

Case C-34/24**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

18 January 2024

Referring court:

Rechtbank Amsterdam (Netherlands)

Date of the decision to refer:

20 December 2023

Applicants in the case in the main proceedings:

Stichting Right to Consumer Justice

Stichting App Stores Claims

Defendants in the case in the main proceedings:

Apple Distribution International Ltd

Apple Inc.

Subject matter of the main proceedings

The case in the main proceedings concerns a collective action for damages brought against Apple Inc. and Apple Distribution International Ltd. ('Apple and Other') as a result of alleged infringements of competition law, in particular, Articles 101 and 102 TFEU, which allegedly caused users of the Netherlands Apple App Store to suffer damage.

Subject matter and legal basis of the request for a preliminary ruling

This request under Article 267 TFEU concerns the question of the interpretation and application of Article 7(2) of Regulation (EU) No 1215/2012 ('the Brussels Ia Regulation') in the context of collective claims and alleged infringements of competition law relating to purchases from the Netherlands Apple App Store. More particularly, the central question raised is which court has territorial

jurisdiction to settle these disputes and whether the Brussels Ia Regulation offers the possibility, under the Netherlands wet afwikkeling massaschade in collectieve actie (Law on the Settlement of Mass Claims in Collective Action; ‘WAMCA’), of applying national referral rules and what connecting factors are relevant when determining the territorial jurisdiction of the courts.

Questions referred for a preliminary ruling

‘Question 1 (Handlungsort)

(a) In a case such as that at issue in these proceedings, where the alleged abuse of a dominant position within the meaning of Article 102 TFEU took place in a Member State by means of sales through an online platform operated by Apple and aimed at the entire Member State, with Apple Ireland acting as exclusive distributor and commission agent of the developer and deducting commission from the purchase price, what should be considered to be the place where the harmful act occurred within the meaning of Article 7(2) of the Brussels Ia Regulation? Is it relevant in this regard that the online platform is in principle accessible worldwide?

(b) Does it matter in this context that these proceedings concern claims brought under Article 3:305a BW (the Netherlands Civil Code) by a legal person whose purpose, by virtue of its own right, is to represent the collective interests of multiple users having their registered offices in different jurisdictions (in the Netherlands: ‘arrondissementen’: districts) within one Member State?

(c) If, on the basis of question 1(a) (and/or 1(b)), not only one but several internal territorially competent courts are designated in the Member State concerned, does Article 7(2) of the Brussels Ia Regulation preclude the application of national (procedural) law that allows referral to a single court within that Member State?

Question 2 (Erfolgsort)

(a) Is it possible that, in a case such as that at issue in these proceedings, where the alleged damage occurred as a result of purchases of apps and digital in-app products through an online platform operated by Apple (the App Store), with Apple Ireland acting as exclusive distributor and commission agent for the developers and deducting commission from the purchase price (and where there has been both an alleged abuse of a dominant position within the meaning of Article 102 TFEU and an alleged infringement of the prohibition on restrictive agreements within the meaning of Article 101 TFEU) and where the place where those purchases took place cannot be determined, only the registered office of the user can serve as the connecting factor for the place where the damage occurred within the meaning of Article 7(2) of the Brussels Ia Regulation? Or are there also

other connecting factors in this situation which could be applied to identify a competent court?

(b) Does it matter in this context that these proceedings concern claims brought under Article 3:305a BW by a legal person whose purpose, by virtue of its own right, is to represent the collective interests of multiple users having their registered offices in different jurisdictions (in the Netherlands: ‘arrondissementen’: districts) within a Member State?

(c) If, on the basis of question 2(a) (and/or 2(b)), an internal territorially competent court in the Member State concerned is designated which has jurisdiction only over the claims of some of the users in that Member State, while other territorially competent courts in the same Member State have jurisdiction over the claims of other users, does Article 7(2) of the Brussels Ia Regulation preclude the application of national (procedural) law which allows referral to a single court within that Member State?

