



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

29 July 2019*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Special jurisdiction — Article 7(2) — Tort, delict or quasi-delict — Place where the harmful event occurred — Claim for compensation for damage caused by a cartel found to be contrary to Article 101 TFEU and Article 53 of Agreement on the European Economic Area)

In Case C-451/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Győri Ítéltábla (Győr Regional Court of Appeal, Hungary), made by decision of 19 June 2018, received at the Court on 10 July 2018, in the proceedings

Tibor-Trans Fuvarozó és Kereskedelmi Kft.

v

DAF Trucks NV,

THE COURT (Sixth Chamber),

composed of C. Toader (Rapporteur), President of the Chamber, A. Rosas and M. Safjan, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- DAF Trucks NV, by M. Boronkay, ügyvéd, and by B. Winters and J.K. de Pree, advocaten,
- the Hungarian Government, by M.Z. Fehér and Z. Wagner, acting as Agents,
- the European Commission, by M. Heller and K. Talabér-Ritz and by G. Meessen, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Hungarian.

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 Tibor-Trans Fuvarozó és Kereskedelmi Kft. ('Tibor-Trans'), a company governed by Hungarian law and DAF Trucks NV, a company governed by Dutch law, concerning an action for damages allegedly caused by an infringement of Article 101 TFEU and Article 53 of the Agreement on the European Economic Area (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)], Regulation (EC) No 44/2001 [of the Council 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 the 1968 Brussels Convention and of the Regulations replacing it.'
- 4 Under Chapter I of Regulation No 1215/2012, entitled 'Scope and definitions', Article 1 thereof provides:

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

- 5 Chapter II of that regulation, entitled 'Jurisdiction', contains, inter alia, Section 1, entitled 'General provisions', and Section 2 entitled 'Special jurisdiction'. Article 4(1) of that regulation, which also appears 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.'

- 6 Article 7 of Regulation No 1215/2012, which is set out in Section 2 of Chapter II of that regulation, is worded as follows:

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

...

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

...'

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

- 7 On 19 July 2016, the European 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), a summary of which was published in the *Official Journal of the European Union* of 6 April 2017 (OJ 2017 C 108, p. 6, 'the decision at issue').
- 8 By the decision at issue, the Commission found there to be a cartel among fifteen international truck manufacturers, including DAF Trucks, in respect of two product categories, that is to say, trucks weighing between 6 and 16 tonnes or weighing more than 16 tonnes, whether rigid trucks or tractor trucks.
- 9 According to that decision, the cartel took the form of a single and continuous infringement of Article 101 TFEU and of Article 53 of the EEA Agreement, which occurred, as far as three of the participating companies were concerned, between 17 January 1997 and 20 September 2010 and, as far as the 12 other participating companies, including DAF Trucks, were concerned, between 17 January 1997 and 18 January 2011. The infringement consisted of collusive arrangements on pricing and gross price increases in the European Economic Area (EEA) for trucks and to the timing and the passing on of costs for the introduction of emission technologies for those trucks required by EURO 3 to 6 standards.
- 10 It follows from the decision at issue that, until 2004, the discussions relating to prices, price increases and the introduction of new emission standards took place at the registered offices of the addressees of that decision and that from at least August 2002 onwards, discussions took place via German subsidiaries which, to varying degrees, reported to their head offices.
- 11 The Commission held that the infringement of Article 101 TFEU extended to the whole of the EEA and lasted from 17 January 1997 until 18 January 2011. Consequently, it imposed fines on all participating entities, including DAF Trucks, with the exception of one entity which was granted immunity.
- 12 As is apparent from the file before the Court, Tibor-Trans is a national and international freight transport company which, from the start of 2000 and until 2008, increasingly invested in the purchase of new trucks. As an end user, Tibor-Trans could not make a direct purchase from the manufacturers,

as it was obliged to use dealerships established in Hungary. It received financing from leasing companies, also established in Hungary, by means of financial leasing agreements involving definite transfer of ownership, and the finance company added the leasing costs and its own profit margin onto the price agreed by Tibor-Trans. The right of ownership over the vehicles was usually transferred to Tibor-Trans upon expiry of the leasing agreement, following performance of the obligations stemming therefrom.

