

Kluwer Competition Law Blog

The Volvo Judgment in Case C-30/20: the Place Where the Damage Occurred in Follow-on Cartel Damages Claims

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The Court of Justice of the European Union provides useful guidance on the interpretation of the concept of “the place where the damage occurred” to ascertain which court within a Member State has jurisdiction over a follow-on cartel damages claim.

Pursuant to settled case-law interpreting Article 7(2) Brussels I bis[1], the court having jurisdiction over an action for damages following the adoption of a cartel decision is both that of “the place where the damage occurred” and “the place of the event giving rise to it”[2].

In its Volvo ruling delivered last week on 15 July 2021 in case C-30/20[3], which follows Advocate General de la Tour’s Opinion published on 22 April 2021, the Court of Justice of the EU (“ECJ”) provides useful guidance on the meaning of the “place where the damage occurred” to ascertain which court within a Member State has jurisdiction over a follow-on cartel damages action.

This judgment is adopted further to a request for a preliminary ruling lodged by the Madrid Commercial Court No 2 in the context of a damages action filed by a Spanish company in the wake of the 2016 decision adopted by the European Commission in the trucks cartel case[4].

While the ECJ already had the opportunity to determine in several key judgments[5] which courts in the Member States have (international) jurisdiction to decide on a competition private action pursuant to Article 7(2) Brussels I bis, it is the first time that it decides that this provision also operates on local territorial jurisdiction[6].

This ruling is of critical importance in the identification of the courts before which they may bring an action within a Member State under Article 7(2) Brussels I bis.

In this blog, I briefly (i) sum up the background to the dispute, (ii) examine and clarify the answer and the reasoning of the ECJ, (iii) and formulate some observations about the solutions adopted by the ECJ.

Background to the dispute

A Spanish company purchased 5 Volvo trucks allegedly impacted by the trucks cartel condemned

by the European Commission.

To obtain compensation for its loss, this company brought an action for damages against several entities of the Volvo Group, including Volvo Group *España* domiciled in Madrid.

Although this Spanish company had purchased the vehicles in Cordoba and was domiciled in that city, it brought its claim before the Madrid Commercial Court No. 2.

In simpler terms than those used by this commercial court and the ECJ in its ruling^[7], the ECJ is asked to define the concept of the “place where the damage occurred” enshrined in Article 7(2) Brussels I bis as applied in a national context, and, in more specific terms, to determine before which court(s) within a Member State a claimant may bring an action when it purchased all the cartelized goods in places within the jurisdiction of one or several courts in the same Member State.

The legal context and the ECJ ruling

Article 4(1) Brussels I bis provides that, as a rule, “persons domiciled in a Member State shall, whatever their nationality be sued in the courts of that Member State”. However, under Article 7(2) Brussels I bis, a person domiciled in a Member State may also 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”. (§§4 and 6)

As mentioned above, pursuant to settled case-law, the concept of “the place where the harmful event occurred” within the meaning of Article 7(2) Brussels I bis 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” (§ 29).

With regard to the concept of “the place where the damage occurred” within the meaning of Article 7(2) Brussels I bis, the Volvo ruling is instructive in two regards.

Firstly, the ECJ holds that Article 7(2) Brussels I bis “confers directly and immediately both international and territorial jurisdiction on the courts for the place where the damage occurred” (§ 33). That being said, the ECJ finds nonetheless that Article 7(2) Brussels I bis “does not preclude Member States from deciding to confer a particular type of dispute to a single court, which therefore has exclusive jurisdiction irrespective of where the damage occurred within that Member State” (§ 35). This is because “the delimitation of the Court’s jurisdiction within which the place where the damage occurred [...] is, as a rule, a matter for the organizational competence of the Member State to which that Court belongs” (§34). The ECJ further rules that “the centralization of jurisdiction before a single specialized court may be justified in the interests of the sound administration of justice” (§ 36).

In other words, the ECJ considers that the concept of “the place where the damage occurred” resulting from Article 7(2) Brussels I bis is not only relevant to determine from an international perspective in which EU Member State(s) a court/courts have jurisdiction, but also, in the national context, which specific court(s) within that Member State have jurisdiction over a follow-on cartel damages claim. This is however without prejudice to the fact that, according to the ECJ, a Member

State may always decide to confer exclusive jurisdiction to one specific specialized court irrespective of where the damage occurred within that Member State, as this is consistent with the interests of the sound administration of justice.

Secondly, regarding the concept of “the place where the damage occurred” to determine which courts in the national context have jurisdiction to adjudicate on a cartel damages action, the ECJ makes a distinction depending on whether the cartelized products were purchased in places within the jurisdiction of one or several courts in the same Member State.

On the one hand, in cases where cartelized products have been purchased in a place or places within the jurisdiction of a single court, the ECJ considers that the court having jurisdiction over an action for damages is “that of the place where the goods [were] purchased” (§ 39), irrespective of whether they were bought directly or indirectly from the defendants or immediately transferred of at the end of a leasing contract (§40). The ECJ refers in this respect to its judgment *Verein für Konsumenteninformation*[8] in which it decided that “where goods are purchased which, following manipulation by their producer, are of lower value, the court having jurisdiction over an action for compensation for damage corresponding to the additional costs paid by the purchaser is that of the place where the goods are purchased” (§40).