Provisions of EU law relied on

Articles 101 and 102 TFEU

Article 7(2) and Articles 17 and 18 of the Brussels Ia Regulation

Provisions of international law relied on

WAMCA

Article 3:305a of the Burgerlijk Wetboek (Civil Code; ‘BW’)

Articles 1-14, 209, 220, 1018c(3), Article 1018d(1), and Article 1018e(1)-(3) of the Wetboek van Burgerlijke Rechtsvordering (Code of Civil Procedure; ‘Rv’)

Succinct presentation of the facts and procedure in the main proceedings

- 1 Apple produces a range of portable devices, including the iPhone, iPad and iPod Touch, which run on an operating system (iOS) developed and operated by Apple and pre-installed on its devices. Apps for such devices can be downloaded and/or purchased from the Apple App Store, Apple’s online sales platform (storefront), where in-app products are also available. These are features, services or products within an app. These apps are developed by Apple or by third-party developers. In the main, the apps used on Apple’s devices are those made available in the App Store. Using the App Store requires the creation of a user profile. The App Store storefront can be used in accordance with the user’s settings and depends on the country specified in the user profile. Users who set the Netherlands as the country in their profile will automatically be directed to the Netherlands storefront of the App Store. Payments in the App Store are made exclusively according to Apple’s

App Store payment system. Third-party developers can offer apps developed for Apple in the App Store, subject to certain conditions. Their remuneration comes out of the purchase price paid by users for using apps or in-app products, for which Apple deducts commission. Apple Inc. heads the Apple Group and is the US-based parent company of Apple Distribution International Ltd (‘Apple Ireland’). The latter acts as Apple’s representative and supplier in the European Union and manages and processes user data in the European Union, including user profile data.

- 2 The applicants, in particular the foundation Right to Consumer Justice and the foundation App Stores Claims, have among their objectives the protection of the interests of persons who have become victims of anti-competitive behaviour. They have brought a collective action for damages before the rechtbank Amsterdam (Amsterdam District Court) for anticompetitive infringements committed by Apple et al, holding Apple Inc. and Apple Ireland jointly and severally liable. The applicants brought the proceedings under WAMCA. Before the introduction of this law, it was already possible to bring a collective action in the Netherlands, but since its entry into force, it is now also possible to bring a collective action for damages, allowing collective damages to be dealt with efficiently and effectively. The foundations bringing these actions do so in their own name and thus act as independent advocates for all persons who believe they have suffered damage. As a result, the applicants are not trustees, agents or assignees of the injured persons. The injured persons are in principle bound by the court’s final decision, unless they make use of the opt-out mechanism, and are (possibly) entitled to individual damages. Collective actions for damages based on WAMCA can also be brought against foreign parties. In that case, the Netherlands court must determine whether it has jurisdiction.

The essential arguments of the parties in the main proceedings

- 3 The applicants are of the view that the referring court has jurisdiction under Article 7(2) of the Brussels Ia Regulation.
- 4 According to Apple et al, the referring court’s jurisdiction cannot be based on Article 7(2) of the Brussels Ia Regulation, since the alleged harmful event did not take place in the Netherlands. In the alternative, at most, the Amsterdam District Court can assume jurisdiction for users who made purchases in Amsterdam from the App Store with a Netherlands storefront.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 5 The central issue in the main proceedings is whether the referring court has jurisdiction to rule on the collective damages claims under Article 7(2) of the Brussels Ia Regulation.