- 13 It is not disputed in the case in the main proceedings that Tibor-Trans never purchased trucks directly from DAF Trucks.
- 14 It follows from the request for a preliminary ruling that other companies governed by Hungarian law also made purchases during the period referred to by the decision at issue. On 4 April 2007, those companies were taken over by Tibor-Trans which therefore became the successor to those companies' rights and obligations.
- 15 On 20 July 2017, Tibor-Trans brought an action before the Győri Törvényszék (Győr Court, Hungary) for non-contractual damages against DAF Trucks allegedly resulting from the fact that it acquired trucks at a price distorted by the collusive arrangements in which DAF Trucks had participated.
- 16 Tibor-Trans claims that the Hungarian courts derive their international jurisdiction to hear the case in the main proceedings from Article 7(2) of Regulation No 1215/2012, as interpreted in the case-law of the Court, in particular in the judgment of 21 May 2015, *CDC Hydrogen Peroxide* (C-352/13, EU:C:2015:335), according to which, in the case of an action for damages brought against defendants domiciled in various Member States as a result of a single and continuous infringement of Article 101 TFEU and of Article 53 of the EEA Agreement, which has been established by the Commission, in which the defendants participated in several Member States, at different times and in different places, each alleged victim can choose to bring an action before the courts of the place where its own registered office is located.
- 17 DAF Trucks disputes the international jurisdiction of the Hungarian courts and takes the view that the particular circumstances of the case in the main proceedings mean that the judgment of 21 May 2015, *CDC Hydrogen Peroxide* (C-352/13, EU:C:2015:335), is not relevant in the present case. In that regard, DAF Trucks submits, first, that the collusive meetings took place in Germany, which should entail the jurisdiction of the German courts and, second, that it never entered into a direct contractual relationship with Tibor-Trans, with the result that it could not reasonably expect to be sued in the Hungarian courts.
- 18 By decision of 19 April 2018, the Győri Törvényszék (Győr Court) found that it did not have jurisdiction in the case in the main proceedings, by giving preference, as the connecting factor for the purposes of applying Article 7(2) of Regulation No 1215/2012, to the place of the event giving rise to the damage, that is to say, to the place where the collusive arrangements were put in place.
- 19 On appeal against that decision, the referring court is uncertain as to the applicability in the case in the main proceedings, by analogy, of the reasoning derived from the judgment of 21 May 2015, *CDC Hydrogen Peroxide* (C-352/13, EU:C:2015:335) in the absence of a direct contractual relationship between the parties. It also has reservations concerning the possibility that that judgment could lead to the establishment of a broad *forum actoris* rule, which would be contrary to the objective pursued by Regulation No 1215/2012.
- 20 The request for a preliminary ruling contains no evidence to support the conclusion that, in the case in the main proceedings, it is disputed that the Hungarian courts cannot derive their international jurisdiction from the place of the causal event giving rise to the alleged damage because none of the

collusive arrangements constituting an infringement under Article 101 TFEU took place in Hungary. The referring court therefore asks whether the Hungarian courts may, however, base their jurisdiction on the place where the alleged damage occurred.

- 21 In those circumstances, the Győri Ítéltábla (Győr Regional Court of Appeal, Hungary) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Should the rule on special jurisdiction laid down in Article 7(2) of Regulation ... No 1215/2012 ... be interpreted as meaning that the court of a Member State has jurisdiction as the court for the ‘place where the harmful event occurred’, where:

- the domicile or principal place of economic activity or of the financial interests of the applicant [in the main proceedings] who claims to have suffered the damage or loss is in the State in question;
- the claim brought by the applicant [in the main proceedings] — which is against a single defendant, namely a truck manufacturer domiciled in another Member State ... — is based on an infringement [established] by [a decision of] the European Commission under Article 101(1) [TFEU], consisting of collusive arrangements on pricing and gross price increases in the EEA, and the decision is addressed to other parties in addition to the defendant [in the main proceedings];
- the applicant [in the main proceedings] only purchased trucks manufactured by other undertakings involved in the cartel;
- there is nothing to show that any of the meetings that were found to restrict competition were held in the [Member] State of the court seised;
- the applicant [in the main proceedings] generally purchased the trucks — in its view, at distorted prices — in the [Member] State of the court seised, and to that end it entered into financial leasing agreements involving definite transfer of ownership with undertakings that operated in that State but, according to its own statements, the applicant negotiated directly with the vehicle dealerships, and the lessor added its own profit margin and the leasing costs onto the prices agreed by the applicant, and the right of ownership over the vehicles was transferred to the applicant on completion of the leasing agreement, when it expired?’

