Reports of Cases

Case C-393/23

Athenian Brewery SA
and
Heineken NV
v
Macedonian Thrace Brewery SA

(Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands))

Judgment of the Court (Fifth Chamber) of 13 February 2025

(Reference for a preliminary ruling – Judicial cooperation in civil and commercial matters – Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters – Regulation (EU) No 1215/2012 – Special jurisdiction – Article 8(1) – Multiple defendants – Claims 'so closely connected' that it is expedient to hear and determine them together – Article 102 TFEU – Concept of an 'undertaking' – Parent and subsidiary companies – Infringement committed by the subsidiary – Presumption of dominant influence exercised by the parent company – Joint and several liability – Decision of a national competition authority – Actions for compensation)

1. *Judicial cooperation in civil matters – Jurisdiction and the enforcement of judgments in civil and commercial matters – Regulation No 1215/2012 – Special jurisdiction – Multiple defendants – Jurisdiction of the court of one of the co-defendants – Restrictive interpretation – Condition – Connection – Concept of related actions*
(European Parliament and Council Regulation No 1215/2012, Arts 4 and 8(1))

(see paragraphs 21-27)

2. *Competition – EU rules – Infringements – Attribution – Parent company and subsidiaries – Economic unit – Criteria for assessment – Presumption of dominant influence exercised by parent company over its wholly owned or almost wholly owned subsidiaries – Rebuttable – Natural or legal person alleging that he or she has suffered harm as a result of a subsidiary's participation in an infringement of EU competition law – Claim brought against the parent company – Applicability of the presumption*
(Art. 102 TFEU, European Parliament and Council Regulation No 1215/2012, Art. 8(1))

(see paragraphs 37-40)

3. *Judicial cooperation in civil matters – Jurisdiction and the enforcement of judgments in civil and commercial matters – Regulation No 1215/2012 – Special jurisdiction – More than one*

defendant – Jurisdiction of the court of one of the co-defendants – Determination by the national courts of their international jurisdiction – Taking of evidence – Scope (European Parliament and Council Regulation No 1215/2012)

(see paragraphs 41-47, operative part)

Résumé

The Court of Justice, hearing a request for a preliminary ruling referred to it by the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), develops its case-law concerning the rule of special jurisdiction under Article 8(1) of Regulation No 1215/2012,[1] according to which a person domiciled in a Member State may be sued, where he or she is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are 'so closely connected' that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings. The context is an action seeking to have a parent company, domiciled in the Netherlands, and its subsidiary, domiciled in another Member State, held jointly and severally liable to pay compensation for the damage suffered as a result of an infringement, by that subsidiary, of the competition rules, brought by the victim of that infringement before the court in the place where the parent company is domiciled. The Court is asked whether that latter court may, to assess whether there is that close connection and establish its international jurisdiction, rely on the rebuttable presumption that,[2] in the particular case in which a parent company holds, directly or indirectly, all or almost all of the capital in a subsidiary which has committed an infringement of the competition rules, that parent company actually exercises a decisive influence over the conduct of its subsidiary and may be held responsible for the infringement on the same basis as that subsidiary ('the presumption of the parent company's decisive influence and liability').

The breweries Athenian Brewery SA ('AB') and Macedonian Thrace Brewery SA ('MTB'), established in Greece, operate on the Greek beer market. AB is part of the Heineken group, the parent company of which, Heineken NV, established in Amsterdam (Netherlands), sets the strategy and objectives of the group, but does not itself carry on any operational activities in Greece. Between September 1998 and 14 September 2014, Heineken indirectly held approximately 98.8% of the shares in the capital of AB.

By a decision of 19 September 2014, the Greek competition authority found that AB had abused its dominant position on the Greek beer market during the abovementioned period and that that conduct constituted a single continuous infringement of Article 102 TFEU and the Greek law on the protection of competition. Despite MTB's request for Heineken to be included in the investigation, the competition authority stated, in its decision, that there was no evidence of Heineken's direct involvement in the infringements and that the specific circumstances did not support the assumption that Heineken had exercised a decisive influence over AB.

MTB made an application to the rechtbank Amsterdam (District Court, Amsterdam, Netherlands) for AB and Heineken to be held jointly and severally liable for the abovementioned infringement and, accordingly, ordered jointly and severally to compensate MTB for the entire loss which it had suffered as a result of that infringement.

[1] 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] Recognised in the case-law of the Court.

The District Court, Amsterdam held that it had jurisdiction to decide on the claims brought against Heineken under Article 4(1) of Regulation No 1215/2012, since that company's seat is in Amsterdam. By contrast, it held that it did not have jurisdiction to decide on the claims brought against AB, on the basis that the close-connection requirement for the purposes of Article 8(1) of the same regulation, between the claims brought against Heineken and AB, was not satisfied.

The appeal court set aside the judgment of the District Court, Amsterdam and referred the case back to that court for a new examination and a decision on the merits. That appeal court of appeal held that those companies were in the same factual situation and it could not be excluded with certainty that they formed one and the same undertaking.

AB and Heineken brought an appeal on a point of law before the Supreme Court of the Netherlands, which is the referring court. That court asks, in essence, whether, in the circumstances of the case in the main proceedings,[3] Article 8(1) of Regulation No 1215/2012 precludes the court for the place of residence of the parent company seised of those claims from relying exclusively, in order to establish its international jurisdiction, on the presumption of the parent company's decisive influence and liability.

Findings of the Court

The Court notes, first of all, that the rule of special jurisdiction laid down in the abovementioned provision, because it derogates from the principle that jurisdiction be based on the defendant's domicile, must be given a strict interpretation.

