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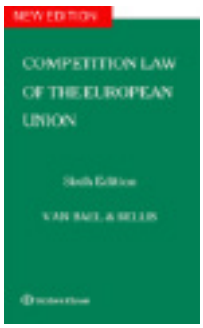
July 2021

# VBB on Competition Law

## Highlights






### Jurisdictions covered in this issue





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# ABUSE OF DOMINANT POSITION

## – MEMBER STATE AND UK LEVEL –

THE NETHERLANDS AND THE UNITED KINGDOM

During the month of July, the competition authorities in the UK ("CMA") and the Netherlands ("ACM") imposed significant fines for unlawful excessive pricing of medicines, continuing the recent trend in Europe of pharmaceutical companies facing prosecution and sanctions for significant price increases.

**CMA imposes record fines of £ 260 million on hydrocortisone suppliers**

On 15 July 2021, the CMA imposed fines of more than £ 260 million on the hydrocortisone tablet suppliers, Auden Mckenzie and Actavis (now named Accord-UK), for charging excessive and unfair prices and for paying potential rivals to remain out of the market (see CMA Press Release). CMA Chief Executive, Andrea Coscelli, referred to the CMA's findings as "*without doubt some of the most serious abuses* […] *uncovered in recent years*."

*Excessive and Unfair Pricing*

The CMA found that Auden Mckenzie and Actavis charged excessive and unfair prices for 10mg and 20mg hydrocortisone tablets between 2008 and 2018 (Actavis took over Auden Mckenzie's hydrocortisone tablet business in 2015 and was therefore liable for its conduct before that date). The CMA found that the parties had increased the price of the tablets by more than 10,000% compared to the price that had been charged for the original branded version of the tablets. More specifically, in April 2008, the price of a single pack of 10mg tablets was 70p and a pack of 20mg tablets was £ 1.07; by March 2016, the prices had risen to £ 88 and £ 102.74, respectively.

In supplying a de-branded version of the hydrocortisone tablets, the parties were able to exploit the fact that it is only the original, branded version of a drug which is subject to price regulation. In theory, the prices of de-branded medicines should be kept in check by the onset of competition between competing generic suppliers. However, in this instance – and to some extent due to the conduct of the parties (see *Market Sharing* below) – such competition did not, in fact, materialise. This created the space for the parties to drastically hike up the price of their products.

The total fine imposed by the CMA for the charging of excessive and unfair prices was £ 155 million.

*Market Sharing*

The CMA also found that Auden Mckenzie concluded anti-competitive market sharing agreements with Waymade and AMCo (now known as Advanz Pharma). Pursuant to these agreements, Auden Mckenzie made monthly payments to Waymade and AMCo in return for their commitment to refrain from introducing their own generic hydrocortisone tablets to market. In total, over the duration of the agreement, AMCo received £ 21 million and Waymade received £ 1.8 million.

The CMA fined Auden McKenzie/Accord-UK and Allergan (as its former parent company) a further £ 66 million for its part in the market sharing agreement. AMCo/Advanz Pharma and its former parent, Cinven, were fined a total of £ 43 million, and Waymade was fined £ 2.5 million.

**ACM fines Leadiant almost € 20 million for excessive pricing**

On 20 July 2021, the ACM announced that it had imposed a fine of € 19,569,500 on Leadiant for abusing its dominant position by charging excessive prices for chenodeoxycholic acid-Leadiant ("CDCA"), a medicine indicated for the treatment of patients suffering from cerebrotendinous xanthomatosis, a rare metabolic disorder (see ACM Press Release and Summary of Decision).

In December 2014, Leadiant secured orphan medicine status for CDCA after it had succeeded in demonstrating the significant benefit of CDCA over existing treatments of CTX. Over time, Leadiant had managed to obtain a list price for CDCA of € 14,000 for a pack of 100 capsules (or

€ 153,300 per patient per year), a price far higher than that of an old medicine with the same active substance indicated for the treatment of cholesterol gallstones (€ 46 for a similar pack).

The ACM considered Leadiant's price for CDCA to be excessive because it was, according to ACM, "*exorbitantly high and unfair*". The ACM's finding that the price for CDCA was exorbitantly high followed from an analysis of Leadiant's costs, investments and revenues associated with the product as well as the risk that the product could fail. The ACM reached the conclusion that the "*CDCA project was characterised by low costs in comparison with the revenues, low risks, and a very high return*".

