

# CJEU Clarifies EU Jurisdictional Rules in Antitrust Damages Claims



On 5 July 2018, the Court of Justice of the European Union (the **CJEU**) handed down an interesting decision in which it clarified the rules governing court jurisdiction in damages claims resulting from anticompetitive conduct.

In the case at hand, **FlyLaL** – a Lithuanian airline – brought a claim before the Lithuanian courts against **Air Baltic** and **Riga airport** (two Latvian companies) seeking compensation for alleged anticompetitive conduct. More particularly, FlyLaL argued that Air Baltic had abused its dominant position by engaging in predatory pricing on certain routes departing from and arriving at Vilnius airport. FlyLaL also argued that those predatory practices were the result of an anticompetitive agreement entered into between Air Baltic and Riga airport whereby Air Baltic benefited from discounts of 80% on fees for aircraft take-off, landing and security services offered by Riga airport. The savings made on those services allowed Air Baltic to fund its predatory prices which affected FlyLaL.

Relying on Article 2 of the now repealed Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the

recognition and enforcement of judgments in civil and commercial matters (the **Brussels I Regulation**) which provides that “*persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State*”, both Air Baltic and Riga airport raised objections claiming that the Lithuanian courts lacked international jurisdiction and that the claim should have been brought before the Latvian courts instead.

However, at first instance, the Lithuanian court found that Article 5 of the Brussels I Regulation\* (which provides that “[a] *person domiciled in a Member State may, in another Member State, be sued [...] 3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur [...]*”) applied to the case at hand and that the Lithuanian courts therefore had jurisdiction to hear the case.

Both Air Baltic and Riga airport challenged that decision.

On appeal, the Lithuanian Court of Appeal was uncertain as to (i) whether the alleged loss of income suffered by FlyLaL as a result of the anticompetitive conduct of Air Baltic and Riga airport could be regarded as damage capable of providing a basis for its jurisdiction pursuant to Article 5(3) of the Brussels I Regulation; and (ii) how to interpret the notion of “*place where the harmful event occurred*” in Article 5(3) of the Brussels I Regulation in the case of damages resulting from violation of competition law. The Lithuanian Court of Appeal therefore stayed the proceedings and referred the matter to the CJEU for a preliminary ruling.

In its judgment, the CJEU confirmed that “*loss of income consisting, inter alia, in loss of sales incurred as a result of anticompetitive conduct [...], may be regarded as ‘damage’ for the purposes of applying Article 5(3) of [the Brussels I Regulation]*” (para. 36).

In addition, the CJEU also found that, in the context of an action seeking compensation for loss of sales caused by anticompetitive conduct, the notion of “*place of harmful event*” under Article 5(3) of the Brussels I Regulation consisted of either:

- the place of the market which is affected by that conduct and on which the victim claims to have suffered those losses (*i.e.* Lithuania in the case at hand); or
- the place of conclusion of this agreement (*i.e.* Latvia in the case at hand), in the case of an anticompetitive agreement between companies; or
- the place where the predatory prices were offered and applied.

By means of derogation to this last possibility, the CJEU also noted (para. 50) that if the predatory pricing policy consisted solely of the implementation of a prior agreed anticompetitive agreement, then the “*place of harmful event*” under Article 5(3) of the Brussels I Regulation would be the place of conclusion of the anticompetitive agreement.

*\* Articles 4 and 7 of the currently applicable Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the **Brussels Ibis Regulation**) contain similar terms to Articles 2 and 5 of the Brussels I Regulation. Consequently, the findings of the CJEU in this case continue to be relevant under the Brussels Ibis Regulation.*

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