulation No 1215/2012 whenever those provisions may be regarded as "equivalent"'. See, for instance, judgment of 10 March 2022, *BMA Nederland* (C-498/20, EU:C:2022:173, 'the judgment in *BMA Nederland*', paragraph 27 and the case-law cited).

[12] See, for instance, judgment in *CDC Hydrogen Peroxide*, paragraph 38; *Volvo*, paragraph 29 or of 6 October 2021, *Sumal* (C-882/19, EU:C:2021:800, 'the judgment in *Sumal*', paragraph 65).

29. That jurisdictional rule is based on the existence of a particularly close link between the dispute and the court that will hear and determine it, 'in particular on the grounds of proximity and ease of taking evidence',[13] given the importance, in tort actions, of establishing the causal link between the alleged damage and its cause.[14]

30. At the same time, that rule constitutes a derogation from the general rule that jurisdiction is to be based on the defendant's domicile. Accordingly, it must be interpreted strictly.[15]

31. In that respect, it follows from the Court's case-law that although 'the place where the harmful event occurred' may also encompass the place where the harmful (causal) event had tangible consequences (see point 28 above), this does not allow jurisdiction of a court to be established solely on the basis that, while within that court's jurisdiction, the victim experiences *adverse consequences* of an event that has already caused damage elsewhere.[16]

32. Indeed, given that such adverse consequences will, inevitably, ultimately be felt in the applicant's domicile, the contrary solution would be at odds with the requirement of a close connection between the court seised and the subject matter of the dispute because there is no inherent reason to assume that the applicant's domicile is, per se, the most appropriate place for facilitating legal proceedings for the reason that evidence as to the existence and extent of the damage would be readily available there. Moreover, in many cases, it would allow the applicant to sue the defendant in the courts of his or her own domicile, thus, effectively reversing the general rule of the defendant's domicile, at will.[17]

33. For the same reasons (which require, in essence, the court seised under Article 7(2) of Regulation No 1215/2012 to be the court of the place of the initial harm), the Court has held that 'the place where the harmful event occurred' within the meaning of that provision does not cover the place where the assets of an *indirect victim* are affected.[18]

34. The Court reached that conclusion in a case in which two French companies, having their registered offices in Paris (France), set up subsidiaries in Germany in order to pursue a property development project. However, German banks withdrew their financing, which lead to those subsidiaries becoming insolvent. The French parent companies sought to sue the German banks in Paris, arguing that this was the place where they experienced the resulting financial loss.

35. The answer provided by the Court in that judgment is, in my view, directly relevant to the present case. Much like the facts at issue in the judgment in *Dumez*, it follows from the case file that the harm alleged by the applicant is not harm which affected it *directly*, but rather harm which was initially suffered by its subsidiaries and which could affect it only 'by ricochet.'[19]

[13] Judgment in *BMA Nederland*, paragraph 30 and the case-law cited.

[14] As the Court explained in the judgment in *Bier* (paragraph 17, in combination with paragraphs 15 and 16).

[15] See, for example, judgment in *CDC Hydrogen Peroxide*, paragraph 37 and the case-law cited, or of 5 July 2018, *flyLAL-Lithuanian Airlines* (C-27/17, EU:C:2018:533, 'the judgment in *FlyLAL*', paragraph 26 and the case-law cited).

[16] See judgment of 19 September 1995, *Marinari* (C-364/93, EU:C:1995:289, paragraphs 14 and 15); of 10 June 2004, *Kronhofer* (C-168/02, EU:C:2004:364, paragraphs 19 to 21); or in *Tibor-Trans*, paragraphs 28 and 29 and the case-law cited.

[17] By contrast, 'such an attribution of jurisdiction is justified if the applicant's domicile *is* in fact the place in which the events giving rise to the damage took place or the damage occurred'. Judgment of 12 September 2018, *Löber* (C-304/17, EU:C:2018:701, paragraph 25 and the case-law cited). Emphasis added.

[18] Judgment of 11 January 1990, *Dumez France and Tracoba* (C-220/88, EU:C:1990:8, 'the judgment in *Dumez*', paragraphs 20 and 22).

[19] Term used in the Opinion of Advocate General Darmon in *Dumez France and Tracoba* (C-220/88, EU:C:1989:595, for example point 14 or 31 to 47). See the judgment in *BMA Nederland*, paragraph 35, where the judgment in *Dumez* was applied by analogy, or judgments in *Tibor-Trans*, paragraphs 29 to 31, and of 9 July 2020, *Verein für Konsumenteninformation*, C-343/19, EU:C:2020:534, paragraphs 27 to 31) where the situations at issue in those cases were distinguished from the situation at issue in *Dumez*.

Indeed, it is undisputed that the applicant has neither purchased (directly or indirectly) any trucks from the defendant, nor succeeded into the rights of the affected subsidiaries, be it based on an assignment of the relevant claims or otherwise. [20]

36. It is true, as the applicant notes, that in the judgment in *Tibor-Trans* (which related to the same collusive behaviour as that established in the Commission Decision at issue in the present case), the Court distinguished that case from the scenario in *Dumez*. The particularity of the facts in *Tibor-Trans* was that the applicant in that case, an end user of the trucks, did not purchase any trucks from the defendant directly, but did so through a dealership. However, that did not prevent the Court from finding that the applicant's claim in that case concerned *direct* damage, because that damage was found to be the immediate consequence of an infringement of Article 101 TFEU, given that the overcharge resulting from the collusive agreement was passed on to that applicant by the dealers. [21]

37. Such passing-on may occur within a supply chain where the alleged victim acquires the goods (or services) which have been subject to a cartel. [22] That, however, is not claimed to have occurred in the case in the main proceedings. Instead, the applicant appears to present the initial harm suffered by its subsidiaries as its own.

