

## The CJEU outlines the forum of the 'anchor defendant' in actions for 'antitrust' damages directed against a plurality of defendants



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The Court of Justice of the European Union (CJEU) has specified the scope of Article 8.1 of the Brussels I Bis Regulation in actions for damages for infringements of competition law with multiple defendants. The judgment clarifies that the *anchor defendant forum* can be applied even if that defendant has not been the addressee of the sanctioning decision and confirms that the mere fact that the alleged harm occurred outside the European Economic Area (EEA) is not, in itself, sufficient to treat the claim as manifestly unfounded at the jurisdictional stage

On 16 April 2026, the Court of Justice of the European Union delivered [a judgment](#) in Joined Cases C-672/23 and C-673/23, ruling on two requests for a preliminary ruling from the *Gerechthof Amsterdam* (Court of Appeal, Amsterdam) concerning the interpretation of Article 8(1) of Regulation (EU) No 1215/2012 (Brussels I Bis), relating to the jurisdiction of multiple defendants, in the context of two actions for damages arising from infringements of Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Article 53 of the EEA Agreement.

This is a relevant judgment for *antitrust* litigation in Europe: it develops the doctrinal line established in the *Athenian Brewery judgment* (C-393/23, February 13, 2025); it specifies what circumstances may support the application of the jurisdiction of the *anchor defendant* when that entity is not one of the addressees of the sanctioning decision; and clarifies that, for the purposes of analysing international jurisdiction, the mere fact that the alleged damage occurred outside the EEA is not sufficient to consider the action manifestly unfounded.

### Background and questions referred

The two preliminary questions ruled on by the judgment arise from two sets of proceedings pending before the Dutch courts. In both cases, the claimants base the jurisdiction of the courts of the Netherlands on the Dutch domicile of subsidiary companies which, although not addressees of the sanctioning decision adopted by the European Commission or the relevant national authority, are alleged to form part (as members of the same economic unit) of the infringing undertaking.

### a) Case C-672/23 (high-voltage electrical cable cartel)

By Decision C(2014) 2139 final of 2 April 2014 (AT.39610, "*Power Cables*"), the EC sanctioned several manufacturers (including the Prysmian, Nexans and ABB groups) for their participation in a cartel of almost global scope in the market for submarine and underground electrical cables between 1999 and 2009. On the basis of that decision, four public entities from Bahrain, Kuwait, Oman and the Gulf Cooperation Council brought an action before the *Rechtbank Amsterdam* (District Court, Amsterdam) seeking joint and several damages from various companies in the sector and compensation for the damage suffered outside the EEA as a result of the cartel.

In order to maintain the jurisdiction of the Dutch courts, the claimants identified Draka Holding BV, a company established in Amsterdam and a wholly owned subsidiary of Prysmian Cavi e Sistemi as the anchor defendant, even though that company had not been the addressee of the EC decision. The court of first instance declared that it had jurisdiction to hear actions against companies established in the Netherlands, but rejected its jurisdiction over those established in other States on the ground that it did not find a sufficiently close connection, within the terms of Article 8(1) of the Regulation. In response, the *Gerechtshof Amsterdam* stayed the proceedings and referred the questions for a preliminary ruling to the Court.

### b) Case C-673/23 (Italian corrugated cardboard cartel)

The Italian Competition Authority (AGCM), by decision of 17 July 2019, sanctioned a number of companies, including Smurfit Kappa Italia, DS Smith Holding Italia and Toscana Ondulati, for their participation in two separate and related infringements of Article 101 TFEU on the Italian market for corrugated cardboard and packaging materials, respectively. The decision imputed the infringement mainly to the Italian operating companies, extending liability to certain parent companies.

During the infringement period, several companies in the Unilever group purchased cartelized goods for their European production sites and, considering that they had been harmed as a result of the cartels sanctioned, brought an action for damages before the *Rechtbank Amsterdam*. They argued that Smurfit International BV (an intermediate *holding company* of the Smurfit group, not sanctioned by the AGCM decision) was located in the chain of corporate control between the ultimate parent company of the group and Smurfit Kappa Italia and that, as a member of the same economic unit, it could serve as an *anchor defendant* within the meaning of Article 8.1 of the Brussels I Bis Regulation.

The court of first instance accepted its jurisdiction, but the *Gerechtshof Amsterdam* had doubts as to whether the requirement of the "close connection" of Article 8(1) of the Brussels I Bis Regulation was met in this case, and therefore also suspended these proceedings and referred several questions to the CJEU for a preliminary ruling, similar to those in the first case.

