COURT OF JUSTICE
OF THE EUROPEAN UNION

PRESS RELEASE No 29/23
Luxembourg, 16 February 2023

Judgment of the Court in Case C-312/21 | Tráficos Manuel Ferrer

Actions for damages in respect of infringements of competition law: the relevant EU law does not preclude a national rule according to which, in the event that the claim is upheld in part, costs are to be borne by each party, who therefore bears half of the common costs

The information asymmetry between the parties is not taken into account in the assessment of the possibility for a national court to estimate the harm caused by such an infringement

Infringements of the competition law of the Member States or of the European Union may cause harm both to undertakings and individuals. Directive 2014/104/EU contains certain rules governing actions for damages under national law concerning those infringements. [1] According to that directive, any natural or legal person who has suffered harm caused by an infringement of competition law must be able to claim and to obtain full compensation for that harm. It requires Member States to lay down, inter alia, measures to remedy the asymmetry of information existing between the party who has suffered harm and the party which has infringed competition law.

On 19 July 2016, the Commission adopted a decision by which it found that 15 truck manufacturers, including Daimler AG, Renault Trucks SAS and Iveco SpA, had participated in a cartel on pricing of trucks in the European Economic Area (EEA).

Two Spanish undertakings, one of which had purchased a Mercedes truck, manufactured by Daimler, the other one of which had purchased 11 trucks (5 manufactured by Daimler, 4 by Renault Trucks and 2 by Iveco) brought before the Commercial Court No 3 of Valencia (Spain), on 11 October 2019, an action for damages against Daimler. They claim to have suffered harm consisting in an overcharge for the vehicles purchased owing to the company's infringement and produced an expert report in order to determine the amount of that overcharge. Daimler, for its part, produced its own expert report. Those undertakings submitted a technical report on the results obtained after they were granted authorisation to consult the data taken into consideration in the expert report submitted by Daimler, on the suggestion of the latter.

Having doubts as to the compatibility of national procedural law with EU law, the Spanish Court referred questions to the Court of Justice for a preliminary ruling.

By today's judgment, the Court considers that, as far as concerns actions for damages covered by Directive 2014/104, **EU law does not preclude a rule of national civil procedure under which, in the event that the claim is upheld in part, costs are to be borne by each party, who each bear half of the common costs,** except in cases of wrongful conduct. According to the Court, that rule does not render practically impossible or excessively difficult the exercise of the right to full compensation for the harm suffered as a result of anticompetitive conduct

[1] 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).

(principle of effectiveness).

Unlike the Unfair Contract Terms Directive, [2] which sets limits on a unequal balance of power between a weak party (the consumer) and a strong party (the 'professional', who sold or rented goods or supplied services), Directive 2014/104 covers actions which concern the non-contractual liability of an undertaking and involve a **balance of power between the parties, which**, as a result of the effect of the national measures transposing that directive, **may have been corrected. The intervention of the EU legislature therefore gave the party who has suffered harm, who was initially at a disadvantage, means intended to correct in his or her favour the balance of power between himself or herself and the party which has infringed competition law.** The evolution of that balance of power depends on the conduct of each of those parties, in particular whether use has been made or not of the tools made available to the party who has suffered harm.

Consequently, **if the party who has suffered harm is unsuccessful in part, it is reasonable for him or her to bear his or her own costs, or at least part of them, as well as part of the common costs**, provided that the origin of those costs is to be attributable to him or her, for example due to the fact that he or she made excessive claims or due to the manner in which he or she conducted the litigation.

As regards **the possibility for a national court to undertake an estimation of the harm** pursuant to Directive 2014/104, the Court observes that **that estimation is based on the premise, first, that the existence of that harm has been established and, second, that it is practically impossible or excessively difficult to quantify it with precision.** This implies, inter alia, that steps such as the request to disclose evidence laid down in the directive were unsuccessful. The asymmetry of information has not been taken into account here since, even where the parties are on an equal footing as regards the available information, difficulties may arise during the specific quantification of the harm.

The fact that the party which has infringed competition law has **made available** to the party who has suffered harm the **data** on which it **relied in order to refute the expert report** of the latter is in itself **not relevant** for the purposes of assessing whether it is permissible for the national courts to estimate the harm. The fact that **the request was merely addressed to one of the addressees of a decision finding the infringement at issue is, in principle, not relevant either for those purposes.**

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.

The full text of the judgment is published on the CURIA website on the day of delivery.

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[2] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).