38. These considerations indicate that, as has already been noted, the applicant acts as an *indirect* victim. It seeks compensation for a loss that has already, and in the first place, affected a different legal person. In that respect, I understand the first question of the referring court as enquiring whether it is possible, in spite of that fact, to establish jurisdiction on the basis of the connecting factor of the applicant's registered seat, given that the applicant and the affected subsidiaries form an economic unit.

39. Before addressing that question, it is necessary to explain why the applicant's registered seat is being relied on as the applicable connecting factor in the first place. This, in turn, requires an explanation as to which connecting factors have been identified by the Court as relevant for the purposes of the application of the jurisdictional rule at issue, in the specific context of actions for damages for infringements of Article 101 TFEU.

B. Connecting factors in the context of claims for damages for infringements of Article 101 TFEU

40. In the present section, I will first discuss the Court's relevant case-law (1) before addressing the Commission's request that the Court clarify a specific aspect thereof (2).

[20] See also the description above in point 14 of this Opinion. I recall that the first question refers to harm suffered *solely* by the applicant's subsidiaries. As the Czech Government observes, in essence, the applicant is not seeking damages in its position as shareholder of the affected subsidiaries (or for a different reason) and its claim thus corresponds, as I understand it, to the claims that could be presented by the affected subsidiaries.

[21] Judgment in *Tibor-Trans*, paragraphs 12 to 15 and 29 to 31.

[22] See also recital 41 and Article 12 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).

1. The relevant case-law

41. Returning to the two categories of places that may constitute the 'place where the harmful event occurred' within the meaning of Article 7(2) of Regulation No 1215/2012, as described above in point 28 of this Opinion, the Court has held that the court with jurisdiction pursuant to the *first category* (causal event of the loss) is, in essence, the court of the place where the cartel was definitively formed. [23]

42. As regards the *second* category, namely, the place where the damage occurred (materialised), the governing rule is more complex.

43. The Court first held in the judgment in *CDC Hydrogen Peroxide* that such a place is the victim's *registered seat*. It justified that approach by pointing out that the relevant assessment depends on factors specifically relating to the applicant's (the alleged victim's) situation. [24]

44. That solution was met with some criticism. First, it was pointed out that the Court appears to have accepted the place of the financial damage as the valid connecting factor. [25] Second, it was observed that the victim's registered seat being the connecting factor may not sit well with the requirement of proximity between the court seised and the subject matter of the dispute. It was noted, in particular, that, while it cannot be excluded that some evidence may be available at the victim's registered office, the harm suffered in the given context will typically be established by comparing the cartel prices with the hypothetical market prices, which can generally be established on the basis of economic data relating to the affected market. [26]

45. Be that as it may, the Court's case-law has evolved. In developing its case-law, the Court has emphasised the link between the market affected by the anticompetitive conduct and the place where the claimants allege to have suffered harm. That evolution has been analysed in detail in particular by Advocate General Richard de la Tour in his Opinion in *Volvo*. [27] For the purposes of the present case, it suffices to note that, on the one hand, the judgment in *Tibor-Trans* arguably implied that the place of the materialisation of the damage is the market affected by the anticompetitive conduct at issue (without further specification). [28] On the other hand, the Court clarified in the judgment in *Volvo* (which constitutes the most recent relevant development) that,

[23] Judgment in *CDC Hydrogen Peroxide*, paragraphs 44 and 56 or *flyLAL*, paragraph 49. When such a place cannot be identified but when 'among several agreements that, as a whole, amounted to the unlawful cartel at issue, there was one in particular which was the sole causal event giving rise to the loss allegedly inflicted on a buyer', 'the courts in whose jurisdiction that particular agreement was concluded would have jurisdiction to adjudicate on the loss thereby inflicted upon that buyer'. Judgment in *CDC Hydrogen Peroxide*, paragraph 46.

[24] Judgment in *CDC Hydrogen Peroxide*, paragraphs 52 and 53.

[25] Opinion of Advocate General Bobek in *flyLAL-Lithuanian Airlines* (C-27/17, EU:C:2018:136, 'Opinion in *flyLAL*', point 75) in which he expresses 'strong reservations about that particular aspect of the judgment in *CDC*' and considers that 'the Court may well be called upon at some stage in the future to take another look at the issue'. See also footnote 44 to that Opinion.

[26] See Wurmnest, W., 'International jurisdiction in competition damages cases under the Brussels I Regulation: CDC Hydrogen Peroxide – Case C-352/13, Cartel Damage Claims (CDC) Hydrogen Peroxide SA v. Akzo Nobel NV, Solvay SA/NV, Kemira Oyj, FMC Foret SA, Judgment of the Court (Fourth Chamber) of 21 May 2015, EU:C:2015:335.', *Common Market Law Review*, Vol. 53, Kluwer Law International, 2016, No 1, pp. 225 to 248, at p. 243; Hartley, T.C., 'Jurisdiction in tort claims for non-physical harm under Brussels 2012, Article 7(2)', *International and Comparative Law Quarterly*, Vol. 67, No 4, Cambridge University Press, 2018, pp. 987 to 1003, at p. 996; Nourissat, C. 'Action indemnitaire en droit de la concurrence: quand la Cour de justice instaure un nouveau *forum actoris* au bénéfice des victimes', *Procédures*, No 7, 2015, pp. 19 and 20.

[27] Opinion in *Volvo and Others* (C-30/20, EU:C:2021:322, 'Opinion in *Volvo*'). These developments started in the judgment in *flyLAL*, paragraph 40 and continued with the judgments in *Tibor-Trans*, paragraph 33, and of 24 November 2020, *Wikingerhof* (C-59/19, EU:C:2020:950, paragraph 37).

