

JUDGMENT OF THE COURT (First Chamber) 15 July 2021 in Case C-30/20 Volvo ECLI:EU:C:2021:604. REQUEST for a preliminary ruling under Article 267 TFEU on Regulation (EU) No 1215/2012 – Article 7(2) – International and internal territorial jurisdiction in matters relating to tort, delict or quasi-delict. Compensation for the damage caused by those arrangements contrary to Article 101 TFEU. (ESM)

International and territorial jurisdiction under the Article 7(2) of Regulation N° 1215/2012 in action for damages on competition matters. (ESM)

Multilingual version

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Tags: Competition, International and internal territorial jurisdiction, tort, quasi-delict, private damage, 101 TFEU.

Context:

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Mercantil n 2 de Madrid (Commercial Court N 2, Madrid, Spain). For that Court it is necessary to establish whether Article 7(2) of Regulation N° 1215/2012 constitutes a rule which strictly concerns international jurisdiction or whether it is a dual or combined rule which also operates as a rule on local territorial jurisdiction.

RH is an undertaking domiciled in Cordoba (Spain), where between 2004 and 2009 it purchased five trucks from a Volvo Group España dealer. The first of those trucks was initially the subject of a leasing agreement before being purchased by RH in 2008.

On 19 July 2016, the Commission adopted decision C(2016) 4673 final relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39824 – Trucks) (OJ 2017 C 108, p. 6, ‘the

decision of 19 July 2016'). By that decision, the Commission found there to be a cartel in which 15 international truck manufacturers had participated, including Volvo, Volvo Group Trucks Central Europe and Volvo Lastvagnar, in respect of two product categories, namely trucks weighing between 6 and 16 tonnes and trucks weighing more than 16 tonnes, whether rigid trucks or tractor trucks.

RH brought an action for damages against Volvo (Gothenburg, Sweden), Volvo Group Trucks Central Europe (Ismaning, Germany), Volvo Lastvagnar (Gothenburg) and Volvo Group España (Madrid, Spain), in support of which it claims to have suffered loss in that it purchased the five vehicles referred to above by paying an additional cost due to the collusive arrangements penalised by the Commission. Although RH purchased the vehicles in Cordoba and is domiciled in that city, it brought its action before the Juzgado de lo Mercantil 2 de Madrid (Commercial Court No 2, Madrid, Spain). The referring court states that the defendants in the main proceedings have not challenged its territorial jurisdiction with the result that, under national law, they must be deemed to have tacitly accepted the jurisdiction of that court.

The defendants have, however, contested international jurisdiction, contending that the 'place where the harmful event occurred or may occur', referred to in Article 7(2) of Regulation No 1215/2012, is the place of the event giving rise to the loss, in this case the place where the truck cartel was concluded, and not where the applicant in the main proceedings is domiciled. Since the cartel was concluded in other Member States of the European Union, the defendants contend that the Spanish courts do not have jurisdiction.

The Spanish Supreme Court has held, in a series of decisions to that effect, that jurisdiction is not territorially determined by the aforementioned regulation in these cases, and has therefore decided to apply a system similar to that provided in our law for unfair competition in Article 52.1.12° of the Civil Procedure Act, which states that jurisdiction will be where the defendant has his place of business, and, in the absence of this, the place of domicile or place of residence. As a last

subsidiary jurisdiction, when the defendant has no domicile or place of residence in Spain, an elective jurisdiction is provided for the plaintiff: the place where the act was carried out or where its effects are produced. (by all of them ATS, Civil sección 1 del 22 de junio de 2021 (ROJ: ATS 8320/2021)

Doctrine of the Court:

29. That is the case of, first, Article 5(3) of Regulation N° 44/2001 and, secondly, Article 7(2) of Regulation No 1215/2012, in respect of which provisions the Court has repeatedly held that the concept of the ‘place where the harmful event occurred’, within the meaning of those provisions, 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 (see, to that effect, judgment of 29 July 2019, Tibor-Trans, C-451/18, EU:C:2019:635, paragraph 25 and the case-law cited).

33. As regards the question of which court within the Member State thus identified has jurisdiction, it is clear from the very wording of Article 7(2) of Regulation No 1215/2012 that that provision confers directly and immediately both international and territorial jurisdiction on the courts for the place where the damage occurred.

36. The Court has already stated that a centralisation of jurisdiction before a single specialised court may be justified in the interests of the sound administration of justice (see, to that effect, judgment of 18 December 2014, Sanders and Huber, C-400/13 and C-408/13, EU:C:2014:2461, paragraph 44).

38. In the absence of such a specialised court, the identification of the place where the damage occurred in order to ascertain the court having jurisdiction within the Member States over an action for damages based on collusive arrangements contrary to Article 101 TFEU must be consistent with the objectives of proximity, predictability of the rules governing jurisdiction, and of the sound administration of justice, referred to in recitals 15 and 16 of Regulation N° 1215/2012 (see, to that effect, judgment of 29 July 2019, Tibor-Trans, C-451/18, EU:C:2019:635, paragraph 34).

The Court of Justice rules:

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 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.