Court of Justice of the European Union
PRESS RELEASE No 193/21
Luxembourg, 28 October 2021

Press and Information

Advocate General's Opinion in Case C-267/20
Volvo and DAF Trucks

Truck cartel in Spain: Advocate General Rantos clarifies the temporal scope of the directive on the compensation of victims of anti-competitive practices

On 19 July 2016, the European Commission found that a number of truck manufacturers, including AB Volvo and DAF Trucks, had participated from 1997 to 2011 in a cartel, inter alia, on the price of trucks. [1]

Having purchased, during 2006 and 2007, three trucks manufactured by those two companies, RM brought an action before a Spanish court, on 1 April 2018, seeking compensation for the harm allegedly suffered as a result of the anti-competitive conduct. His claim for damages was upheld in part by the first-instance court, and Volvo and DAF Trucks were ordered to pay compensation equating to 15% of the purchase price of the trucks. That court rejected the plea in law raised by Volvo and DAF Trucks that the action was time-barred, finding that the five-year limitation period provided for in the Spanish legislation, which transposed the directive on the compensation of victims of anti-competitive practices, applied. [2] In addition, in accordance with that legislation, the court applied the presumption of harm caused by the infringements at issue and used its power to assess the harm, as provided for in two of the directive's provisions.

The two companies brought an appeal against that judgment before the Audiencia Provincial de León (Provincial Court, Léon, Spain), submitting, first, that the action was time-barred because the one-year limitation period laid down in the general scheme governing non-contractual liability in the Spanish Civil Code, which in their view is applicable, began to run from the publication of the Commission's press release on 19 July 2016. Secondly, they are also of the view that there is no proof of the causal relationship between the conduct described in the Commission Decision and the increase in the price of the trucks purchased by RM.

The Audiencia Provincial de León decided to refer to the Court of Justice questions on the scope *ratione temporis* of certain provisions of the directive concerning the limitation period applicable and the assessment of harm as well as the compatibility of the national legislation applicable to actions for damages resulting from infringements of competition law in view of Article 101 TFEU and the principle of effectiveness.

In today's Opinion, Advocate General Athanasios Rantos points out, first of all, that the present case concerns the legal rules applicable, first, to the limitation period of the action in question and, secondly, the assessment and quantification of the harm suffered.

The Advocate General observes, first, that the temporal scope of Directive 2014/104 is indeed limited, because that directive draws a distinction between substantive provisions, which do not apply retroactively to 'situations existing' before their entry into force and procedural provisions,

[1] Commission Decision C(2016) 4673 final of 19 July 2016 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39824 – Trucks) (see the Commission Press Release), a summary of which was published in the *Official Journal of the European Union* of 6 April 2017 (OJ 2017 C 108, p. 6).
[2] 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).

which apply in the context of actions that have been brought after that directive entered into force (namely, 26 December 2014).

The Advocate General considers that, in order to ensure a consistent and uniform application of EU competition law, **determining which provisions of the directive are substantive or procedural must be assessed in the light of EU law** and not in the light of national law.

More specifically, **the rule of the directive concerning the limitation period is a matter of substantive law,** since that period has the function of ensuring the protection both of the injured party, who must have sufficient time in which to gather the appropriate information with a view to a possible action, and the person liable for the damage, by preventing the injured party from being able to delay indefinitely the exercise of his or her right to damages.

Thus, **the five-year limitation period provided for in Directive 2014/104 does not apply to an action such as that at issue which, although it was brought after that directive and the national transposing measures entered into force** (26 May 2017)**, concerns facts occurring and penalties imposed before the latter entered into force.**

The Advocate General further observes that **the provision of the directive, according to which it is to be presumed that cartel infringements cause harm, is substantive.** Indeed, by allocating the burden of proof to the infringer and thus exempting the injured party from the obligation of proving the existence of the harm suffered on account of the cartel, that presumption is directly linked to the allocation of non-contractual civil liability to the infringer concerned and, as a result, directly affects the latter's legal situation.

Thus, as regards specifically national legislation transposing the provision that lays down **a presumption of harm caused by cartels**, the Advocate General considers that, in the context of actions for damages **brought after the entry into force of those national transposing measures,** the Directive **precludes** the application of those measures to infringements committed **before their entry into force.**

By contrast, according to Mr Rantos, **national transposing measures adopted in order to comply with the provision of the directive concerning the courts' power to assess the harm caused are procedural and can apply to harm suffered as a result of an infringement of competition law which ceased *before* the entry into force of the national transposing legislation in the context of an action for damages brought *after* the entry into force of the national transposing measure.**

The Advocate General examines, next, whether the rules governing non-contractual liability laid down in the Spanish Civil Code are compatible with the principle of effectiveness, according to which any person who has suffered harm must be able to seek compensation for loss.

As regards the duration of the limitation period, the Advocate General points out, while acknowledging that the one-year period provided for in the Spanish legislation is significantly shorter than the five-year period provided for in the Directive, that other elements of the national rules on limitation must also be taken into consideration.

As regards the *dies a quo* for calculating the one-year limitation period laid down in the Civil Code, the Advocate General considers that that period **begins to run from the date of publication of the summary of the Commission decision in the *Official Journal of the European Union*, that is to say, 6 April 2017.** This means that **the action for damages** brought by the purchaser of the trucks (RM) on 1 April 2018 **is not time-barred.**

The Advocate General rules out that **that period may begin to run from the date of publication of the Commission press release** on its decision finding the infringement at issue. Indeed, **the mere publication of that document does not enable the injured party concerned to know all the information required to exercise his or her right to bring an action for damages.** In addition, the Advocate General points out that the victims of infringements of competition law are

not subject to «a duty of due diligence» requiring them to monitor the publication of those press releases.

Lastly, the Advocate General emphasises that the fact that the presumption of harm provided for in the directive is not to apply in the present case would not preclude national courts from applying presumptions relating to the burden of proof, concerning the presence of harm, which existed prior to the respective national implementing measures, whose conformity with the requirements of EU law must be assessed having regard in particular to the general principles of effectiveness and equivalence.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355