### c) Preliminary questions referred

In this context, the referring court referred to the CJEU several questions for a preliminary ruling (similar in both proceedings subsequently joined) aimed, in essence, at clarifying: (i) whether the close connection of Article 8.1 of the regulation between an action brought against an *anchor defendant* who is not the addressee of a sanctioning decision and actions brought against co-defendants who are (or are not) addressees of the decision can be appreciated; (ii) to what extent the foreseeability of that jurisdiction operates as an autonomous criterion for accepting international jurisdiction; (iii) whether the viability of the action against the *anchor defendant* should be considered (even where the damage would have been suffered outside the EEA) and, if so, whether the presumption of decisive influence of the parent companies is applicable for this analysis of international jurisdiction; (iv) whether Article 8.1 determines both international and territorial jurisdiction; and (v) whether the court initially competent may decline jurisdiction in favor of another body of the same Member State.

## The CJEU's decisión

### a) The "close connection" of Article 8.1 when the anchor defendant is not the recipient of the sanctioning decision

The CJEU begins by recalling the role of Article 8(1) of the Brussels I Bis Regulation, which – as an exception to the general principle of jurisdiction of the court of the defendant's domicile (Article 4) – allows a person domiciled in a Member State to be sued before the courts of the place where any other co-defendant is domiciled. provided that the claims are linked to each other by such a close relationship that it is appropriate to hear and determine them together in order to avoid contradictory decisions.

It is, the court insists in line with its previous case-law, a rule of strict interpretation, which cannot be used to artificially remove a defendant from the forum of his domicile (judgment of 7 September 2023, *Beverage City Polska*, C832/21, EU:C:2023:635, paragraph 35). Thus, it is for the national court to ascertain whether, in the light of the circumstances of the case, there is such a link between the various claims brought against several defendants that it is appropriate to examine them together, in order to avoid contradictory decisions.

Specifically, the CJEU:

- Points out, first, that in order to consider that there is a risk of irreconcilable judgments, the claims made against the various defendants must relate to the same factual and legal situation; whereas, in turn, that condition is satisfied where several defendant undertakings have participated in a single and continuous infringement of competition law found in a Commission decision, even if the involvement of each of them in the execution of that infringement differs according to the periods or geographical areas affected. It also recalls that the absence of a prior and definitive declaration of joint and several liability between the parent company and the subsidiary does not in itself prevent the application of Article 8.1. In that regard, it reaffirms the case-law of *Athenian Brewery* (C393/23, EU:C:2025:85): that provision may also apply to actions brought simultaneously against a parent company and a subsidiary with which it forms an economic unit, even where the infringement has been found in a decision of a national competition authority.
- It states that the key lies in the concepts of "undertaking" and "economic unit", which are specific to EU competition law. Where there are serious indications that several companies belong, within the meaning of EU competition law, to the *undertaking* or *economic unit* to which the infringement was imputed, that economic unit may be decisive both in assessing the close connection in Article 8(1) and, where appropriate, in substantiating the attribution of liability. always within the limits outlined by the *Sumal case-law* (C882/19, EU:C:2021:800).
- It also recalls that several legal persons organized as a group constitute a single *undertaking* where they do not determine their conduct on the market independently, but are subject to decisive influence exercised effectively. It also reiterates that, where the parent company directly or indirectly holds all or virtually all of the share capital of the infringing subsidiary, there is a *rebuttable presumption* of effective exercise of decisive influence, which the national court may also rely on in the examination of its international jurisdiction, with the defendants retaining the possibility of rebutting that presumption.
- However, it brings up a relevant nuance when the action is not directed against the parent company sanctioned by the competition authority, but against a subsidiary that has not been sanctioned. In that case, it is not enough to invoke group membership in an abstract way. In accordance with the *Sumal doctrine*, the injured party must prove, first, that that subsidiary company and the entity to which the infringement was imputed formed, at the relevant time, the same economic unit and, second, that there was a specific link between the economic activity of that subsidiary company and the subject matter of the infringement imputed to the parent company.

- On that basis, it concludes that circumstances such as whether *or not the anchor defendant* is domiciled in the Member State whose competition authority found the infringement, or whether certain companies have been designated in the administrative decision as "participants" in the cartel, do not constitute independent criteria for assessing the existence of a close relationship, but, where appropriate, relevant elements to prove the existence (or not) of that relationship.

