Case C-425/22

Request for a preliminary ruling

Date lodged:

28 June 2022

Referring court:

Kúria (Hungary)

Date of the decision to refer:

7 June 2022

Applicant:

MOL Magyar Olaj- és Gázipari Nyrt.

Defendant:

Mercedes-Benz Group AG

[...]

Order made by the Kúria (Supreme Court, Hungary) seised of an appeal in cassation

[…]

Applicant: MOL Magyar Olaj- és Gázipari Nyrt. ([…] Budapest […])

Defendant: Mercedes-Benz Group AG ([…] Stuttgart, Germany)

Subject matter of the proceedings: Action for damages

Appellant in cassation: the applicant

Name of the court of second instance […]**:**

Fővárosi Ítélőtábla (Budapest Regional Court of Appeal, Hungary) […]

Name of the court of first instance […]**:**

Fővárosi Törvényszék (Budapest High Court, Hungary) […]

Operative part

The Supreme Court hereby refers the following questions to the Court of Justice of the European Union for a preliminary ruling:

1. Where a parent company brings an action for damages in respect of the anti-competitive conduct of another company in order to obtain compensation for the damage suffered as a result of that conduct solely by its subsidiaries, does the registered office of the parent company determine the forum of jurisdiction, as the place where the harmful event occurred for the purposes 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 ('the Brussels Ia Regulation')?

2. Is the fact that, at the time of the purchases at issue in the proceedings, not all the subsidiaries belonged to the parent company's group of companies relevant for the purposes of the application of Article 7(2) of the Brussels Ia Regulation?

[…]

Grounds

Subject matter of the dispute and relevant facts

1 In its final decision adopted on 19 July 2016 in competition case AT.39824 — *Trucks*, the European Commission found that, by colluding on gross list pricing for medium trucks (between 6 and 16 tonnes) and heavy trucks (over 16 tonnes) in the European Economic Area, the defendant, established in Germany, together with other companies, had participated in a cartel between 17 January 1997 and 18 January 2011, which constituted a continuous infringement of the prohibitions laid down in Article 101 of the Treaty on the Functioning of the European Union ('TFUE') and in Article 53 of the Agreement on the European Economic Area.

2 The applicant, a public limited company which has its registered office in Hungary and is listed on the Budapest stock market, has ultimate responsibility for the management of companies belonging to the MOL Group. The applicant is either the majority shareholder or holds another form of exclusive controlling power over a number of companies, such as MOLTRANS, established in Hungary; INA, established in Croatia; Panta and Nelsa, established in Italy; ROTH, established in Austria; and SLOVNAFT, established in Slovakia. During

the infringement period established by the European Commission in the Decision relied on, those subsidiaries of the applicant purchased indirectly from the defendant, either as owners or under a financial leasing arrangement, a total of 71 trucks in a number of Member States.

3 In its application, the applicant requested that the defendant be ordered to pay EUR 530 851 plus the applicable interest and costs, arguing that this was the amount that its subsidiaries had overpaid for the various trucks as a consequence of the cartel on pricing declared by the European Commission. In its capacity as the controlling member of the group of companies and relying on the economic unit theory, the applicant sought to assert in its own right the subsidiaries' claims for damages against the defendant. Pursuant to Article 7(2) of the Brussels Ia Regulation, the applicant submitted that the forum of jurisdiction was that of its registered office, as the place where the centre of economic and financial interests of the group of companies is situated, and, therefore, as the place where, ultimately, the harmful event had occurred. In its capacity as the controlling company of its group, the applicant submitted that the damage suffered by its subsidiaries had also been inflicted on it.

4 The defendant put forward an objection to jurisdiction, arguing that the provision relied on could not provide a basis for the court's jurisdiction.

