The CJEU confirms that a subsidiary that infringed competition law can be sued for damages at the parent company's domicile in another Member State

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14 de febrero de 2025

The Court of Justice of the EU (CJEU) delivered its judgment in the *Heineken* case, which raised the question whether a subsidiary which was held liable for an infringement of competition law can be sued for damages together with its parent company before the courts of the latter's domicile in another Member State relying on Art. 8(1) of the Brussels Ia Regulation (BIaR).

The issue was raised in an action for damages brought by the Greek brewery MTB before the Dutch courts against AB, which was held liable for an abuse of a dominant position by the Greek competition authority, and Heineken, the indirect parent company of AB, domiciled in Amsterdam.

The Dutch Supreme Court referred to the CJEU a question of interpretation of Art. 8(1) BIaR, which provides that in case of multiple defendants, a person domiciled in a Member State may be sued in the courts of the place where any of the defendants is domiciled, provided that there is a close connection between the claims so that it is expedient to determine them jointly to avoid the risk of irreconcilable judgments. The Dutch Court asked whether, to establish a close connection between the claims against the parent and the subsidiary for the purposes of Art. 8(1), it could rely exclusively on the presumption of control established for the purposes of substantive EU competition law, whereby a parent company that holds (almost) all the capital of a subsidiary exercises a decisive influence and thus forms a single "undertaking" with the subsidiary.

The CJEU replies in the affirmative, establishing that the concept of "undertaking" and the presumption of control is also relevant in assessing jurisdiction under Art. 8(1) BIaR.

It first finds that the same situation of fact and law exists in case of claims based on an infringement of EU competition law by a subsidiary brought against the subsidiary and its parent, when it is alleged that they form a single undertaking.

It then recalls that the concept of "undertaking" automatically entails the joint and several liability for an infringement of the competition rules of all legal entities of which it is made up. And adds that the fact that joint and several liability was not established in a Commission's decision does not prevent the application of Art. 8(1) BIaR. Precisely in the absence of such a decision, which would be binding on national courts, there is a risk of irreconcilable judgments concerning the same situation of fact and law if the claims were heard separately.

The CJEU then finds that, in light of the concept of "undertaking", it is reasonably foreseeable for the parent and the subsidiary that, in case of an infringement of EU competition law committed by one of them, each of them can be sued before the courts of the Member State where the other is domiciled. Indeed, the concept of undertaking and the presumption of the parent's decisive influence and liability also applies to actions for damages.

Finally, the CJEU recalls that, in determining its jurisdiction, the court seised must not examine the admissibility or substance of the claim, although it should examine all the relevant available information, including that provided by the defendant. In the case at hand, this means that to find that it has jurisdiction it is sufficient for the court to conclude that a decisive influence of the parent on the subsidiary cannot be excluded and it can so conclude based on the presumption of control and liability invoked by the claimant, provided that the defendant has the possibility of relying on firm evidence suggesting that such presumption does not apply.

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