[28] Judgment in *Tibor-Trans*, paragraphs 32 and 33, referring to the judgment in *flyLAL*, in which, however the affected market corresponded to the Lithuanian market (and more specifically the market for flights to and from the Vilnius airport, judgment in *flyLAL*, paragraphs 38 to 40). See Opinion in *Volvo*, points 77 and 78. See also Nuyts, A., 'Droit international privé européen', *Journal de droit européen*, 2021, pp. 74 to 95, p. 80, point 10.

in the context of an action for damages arising from an agreement on the fixing and increase in prices, 'the place where the damage occurred' is the place, *within the affected market*, where the *goods* subject to the cartel *were purchased*.[29] Such a connecting factor thus appears to identify the place alleged by the applicant to be the place where the specific damage was inflicted upon it, within the broader territory affected by the distortion of competition at issue.[30]

46. The Court has simultaneously reaffirmed, in the same judgment, the ongoing relevance of the alleged victim's registered office, in cases where multiple purchases were made in different places.[31] It follows, in my view, that the connecting factor of the victim's registered office is to be applied on a subsidiary basis, where the multiplicity of purchases made in various places does not allow the court having jurisdiction to be determined on the basis of the main connecting factor of the (single) place of the purchase(s).[32]

47. The Commission is of the view that, although the place of the registered office may be located within the affected market (such as in the situation in *Volvo*), the existing case-law leaves room for doubt as to whether that connecting factor can also be applied when the victim's registered office is located outside the affected market. That would, in its view, go against the principles of proximity, foreseeability of the forum and consistency between the forum and the applicable law. Accordingly, it requests that the Court take this opportunity to exclude such a scenario and confirm that the main connecting factor is, as I understand the argument, that of the affected market.

48. I will address that issue below.

2. The alleged victim's registered office and the affected market

49. First, and as has already been noted, the Court made it clear in the judgment in *Volvo* that the affected market is not necessarily a sufficiently specific connecting factor to establish jurisdiction. Indeed, where the collusive agreement had effects across the entire territory of the European Union, Article 7(2) of Regulation No 1215/2012 does not allow an action for damages to be brought just *anywhere* within the Union.[33] Indeed, the competent court must be established on the basis of a more specific link (primarily the place of the purchase).

50. Second, the facts of the case in *Volvo* were such that both the place of the purchases and the victim's registered seat were located not only within one Member State but also at the same place within the Member State in question. Indeed, the victim's registered seat was in Cordoba (Spain), which was also the place where it bought the trucks which were subject to the cartel. Moreover, Spain, as the Court observed, formed (necessarily) part of the (broader) affected market (covering the entire EEA), as defined in the respective Commission decision.[34]

[29] Judgment in *Volvo*, paragraphs 39 to 40 and 43.

[30] For the distinction between general damage and the specific jurisdictional notion of damage, see Opinion in *flyLAL*, points 31 to 35.

[31] Judgment in *Volvo*, paragraphs 41 to 43.

[32] Judgment in *Volvo*, paragraphs 40 and 43.

[33] See also Opinion in *flyLAL*, points 54 and 55, in which it is observed that such an outcome seems difficult to reconcile with the fact that the jurisdictional rule at issue must be interpreted narrowly.

[34] That decision was, again, the same as that at issue in the present case. Judgment in *Volvo*, paragraph 31.

51. In other words, both types of the specific connecting factors (place of the purchase and the victim's registered seat) related, in any event, to the same affected market (and to the same local and national segments thereof). In that respect, the Court's conclusion appears to be (or at least could be regarded as) framed by the starting premise that both categories of the connecting factors were considered against that factual background. [35]

52. That leaves open the question of whether a contrary solution could be reached in a different factual context, where the applicant's registered seat is situated outside the affected market [36] (and where that market does not cover the entire territory of the European Union).

53. Prima facie, I agree with the Commission that, if the jurisdiction of a court *outside* the market affected by a given anticompetitive conduct were to be established over a claim for damages allegedly resulting *from* such conduct, this would not sit well with the developments discussed above, in which the Court began to emphasise the link between the affected market and the alleged place of harm. In the same vein, in his Opinion in *flyLAL*, Advocate General Bobek found it 'impossible to conceive of jurisdiction being granted, on the basis [of the jurisdictional rule at issue] and the "place where the damage occurred", to courts outside the market affected by the infringement'. [37]

54. That said, and in response to the Commission's request, I find that excluding the relevance of a particular element in absolute terms, in the absence of a concrete set of factual circumstances, is a delicate exercise which should be engaged in with caution, all the more so in the light of the most recent case-law.

55. The scenario that the Commission seeks to exclude may, in my view and after the judgment in *Volvo*, arise in the case of multiple purchases made in different locations in Member State A, by an applicant having its registered seat in Member State B, where Member State B is outside the market affected by the relevant anticompetitive conduct. To prevent that result, the application of the solution devised in *Volvo* to such a cross-border context would have to be excluded. [38]

56. Another example that comes to mind is the situation of indirect purchasers alleging that an overcharge resulting from a collusive agreement has been passed on to them. As already noted, the Court held in the judgment in *Tibor-Trans* that such damage is considered to be direct, for the purposes of the application of Article 7(2) of Regulation No 1215/2012. [39] In that light, it

[35] Judgment in *Volvo*, paragraphs 27 and 43.

[36] As also noted by Lutzi, T., 'Art. 7 Nr. 2 EuGVVO als Regelung der internationalen und örtlichen Zuständigkeit für Kartellschadensersatzklagen: zu EuGH, 15.7.2021, Rs. C-30/20, RH ./. AB Volvo u.a.', *Praxis des internationalen Privat- und Verfahrensrechts*, 2023, Vol. 20, No 1, pp. 20 to 24, at p. 20.