- 6 In its judgment of 15 July 2021, *Volvo and Others* (C-30/20, EU:C:2021:604) ('the *Volvo and Others* judgment'), the Court of Justice held that Article 7(2) of the Brussels Ia Regulation confers territorial jurisdiction directly and immediately. According to the settled case-law of the Court of Justice, Article 7(2) of the Brussels Ia Regulation allows the territorial jurisdiction of the courts to be determined by reference to both the place where the event giving rise to the loss occurred (the 'Handlungsort') and the place where the damage occurred (the 'Erfolgsort'), so that the applicant has a choice.
- 7 According to the judgment of the Court of Justice of 5 July 2018, *flyLAL-Lithuanian Airlines* (C-27/17, EU:C:2018:533) ('the *flyLAL* judgment'), the Handlungsort in the case of abuse of a dominant position (Article 102 TFEU) is determined by reference to the acts performed by the dominant undertaking to put that abuse into practice. However, where separate events occur which form part of a common strategy which all contributed to the damage, it is necessary to identify the event of most importance in implementing such a strategy. In view of the ruling in the judgment of the Court of Justice of 25 October 2011, *eDate Advertising and Others* (Joined Cases C-509/09 and C-161/10, EU:C:2011:685) ('the *eDate Advertising and Others* judgment'), the conduct of Apple et al. constitutes an alleged abuse of a dominant position which (also) occurred in the Netherlands, meaning that the Netherlands court has international jurisdiction. The Court of Justice also ruled on the determination of the Handlungsort in the case of prohibited resale price maintenance (Article 101 TFEU) in the *flyLAL* judgment and the judgment of 21 May 2015, *CDC Hydrogen Peroxide* (C-352/13, EU:C:2015:335) ('the *CDC Hydrogen Peroxide* judgment'). These judgments ruled that the Handlungsort depends upon the identification of a specific event during which either the cartel was definitively concluded or one agreement in particular was made which was the sole causal event giving rise to the loss allegedly inflicted.
- 8 It follows from the judgment of the Court of Justice of 12 September 2018, *Löber* (C-304/17, EU:C:2018:701), that, when determining the Erfolgsort, it is not possible to take into account every place where the adverse consequences can be felt, but that it must relate to the initial damage, which is the direct result of the causal event, and not to subsequent adverse consequences. It also follows from the *flyLAL* judgment that, where the market affected by the anti-competitive acts is in the Member State on whose territory the alleged damage occurred, that Member State must be regarded as the place where the damage occurred.
- 9 First, the referring court notes that the Netherlands legislature did not designate a single court with exclusive jurisdiction to deal with all WAMCA cases, so that the question of territorial jurisdiction under the Brussels Ia Regulation is relevant. Moreover, the *CDC Hydrogen Peroxide* judgment cannot be applied automatically to the procedure in the main proceedings because here, unlike the case which led to that judgment, the claims of the injured persons are not bundled, but the applicants are acting in their own names while representing the collective interests of the injured persons.

- 10 Second, the referring court considers that, in determining the Handlungsort, the relevant acts relating to Apple's abuse of a dominant position can be linked to the fact that the App Store with the Netherlands storefront is specifically aimed at the Netherlands market and also uses the Netherlands language. According to the referring court, the relevant acts are sales in the App Store (which is operated by Apple), with Apple Ireland acting as exclusive distributor and commission agent and deducting commission from the purchase price for this purpose. Applying the case-law from the *flyLAL* judgment and the *eDate Advertising and Others* judgment, it can thus be concluded, first, that the alleged infringements of competition law are located in the Netherlands and, second, that the Netherlands court has international jurisdiction. However, unlike the *flyLAL* judgment, there is no location where a specific act takes place, as the purchases are made on an online platform. Consequently, it has not yet been determined which Netherlands court has territorial jurisdiction.
- 11 Third, according to the referring court, the Erfolgsort for most of the users is located in the Netherlands, because those users made purchases in the App Store with a Netherlands storefront and paid for those purchases through Netherlands bank accounts. It follows that the Netherlands is the place where the initial damage occurred. This does not yet determine which Netherlands court has jurisdiction. It follows from the *Volvo et al* judgment that territorial jurisdiction rests with the court of the place of purchase of the injured party's registered office. However, since these purchases were made on mobile devices on an online platform, the exact place is difficult to determine. The referring court asks whether the registered office of the user/purchaser may be invoked in this case. In that case, the jurisdiction of the Amsterdam District Court would be established with respect to users located in Amsterdam, but it is unclear on the basis of Article 7(2) of the Brussels Ia Regulation whether the referring court would also have jurisdiction with respect to users located outside Amsterdam but within the Netherlands. Different courts from different districts may thus have jurisdiction, depending on the registered office of the party whose interests are represented. As a result, there is an increased risk of divergent decisions being taken in similar cases.
- 12 Moreover, the referring court questions whether it matters that a collective action for damages is brought by a legal person representing collective interests. If the answer to that question is in the affirmative, the referring court asks whether the registered office of the legal person is a connecting factor for determining the jurisdiction of the court having jurisdiction over the whole Member State, or whether other connecting factors must be taken into account. If the registered office of the legal person representing the users' interests may be taken into account, the action for damages can be brought effectively and efficiently before a single court under Article 220 Rv.
- 13 Finally, the referring court wishes to know whether the Brussels Ia Regulation leaves room for the application of national (here: Netherlands) referral rules (in particular Article 220 Rv), despite the fact that the regulation in question aims to

designate directly and immediately the territorially competent court. This question was also raised in two requests for a preliminary ruling submitted to the Court of Justice by the Gerechtshof Amsterdam (Amsterdam Court of Appeal) on 19 September 2023 (cases C-672/23 and C-673/23).

WORKING DOCUMENT