5 The court of first instance made an order staying the proceedings of its own motion. In that order, the court of first instance pointed out that the special jurisdiction rule in Article 7(2) of the Brussels Ia Regulation must be interpreted strictly, in accordance with the relevant case-law of the Court of Justice of the European Union ('the Court of Justice'), and that that rule may be applied only if there is a particularly close link. The court of first instance stated that, in the case of the cartel concerned, it was not possible to determine the place where the harmful event occurred, in view of the fact that multiple contracts had been concluded in meetings and conversations which took place in different Member States. It deduced from this that it was necessary to examine whether Hungary could be identified as the place where the damage had occurred. In that connection, the court found that the damage suffered by the applicant consisted in effect of so-called purely financial damage, in the light of which it referred to the interpretation set out in the judgment of 10 June 2004, *Kronhofer* (C-168/02, EU:C:2004:364), in accordance with which the mere fact that the applicant has suffered damage resulting from the loss of part of his assets which arose in another Member State does not enable the applicant's domicile (in this case, its registered office) to be treated as the place where the damage occurred. The first-instance court also observed that the rulings of the Court of Justice in relation to actions for damages for infringements of competition law are not applicable to matters of jurisdiction, since, in the present case, it was not the applicant but its subsidiaries established in other Member States of the European Union which purchased the trucks and which were effectively harmed by the distortion in the fixing of prices. Consequently, in the absence of an appropriate connecting factor, the registered office of the applicant, in its capacity as the controlling member of

the group of companies, does not create a sufficiently close link between the subject matter of the dispute and the Hungarian courts, and therefore it cannot provide a basis for the criterion of jurisdiction based on the applicant's domicile.

6 The court of second instance which heard the appeal lodged by the applicant confirmed by order the decision given at first instance. Examining the grounds of the appeal, that court ruled as follows: the trucks were not purchased by the applicant and instead the applicant only claimed in its application that the relevant point for the purposes of allocating jurisdiction is its centre of interests and economic activities, from which it followed that, in the applicant's opinion, as the parent company of the group, its registered office is the place where the harmful event occurred. Supplementing the reasoning of the court of first instance, the court of second instance stated that, in accordance with the case-law of the Court of Justice, the economic unit theory is applicable solely for the purpose of establishing liability for the infringement of competition law and that an *a contrario* interpretation in relation to the injured party is not possible. According to the court of second instance, the judgments on which the applicant relies do not support the applicant's position either. That court stated that, in accordance with Article 7(2) of the Brussels Ia Regulation, what matters is the place where the damage occurred and that place must be determined by reference to the registered office of [the company] suffering loss or damage and not the registered office of the controlling company or the circumstances of the transaction concluded by it. Therefore, the court of second instance did not consider the definition of undertaking or the economic unit theory relied on by the applicant relevant for the purposes of allocating jurisdiction; according to that court, the question of which entity has controlling power over the injured party has no bearing on the matter of jurisdiction. Like the court of first instance, the court of second instance stressed that, in the present case, it was not the applicant which purchased and paid for the trucks subject to the cartel but rather its subsidiaries, from which it followed that it was not the applicant which suffered the damage but its subsidiaries. The court of second instance added that, in accordance with the interpretation given by the Court of Justice in the judgment of 21 May 2015, *CDC Hydrogen Peroxide* (C-352/13, EU:C:2015:335), the jurisdiction of the court seised of the matter is limited to the loss suffered by the undertaking whose registered office is in its territory, meaning that the linking factor consisting of the place where the damage occurred cannot be altered, inter alia, by the application by the injured party of the economic unit theory, which is not recognised by the rules governing the allocation of jurisdiction.

7 The applicant appealed on a point of law before the Supreme Court, Hungary, against the final order, claiming that the order should be set aside and that the proceedings should continue before the courts previously seised of them. The applicant submits that those courts incorrectly interpreted Article 7(2) of the Brussels Ia Regulation and unlawfully stayed the proceedings. The applicant submits that the economic unit theory is also relevant to the allocation of jurisdiction because the applicant, as the sole controlling company of the group of companies, determines the economic strategy of the companies forming part of

that group, as a result of which it is directly affected by the operation, at a profit or at a loss, of those companies. Accordingly, the applicant contends that the concept of undertaking must be interpreted uniformly. The applicant sets out in detail the case-law of the Court of Justice on jurisdiction in actions for damages resulting from the infringement of competition law. The applicant adds that the court of second instance incorrectly interpreted the judgment in *CDC Hydrogen Peroxide*, because, although in actual fact the acquisition of claims at issue did not serve to enable the different claims concerned to be brought before the same court – as the Court of Justice held in that case – that connection was provided by the concept of economic unit.