Consideration of the question referred

- 22 By its question, the referring court asks, in essence, whether Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that, in an action seeking compensation for damage caused by an infringement of Article 101 TFEU, consisting, inter alia, of collusive arrangements on pricing and gross price increases for trucks, the place where the victim claims to have suffered that damage may be considered to be ‘the place where the harmful event occurred’, even where the action is directed against a participant in the cartel at issue with whom that victim had not established contractual relations.
- 23 As a preliminary point, it must be noted, in the first place, that it is settled case-law 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 the recognition 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, to that effect, judgments of 31 May 2018, *Nothartová*, C-306/17, EU:C:2018:360,

paragraph 18; of 15 November 2018, *Kuhn*, C-308/17, EU:C:2018:911, paragraph 31, and of 28 February 2019, *Gradbeništvo Korana*, C-579/17, EU:C:2019:162, paragraph 45 and the case-law cited).

- 24 In the second place, it should be noted that an action seeking legal redress for damage resulting from alleged infringements of EU competition law, such as that in the main proceedings, comes within the definition of ‘civil and commercial matters’, within the meaning of Article 1(1) of Regulation No 1215/2012, and, therefore, falls within the scope of that regulation (see, to that effect, judgment of 23 October 2014, *flyLAL-Lithuanian Airlines*, C-302/13, EU:C:2014:2319, paragraph 38).
- 25 In the third place, it should also be observed that, as has repeatedly been held by the Court in its case-law concerning Article 7(2) of Regulation No 1215/2012, the notion of ‘place where the harmful event occurred’ is intended to cover both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the applicant, in the courts for either of those places (judgments of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 45; of 16 June 2016, *Universal Music International Holding*, C-12/15, EU:C:2016:449, paragraph 28; and of 5 July 2018, *flyLAL-Lithuanian Airlines*, C-27/17, EU:C:2018:533, paragraph 28 and the case-law cited).
- 26 In the present case, the request for a preliminary ruling contains no evidence to support the conclusion that it is disputed that the Hungarian courts cannot derive their international jurisdiction to hear the case in the main proceedings from the place of the causal event giving rise to the alleged damage because none of the collusive arrangements constituting an infringement under Article 101 TFEU took place in Hungary. The question referred relates solely to the determination of the place where the alleged damage occurred, consisting of additional costs incurred because of artificially high prices, such as those of the trucks covered by the cartel at issue in the main proceedings.
- 27 As regards the determination of the place where such damage occurred, it must be noted that that place depends on whether the issue concerns the initial damage, resulting directly from the event giving rise to the damage, in which case the place where such damage occurred may provide a basis for jurisdiction under Article 7(2) of Regulation No 1215/2012, or whether it concerns subsequent adverse consequences which are not capable of providing a basis for jurisdiction under that provision (see, to that effect, judgment of 5 July 2018, *flyLAL-Lithuanian Airlines*, C-27/17, EU:C:2018:533, paragraph 31).
- 28 In that regard, the Court held that the term ‘place where the harmful event occurred’ cannot be construed so extensively as to encompass any place where the adverse consequences of an event, which has already caused damage actually occurring elsewhere, can be felt. Consequently, it stated that this notion cannot be construed as including the place where the victim claims to have suffered financial damage following initial damage arising and suffered by him in another State (judgment of 5 July 2018, *flyLAL-Lithuanian Airlines*, C-27/17, EU:C:2018:533, paragraph 32 and the case-law cited).
- 29 The Court has also ruled, as regards Article 5(3) of the Convention of 27 September 1968 on jurisdiction and the recognition 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 wording of which corresponds to that of Article 7(2) of Regulation No 1215/2012, that damage which is no more than the indirect consequence of the harm initially suffered by other persons who were the direct victims of damage which occurred at a place different from that where the indirect victim subsequently suffered harm cannot establish jurisdiction under that provision (see, to that effect, judgment of 11 January 1990, *Dumez France and Tracoba*, C-220/88, EU:C:1990:8, paragraphs 14 and 22).

