CJEU Rules on Jurisdiction in Private Damages Actions for Infringement of Competition Law in Absence of Contractual Link between Plaintiff and Participant to Cartel

On 29 July 2019, the Court of Justice of the European Union (the ***CJEU***) handed down a judgment in which it held that a domestic court in an EU Member State has jurisdiction to rule on a follow-on competition damages claim even when no direct contractual link exists between the participant to a cartel and the victim.

The case concerned a civil action for damages initiated by *Tibor-Trans Fuvarosó és Kereskedelmi Kft* (***Tibor-Trans***), a freight transport company based in Hungary, against *DAF Trucks NV* (***DAF***), a trucks manufacturer headquartered in the Netherlands. The case was initiated before Hungarian courts by Tibor-Trans following the 2016 decision of the European Commission which found that, between 1997 and 2011, the international truck manufacturers, including DAF, had colluded

on pricing and on the timing and the passing on of costs for the introduction of emission technologies (Case AT.39824 – Trucks).

Tibor-Trans brought its follow-on action for damages against DAF alleging that it had suffered financial harm as a result of the collusive arrangements between truck companies. Tibor-Trans said it had heavily invested in the purchase of new trucks between 2000 and 2008. In order to purchase those trucks, Tibor-Trans had secured financing from leasing companies which retained ownership of the vehicles until the expiry of the leasing agreements. The right of ownership only passed on to Tibor-Trans after performance of its obligations under the leasing agreements. Thus, although Tibor-Trans never purchased any DAF trucks, it claimed to be a direct victim of the anti-competitive infringement, considering that (i) the leasing companies only provided financing and completely passed on the overcharge to Tibor-Trans; and (ii) in Hungary, customers were only able to purchase trucks from independent dealers, and not directly from the original equipment manufacturers.

Tibor-Trans argued that Hungarian courts had jurisdiction to rule in that case. Tibor-Trans relied more particularly on Article 7(2) of Regulation 1215/2012 of the European Parliament and of the Council of 12 December 2012 on the jurisdiction and enforcement of judgments in civil and commercial matters (the ***Brussels Ibis Regulation***) which 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*".

Tibor-Trans also relied on the CJEU's case-law in which the CJEU interpreted Article 7(2) of the Brussels *Ibis* Regulation to mean that, in the case of an action for damages brought against defendants domiciled in different Member States as a result of a violation of competition rules, the victims of

those competition law infringements were entitled to bring follow-on actions before the courts of the place where its own registered office was located (Case C-352/13, *CDC Hydrogen Peroxide*).

DAF, on the other hand, disputed the jurisdiction of the Hungarian court, arguing that the German courts should have jurisdiction because (i) the collusive meetings took place in Germany; and (ii) neither DAF nor any other participants in the cartel had ever entered into a direct contractual relationship with Tibor-Trans, therefore DAF could not reasonably expect to face litigation in Hungary.

Uncertain as to the answer called for by this issue, the Hungarian court stayed the proceedings and referred the matter to the CJEU for a preliminary ruling.

In its judgment, the CJEU noted that the damages that can be recovered in follow-on competition law damages actions is not limited to the financial consequences suffered by the direct purchasers. Those damages also cover actions for reparation of harm caused by "*additional costs incurred because of artificially high prices*". According to the CJEU, such damage appears "*to be the immediate consequence of an infringement pursuant to Article 101 TFEU and thus constitutes direct damage which, in principle, provides a basis for the jurisdiction of the courts of the Member State in which it occurred*".

Relying on its previous case-law in case C-27/71, *FlyLAL* (see our coverage here), the CJEU then noted that, for the purpose of applying Article 7(2) of the Brussels *Ibis* Regulation to competition law infringements, the place where the damage occurred consists of the EU Member State on whose territory the alleged damage is purported to have occurred.

The CJEU therefore concluded that Article 7(2) of the Brussels *Ibis* Regulation must be interpreted, in the case at hand, "*as*

meaning that, in an action for compensation for damage caused by [infringements of competition law] *'the place where the harmful event occurred' covers* […] *the place where the market which is affected by that infringement is located, that is to say, the place where the market prices were distorted and in which the victim claims to have suffered that damage, even where the action is directed against a participant in the cartel at issue with whom that victim had not established contractual relations*".