In view of this, the CJEU declares that Article 8.1 must be interpreted as meaning that there may be such a "close relationship" between, on the one hand, an action for damages directed against an *anchor defendant* not mentioned as liable in the decision of the EC or a national competition authority and, on the other, actions for damages directed against companies in respect of which there are serious indications that they belong to undertakings, within the meaning of EU competition law, to which the infringement was imputed.

However, that assessment is a matter for the national court, in the light of the circumstances of the case and without losing sight of either the requirement of the same factual situation or the same legal situation, or the prohibition of the artificial creation of the conditions laid down for the application of that special forum.

### **b) Foreseeability as a general principle, not as an autonomous criterion**

Secondly, the CJEU confirms that the foreseeability for the co-defendant of being called before the forum of the anchor *defendant's* domicile does not constitute an independent requirement added to those already provided for in Article 8.1. Rather, it is a general principle of the rules of jurisdiction (derived from recitals 15 and 16 of the regulation and the principle of legal certainty) which must guide the application of that rule.

Applied to the *antitrust* context, the court states that this requirement is satisfied where the defendant has participated in a single infringement of Article 101 TFEU as a member of an undertaking (within the meaning of EU competition law): by that participation he must be regarded as having created a close relationship with the other members of that economic unit and that he can reasonably expect to be sued before the courts of the domicile of the defendant. any of them.

### **c) The prospects for success of the action and the damage suffered outside the EEA**

The CJEU then addresses, jointly, the questions aimed at elucidating to what extent, when ruling on its jurisdiction, the court of the forum must assess the expectations of success of the action brought against the *anchor defendant*, in particular when claims for damages suffered outside the European Economic Area, and whether it can be supported, to that effect, on the presumption of decisive influence of the parent company, or on the possibility of attributing *the infringing conduct* to an intermediate holding company.

In this regard, the court recalls that, when examining its international jurisdiction, the national court must not examine the admissibility or the merits of the claim, but must confine itself to verifying the existence of the connecting points provided for by the regulation. Only exceptionally, when the action against the *anchor defendant* is manifestly unfounded, artificial or lacks real interest for the claimant, and there is convincing evidence to show that the conditions for the application of Article 8(1) have been artificially created or maintained for the sole purpose of excluding one of the defendants from the jurisdiction of the courts of the State of his domicile, the special jurisdiction provided for in Article 8.1 may not apply.

In this regard, the CJEU makes three relevant clarifications:

- i. Damage outside the EEA.** The CJEU declares that, since the cartel has taken place within the internal market, the competence of the Union to apply its competition rules to that conduct derives from the principle of territoriality. Accordingly, the fact that the alleged damage for which compensation is sought occurred outside the EEA does not, in itself and at this preliminary stage, allow the action to be regarded as manifestly unfounded, provided that it has a causal link with the

anti-competitive conduct complained of. Consequently, this circumstance alone does not allow the action to be classified as manifestly unfounded at the stage of control of international judicial jurisdiction.

- ii. **Presumption of decisive influence.** The CJEU declares (in line with what was decided in *Skanska* and *Athenian Brewery*) that the concept of "undertaking" in Article 101 of the TFEU cannot have a different scope in the context of public and private application of competition law. Accordingly, the rebuttable presumption that the parent company which holds, directly or indirectly, all or substantially all of the share capital of an infringing subsidiary exercises decisive influence over its conduct is also applicable to actions for damages (private enforcement). For the sole purpose of assessing its international jurisdiction under Article 8(1), it is sufficient for the national court to find that it cannot be ruled out that, at the time the action is brought, the co-defendant companies are part of the same undertaking within the meaning of competition law.
- iii. **Intermediate holding companies.** With regard to the possible attribution to an intermediate *holding company* of the conduct of a subsidiary of the group (and its status as anchor *defendant*), the CJEU admits that the mere holding and management of shares does not imply, in itself, intervention in the market. However, that does not preclude the economic conduct of the subsidiary from being imputed to the *holding company* where, despite its own legal personality, the subsidiary does not determine its conduct on the market autonomously, but essentially follows the guidelines defined by its parent company. And it adds that such an imputation is feasible when the subsidiary over which the *holding company* exercises decisive influence carries out an economic activity specifically linked to the object of the infringement imputed to the parent company or "grandparent" company.