The ACM's finding that the price for CDCA was also unfair came in spite of the orphan medicine designation of CDCA. According to the ACM, Leadiant did not innovate and CDCA did not present any therapeutic added value over other CDCA-based medicines. Even on the safety and efficacy front, the contribution of CDCA had been minimal as the active substance had been prescribed and administered for decades.

Leadiant maintained that it had always been open to price discussions, but from the ACM's perspective there had been no indication that Leadiant had ever been willing to entertain the possibility of a non-excessive price. According to the ACM, Leadiant had failed to "*negotiate effectively or seriously with health insurers and the ministry* [of health, welfare and sport]".

Leadiant has come under scrutiny from competition authorities in several countries, including Belgium, Italy and Spain, but the ACM was the first to impose a fine. The decision against Leadiant also marks the first time that the ACM has imposed a fine to tackle the excessive pricing of medicines.

**CMA continues crack down on excessive pricing of medicines**

Hot on the heels of the £ 260 million fine it imposed on hydrocortisone suppliers for charging excessive prices and concluding anticompetitive market sharing agreements, on 29 July 2021, the CMA fined Advanz Pharma and previous owners, Cinven and HgCapital, a total of more than £ 101 million for charging excessive and unfair prices for liothyronine tablets – a treatment for hypothyroidism (see Press Release). In line with the most recent excessive pricing cases, this new decision concerns a drastic increase in the price of genericised medicines that could not be justified by increased costs, investments or innovation.

During its investigation, the CMA uncovered Advanz's strategy of identifying genericised medicines subject to no (or limited) competition and substantial barriers to new entry. After acquiring the rights to such medicines, Advanz would "de-brand" the medicines in order to avoid applicable price regulations.

Using this strategy, Advanz Pharma was able to increase the price of liothyronine tablets by more than 6,000% between 2009 and 2017. As a result, NHS spending on liothyronine tablets increased from approximately £ 2.3 million in 2009 to above £ 30 million in 2016. Liothyronine tablets were ultimately placed on the NHS "drop list", leaving patients with the option of either ceasing use of the treatment or having to purchase the treatment at their own expense.

**Analysis: New Developments or More of the Same?**

***NEW – Prosecution of excessive pricing during regulatory exclusivity***. While past excessive pricing cases, as well as the two new cases in the UK, all involve products for which any patent or regulatory exclusivity had expired, the case in the Netherlands concerns the pricing of a product for which Leadiant held valid regulatory exclusivity under the orphan drugs regulations. While the Dutch competition authority took pains to emphasise that any innovation by Leadiant was minimal (as CDCA was previously available for many years), this case nevertheless represents an additional step by competition authorities, demonstrating that they are also willing to prosecute strategies involving large price increases and limited innovation.

***NEW – Highest ever fines***. The fines issued in these cases are the highest fines ever imposed on pharmaceutical companies by the UK and Dutch competition authorities, indicating that the authorities in these countries consider such excessive pricing to be as serious an infringement as cartel conduct.

***NEW – Specific requirements when negotiating prices***. The Dutch decision includes the legal standard the ACM expects to be met by dominant pharmaceutical companies when negotiating prices. Specifically, such companies have a responsibility of "*active engagement*" and to negotiate "*effectively and seriously*" with health insurers and other relevant public authorities, and ultimately "*not to charge and collect an excessive price*".

***NEW – 1800% and 250% price increases allowed?*** In the case in the Netherlands, the price of CDCA increased from € 46 to € 14,000. However, only Leadiant's last price increase (of 350% in 2017) was held to be an infringement, while Leadiant's prior price increases of 1800% in 2009 and 250% in 2014 were not sanctioned. Potential explanations are that Leadiant was not dominant before receiving exclusivity in 2017 or that Leadiant's prior price increases were justified by the costs it incurred to gain regulatory approval.

***SAME – Compliance with regulations is not an infringement, but it is also not a valid defence***. The ACM does not allege that Leadiant unlawfully obtained an orphan designation for CDCA, or that the necessary price increase to cover the costs for the registration is unlawful. However, the ACM also does not appear to accept that Leadiant's compliance with the orphan regulations and the associated "reward" of regulatory exclusivity empower Leadiant to freely set its prices in its discretion, and does not justify the last 350% price increase implemented in 2017.

***SAME – Comparisons with prices in other countries is also not a valid defence***. Consistent with the approach of the European Commission and Italy in the Aspen case, the ACM did not appear to accept Leadiant's argument that the list price set in the Netherlands is "the lowest in the EU" as a defence against a finding of excessive pricing.