8 In its response to the appeal on a point of law, the defendant seeks the confirmation of the final order. The defendant argues that the applicant did not purchase any of the trucks subject to the cartel, from which it follows that the applicant did not suffer the damage. The defendant submits that the economic unit theory relied on by the applicant cannot be interpreted in the way the applicant claims; that interpretation has no legal basis and is not supported by the Court of Justice, which does not refer to the possibility of application of that theory by the injured party in any of its judgments, or, for example, in the judgment of 6 October 2021, *Sumal* (C-882/19, EU:C:2021:800), given after the final order was made. In the defendant's submission, that judgment in no way supports the application of the economic unit theory by the applicant. The defendant reiterates the arguments that it previously put forward in relation to the relevant judgments of the Court of Justice, which are essentially the same as the interpretation given by the lower courts.

National and European Union legislation

9 Pursuant to Article 101(1) TFEU, all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market are incompatible with the internal market and are to be prohibited.

10 Article 7(2) of the Brussels Ia Regulation provides that a person domiciled in a Member State may be sued in another Member State, in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur.

11 Under Paragraph 240(1) of the a polgári perrendtartásról szóló 2016. évi CXXX. törvény (Law CXXX of 2016 on Civil Procedure), a court must stay proceedings of its own motion, at any stage of those proceedings, where:

b) since there is no basis for the allocation of jurisdiction to the Hungarian courts, jurisdiction may be based on the entering of an appearance by the defendant, but:

ba) the defendant has not lodged a defence, or

bb) the defendant has put forward an objection to the jurisdiction of the court.

Case-law of the Court of Justice

12 To date the Court of Justice has examined on a number of occasions in its case-law issues related to jurisdiction in actions for damages in respect of loss and damage caused by a cartel.

13 In *CDC Hydrogen Peroxide*, C-352/13, the Court observed, in relation to the determination of the place where the harmful event occurred, that the allocation of jurisdiction on the basis of that criterion depends upon the identification, in the jurisdiction of the court seised of the matter, of a specific event during which either that cartel was definitively concluded or one agreement in particular was made which was the sole causal event giving rise to the loss allegedly inflicted on a buyer (judgment of 21 May 2015, *CDC Hydrogen Peroxide*, C-352/13, EU:C:2015:335, paragraph 50). However, in the instant case, in view of the fact that cartel agreements were concluded successively in different places and in different ways, it has not been possible to allocate jurisdiction in that manner. In that regard, the damage occurred (was suffered) in the place where the harmful event produces its harmful effects.

14 In its judgment in *flyLAL-Lithuanian Airlines*, C-27/17, the Court stated that 'the 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 arising elsewhere, can be felt; that is, it does not include the place where the victim suffered financial damage following upon initial damage arising and suffered by him in another Member State (judgment of 5 July 2018, *flyLAL-Lithuanian Airlines*, C/27/17, EU:C:2018:533, paragraph 32).

15 *Tibor-Trans*, C-451/18, was the first case in which a reference for a preliminary ruling was made in relation to the so-called truck cartel, which has also given rise to the present case. In the judgment of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraph 25, the Court stressed that 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. The Court also ruled that the damage alleged in the case in the main proceedings [in that case] resulted essentially from the additional costs incurred because of artificially high prices and, therefore, appeared to be the immediate consequence of an infringement pursuant to Article 101 TFEU and thus constituted direct damage which, in principle, provided a basis for the jurisdiction of the courts of the Member State in which it occurred (judgment of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraph 31). 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 the Brussels Ia Regulation (judgment of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraph 33). 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 (judgment of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraph 34).

16 In *Volvo and Others*, C-30/20, the Court developed its case-law, ruling that Article 7(2) of the Brussels Ia Regulation must be interpreted as meaning that, within the market affected by collusive arrangements on the fixing and increase in the prices of goods, either the court within whose jurisdiction the undertaking claiming to be harmed purchased the goods affected by those arrangements or, in the case of purchases made by that undertaking in several places, the court within whose jurisdiction that undertaking's registered office is situated, has international and territorial jurisdiction, in terms of the place where the damage occurred, over an action for compensation for the damage caused by those arrangements contrary to Article 101 TFEU (judgment of 15 June 2021, *Volvo and Others*, C-30/20, EU:C:2021:604, paragraph 43).