[37] Opinion in *flyLAL*, point 51. However, as noted therein, that case concerned a restriction of competition that was 'exclusionary (loss of sales and market marginalisation), rather than exploitive in nature (charging of inflated cartel prices to customers)'. Ibid., point 76. The present case differs because it concerns the latter scenario.

[38] For the purposes of the present case, I do not consider it necessary to discuss the question of whether the maintaining of the connecting factor of the victim's registered office is, even on a subsidiary basis, entirely convincing. Indeed, one could also consider the analogous application of the solution developed in judgment of 3 May 2007, *Color Drack* (C-386/05, EU:C:2007:262, paragraphs 40 to 42) in the context of multiplicity of places of performance of a contractual obligation (delivery of goods) within one Member State. In that context, the Court concluded that the court having jurisdiction is the court of the place of the principal delivery or, absent such a principal delivery, the court of the place of the applicant's choice (within the respective places of deliveries at issue). See, to that effect, Lehmann, M., 'Jurisdiction in suits for cartel damages: the CJEU draws a new distinction. Case Comment', *European Competition Law Review*, Vol. 43, 2022, No 3, pp. 150 and 151, p. 151. I note nevertheless that in points 98 to 110 of his Opinion in *Volvo* Advocate General Richard de la Tour presents arguments in favour of the renewed attention to be paid to the connecting factor of the victim's registered seat.

[39] Judgment in *Tibor-Trans*, paragraphs 30 and 31. See above, point 36 of this Opinion.

cannot be excluded that the relevant connecting factor could, in the specific circumstances of a complex supply chain, point to a territory outside the market affected by the anticompetitive conduct alleged to have caused the damage. [40]

57. Be that as it may, that question is not, as such, at issue before the referring court, as the Commission acknowledges. Although those developments explain, to some extent, why the applicant invokes its registered seat to establish the jurisdiction of the Hungarian courts, the applicant invokes it in a context that differs significantly from those at issue in the abovementioned cases. The applicant seeks to extend the application of that connecting factor to establish jurisdiction in relation to its claim in which it seeks compensation for harm suffered solely by *other* members of its economic unit.

58. In that light, and to recall, the referring court's first question enquires, in essence, whether the concept of an economic unit can be applied for a purpose other than that of *attributing liability* for infringement of competition law to a given defendant (which is how it has traditionally been applied, as I will explain below), namely for the purpose of *establishing jurisdiction*, independently of the (legal) person having initially suffered the alleged harm.

59. I will examine this next.

C. Harm suffered by a subsidiary: can the parent company's registered office be the 'place where the harmful event occurred'?

60. In order to address the referring court's question, I will first address the concept of an economic unit (1) and explain why the first question referred must be answered in the negative (2). Although that suggested answer makes it unnecessary to reply to the second question referred, I will address that question briefly for the sake of completeness (3).

1. The concept of an economic unit

61. The concept of an economic unit (or single economic unit) has been developed in the Court's case-law to describe, in essence, the term 'undertaking' that appears in Articles 101 and 102 TFEU. That term is considered 'critical' [41] to the area of competition law because that law governs not legal and natural persons but 'undertakings'. [42] In that context, an undertaking can, in some cases, correspond to a natural or legal person but may, in others, comprise several such persons. [43]

[40] Such a supply chain could involve not only a 'simple' scenario ('infringer-intermediary-indirect purchaser'), but also more complicated scenarios involving further indirect purchasers in the downstream markets. See an example of the Polish national practice identified in the *Study to support the preparation of a report on the application of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Ia Regulation)*, Publications Office of the European Union, 2023, p. 434.

[41] Whish, R., Bailey, D., *Competition Law*, Oxford, Oxford University Press, 10th edition, 2021, 1184 p., at p. 84; Van Bael & Bellis, *Competition Law of the European Union*, Wolters Kluwer, 6th edition, lv-1771, 2021, at p. 25; Urraca Caviedes, C., 'Concept of Undertaking and Allocation of Liability for Antitrust Fines', *in* Dekeyser, K., Gauer, C., Laitenberger, J., Wahl, N., Wils, W., Prete, L., *Regulation 1/2003 and EU Antitrust Enforcement. A systematic Guide*, Wolters Kluwer, lxiii-1060, 2023, pp. 539 to 546, at p. 540.

[42] See, to that effect, judgment of 5 September 2019, *European Union* v *Guardian Europe and Guardian Europe* v *European Union* (C-447/17 P and C-479/17 P, EU:C:2019:672, 'the judgment in *European Union* v *Guardian Europe*', paragraph 102 and the cited case-law).

[43] See also the judgment in *Sumal*, paragraph 41 and the case-law cited or judgment of 14 March 2019, *Skanska Industrial Solutions and Others* (C-724/17, EU:C:2019:204, 'the judgment in *Skanska*', paragraph 37).

62. For what is relevant to the present case, it is generally considered that a parent company and its subsidiary form an economic unit when, in essence, the latter is subject to decisive influence exercised by the former and does not act autonomously.[44] In such a situation, the whole group will be considered to be an 'undertaking' to which competition law rules are addressed and by which they, as a whole, must abide, triggering joint and several liability.[45]

63. This has important consequences for the application of certain substantive rules of competition law and affects the attribution of liability for competition law infringements.

64. As regards, first, the substantive-law aspect, and to provide one example, agreements that have been concluded between persons that are part of an economic unit are not covered by Article 101 TFEU[46] because, in essence, coordination within the group cannot affect competition, since there is no competition within the unit to start with.