***NEW – Authorities not deterred by losses in prior cases***. The UK CMA's prior high-profile case against Pfizer and Flynn for excessive pricing of phenytoin sodium capsules was annulled on appeal. Despite this high-profile rebuke – with the CMA being criticised for, among other things, misapplying the legal test for excessive pricing and failing to properly evaluate evidence adduced by the parties – the CMA appears to be undeterred in the pursuit of cases involving significant price increases on medicines.

# CARTELS AND HORIZONTAL AGREEMENTS

**– MEMBER STATE LEVEL –**

FRANCE

**Paris Court of Appeal significantly reduces fines imposed in French endive cartel case**

On 1 July 2021, the Paris Court of Appeal largely confirmed an earlier decision of the French Competition Authority ("FCA") finding that French endive producers' organisations and associations had infringed Article 101 TFEU, but significantly reduced the amount of the fines imposed on them due to the uncertain interplay between EU competition law and the EU Common Agricultural Policy ("CAP").

On 6 March 2012, the FCA imposed fines totalling € 4 million on several French endive producers' organisations and associations for their involvement in a price-fixing, output restriction and market-sharing cartel. On appeal, the producers' organisations and associations argued in their defence that they had a responsibility under the CAP to stabilise endive producer prices and to adjust production to demand, and that their conduct therefore could not amount to an infringement of the EU competition rules.

After the Paris Court of Appeal accepted these arguments and ruled that there was no infringement of Article 101 TFEU, the French Supreme Court requested guidance from the Court of Justice of the European Union ("ECJ") on the interplay between EU competition law and the CAP, and in particular the application of EU competition law to agricultural producers' organisations ("POs") and their associations ("APOs"). In a 2017 ruling (see VBB on Competition Law, Volume 2017, No. 11), the ECJ held that practices discussed within a PO/APO may escape the application of EU competition law where they pursue the objectives assigned to these entities under the CAP and do not go beyond what is strictly necessary to achieve these objectives. However, where practices go beyond this, the EU competition rules apply. Following the ECJ's preliminary ruling, the French Supreme Court overturned the Paris Court of Appeal's original judgment and remanded the case back to the Court of Appeal for reconsideration.

In its recent judgment on remand, the Paris Court of Appeal ruled that most of the infringements of Article 101 TFEU found by the FCA in its 2012 decision had been duly established. According to the Court, only three of the practices engaged in by the endive producers' organisations and associations fulfilled the criteria enunciated by the ECJ in its 2017 ruling and thus did not fall within the scope of EU competition law.

However, the Court reduced the amount of the fines imposed by the FCA from € 3.9 million to € 1.15 million on account of mitigating circumstances. More particularly, while the Court recognised the gravity of the anti-competitive practices at issue, it also pointed to the complexity of the interplay between EU competition law and the CAP before the ECJ's 2017 ruling. Moreover, the Court observed that the practices were organised publicly and without opposition by the competent authorities during the first two years of their implementation, and that the organisations and associations could therefore have believed that their practices were excluded from the scope of EU competition law. The Court considered that this reasonable doubt and the uncertainty regarding the applicable legal framework had not sufficiently been taken into consideration by the FCA in setting the fine. In addition, the Court considered that the practices at issue had had a limited impact on the economy.

# VERTICAL AGREEMENTS

**– EUROPEAN UNION LEVEL –**

**Draft new Vertical Agreements Block Exemption and Vertical Guidelines released for comment**

On 9 July 2021, the European Commission ("Commission") published the draft revised Vertical Block Exemption Regulation ("Draft VBER") and draft revised guidelines on vertical restraints ("Draft VGL"), a key step in the context of the revision of the current regime governing vertical agreements, set to expire on 31 May 2022. Comments on the drafts may be submitted to the Commission by **17** September 2021.

The Draft VBER and Draft VGL would bring about a number of important changes to the application of the EU competition rules to a wide range of vertical agreements. These changes would impact not only distribution systems for branded products, but vertical agreements in all industry sectors across the entire economy. In a VBB Insights piece dedicated to this subject, we provide a first detailed analysis of the most important changes and their potential impact on market participants, an executive summary of which is provided in the link above.

# INTELLECTUAL PROPERTY/LICENSING

**– EUROPEAN UNION LEVEL –**

**Request for preliminary ruling on abuse of dominance in SEP licensing negotiations removed from the register of the Court of Justice**

On 24 June 2021, the Court of Justice of the European Union ("ECJ") ordered the removal of a request for a preliminary ruling lodged by the Regional Court of Düsseldorf on 23 March 2021 in Case C-182/21, *Nokia Technologies Oy v. Daimler AG*.