17 In *Sumal*, C-882/19, the Court held that the victim of an anticompetitive practice by an undertaking may bring an action for damages, without distinction, either against a parent company who has been punished by the Commission for that practice in a decision or against a subsidiary of that company which is not referred to in that decision, where those companies together constitute a single economic unit (judgment of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 67). Where the market affected by the anticompetitive conduct is in the Member State on whose territory the alleged damage is said to have occurred, it is to be held that that Member State must be regarded as the place where the damage occurred for the purposes of applying Article 7(2) of the Brussels Ia Regulation (judgment of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 66).

Grounds for the reference for a preliminary ruling to the Court of Justice

18 The Kúria (Supreme Court) considers that answers to the questions referred for a preliminary ruling are necessary both for the resolution of the dispute of which it is seised and for the purpose of the uniform interpretation and application of Article 7(2) of the Brussels Ia Regulation. There is no settled case-law of the Court of Justice in that regard and nor can the possible answers be deemed to 'leave no scope for any reasonable doubt' (judgment of 6 October 1982, *Cilfit and Others*, 283/81, EU:C:1982:335, paragraph 21).

19 According to the court of second instance which was seised of this case, the Hungarian courts do not have jurisdiction to hear the proceedings instituted by the parent company. In that court's view, it is contrary to the principles of procedural economy and procedural efficiency for the Hungarian courts to hear the claims for damages which have been brought by companies that are, for the most part, established abroad and which are based on motor vehicle contracts concluded outside Hungary. It is not possible to treat the applicant as the indirect purchaser of the trucks either, and the damage was not inflicted on the parent company but on its subsidiaries; the parent company could only have sustained financial damage which cannot provide a basis for the jurisdiction of the courts for the place where that company has its registered office as the place where the harmful event occurred. To support the argument that jurisdiction should be allocated to the Hungarian courts, the applicant does not rely on purchases made in Hungary and instead relies on the centre of economic activity and interests of the group of companies, which does not provide a basis for the jurisdiction laid down in Article 7(2) of the Brussels Ia Regulation.

20 It is not disputed that the Court of Justice has developed, in its case-law, the economic unit theory, according to which the victim of an anti-competitive practice may bring an action for damages against one of the legal entities that is a member of the group of undertakings concerned. Therefore, in the interests of ensuring the effective enforcement of competition law, the injured party has the option of bringing an action for damages either against the parent company or against one of its subsidiaries, irrespective of which one of these the Commission specifically held responsible for the infringement of competition law in its decision (judgment of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800).

21 The Court's case-law is also uniform on the point that the members of a cartel cannot be unaware of the fact that the purchasers of the goods in question are established within the market affected by the collusive practices and, therefore, they have to expect, based on the requirement of predictability, that an action may be brought against them in the territory of any of the Member States concerned (judgment of 15 July 2021, *Volvo and Others*, C-30/20, EU:C:2021:604, paragraphs 38 and 42).

22 However, the Court has yet to rule on whether, in the context of the interpretation of Article 7(2) of the Brussels Ia Regulation, the economic unit theory is also applicable to the injured party.

23 Nor has the Supreme Court yet given a ruling in any case on the legal question raised, although a number of cases with similar subject matter are currently pending before it and therefore it will have to address the matter.

24 The Supreme Court considers it a feature of the present case that, in the light of the objection to jurisdiction raised by the defendant, the lower courts decided to stay the proceedings on the basis of, inter alia, the lack of damage sustained by the parent company and the inability of that company to plead as indirect damage the

damage suffered by its subsidiaries. Although those questions concern the substance of the case, the answers to them cannot be overlooked for the purposes of determining the forum of jurisdiction, since, as a preliminary issue, it must be ascertained whether the registered office of the parent company can provide a basis for the jurisdiction of the Hungarian courts, as the place where the damage occurred within the meaning of Article 7(2) of the Brussels Ia Regulation; in other words, whether, and in what manner, an *a contrario* application of the economic unit theory is possible.

25 It is also a feature of the facts in this case that, during the period of operation of the cartel on pricing declared by the decision of the European Commission, not all the subsidiaries belonged to the parent company and therefore they were not part of the group of companies when they made the purchases at issue either. If the Court of Justice considers the registered office of the parent company to be a legal factor enabling the allocation of jurisdiction to hear the claims for damages brought by the parent company's subsidiaries, based on the place where the damage occurred, the question arises of whether it is relevant that not all the companies were owned by the parent company at the time when the damage occurred.

[...]

Budapest, 7 June 2022.

[signatures]

[…]