Case C-588/20

Request for a preliminary ruling

Date lodged:

10 November 2020

Referring court:

Landgericht Hannover (Germany)

Date of the decision to refer:

19 October 2020

Applicant:

Landkreis Northeim

Defendant:

Daimler AG

[…]

Landgericht

Hannover
(Regional Court,
Hanover, Germany)

Order

[…]

In the case of

Landkreis Northeim (administrative district of Northeim)[…]

- Applicant -

[…]

v

Daimler AG, […] Stuttgart

- Defendant -

[…] **[Or. 2]**

the Regional Court of Hanover – 13th Civil Chamber – […] ordered as follows on 19 October 2020:

1. **The following question […] is referred to the Court of Justice of the European Union for a preliminary ruling under point (b) of the first paragraph and the second paragraph of Article 267 TFEU:**

   Must the decision of the European Commission of 19 July 2016 – C(2016) 4673 final – relating to a proceeding under Article 101 TFEU and Article 53 of the EEA agreement (Case AT.39824 – Trucks) be interpreted as meaning that special-purpose/specialised vehicles, in particular refuse collection vehicles, are also covered by the findings of that Commission Decision?

2. **The proceedings are stayed pending a ruling from the Court of Justice of the European Union on the question referred, set out in point 1 above.**

[…]

Grounds

[1] **1.** […]

[2] **a.** The case referred rests on the following facts […]:

[3] The applicant is a corporation governed by public law and acquired from the defendant – a global automobile group, which, amongst other things, develops, produces and markets trucks – a complete refuse collection vehicle at a price of EUR 146 740.00 by order of 19 June 2006 and a complete refuse collection vehicle at a price of EUR 146 586.58 by order of 10 December 2007, after public tenders had been held prior to each purchase. **[Or. 3]**

[4] By decision of 19 July 2016, which is addressed inter alia to the defendant […], the European Commission found that various undertakings, including the defendant […], had engaged in anti-competitive conduct. The summary of that decision states the following:

[5] ‘2.3 Summary of the infringement:

The products concerned by the infringement are trucks weighing between 6 and 16 tonnes (“medium trucks”) and trucks weighing more than 16 tonnes (“heavy

trucks") both as rigid trucks as well as tractor trucks (hereinafter, medium and heavy trucks are referred to collectively as "trucks") ([4] Excluding trucks for military use). The case does not concern aftersales, other services and warranties for trucks, the sale of used trucks or any other goods or services.'

[6] The English version of the decision (https://ec.europa.eu/competition/antitrust/cases/dec_docs/39824/39824_8750_4.pdf) […] is worded in that respect as follows:

[7] '1. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

1.1. The product:

The products concerned by the infringement are trucks weighing between 6 and 16 tonnes ("medium trucks") and trucks weighing more than 16 tonnes ("heavy trucks") both as rigid trucks as well **[Or. 4]** as tractor trucks (hereinafter, medium and heavy trucks are referred to collectively as "Trucks") ([5] Excluding trucks for military use). The case does not concern aftersales, other services and warranties for trucks, the sale of used trucks or any other goods or services sold by the addressees of this Decision.'

[8] The applicant claims that the truck cartel identified by the Commission caused it pecuniary harm in the context of its purchase of its two refuse collection vehicles as a result of the excessive prices brought about by the cartel, and it seeks compensation from the defendant by way of the action brought in the present proceedings.

[9] It takes the view that the refuse collection vehicles acquired by it are covered by the definition of trucks in the Commission's decision, and it bases that view on the wording of the decision, according to which special-purpose vehicles are not expressly excluded.

[10] The defendant, on the other hand, takes the view that, as special-purpose vehicles, the refuse collection vehicles at issue are not covered by the Commission's decision. It justifies this on the ground that, prior to the decision of 19 July 2016, the Commission specified the scope of the investigations in a […]request for information of 30 June 2015 sent to the defendant […], stating that the term 'truck' does not cover used trucks, special-purpose/specialised vehicles (for example military vehicles, fire-fighting vehicles), resold 'add-ons', after-sales services and other services and warranties.

[11] **b.** […]

[12] **aa.** The provision of German law relevant to the resolution of the dispute reads as follows, in the version applicable here: **[Or. 5]**

[13] ‘Paragraph 33 of the Gesetz gegen Wettbewerbsbeschränkungen (Law against restrictions on competition, ‘the GWB’) – Right to obtain a prohibitory injunction, Duty to provide compensation

> […]
>
> (4) Where compensation is sought for an infringement of a provision of this Law or of Article 81 or 82 of the Treaty establishing the European Community, the court shall be bound by the finding of an infringement in so far as it was made in a final decision of the cartel authority, the Commission of the European Community or the competition authority or the court acting in that capacity in another Member State of the European Community. The same shall apply to corresponding findings in final court decisions that have been issued as a result of challenges to decisions pursuant to the first sentence. […]’

[14] (Paragraph 33(4) of the Law against restrictions on competition in the version of 15 July 2005, in force from 13 July 2005 to 29 June 2013[…])

[15] […] In view of the defendant’s cartel infringements – alleged by the applicant – in connection with the vehicles at issue, which are based on the applicant’s orders of 19 June 2006 and 16 October 2007, […] the version of Paragraph 33(4) of the GWB in force on those dates is applicable. **[Or. 6]**

[16] […]T]hat national provision constitutes a declaratory reproduction of the first sentence of Article 16(1) of Regulation No 1/2003, which is applicable under EU law in any event, at least in so far as the scope of that provision of EU law is sufficient […].

[17] **bb.** [national case-law] […].