Consequently, in order for Article 8(1) of Regulation No 1215/2012 to apply, it is necessary to ascertain whether, between claims brought by the same applicant against various defendants, there is a connection of such a kind that it is expedient to determine those actions together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings. In order for judgments to be regarded as such, there must be a divergence in the outcome of the dispute, which arises in the context of the same situation of fact and law.[4]

It is for the referring court to assess, having regard to all of the relevant facts of the case before it, whether such a situation exists and to satisfy itself that the claims brought against the sole co-defendant whose domicile gives rise to the jurisdiction of the court seised are not intended artificially to satisfy the conditions for the application of Article 8(1) of Regulation No 1215/2012.

The Court may nevertheless provide the points of interpretation of EU law which are useful for the purposes of that assessment. It has thus held that the requirement concerning the existence of the same situation of fact and law must be regarded as satisfied where several undertakings that participated in a single and continuous infringement of EU competition rules, established by a decision of the European Commission, are subject, as defendants, to claims based on their participation in that infringement, despite the fact that the defendants in question have, in different places and at different times, participated in the implementation of the cartel concerned.[5]

[3] Characterised by the fact that Heineken did not itself carry out operations on the Greek beer market, the action brought against it by MTB was based solely on the decisive influence that it exercised over AB's conduct and Heineken disputed having exercised such an influence.

[4] Judgment of 21 May 2015, *CDC Hydrogen Peroxide* (C-352/13, EU:C:2015:335, paragraph 20).

[5] Judgment in *CDC Hydrogen Peroxide* (cited above, paragraph 21).

That same finding must also be made in the case of claims based on a company's participation in an infringement of EU competition law brought against that company and against its parent company, in which it is alleged that they together formed one and the same undertaking.

Where it is established that a company and its subsidiary are part of the same economic unit and thus form a single undertaking, within the meaning of EU competition law, it is the very existence of that economic unit which committed the infringement that decisively determines the liability of one or other of the companies making up that undertaking for the anticompetitive conduct of the latter. The concepts of an 'undertaking' and an 'economic unit' automatically entail the application of joint and several liability amongst the entities of which the economic unit is made up at the time that the infringement was committed.

In that regard, the fact that, as in the present case, the joint and several liability of the parent company and its subsidiary for the infringement of EU competition rules was not established in a final Commission decision does not preclude the application of Article 8(1) of Regulation No 1215/2012 to such claims.

In the present case, the referring court has doubts concerning the implications, with respect to the possible application of the abovementioned provision, of the fact, first, that an applicant relies, in support of its claims against a company which participated in an infringement of EU competition law and against the company which holds all or almost all of the capital of the first company, on the presumption of the parent company's decisive influence and liability and, secondly, that the parent company disputes having exercised a decisive influence over its subsidiary and having formed an economic entity with it.

The Court notes, in the first place, that that presumption was developed in the context of challenges, by the undertakings concerned, to Commission decisions finding that they had participated in an infringement of EU competition rules and imposing fines on them under Regulation No 1/2003.[6] In that context, the Court has specified that it is sufficient for the Commission to prove that all or almost all of the capital of a subsidiary is held by its parent company in order for it to be presumed that the parent exercises decisive influence over the commercial policy of that subsidiary. It will thereafter be possible to hold the parent company jointly and severally liable for the payment of the fine imposed on its subsidiary, unless the parent company, which has the burden of rebutting that presumption, adduces sufficient evidence to show that its subsidiary acts independently on the market.[7]

The Court points out that that presumption may also apply in the case of a claim brought by a natural or legal person who alleges that he or she has suffered harm as a result of a company's participation in an infringement of EU competition law, brought against another company which holds all or almost all of the capital of the former.[8]

[6] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1).

[7] Judgment of 26 October 2017, *Global Steel Wire and Others* v *Commission*, C-457/16 P and C-459/16 P to C-461/16 P, EU:C:2017:819, paragraph 84 and the case-law cited).

[8] The concept of 'undertaking', within the meaning of EU competition law cannot have a different scope with regard to the imposition of fines by the Commission under Article 23(2) of Regulation No 1/2003 as compared to actions for damages for infringement of EU competition rules.

In the second place, it is apparent from the Court's case-law that, at the stage at which international jurisdiction is determined, the court seised examines neither the admissibility nor the substance of the claim, but identifies only the connecting factors with the State in which that court is situated which are capable of providing a basis for its jurisdiction under Article 8(1) of Regulation No 1215/2012.

Consequently, in a situation such as that in the main proceedings, the court seised may confine itself to verifying that a decisive influence by the parent company over its subsidiary cannot be excluded a priori in order that that court may declare itself competent in so far as permitted under national law.

That will be the case if the applicant relies on the presumption of the parent company's decisive influence and liability. However, verifying that the claim against the parent company is not artificial presupposes that the defendants are able to rely on firm evidence to suggest that the parent company does not hold directly or indirectly all or almost all of the capital of its subsidiary, or that that presumption should nevertheless be rebutted.

In those circumstances, Article 8(1) of Regulation No 1215/2012 does not preclude – in claims for a parent company and its subsidiary to be held jointly and severally liable to pay compensation for the damage suffered as a result of an infringement, by that subsidiary, of the competition rules – the court for the place of residence of the parent company seised of those claims from relying, in order to establish its international jurisdiction, on the presumption of the parent company's decisive influence and liability, provided that the defendants are not deprived of the possibility set out above.