65. When it comes, second, to enforcement, the concept of an economic unit fundamentally affects the logic governing the attribution of liability for infringement of competition law. More importantly, it provides the Commission (or a national competition authority) with the possibility of holding, in principle, a parent company liable for such an infringement although it was actually committed by its subsidiary.[47] Moreover, the Court clarified that, where a parent company and its subsidiary constitute an economic unit, and where only the parent company has been referred to in the Commission decision and punished for an anticompetitive practice, an action for damages can be brought against either of them, subject to certain conditions.[48] The Court explained, in essence, that the concept of 'undertaking' within the meaning of Article 101 TFEU cannot have a different scope depending on whether it is relied upon in the context of public or private enforcement of competition law.[49]

66. In that regard, the applicant argues that given that infringement of competition law triggers joint and several liability of the entire economic unit, meaning that one member can be held liable for the acts of another member, a mirror (or reverse) image of the same principle must apply, as I understand the argument, to the enforcement of claims for infringement of competition law affecting a member of the economic unit. In the applicant's words (which appear to take inspiration from the Court's findings, paraphrased in the previous paragraph), the concept of an economic unit cannot have a different meaning depending on whether the given undertaking acts as a claimant or a defendant. In the context of the present case, that assertion would mean that the claim pending in the main proceedings can be enforced by a parent company, independently of the fact that the harm was suffered by its subsidiaries. Consequently, to follow the applicant's argument further, the parent company's registered seat must be considered to be the 'place where the harm occurred' for the purposes of the application of Article 7(2) of Regulation No 1215/2012.

[44] The Court described that situation as 'although having a separate legal personality, [the] subsidiary does not determine independently its own conduct on the market, but essentially carries out the instructions given to it by the parent company, having regard especially to the economic, organisational and legal links between those two legal entities'. Judgment of 27 April 2017, *Akzo Nobel and Others* v *Commission* (C-516/15 P, EU:C:2017:314, 'the judgment in *Akzo Nobel*', paragraphs 52 and 53 and the case-law cited), and, more recently, judgment in *Sumal*, paragraph 43.

[45] Judgment in *Sumal*, paragraphs 39 to 44 and the case-law cited.

[46] See, for example, judgment of 17 May 2018, *Specializuotas transportas* (C-531/16, EU:C:2018:324, paragraph 28 and the case-law cited).

[47] Judgment in *Akzo Nobel*, paragraphs 52 and 53.

[48] Judgment in *Sumal*, paragraphs 48 and 51.

[49] Judgments in *Sumal*, paragraph 38 and *Skanska*, paragraph 47.

67. I am of the view that, on a more general level (unrelated to questions of jurisdiction), the Court rejected the idea of 'reverse application' of the concept of an economic unit, when it held that that concept does not apply in the (obviously different) context of an action for damages invoking the extra-contractual liability of the European Union, under the second paragraph of Article 340 TFEU. To explain, in the judgment in *Guardian Europe* v *European Union*, the General Court, in essence, excluded the claim of a parent company to the effect that it had suffered a loss of profit due to the payment of a fine, imposed by the Commission and subsequently partly annulled, where the burden of the fine was, in reality, incurred by its subsidiaries. On appeal, the Court of Justice endorsed the General Court's rejection of a 'reverse' understanding of the concept of an economic unit and explained that an action invoking extra-contractual liability of the European Union is 'governed by general procedural rules, which are … independent of the principles that determine liability in anti-trust law'. [50]

68. Independently of whether a different solution on the merits could be reached in the context of a private action for damages, [51] I note that Advocate General Szpunar recently rejected a similar argument and convincingly explained that the concept of economic unit cannot affect the interpretation of the rules governing the service of legal documents within the Union [52] and does not allow for an action for damages addressed to a parent company to be validly served on that company's subsidiary. [53]

69. Against the background of those more general developments, it remains to be examined whether the concept of an economic unit can be employed in the operation of Article 7(2) of Regulation No 1215/2012 so as to, in essence, grant a *forum actoris* to an alleged indirect victim of conduct infringing Article 101 TFEU.

2. Can the concept of an economic unit affect the scope of the place where the damage occurred?

70. In agreement with the positions expressed by the defendant, the Czech Government, as well as the Commission, I am of the view that that that question should be answered in the negative.

71. First, it follows from the previous sections of this Opinion, that the applicant's position to the contrary simply does not find any support in the Court's case-law.

72. Second, embracing that position would be at odds with the principles underlying the jurisdictional rule at issue. It would hamper its rationale of proximity and the related requirement of individual assessment of the connecting factors (a). In the circumstances of the present case, it would also fail to meet the requirement of predictability of the forum and the objective of consistency between the forum and the applicable law (b).

[50] Judgments in *European Union* v *Guardian Europe*, paragraph 106, and of 7 June 2017, *Guardian Europe* v *European Union* (T-673/15, EU:T:2017:377, paragraphs 99 to 103 and 153).

[51] I recall that in relation specifically to the provision that preceded Article 7(2) of Regulation No 1215/201, the Court has held that 'at the stage at which jurisdiction is determined, the court seised does not examine either the admissibility or the substance of the application in the light of national law, but identifies only [the] points of connection with the State in which that court is sitting that support its claim to jurisdiction under that provision'. Judgment of 16 June 2016, *Universal Music International Holding* (C-12/15, EU:C:2016:449, paragraph 44 and the case-law cited). See also Opinion of Advocate General Szpunar in *AB and AB-CD (Document evidencing property in works of art)* (C-265/21, EU:C:2022:476, points 78 and 80).

[52] Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79).

[53] Opinion of Advocate General Szpunar in *Volvo (Service of summons at the registered office of a subsidiary of the defendant)* (C-632/22, EU:C:2024:31, especially points 50 to 51 and 60). That case, which is still pending before the Court, concerns an action for damages brought in the context of the same truck cartel as that at issue in the present case.