[18] […].

[19] […].

[20] […] **[Or. 7]** […].

[21] c. For the following reasons, the referring court has doubts as to the interpretation of the Commission’s decision of 19 July 2016 within the meaning of the question referred for a preliminary ruling (**aa.**) and, in that regard, there is a connection between the Commission’s decision and the national law applicable to the main proceedings, and that connection is material to the decision to be given in those proceedings (**bb.**) […]:

[22] **aa.** Doubts as to the interpretation of the Commission’s decision arise, first of all, from the fact that the precise wording of the Commission’s decision of 19 July 2016

[23] ‘The products concerned by the infringement are trucks weighing between 6 and 16 tonnes (“medium trucks”) and trucks weighing more than 16 tonnes (“heavy trucks”) both as rigid trucks as well as tractor trucks (hereinafter, medium and heavy trucks are referred to collectively as “Trucks”) ([1] Excluding trucks for military use). The case does not concern aftersales, other services and warranties for trucks, the sale of used trucks or any other goods or services.’

[24] […]

[25] generally refers only to trucks and expressly excludes only trucks for military use, meaning that **[Or. 8]** various possible interpretations regarding other specialised vehicles are conceivable. On the one hand, that wording could be understood to mean that, in principle, only ‘normal’ trucks – excluding those for military use – should be covered and that, in the absence of any express mention, specialised vehicles should therefore fall within the concept of ‘other goods’ and be excluded from the concept of ‘trucks’. On the other hand, this wording could also be understood to mean that the term ‘truck’ is supposed to refer to any type of truck, that is to say including all types of special-purpose vehicles – other than military vehicles.

[26] Furthermore, doubts as to the interpretation of the Commission’s decision arise from the fact, referred to by the defendant, that, prior to the decision of 19 July 2016, the Commission specified the scope of the investigations in a request for information of 30 June 2015 sent to the defendant, stating that the term ‘truck’ does not cover ‘special-purpose/specialised vehicles (for example military vehicles, fire-fighting vehicles)’.

[27] Were a Commission decision open to the same methods of interpretation as a law, it would be possible to reach a conclusion favouring a particular interpretation by consulting the history of the preliminary work for the decision; the statements made by the Commission prior to the adoption of the decision could then be consulted when interpreting the wording of the decision, in order to determine the scope of its effects.

[28] It is unclear in this respect whether, in the context of its request for information of 30 June 2015, the Commission may have made it clear, in advance of the subsequent decision, that special-purpose/specialised vehicles are generally not supposed to be covered by the term ‘truck’, and the additional text in brackets in that request for information, stating ‘for example military vehicles, fire-fighting vehicles’, is merely a list of examples and is not an exhaustive list. **[Or. 9]**

[29] Owing to the lack of express wording to that effect in the Commission’s decision of 19 July 2016, it is still unclear whether, after the request for information of 30 June 2015, the idea of excluding special-purpose vehicles, which had initially been considered before the decision was taken, may have actually been dropped again during the final decision-making process for taking

the decision, and an inclusion of special-purpose vehicles (other than military vehicles) was intended and meant when the final decision was taken.

[30] If account is also taken of the fact that the Commission's decision came about in the 'settlement procedure', it is also conceivable that, in this case, the linguistic formulations ultimately chosen by the Commission could have been made 'softer' in order to be able to actually achieve a settlement decision. Against this background, it is also unclear what impact such a possibly 'softer' wording was supposed to have had on the scope of the legal effects of the decision of 19 July 2016 with regard to special-purpose vehicles.

[31] **bb.** The connection, which is material to the decision to be given, between the Commission's decision and the national law applicable to the main proceedings arises from the fact that, under German law, pursuant to the provision cited above, Paragraph 33(4) GWB (old version), the German courts are bound by the Commission's findings regarding an infringement of cartel law.

[32] The precise understanding of the wording of the Commission's decision of 19 July 2016, which must be clarified by way of interpretation, is therefore relevant to the extent of the binding effect provided for by national law. In that regard, the referring national court must be able to determine clearly, in the proceedings for damages under cartel law pending before it, the extent of the binding effect of the Commission's decision of 19 July 2016. This is currently not possible.

[33] In the case specifically referred, the success or failure of the action therefore hinges on the answer to the question raised in relation to the interpretation **[Or. 10]** of the Commission's decision of 19 July 2016. If the favoured interpretation were that special-purpose vehicles, such as the refuse collection vehicles at issue here, are not supposed to be covered by the effect of the Commission's decision, the applicant would be unable to rely on the direct binding effect of the Commission's decision in that regard, and other, more far-reaching procedural requirements for the burden of proof borne by the parties would arise with regard to the indirect effects of the cartel – which would be the only effects still conceivable in that scenario.

[34] In this respect, the referring court considers that it would be in the interests of procedural economy to clarify the question referred for a preliminary ruling at this stage, because, in particular, an economic assessment of possible damage caused by the cartel, which may become necessary in the subsequent course of the proceedings, would be possible only with considerable procedural effort and at considerable expense – and may even require economic expertise.

[35] The answer to the question referred is also of considerable importance beyond the present case. In that respect, the referring court […] notes that it is currently seised of a number of cases with similar facts, but in which, in some cases, the number of vehicles acquired is significantly higher (sometimes several

hundred trucks) and in which a key issue is, as in the present case, whether the Commission's decision of 19 July 2016 has binding effect with regard to refuse collection vehicles or other types of special-purpose/specialised vehicles […]. […].

[36] […]**[Or. 11]** […]

[37] **2.** [National procedural law] […]

[38] **3.** […]