It is worthwhile highlighting that in its *Verein für Konsumenteninformation* ruling[9], the ECJ concluded that, “where vehicles equipped by their manufacturer with software that manipulates data relating to exhaust gas emissions are sold, the damage suffered by the final purchaser is neither indirect nor purely financial and occurs when such a vehicle is purchased from a third party”. In this regard, it explained that “the place where the goods [were] purchased” was appropriate as *i*) the defendant which sells tampered products in other Member States “may reasonably expect to be sued in the courts of those States” (§ 36 of this ruling) and *ii*) it is consistent with the objectives of proximity and of the sound administration of justice, as, “in order to determine the amount of the damage suffered, the national court may be required to assess the market conditions in the Member State where that vehicle was purchased” and “the courts of that Member State are likely to have best access to the evidence needed to carry out those assessments” (§38 of this ruling).

On the other hand, where cartelized products have been purchased in places within the jurisdiction of several courts, irrespective of the legal mechanism of transfer, the ECJ rules that the court having jurisdiction over an action for damages is “that of the place of the victim’s registered office” (§ 41). According to the ECJ, in essence, this is because the members of the cartel cannot be unaware of the fact that the purchasers of the goods in question are established within the market affected by the cartel (§ 42).

Some observations about the ruling

Firstly, one could argue that the position according to which Article 7(2) Brussels I bis also determines which specific court within a Member State has jurisdiction over a cartel damages claims, but that Member States always have the right to confer exclusive jurisdiction to one specific specialized court, may seem *prima facie* paradoxical.

This (apparent) paradox may be phrased as follows: If the determination of the jurisdiction of the courts within a Member State is governed by Brussels I bis, how is that possible that national laws

can nonetheless confer exclusive jurisdiction to one specialized court within that Member State, despite the fact that there is no specific provision in Brussels I bis authorizing such a derogation?

In our opinion, this paradox may not actually be real as, in cases where only one single specialized court in a Member State “has exclusive jurisdiction irrespective of where the damage occurred within that Member State”, that court would, in any event, be the only one to have, pursuant to Article 7(2) Brussels I bis, jurisdiction over any damages claims, no matter where the damage actually occurred within that Member State.

Secondly, while the interpretation made by the ECJ of the concept of “the place where the damage occurred” pursuant to Article 7 (2) Brussels I bis as to the court before which a claim can be brought provides legal predictability and clarity to both claimants and defendants, the solutions it adopted are not exempt from any criticisms in our view.

First and foremost, it may be argued that the place where the damage resulting from a cartel actually occurs is in any event at the place of his registered office, irrespective of whether he bought cartelized products in one or several places within the jurisdiction of one or several courts. This is because the surcharge or the loss of profit resulting from the cartel and which constitutes the damage will, in any event, be suffered by the company at the place where it is seated.

Moreover, to reach the solution that the court having jurisdiction over an action for damages is “that of the place where the goods [were] purchased” in cases where those goods were bought in one single place, the ECJ relies, as indicated above, on judgment *Verein für Konsumenteninformation*. However, it is not clear how the objectives of proximity and of the sound administration of justice put forward in that ruling would be better protected if the court having jurisdiction over these claims is that where the cartelized products were purchased rather than the place where the victim is seated. This is because in both cases, the courts (where the products were purchased or where the victim is seated) will both have to assess the national market conditions where the damage was suffered and will benefit from equal access to the evidence needed to carry out this assessment.

Finally, the solution adopted by the ECJ might not actually be favourable to claimants. It may be assumed in practice that it would normally be easier for a claimant to sue before the courts where he has his seat rather than the courts where he purchased the cartelized products which may be far away from his seat.

Conclusion

By way of conclusion, it is worthwhile highlighting that, even if we are not entirely convinced by the appropriateness of the solutions adopted by the ECJ, the Volvo ruling provides useful guidance to claimants as to the courts before which they may bring their competition damages claims within a Member State. In this respect, it must be welcomed as it adds a new brick in the wall of cases adopted by the ECJ over the past few years which contribute to providing legal predictability to antitrust victims.

[1] 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 (OJ 2012 L 351, p. 1).

[2] Judgment of 29 July 2019, *Tibor-Trans*, C?451/18, EU:C:2019:635, paragraph 25 and the case-law cited.

[3] Judgment of 15 July 2021, *Volvo e.a.*, C-30/20, ECLI:EU:C:2021:604.

[4] European Commission decision of 19 July 2016, 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’).

[5] Judgment of 21 May 2015, *CDC Hydrogen Peroxide*, C?352/13, EU:C:2015:335; Judgment of 29 July 2019, *Tibor-Trans*, C?451/18, EU:C:2019:635 ; Judgment of 24 November 2020, *Wikinghof*, C?59/19, EU:C:2020:950.

[6] As indicated by the ECJ’s press release.

[7] According to the ECJ, “[b]y its question, the referring court asks, in essence, whether Article 7(2) [Brussels I bis] 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” (§ 27).

[8] Judgment of 9 July 2020, *Verein für Konsumenteninformation*, C?343/19, EU:C:2020:534.

[9] In § 35 of this case, the ECJ concluded that, “where vehicles equipped by their manufacturer with software that manipulates data relating to exhaust gas emissions are sold, the damage suffered by the final purchaser is neither indirect nor purely financial and occurs when such a vehicle is purchased from a third party”.

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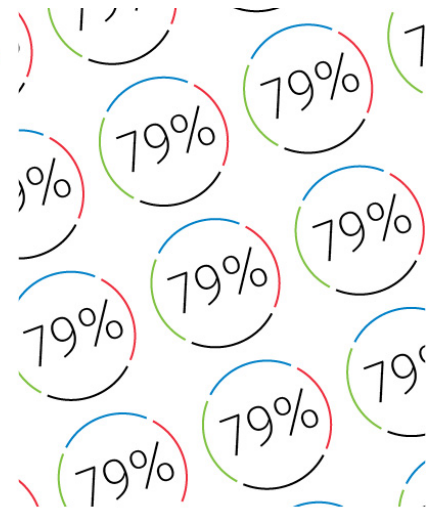
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