73. Finally, in order to address the applicant's concerns, I will explain that that conclusion does not hamper the efficiency of enforcement of the rights arising from infringement of competition law (c).

(a) Requirement of proximity and individual assessment

74. As I have explained above, the courts whose jurisdiction can be established on the basis of Article 7(2) of Regulation No 1215/2012 are considered to be the best placed 'in particular on grounds of proximity and ease of taking evidence'. [54]

75. From that perspective, I certainly acknowledge the complexity of gathering evidence in cross-border actions for damages, [55] including in the context of claims (or defences) raising arguments that the overcharge resulting from a collusive agreement has been passed on. [56]

76. That said, the location of the parent company's office does not immediately provide any meaningful link, indicating why it would be better suited to that end as compared (especially) to the place of the purchase. [57]

77. In that regard, the solution supported by the applicant would be incompatible with the requirement according to which the connecting factors must be *assessed individually* for each victim. That was clearly stated in the judgment in *CDC Hydrogen Peroxide*, which concerned an action relating to multiple claims that had been assigned to a single company. [58]

78. It is true, as the applicant notes, that in the judgment in *Volvo*, the Court uses the term 'undertaking' to describe the applicant in that case, which was the alleged victim of the anticompetitive practices at issue. However, I do not believe that the use of that term was made to complement the developments discussed above, in which the Court nuanced the definition of 'the place where the damage occurred' to take into account the specificity of competition-law litigation (by adding to the definition of the 'applicant' in that context).

79. First, the use that the Court makes of the term 'undertaking' as described above appears already in the judgment in *CDC Hydrogen Peroxide*, which *predates* those developments. More importantly, as the Commission and the Czech Republic observe, it is clear from a closer reading of the judgments in both *CDC Hydrogen Peroxide* and *Volvo* that the term of undertaking is not used in the specific sense of competition law, but in its common sense and as a synonym of

[54] See above, point 29 of this Opinion.

[55] See, on the complexity and the limits of the assessment, Communication from the Commission on quantifying harm in actions for damages based on breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union (OJ 2013 C 167, p. 19), point 9; Commission, Staff Working Document – Practical Guide on Quantifying Harm in Actions for damages based on breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union (SWD(2013) 205), 11.6.2013, points 16 to 20.

[56] As evidenced by the guidelines comprising 193 points addressed for that purpose to the national courts: Communication of the Commission – 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). That aspect can indeed be used both as a 'sword' and as a 'shield' (ibid., point (4) and points (17) to (19)). This means that, on the one hand, an applicant must be able to establish harm when it shows that, although not acting as a direct purchaser, the resulting overcharge has been passed on to it. On the other hand, the defendant may fight that allegation by showing that the applicant has passed that overcharge on to a third party. See Chapter IV of Directive 2014/104 on 'the passing-on of overcharges'.

[57] This, of course, is without prejudice to the role of the defendant's domicile, which, however, is not the scenario discussed here. See the provisions governing the disclosure of evidence laid down in Chapter II of Directive 2014/104. See also recitals 15 and 16 thereof.

[58] Judgment in *CDC Hydrogen Peroxide*, paragraphs 52 and 55.

'company' or 'legal person'.[59] Besides, reaching a different conclusion would be in direct conflict with the need for an individual assessment, which was one of the main findings in the judgment in *CDC Hydrogen Peroxide*, and which was later recalled in the judgment in *Volvo*.[60]

80. Moreover, as the defendant, the Czech Government and the Commission note, the same 'individual approach' to the definition of the alleged victim of anticompetitive conduct was adopted by the EU legislature in Directive 2014/104.[61] The adoption of that instrument has been perceived, in essence, as an important milestone in contributing to the efficiency of private enforcement of rights arising from infringements of competition law.[62] To that effect, that directive sets out rules coordinating, inter alia, the enforcement of the competition rules in actions for damages to ensure that anyone who has suffered harm caused by an infringement of competition law can effectively exercise the right to claim full compensation from the responsible undertaking.[63]

81. In that regard, it is significant that the EU legislature did not deem it appropriate to define the term 'injured party'[64] more broadly to include not only direct but also indirect victims.[65] If that was not deemed necessary in the context of an instrument specifically designed to enhance private enforcement of competition law, I fail to see any reason to adopt such an approach in the context of Regulation No 1215/2012, which, as the applicant itself in essence observes, is a generally applicable act governing any kind of dispute falling within its scope (especially when such an approach would hamper the aspects of the operation of the jurisdictional rule at issue to which I have just referred as well as those which I address below).

(b) The objective of consistency between the forum and the applicable law and the requirement of high predictability of the forum

82. In the case-law referred to above, the Court stressed the relevance of consistency between the competent court and the applicable law, on the one hand, and the requirement of predictability of the forum, on the other.

[59] See judgment in *CDC Hydrogen Peroxide*, for example in paragraphs 35 or 53 to 55 (or paragraphs 9 and 10 as regards the designation of the company CDC, acting as the applicant, and in respect of which the terms 'company' and 'undertaking' are used interchangeably; I note that the French version of that judgment uses the equivalent of the term company ('société') in paragraphs 9 and 10). See also judgment in *Volvo*, paragraph 42.

[60] Judgments in *CDC Hydrogen Peroxide*, paragraph 52, and in *Volvo*, paragraph 41.

[61] See footnote 22 above.

[62] See, for example, Biondi, A., Muscolo, G., Nazzini, R., *After the Damages Directive: Policy and Practice in the EU Member States and the United Kingdom*, Alphen aan den Rijn, Wolters Kluwer Law International, 2022, xl-626 p., at p. 6; Kirst, P. *The impact of the damages directive on the enforcement of EU competition law: a law and economics analysis*, Cheltenham, Northampton: Edward Elgar Publishing, 2021, 416 p., at p. 31; Rodger, B., Sousa Ferro, M., Marcos, F., *The EU Antitrust Damages Directive: Transposition in the Member States*, Oxford, Oxford University Press, 2018, 560 p. at p. 55.

