

RECHTSPRAAK

JURISPRUDENCE

INTERNATIONAAL PRIVAATRECHT / DROIT INTERNATIONAL PRIVÉ

HOF VAN JUSTITIE 29 JULI 2019

EUROPEES EN INTERNATIONAAL GERECHTELIJK RECHT

**Bevoegdheid en executie – Verordening (EU) nr. 1215/2012 – Bijzondere bevoegdheid – Artikel 7, 2. – Verbin-
tenissen uit onrechtmatige daad – Plaats waar het scha-
debren- gende feit zich heeft voorgedaan – Plaats waar de
schade is ingetreden – Verzoek om vergoeding van de
schade die is veroorzaakt door een met artikel 101
VWEU en artikel 53 van de overeenkomst betreffende de
Europese Economische Ruimte strijdig verklaarde
mededingingsregeling – Mededinging**

*Artikel 7, 2. van verordening (EU) nr. 1215/2012 van het
Europees Parlement en de Raad van 12 december 2012
betreffende de rechterlijke bevoegdheid, de erkenning en de
tenuitvoerlegging van beslissingen in burgerlijke en han-
delszaken dient aldus te worden uitgelegd dat bij een vorde-
ring tot vergoeding van schade als gevolg van een op
artikel 101 VWEU gemaakte inbreuk die onder meer bestaat
uit heimelijke afspraken over prijsstelling en verhogingen
van de brutoprijs van vrachtwagens, "de plaats waar het
schadebrengende feit zich heeft voorgedaan", in een situatie
als die van het hoofdgeding betrekking heeft op de plaats
waar zich de markt bevindt die door die inbreuk is beïnvloed,
dus de plaats waar de prijzen op de markt zijn vervalst, en
waar de benadeelde stelt schade te hebben geleden, ook al is
de vordering gericht tegen een deelnemer aan het betref-
fende kartel met wie de benadeelde geen contractuele relatie
was aangegaan.*

Tibor-Trans Fuvarozó és Kereskedelmi Kft./DAF TRUCKS NV

(...)

Het Europees Hof van Justitie heeft verklaard dat

1. A selection of the paragraphs of the judgment that need to
be published along with your note:

(...)

26. In the present case, the request for a preliminary ruling
contains no evidence to support the conclusion that it is dis-
puted that the Hungarian courts cannot derive their interna-

DROIT JUDICIAIRE EUROPÉEN ET INTERNATIO- NAL

**Compétence et execution – Règlement (UE) n° 1215/2012
– Compétences spéciales – Article 7, 2. – Matière délic-
tuelle ou quasi délictuelle – Lieu où le fait dommageable
s'est produit – Lieu de la matérialisation du dommage –
Demande en réparation du préjudice causé par une
entente déclarée contraire à l'article 101 TFUE et à
l'article 53 de l'accord sur l'Espace économique euro-
péen – Droit de la concurrence**

*L'article 7, 2., du règlement (UE) n° 1215/2012 du Parle-
ment européen et du Conseil du 12 décembre 2012 concer-
nant la compétence judiciaire, la reconnaissance et l'exécu-
tion des décisions en matière civile et commerciale, doit être
interprété en ce sens que, dans le cadre d'une action en
réparation d'un préjudice causé par une infraction au titre
de l'article 101 TFUE, consistant notamment en des arran-
gements collusoires sur la fixation des prix et l'augmenta-
tion des prix bruts des camions, le « lieu où le fait domma-
geable s'est produit » vise, dans une situation telle que celle
en cause au principal, le lieu du marché affecté par cette
infraction, à savoir le lieu où les prix du marché ont été faus-
sés, au sein duquel la victime prétend avoir subi ce préju-
dice, même si l'action est dirigée contre un participant à
l'entente en cause avec lequel cette victime n'avait pas établi
de relations contractuelles.*

tional jurisdiction to hear the case in the main proceedings
from the place of the causal event giving rise to the alleged
damage because none of the collusive arrangements consti-
tuting an infringement under Article 101 TFEU took place in
Hungary. The question referred relates solely to the determi-
nation of the place where the alleged damage occurred, con-
sisting of additional costs incurred because of artificially
high prices, such as those of the trucks covered by the cartel
at issue in the main proceedings.

27. As regards the determination of the place where such

damage occurred, it must be noted that that place depends on whether the issue concerns the initial damage, resulting directly from the event giving rise to the damage, in which case the place where such damage occurred may provide a basis for jurisdiction under Article 7, (2) of Regulation No 1215/2012, or whether it concerns subsequent adverse consequences which are not capable of providing a basis for jurisdiction under that provision (see, to that effect, judgment of 5 July 2018, C 27/17, *flyLAL-Lithuanian Airlines*, EU:C:2018:533, para. 31).

(...)

30. As is apparent from the file before the Court and without prejudice to the findings of fact in the main proceedings which it is for the referring court to make, the damage alleged by Tibor-Trans consists of additional costs incurred because of artificially high prices applied to trucks following collusive arrangements constituting a single and continuous infringement of Article 101 TFEU which had been effective throughout the EEA between 17 January 1997 and 18 January 2011 and in which 15 international truck manufacturers, including DAF Trucks, had participated. It is also clear from the file before the Court that Tibor-Trans did not purchase trucks directly from the participants in the cartel at issue, as they were initially sold to Hungarian vehicle dealerships which passed the costs of the price increase on to the end users, such as Tibor-Trans.

31. As regards the nature of the damage alleged, it should be noted that it is not merely a financial consequence of the

damage that could have been suffered by direct purchasers, such as Hungarian vehicle dealerships, and which could have consisted of a loss of sales following the price increase. By contrast, the damage alleged in the case in the main proceedings results essentially from the additional costs incurred because of artificially high prices and, therefore, 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.

(...)

On those grounds, the Court (6th Ch.) hereby 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, in an action for compensation for damage caused by an infringement of Article 101 TFEU, consisting, *inter alia*, of collusive arrangements on pricing and gross price increases for trucks, “the place where the harmful event occurred” covers, in a situation such as that at issue in the main proceedings, 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.

Noot

Case Review: Tibor-Trans Fuvarozó és Kereskedelmi Kft. / DAF TRUCKS NV (C-451/18)

Reza BEHESHTI¹

I. INTRODUCTION

Private enforcement of competition law is a fast-growing field. Private actions pursued against anti-competitive practices may involve entities located in different countries and thus entail procedures in more than one jurisdiction. This means that judicial and administrative authorities of various countries may encounter difficulties associated with the international character of antitrust infringements. There is

therefore increasing concern about the effective and uniform application of rules on jurisdiction, the applicable law and recognition of judicial decisions. *Tibor-Trans Fuvarozó és Kereskedelmi Kft. / DAF TRUCKS NV* is an interesting case concerning follow-up damages action against collusive and restrictive agreements arranged by a cartel, which deserves an analysis.

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