Consequently, the CJEU concludes that the viability of the action against the *anchor defendant* should not be examined, as such, when analysing jurisdiction under Article 8.1, although it can be assessed as an indication that the claimant has not artificially created the conditions for the application of that rule; and that the fact that the alleged harm was suffered outside the EEA does not, by itself, render the claim manifestly unfounded.

#### **d) International and territorial jurisdiction: Article 8.1 designates both**

Fourthly, the CJEU addresses the scope of the jurisdiction rule in Article 8(1) and states that, unlike other provisions of the Brussels I Bis Regulation, which are limited to attributing jurisdiction "to the courts of a Member State" (such as Article 4(1), Article 8(1) refers to the courts "of the place" where one of the co-defendants is domiciled. Therefore, it directly and immediately confers both international jurisdiction and territorial jurisdiction on the court of the place of domicile of the *anchor defendant*.

That interpretation, the court adds, is also consistent with the requirements of the sound administration of justice and is justified with particular intensity in the field of actions for *antitrust* damages, which require a complex analysis of a factual and economic nature and in which joinder before a single body facilitates both the effective exercise of the right to full compensation and the work of the court.

#### **e) Internal inhibition in favour of another organ of the same State**

Finally, the CJEU specifies that Article 8.1 does not preclude the court of a Member State that may have international jurisdiction to hear an action for damages based on it, but that it considers itself incompetent in the light of its national rules of domestic territorial jurisdiction to hear the action against the *anchor defendant*, decline its jurisdiction in favour of another body of the same Member State with territorial competence to do so. That is provided that such a disqualification is in accordance with national procedural rules and does not undermine the effectiveness of the regulation.

## Synthesis and assessment

In short, the judgment handed down by the CJEU consolidates the line of jurisprudence that European justice had been drawing around the jurisdiction of the *anchor defendant* in antitrust *litigation* (particularly from *CDC Hydrogen Peroxide*, *Beverage City Polska* and *Athenian Brewery*) and helps to outline the delicate balance between the effective judicial protection of the injured party and the predictability and proportionality of the rules of jurisdiction. Thus, the CJEU:

- a. **It confirms that the *anchor defendant* referred to in Article 8.1 of the Regulation need not be either the addressee of the sanctioning decision** or, necessarily, an operating entity directly active in the affected market, **provided that there are serious indications** (although not necessarily irrefutable and, therefore, likely to be disputed together with the merits of the case) **of its integration into the company or economic unit infringer**. This reinforces the role of Article 8.1 as a legitimate instrument of procedural concentration in *antitrust litigation*, without emptying the defendant's guarantees of content, which retains its right to contest its membership of that economic unit in the merits phase.
- b. **It states that the specific circumstances invoked in favour of or against the close connection** (direct participation in the conduct, marketing of the cartelized products, domicile or not in the State of the infringement, status or not as addressee of the decision, etc.) **they are not watertight compartments, but weighting elements subject to the assessment of the national court, for the purposes of determining the possible existence of such a close connection** (same factual and legal situation).
- c. **The presumption of decisive influence of the parent company over the subsidiary wholly or almost wholly owned by the parent company is reaffirmed as a tool also in the private application of competition law, both for the purposes of liability and for a certain preliminary review of international jurisdiction.**
- d. **With regard to the aforementioned preliminary review, it confirms that the national court should not examine the viability of the *anchor defendant* as a prerequisite for accepting its jurisdiction under Article 8.1 of the Regulation, although it may assess whether the action against that defendant is manifestly unfounded, artificial or lacking in real interest, as an indication that the claimant could have artificially created the conditions for the application of that provision.**
- e. In this regard, it confirms that the mere fact that **the alleged damage was suffered outside the EEA is not sufficient, at the stage of review of international jurisdiction, to consider the claim manifestly unfounded**, provided that a causal link with the anti-competitive conduct implemented in the internal market is asserted.

## Practical relevance for litigation in Spain

Moreover, from the point of view of national litigation, the judgment may have material relevance. As is well known, Spain is already, in practice, a particularly active forum in litigation of damages for infringements of competition law, both in terms of the volume of *follow-on* claims and the frequency with which business groups with a presence in several Member States have subsidiaries or parent companies domiciled in Spanish territory. In this context, the CJEU's ruling provides Spanish courts with a clearer framework for analysing claims brought simultaneously against several group entities, including companies not mentioned in the sanctioning decision, when the forum of Article 8.1 is invoked on the basis of the domicile in Spain of one of them.

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