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## Reference for a preliminary ruling from the Hungarian Supreme Court to the CJEU concerning the application of the *theory of economic unity* to the parent company and subsidiaries of the injured party in a competition damage claim

### 1. Context of the question referred for a preliminary ruling

On 28 June 2022, the Supreme Court of Hungary (*Kúria*) referred a question to the Court of Justice of the European Union (“**CJEU**”) for a preliminary ruling in Case C-425/22.

The original proceedings were brought before the General Court of Budapest (*Fővárosi Törvényszék, omissis*) by the claimant MOL Magyar Olaj- és Gázipari Nyrt (“**Mol**” or “**the applicant**”), a joint stock company with its registered office in Hungary, listed on the Budapest Stock Exchange and ultimately managing the companies belonging to the MOL Group, against the defendant Mercedes-Benz Group AG, (“**Mercedes**” or “**the defendant**”) claiming compensation for the alleged damages resulting from an infringement of Article 101 of the Treaty on the Functioning of the European Union (“**TFEU**”) and Article 53 of the Agreement on the European Economic Area, sanctioned in the European Commission’s decision of 19 July 2016, (Case AT.39824 — Trucks<sup>1</sup>).

Initially, the applicant in the original proceedings sought an order that the defendant pay EUR 530,851 plus interest and costs, claiming that this was the amount that its subsidiaries had overpaid for the purchase of various trucks. Mol justified the forum and invoked its legitimacy on the basis of the theory of economic unity and as a leading member of the group of allegedly damaged companies. Pursuant to 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 (the “**Brussels Ia Regulation**”), the applicant interpreted the competent forum as being the place where the centre of the economic and property interests of the group of companies was located and, therefore, that forum constituted the place where the harmful event would have taken place. Mol, as the parent company of its group, claimed for the damages suffered by its subsidiaries.

In response to this interpretation, the defendant raised a plea of lack of jurisdiction, denying that the provision invoked could be the basis for the court’s jurisdiction.

Consequently, the Budapest General Court issued a dismissal order at first instance and the Budapest High Court (*Fővárosi Ítéltábla, omissis*), at second instance, heard the appeal lodged by the applicant, stressing that the trucks were not purchased directly by the applicant as a lead company. It also pointed out that according to the CJEU’s case law, the theory of economic unity is only applicable to determine liability for infringement of competition law, and cannot be interpreted in *sensu contrario* in relation to the injured party, as Article 7(2) of the Brussels Ia Regulation establishes the jurisdiction of the place where the damage occurred.

Finally, Mol lodged a cassation appeal with the Hungarian Supreme Court reiterating that the attribution of jurisdiction was determined by the economic strategy of the companies forming part of the group of businesses, hence the parent company was considered to be affected by the profitable or loss-making operation of its subsidiaries.

<sup>1</sup> Case AT.39824 Trucks/Settlement (19 July 2016)

## 2. Considerations of the Hungarian Supreme Court on the question referred for a preliminary ruling

Following the above, the Hungarian Supreme Court referred the following questions to the CJEU for a preliminary ruling:

- i. If a parent company brings an action for damages for anti-competitive conduct of another company in order to obtain compensation for the damage caused by that conduct exclusively in its subsidiaries, then the registered office of the parent company determines the forum of jurisdiction, as the place where the harmful event occurred for the purposes of Article 7(2) of the Brussels Ia Regulation.
- ii. Whether the fact that, at the time of the purchases at issue in the proceedings, not all the subsidiaries belonged to the parent company's group of companies is relevant for the purposes of the application of Article 7(2) of the Brussels Ia Regulation.

Furthermore, when these questions were raised, the Hungarian Supreme Court considered that there is no established case law of the CJEU on the uniform interpretation and application of Article 7(2) of the Brussels Ia Regulation<sup>2</sup>.

Finally, the Hungarian Supreme Court states in relation to the above that jurisdiction to hear claims for damages suffered by subsidiaries raises the question of whether it is relevant that not all companies belonged to the parent company at the time when the damage occurred.

In short, in matters of damages arising from a competition infringement, it is necessary for the CJEU to rule on the application to the injured party of the theory of economic unity, both in the context described above and for similar and future situations.

<sup>2</sup> It also considers that the possible answers "(...) leave no scope for any reasonable doubt" (judgment of 6 October 1982, *Sri CILFIT and Others*, 283/81, EU:C:1982:335, paragraph 21). (...)"

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