- 30 As is apparent from the file before the Court and without prejudice to the findings of fact in the main proceedings which it is for the referring court to make, the damage alleged by Tibor-Trans consists of additional costs incurred because of artificially high prices applied to trucks following collusive arrangements constituting a single and continuous infringement of Article 101 TFEU which had been effective throughout the EEA between 17 January 1997 and 18 January 2011 and in which fifteen international truck manufacturers, including DAF Trucks, had participated. It is also clear from the file before the Court that Tibor-Trans did not purchase trucks directly from the participants in the cartel at issue, as they were initially sold to Hungarian vehicle dealerships which passed the costs of the price increase on to the end users, such as Tibor-Trans.
- 31 As regards the nature of the damage alleged, it should be noted that it is not merely a financial consequence of the damage that could have been suffered by direct purchasers, such as Hungarian vehicle dealerships, and which could have consisted of a loss of sales following the price increase. By contrast, the damage alleged in the case in the main proceedings results essentially from the additional costs incurred because of artificially high prices and, therefore, appears to be the immediate consequence of an infringement pursuant to Article 101 TFEU and thus constitutes direct damage which, in principle, provides a basis for the jurisdiction of the courts of the Member State in which it occurred.
- 32 As regards the place where such damage occurred, it is apparent from the decision at issue that the infringement established in Article 101 TFEU extended to the whole of the EEA. It thus entailed a distortion of competition in that market of which Hungary is also a member since 1 May 2004.
- 33 Where the market affected by the anticompetitive conduct is in the Member State on whose territory the alleged damage is purported to have occurred, that Member State must be regarded as the place where the damage occurred for the purposes of applying Article 7(2) of Regulation No 1215/2012 (see, to that effect, judgment of 5 July 2018, *flyLAL-Lithuanian Airlines*, C-27/17, EU:C:2018:533, paragraph 40).
- 34 That approach is consistent with the objectives of proximity and predictability of the rules governing jurisdiction, since, first, the courts of the Member State in which the affected market is located are best placed to assess such actions for damages and, secondly, an economic operator engaging in anticompetitive conduct can reasonably expect to be sued in the courts having jurisdiction over the place where its conduct distorted the rules governing healthy competition (see, to that effect, judgment of 5 July 2018, *flyLAL-Lithuanian Airlines*, C-27/17, EU:C:2018:533, paragraph 40).
- 35 As the Commission pointed out in its written observations and as was also noted in paragraph 41 of the judgment of 5 July 2018, *flyLAL-Lithuanian Airlines* (C-27/17, EU:C:2018:533), determining the place where the damage occurred in such a manner also satisfies 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.
- 36 As regards the other specific circumstances pointed out by the referring court, linked to the fact that Tibor-Trans brought an action against only one of the undertakings involved in the infringement at issue, from which it did not obtain its supplies directly, it must be noted, as the Commission has done, that a single and continuous infringement of competition law involves the joint and several liability of all of the undertakings that committed the infringement. Therefore, the fact that Tibor-Trans brought an action against only one of the responsible parties from which it did not obtain its supplies directly does not call into question the arguments contained in paragraphs 31 to 33 of the present judgment as regards the rule on jurisdiction laid down in Article 7(2) of Regulation No 1215/2012.

- 37 In the light of those considerations, the answer to the question referred is that Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that, in an action for compensation for damage caused by an infringement of Article 101 TFEU, consisting, *inter alia*, of collusive arrangements on pricing and gross price increases for trucks, ‘the place where the harmful event occurred’ covers, in a situation such as that at issue in the main proceedings, the place where the market which is affected by that infringement is located, that is to say, the place where the market prices were distorted and in which the victim claims to have suffered that damage, even where the action is directed against a participant in the cartel at issue with whom that victim had not established contractual relations.

Costs

- 38 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 (Sixth 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, in an action for compensation for damage caused by an infringement of Article 101 TFEU, consisting, *inter alia*, of collusive arrangements on pricing and gross price increases for trucks, ‘the place where the harmful event occurred’ covers, in a situation such as that at issue in the main proceedings, the place where the market which is affected by that infringement is located, that is to say, the place where the market prices were distorted and in which the victim claims to have suffered that damage, even where the action is directed against a participant in the cartel at issue with whom that victim had not established contractual relations.

[Signatures]