The questions arose in a dispute between Nokia and Daimler regarding the licensing of standard essential patents ("SEPs") in multi-layered supply chains. The Düsseldorf Court had asked the ECJ questions that, among others, were likely to clarify whether an SEP holder that had committed to offer licensing terms that are fair, reasonable and non-discriminatory ("FRAND") is free to choose who, in a multi-layered supply chain, should take out a licence. The ECJ was expected to provide guidance on whether the SEP holder abuses its dominant position, pursuant to Article 102 TFEU, if it insists that the producer of an end-product (such as a car manufacturer) take out a licence, while rejecting a request for a licence from the manufacturer/distributor of the upstream component implementing the SEP, which is later incorporated into the end-product.

In addition, the Düsseldorf Court had asked for clarification on the requirements established by the ECJ's judgment in *Huawei v. ZTE* (see VBB on Competition Law, Volume 2015, No. 7). For a summary of the questions referred by the Regional Court of Düsseldorf, see VBB on Competition Law, Volume 2020, No. 11.

In June 2021, Daimler and Nokia announced their agreement to settle all pending litigation. Nokia abandoned its action and, as a result, the Regional Court of Düsseldorf withdrew the request for a preliminary ruling.

The questions relating to SEP licensing negotiations opposing SEP holders in the telecommunications sector and parties in the automotive industry that use components implementing SEPs will therefore remain unanswered. National courts have already interpreted these in diverging ways. For a summary of recent case law in Germany on when SEP licensing negotiations may give rise to an abuse of dominance, see VBB on Competition Law, Volume 2021, No. 6.

# STATE AID

## – EUROPEAN UNION LEVEL –

### Court of Justice provides further guidance on standing to challenge state aid decisions related to competing undertakings (*Deutsche Lufthansa v Commission*, Case C-453/19 P)

On 15 July 2021, the Court of Justice of the European Union ("ECJ" or "Court") rejected the appeal filed by the German airline company Deutsche Lufthansa AG against the judgment of the General Court of 12 April 2019, *Deutsche Lufthansa v Commission* (Case T-492/15).

The substance of the dispute concerned certain alleged aid measures adopted by the German authorities in favour of Frankfurt Hahn airport, Ryanair and other airlines using that airport. Lufthansa and other competitors of the recipients filed state aid complaints against those measures before the Commission. These complaints were rejected by Commission Decision (EU) 2016/789 of 1 October 2014 on the State aid SA.21121 (ex NN 54/07) (OJ 2016 L 134, p. 46), on the ground that the measures were either "state aid" compatible with the internal market, or did not constitute "state aid" in the sense of Article 107(1) TFEU.

At first instance, the General Court found that the action brought by Lufthansa did not meet the requirements for standing under Article 263(4) TFEU, *inter alia*, because it was not "*directly*" and "*individually*" concerned by the Commission's decision. Amongst the reasons to reject the application, the General Court noted that Lufthansa had not demonstrated that its market position was "*substantially affected*" by the alleged aid measures at stake. The fact that Lufthansa had filed a complaint with the Commission and that it participated in the formal state aid investigation was not deemed sufficient to justify its *locus standi*.

On appeal, the ECJ confirmed the General Court's judgment and provided further guidance on the standing of third parties to challenge the Commission's state aid decisions. Below we outline the most interesting aspects of the Court's reasoning.

1. **Participation in a formal state aid investigation by an "*interested party*" is neither a necessary nor a sufficient condition for that party to have standing to challenge the resulting decision.**

Lufthansa argued that the General Court had erred in law in holding that it had failed to demonstrate that its position on the market was "*substantially affected*" by the alleged aid at issue. According to Lufthansa, its right to bring an action for annulment against the Commission's decision was inherent in the fact that it participated in the procedure leading to the adoption of the decision as an "*interested party*" in the sense of the relevant rules on state aid procedure.

In response to that line of argument, the ECJ drew an important distinction between the preliminary examination ("Phase 1") and the formal investigation ("Phase 2") under Article 108(2) TFEU, insofar as the standing of an "*interested party*" is concerned.

The ECJ recalled that in the context of Phase 1, "interested parties" do not have the right to submit comments to the Commission – meaning that, if the Commission decides to close the investigation without moving to Phase 2, their only possibility of challenging the findings of the Commission is to bring an action before the EU Courts on the basis of Article 263(4) TFEU. That is why the case law allows such an action for the annulment to be admissible, insofar as the applicant seeks to safeguard its procedural rights.