[63] See, respectively, the second and first paragraphs of Article 1 of Directive 2014/104.

[64] Defined as 'a *person* that has suffered harm caused by an infringement of competition law' in point 6 of Article 2 of Directive 2014/104. By contrast, point 2 of Article 2 thereof defines the 'infringer' as 'an *undertaking* or association of undertakings which has committed an infringement of competition law'. In addition, Article 3(1) states that 'Member States shall ensure that any *natural or legal person* who has suffered harm caused by an infringement of competition law is able to claim and to obtain full compensation for that harm'. Emphasis added. In the same vein, recital 13 states that 'the right to compensation is recognised for any natural or legal person – consumers, undertakings and public authorities alike …'. Again, the term 'undertakings' describes legal persons as being different to public authorities.

[65] Without prejudice to the situation of indirect purchasers to whom an overcharge was passed on. See Chapter IV of Directive 2014/104 and points 36 and 37 above.

83. In respect of the first point, the Court observed that determining the place where the damage occurred as being located within the affected market satisfied the objective of consistency between the applicable law and the competent court, as expressed in recital 7 of the Rome II Regulation, given that pursuant to that regulation, the law applicable to actions for damages arising from a breach of competition law is that of the country where the market is, or is likely to be, affected.[66]

84. In respect of the second point, the Court justified, in the judgment in *Volvo*, the (subsidiary) connecting factor of the victim's registered office by reference to the fact that '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'.[67]

85. In addition to the issues raised in the previous subsection with respect to proximity and the individual assessment, the reliance on the parent company's registered seat in the circumstances of the present case appears deficient on both accounts.

86. It is true that the applicant's registered office is located within the affected market as defined by the Commission Decision (which is the natural consequence of the pan-European scope of the cartel at issue). However, I have already explained that in accordance with the judgment in *Volvo*, a more specific factor such as the place of purchase or the direct victim's registered seat needs to be applied.

87. It follows from the case file that the respective purchases by the different subsidiaries were made in several Member States (including, but not limited to, Hungary)[68] whose law, thus, becomes applicable by virtue of Article 6(3)(a) of the Rome II Regulation. In those circumstances, the objective of ensuring consistency with the applicable law cannot be attained (if the claims concerning harm having occurred outside Hungary are to be adjudicated upon by the Hungarian courts).

88. As regards predictability of the forum, if jurisdiction were to be determined on the basis of the place of the parent company's registered office, this would have the associated risk of turning the resulting forum into a moving target. Indeed, any time there is a transaction that alters which person has control over a given subsidiary, the court having jurisdiction in the present context would change, depending on the seat of the new parent company.[69] The second question referred illustrates that risk rather well, as it reveals that some of the affected subsidiaries did not, at the time the purchases were made, belong to the applicant's group. In that respect, although one could suggest that, when it comes to determining the specific place 'where the harm occurred', the pursuit of the predictability of the forum becomes to some extent illusory (in the context of a pan-European cartel), that is not a reason to abandon that pursuit altogether nor to add an additional layer of uncertainty to it.

89. With that clarified, I should still address the applicant's argument that precluding the application of the concept of an economic unit in the present circumstances seriously undermines the possibility for the victims of anticompetitive conduct to enforce their rights.

[66] 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) ('the Rome II Regulation'). Recital 7 thereof states that 'the substantive scope and the provisions of this Regulation should be consistent with [Regulation No 1215/2012] …'. See judgments in *flyLAL*, paragraph 41, in *Tibor-Trans*, paragraph 35, and in *Volvo*, paragraph 32.

[67] Judgment in *Volvo*, paragraph 42, see also judgments in *FlyLAL*, paragraph 40, and *Tibor-Trans*, paragraph 34.

[68] The applicant adds that those purchases occurred in Hungary, Croatia, Italy, Austria and Slovakia.

[69] Moreover, as the defendant argues, it cannot be excluded that, in anticipation of future litigation, the future claimant could create a new holding company in a different Member State, thus effectively choosing the forum for its claim.

(c) Efficiency of enforcement of rights

90. The applicant explains at length the difficulties that arise, in its view, for a victim of anticompetitive conduct when it comes to cross-border enforcement of the related rights. It observes, inter alia, that the infringers systematically hamper that enforcement by, in particular, opposing international jurisdiction of the courts seised. It is of the view, in essence, that those difficulties may be avoided (in the specific case of the truck cartel at issue) if the jurisdiction is centralised in respect of all the harm suffered in different places by different members of an economic unit and if that centralised jurisdiction is based on the parent company's registered seat. The current situation affects, in its view, the efficiency of the enforcement of the underlying rights because a victim running business in different Member States (such as itself, if I follow the argument correctly), must start litigation in five different Member States for the sole reason that the trucks were acquired by its subsidiaries. Moreover, it refers to the increased costs that such fragmented litigation involves and observes that because the majority of the infringers are established in founding Member States (or in those that have acceded 'first'), the current rules mean that victims must start the litigation in those States, although they themselves may be established in the other Member States.