The same reasoning does not, however, apply to a decision adopted after Phase 2. Where the Commission closes an investigation after Phase 2, the "*interested party*" will have had the right to submit its comments to the Commission. Thus, as noted by the Court, "*if the applicant*

*calls into question the merits of a decision appraising the aid taken on the basis of Article 108(3) TFEU or after the formal investigation procedure, the mere fact that it may be regarded as 'concerned' within the meaning of Article 108(2) TFEU cannot suffice to render the action admissible. It must then demonstrate that it has a particular status, for the purposes of the case-law* […]. *That applies in particular where the applicant's position on the market concerned is substantially affected by the aid to which the decision at issue relates*" (para. 37 of the judgment under discussion).

This is an important passage of the Court's reasoning. It further clarifies that it is not enough for an "*interested party*" to have participated in the state aid procedure in order to be able to challenge the decision adopted by the Commission. For instance, an "*interested party*" would need to show that their position on the market is "*substantially affected*" by the aid at stake.

It is unclear, however, whether the judgment should be read as meaning that competitors must have participated in the state aid procedure in order to be able to challenge the resulting decision. In other words, the question arises whether, for instance, the "*substantial adverse effect*" on the market position would be by itself sufficient to show "*individual concern*", absent participation in the state aid investigation.

The Court has already held that it does not follow from the case law that participation in the state aid procedure is a necessary condition for the finding that a decision is of "*individual concern*" to an undertaking within the meaning of the fourth paragraph of Article 263 TFEU. In this sense, the lack of participation does not preclude the possibility of an undertaking putting forward other specific circumstances which distinguish it individually in a way that is similar to the case of the person addressed by that decision (see, e.g., *Sniace v Commission*, Case C-260/05, para. 57).

Therefore, the takeaway from the judgment under discussion appears to be that participation in Phase 2 by an "*interested party*" is neither a necessary nor a sufficient condition to have standing to challenge the resulting state aid decision.

2. **Further guidance on the standard of proof related to the "*substantial adverse effect*" on the applicant's market position.**

A second interesting passage of the Court's reasoning concerns the standard of proof for the "*substantial adverse effect*" on the applicant's market position. Based on the case law, an interested party – such as a competitor of the aid recipient – may bring an action for annulment against a state aid decision insofar as it demonstrates that the aid had a "*substantial adverse effect*" on its market position. Lufthansa argued that the General Court had examined this condition in the light of incorrect requirements.

On appeal, the ECJ clarified that "*the substantial adverse effect on the applicant's competitive position on the market in question results not from a detailed analysis of the various competitive relationships on that market, allowing the extent of the adverse effect on its competitive position to be established specifically, but, in principle, from a prima facie finding that the grant of the measure covered by the Commission's decision leads to a substantial adverse effect on that position*" (para. 58). In this sense, it is sufficient for the measure to be liable to have a substantial adverse effect on its position on the market concerned.

However, it is not enough for the undertaking to be a competitor of the alleged aid recipient. The applicant must demonstrate, for instance, that the alleged aid measure led to a decline in its commercial or financial performance – or that it caused the loss of an opportunity to make a profit, or a less favourable development than would have been the case without such aid.

With that in mind, the ECJ found that, in the present case, the General Court had made an error in law in that it rejected the action because Lufthansa did not sufficiently define the market (or markets) on which it considered that it had suffered a "*substantial adverse effect*". This, according to the ECJ, goes beyond what the case law requires from the applicant in order to demonstrate the existence of such an adverse effect on its market position.

However, the Court noted that the General Court's conclusion as to the inadmissibility of Lufthansa's action for annulment was not only based on that finding. The over-

all assessment of the facts made by the General Court – which the ECJ could not, in this case, review on appeal – led to the conclusion that the financial indicators put forward by Lufthansa did not demonstrate a "*substantial adverse effect*" on its market position. Thus, the ECJ found that the error made in the judgment at first instance was not enough to overturn the rejection of the action for annulment brought by Lufthansa.

3. **The "*direct concern*" criterion must be interpreted and applied in the same way for the purpose of all standing scenarios mentioned in Article 263(4) TFEU.**

According to Article 263(4) TFEU, any natural or legal person may institute proceedings against an act addressed to that person (first scenario), or which is of "*direct and individual concern*" to them (second scenario), or against a "*regulatory act*" which is of "*direct concern to them and which does not entail implementing measures*" (third scenario).

Leaving aside the first scenario, Lufthansa argued that the concept of "*direct concern*" cannot be interpreted and applied in the same way in relation to the other two scenarios. On that basis, it criticised the General Court for having found that because Lufthansa was not "*directly concerned*" under the second scenario, it was also to be deemed as not "*directly concerned*" for the purposes of the third scenario.

The ECJ rejected that line of argument and explained that "*it does not follow from the Court's case-law* […] *that* [the direct concern] *criterion would have a different meaning for the purposes of the second and the third situations provided for in the fourth paragraph of Article 263 TFEU*" (para. 82).

While quite obvious, this remains an important clarification made by the Court, which should avoid any misunderstandings in the future as to the relationship between the second and third scenarios for standing under Article 263(4) TFEU. In fact, the advantage of the third scenario – as opposed to the second – is (only) that the applicant is not required to prove its "*individual concern*" – it does not grant any leeway when it comes to the "*direct concern*" requirement, which remains fully applicable and as strict a requirement as under the second scenario.

# PRIVATE ENFORCEMENT

## – EUROPEAN UNION LEVEL –

### Court of Justice establishes rules on local territorial jurisdiction for damages actions

On 15 July 2021, the Court of Justice of the European Union ("ECJ") handed down a judgment following a request for a preliminary ruling on the interpretation of Article 7(2) of Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("Brussels Regulation (recast)") (Case C-30/20, *RH v. Volvo*).

The question was referred to the ECJ by Madrid's Commercial Court No. 2 in the broader context of legal proceedings initiated by RH, a company domiciled in Cordoba, against various entities of the Volvo group ("Volvo") located in Sweden, Germany and Spain. Following the European Commission's decision of 19 July 2016 sanctioning 15 truck manufacturers – including three Volvo entities – for infringing Article 101 TFEU (AT.39824 – *Trucks*), RH sought to obtain damages for the loss sustained as a result of allegedly paying artificially high prices when purchasing five vehicles.

Pursuant to Article 7(2) of the Brussels Regulation (recast), in matters relating to tort, a person domiciled in an EU Member State may be sued before the courts of the place where the harmful event occurred. Under the ECJ's established case law, the "place where the harmful event occurred" covers both the place where the damage materialised and the place where the event giving rise to that damage occurred. The claimant may choose to initiate proceedings in the courts of either of these places (see, e.g., *Kolassa* (C-375/13), *Universal Music International Holding* (C-12/15), *flyLAL-Lithuanian Airlines* (C-27/17) and *Tibor-Trans* (C-451/18)). In this case, the Commission decision established that the infringement of Article 101 TFEU giving rise to the alleged damage covered the entire EEA market.

The referring court expressed doubt as to whether Article 7(2) of the Brussels Regulation (recast) and the ECJ case law on the scope of this provision (e.g., *CDC Hydrogen Peroxide* (C-352/13), *flyLAL-Lithuanian Airlines* (C-27/17) and *Tibor-Trans* (C-451/18)) were intended to determine only international jurisdiction of the courts of the Member State in which the damage occurred, or also local territorial jurisdiction of the courts within that Member State.

First, the ECJ noted that Article 7(2) of the Brussels Regulation (recast) does not preclude a Member State from conferring jurisdiction for a particular type of dispute to a single specialized court with exclusive jurisdiction irrespective of where the damage occurred, as such centralization may be in the interests of the sound administration of justice. In the absence of such a specialized court, the determination of the court with jurisdiction in relation to the place where the harmful event occurred must remain consistent with the aims of: (i) proximity between the court and the action; (ii) predictability of the rules governing jurisdiction; and (iii) the sound administration of justice.

Second, whereas previous ECJ judgments established that Article 7(2) of the Brussels Regulation (recast) determined international jurisdiction with respect to damages actions, the RH v. Volvo judgment further refines this case law to establish that Article 7(2) confers both international and local territorial jurisdiction on the courts of the place where the damage occurred.

In light of the above, in the absence of a specialized court, the ECJ found that Article 7(2) of the Brussels Regulation (recast) must be construed as meaning that, within the market affected by the anticompetitive conduct, the court with international and local territorial jurisdiction to hear a claim for damages allegedly incurred because of artificially high prices resulting from a cartel is either the court within whose jurisdiction the claimant purchased the goods affected by the cartel or, if the claimant purchased the goods in several places, the court within whose jurisdiction the claimant's registered office is located.

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