91. To address, first, that last observation, it seems to me that the applicant essentially criticises, if I follow the argument correctly, the main rule of the defendant's domicile governing Regulation No 1215/2012. Indeed, that rule inconveniences the claimants (any claimant for that matter) because it is the claimant who must 'travel' to the defendant's domicile, and comply with the applicable procedural rules (and not vice versa). This is, nevertheless, the way in which Regulation No 1215/2012 has been drafted (in accordance with a long-established rule existing across national legal systems).[70]

92. It should be observed, second, that the latter regulation reverses that general rule in respect of certain categories of claimants, regarded as weaker parties, by providing them with stronger protection in the form of the possibility of suing in the place of their domicile (or work).[71] Alleged victims of anticompetitive conduct are, as such, not among those categories (unless they act, in a given case, as consumers). This status quo is independent of the fact that there is a public interest in ensuring the observance of competition law and that to promote that interest, the EU legislature decided to adopt certain common rules in the field of private enforcement of that law.[72] What is relevant to the present case is that that choice has no equivalent in the 'protective' jurisdictional rules as currently laid down in Regulation No 1215/2012.

93. Third, in contrast to those protective rules, the jurisdictional rule at issue relies on a fundamentally different rationale, as has been explained above. It follows that the respective interests of claimants and defendants must be considered to be equivalent. Moreover, as an exception to the general rule, that jurisdictional rule must interpreted strictly.

[70] For instance, Lazić, V., Mankowski, P., *The Brussels I-bis regulation: a handbook and practical guide*, Edward Elgar Publishing, Northampton, 2023, 602 p., see point 1.187 with further references.

[71] This is the case of the rules of jurisdiction set out in Sections 3 to 5 of Chapter II of Regulation No 1215/2012 concerning the insured, consumers and employees and which offer to those parties the possibility of suing in the place of their domicile or in the place where they, in essence, carry out their work. Judgments of 25 October 2012, *Folien Fischer and Fofitec* (C-133/11, EU:C:2012:664, paragraph 46 and the case-law cited), and of 17 October 2017, *Bolagsupplysningen and Ilsjan* (C-194/16, EU:C:2017:766, paragraph 39).

[72] I recall that that regime applies not only to follow-on actions, such as that at issue in the present case (which rely on a previous administrative decision establishing an infringement), but also to stand-alone actions, where such infringement has to be established.

94. Fourth, in the judgment in *CDC Hydrogen Peroxide*, the Court, nevertheless, went as far as to create a *forum actoris* for the (direct) victim of a price cartel and that *forum actoris* was confirmed, on a subsidiary basis in the judgment in *Volvo*. As the Commission notes, the Court also held in *CDC Hydrogen Peroxide* that the jurisdiction of the seat of the victim can rule upon the entirety of the damage claimed [73] (which appears to be the logical consequence of choosing the victim's registered seat as the connecting factor).

95. Fifth, as has already been explained and as the Commission points out, the victim can initiate the action not only against the parent company that is the addressee of the respective Commission decision establishing an infringement but also against a subsidiary within that parent company's economic unit, subject to certain conditions. [74] That creates the possibility of an additional forum (depending on the location of the subsidiary) and may therefore further facilitate enforcement.

96. Finally, if a given claimant considers the centralisation of jurisdiction to be its first priority, universal remedy is always offered before the courts of the defendant's seat. That choice certainly entails the inconvenience of 'travel' but cannot be criticised for leading to fragmented litigation.

97. In those circumstances, I fail to see in what way the current jurisdictional rules fundamentally prevent the alleged victims of anticompetitive conduct from asserting their rights, or the flaw in the current regime of Regulation No 1215/2012 which makes it necessary to apply the 'reverse' concept of an economic unit to extend the scope of the concept of the 'place where the harmful event occurred', within the meaning of Article 7(2) of Regulation No 1215/2012 (and, more specifically, the one of the place where the damage occurred within the meaning of the Court's case-law as explained above).

98. In the light of the foregoing considerations, I conclude that the term 'the place where the harmful event occurred', within the meaning of Article 7(2) of Regulation No 1215/2012, does not cover the registered office of the parent company that brings an action for damages for the harm caused solely to that parent company's subsidiaries by the anticompetitive conduct of a third party, and where it is claimed that that parent company and those subsidiaries form part of the same economic unit.

3. Second question referred: relevance of the time of the purchases (and of the time of the acquisition of the subsidiaries)

99. Given my conclusion above, there is no need to address the second question referred by which the referring court enquires whether the possibility for a parent company to rely on its registered seat – and on the concept of an economic unit – to establish jurisdiction is affected by the fact that some of the affected subsidiaries were acquired by the applicant only after they had paid the artificially increased prices and suffered the corresponding loss.

100. That said, the merits of that question may be, in my view, addressed rather swiftly. In that respect, I agree with the applicant that that question touches upon the substance of the claim and is thus irrelevant for the stage of the determination of jurisdiction. [75]

[73] Judgment in *CDC Hydrogen Peroxide*, paragraph 54. See, on that point, Hartley, T.C., op. cit., cited above in footnote 26, at p. 997 and Wurmnest, W., op. cit., cited above in footnote 26, p. 242. See also Opinion in *Volvo*, point 101 and footnote 118.

[74] See above, point 65 of this Opinion.

[75] See references in footnote 51 above.

101. Indeed, if it were to be admitted that the concept of an economic unit transforms the applicant's registered office into the applicable connecting factor for the purposes of Article 7(2) of Regulation No 1215/2012, it would have to be observed that the issue raised by the second question relates to the extent of the damages which the applicant can claim (namely whether it can also claim such damage successfully for the loss suffered by the subsidiaries prior to their acquisition by the applicant). That aspect thus relates to the merits of the case, and not to the issue of jurisdiction.

V. Conclusion

102. In the light of the above, I propose that the Court answer the questions referred for a preliminary ruling by the Kúria (Supreme Court, Hungary) 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

is to be interpreted as meaning that the term 'the place where the harmful event occurred' does not cover the registered office of the parent company that brings an action for damages for the harm caused solely to that parent company's subsidiaries by the anticompetitive conduct of a third party, and where it is claimed that that parent company and those subsidiaries form part of the same economic unit.