



## PRESS RELEASE No 108/22

Luxembourg, 22 June 2022

Judgment of the Court in Case C-267/20 | *Volvo and DAF Trucks*

### **The Court specifies the temporal scope of the rules governing the limitation period for bringing an action for damages for infringements of competition law and of the rules governing the quantification of the harm resulting from such infringements and the rebuttable presumption relating to the existence of harm resulting from a cartel**

By decision of 19 July 2016, <sup>1</sup> the European Commission found that, by agreeing, first, on the prices of trucks in the European Economic Area (EEA) from 1997 to 2011 and, second, on the timing and passing on of costs for the introduction of emission technologies required by EURO 3 to EURO 6 standards, Volvo and DAF Trucks participated, with a number of other truck manufacturers, in a cartel contrary to the EU law rules prohibiting cartels. <sup>2</sup> A press release was issued on the same day as the adoption of that decision and a summary was published in the *Official Journal of the European Union* on 6 April 2017. <sup>3</sup>

Having purchased, during 2006 and 2007, three trucks manufactured by Volvo and DAF Trucks, RM brought before the Juzgado de lo Mercantil de León (Commercial Court, León, Spain) an action seeking compensation for the harm suffered as a result of the cartel found by the Commission. That action, brought on 1 April 2018, was declared admissible by the Commercial Court, inter alia having regard to the five-year limitation period provided for by the Spanish legislation transposing Directive 2014/104 on the compensation of victims of anti-competitive practices. <sup>4</sup> The Commercial Court also relied on the presumption established by that transposing legislation according to which it is presumed that all cartels cause harm and it exercised the discretion, provided for by that same legislation, to estimate the amount of the harm caused to RM. Volvo and DAF Trucks were thus ordered to pay RM compensation corresponding to 15% of the purchase price of the trucks in question.

Volvo and DAF Trucks brought an appeal against that judgment before the Audiencia Provincial de León (Provincial Court, León, Spain), disputing the applicability of Directive 2014/s104 and of the Spanish transposing legislation, on the ground that the cartel had ceased before the entry into force of that directive.

In that context, the Provincial Court, León referred to the Court a number of questions for a preliminary ruling with a view to ascertaining whether Article 10 and Article 17(1) and (2) of Directive 2014/104, which establish,

<sup>1</sup> Commission Decision C(2016) 4673 final relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (AT.39824 – Trucks).

<sup>2</sup> Article 101 TFEU and Article 53 of the EEA Agreement.

<sup>3</sup> OJ 2017 C 108, p. 6.

<sup>4</sup> Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ 2014 L 349, p. 1)

respectively, the rules:

- on the time-barring of actions for damages for infringements of competition law,
- on the quantification of harm resulting from such infringements and
- on the presumption of the existence of that harm,

are applicable to an action for damages which, although relating to a cartel which ceased before the entry into force of that directive, was brought after the entry into force of the provisions transposing it into national law.

### **Assessment of the Court**

So far as concerns the temporal scope of Directive 2014/104, the Court recalls first of all that that directive prohibits, first, the retroactive application of any national legislation transposing the substantive provisions that it provides for and, second, the application of any national legislation transposing the non-substantive provisions of the directive to actions for damages brought before 26 December 2014.

Regarding the temporal applicability of Article 10 of Directive 2014/104, which establishes the rules relating to the time-barring of actions for damages for infringements of competition law, the Court notes, next, that such rules protect both the aggrieved person and the person responsible for the harm. It is apparent, additionally, from case-law of the Court that the limitation period, by resulting in the extinction of the legal action, is a matter of substantive law. Therefore, Article 10 of Directive 2014/104 is a substantive provision, for which the retroactive application of the transposing provisions is excluded under the directive.

Since Directive 2014/104 was transposed into Spanish law five months after the expiry of the time limit for transposition, fixed at 27 December 2016, the Court considers that, in order to determine the temporal applicability of Article 10 of that directive, it is necessary to ascertain whether the legal situation at issue in the main proceedings arose before the expiry of the period for transposition of the said directive or whether it continued to produce effects after the expiry of that time limit. In particular, the Court considers it necessary to ascertain whether, at the date of expiry of the time limit for transposition of Directive 2014/104, namely 27 December 2016, the limitation period applicable to the situation at issue in the main proceedings had elapsed, which means determining the time when that limitation period began to run. The Spanish legislation that was in force at the time provided that the one-year limitation period began to run from when the circumstances giving rise to liability had become known to the injured party.

While it is for the referring court to determine the date of the acquisition of that knowledge by RM in this case, it is obliged to interpret the applicable national provisions, so far as possible, in the light of EU law and, in particular, the wording and purpose of Article 101 TFEU.

In that context, the Court emphasises that it follows from the principle of effectiveness that national limitation periods applicable to actions for damages for infringements of competition law cannot begin to run before the infringement has ceased and the injured party knows, or can reasonably be expected to know, the information necessary to bring his or her action, namely the existence of harm, the causal link between that harm and the infringement of competition law committed and the identity of the perpetrator of that infringement.

In that regard, the Court notes that **the press release of the Commission decision finding the cartel, published on 19 July 2016, does not appear to identify with the precision of the summary, published on 6 April 2017, the identity of the perpetrators of the infringement, its exact duration and the products concerned.** In those circumstances, the full effectiveness of Article 101 TFEU requires it to be considered that, **in this case, the limitation period of the action for compensation brought by RM began to run on the day of the publication of the summary of the Commission decision.**

In so far as that would be the case, it thus appears that **that period had not elapsed before the expiry of the**

**time limit for transposition of Directive 2014/104.** It continued to run even after the date of entry into force of the Spanish transposing legislation. Thus, the Court considered that, **in so far as the limitation period applicable to RM's action for damages under the old rules did not elapse before the date of expiry of the time limit for transposing that directive, that action falls within the temporal scope of Article 10 of the said directive.**

**With regard to the temporal applicability of Article 17(1) of that same directive,** the Court finds that, by aiming in particular to empower the national courts to estimate the amount of harm suffered where it is practically impossible or excessively difficult precisely to quantify it on the basis of the evidence available, **the objective of that provision is to relax the standard of proof required for the purposes of determining the amount of the harm resulting from an infringement of the competition law rules.**

In the light of its case-law, according to which the rules on the burden of proof and the standard of proof are, in principle, classified as procedural rules, the Court concludes that **Article 17(1) of Directive 2014/104 constitutes a procedural provision, within the meaning of Article 22(2) of that directive, for which the application of the transposing provisions to actions brought before 26 December 2014 is excluded.**

**RM having brought its action on 1 April 2018, that action, although relating to an infringement which ceased before the entry into force of the said directive, falls, consequently, within the temporal scope of Article 17(1) of the said directive.**

So far as concerns, last, the temporal applicability of Article 17(2) of Directive 2014/104, establishing a **rebuttable presumption as to the existence of harm resulting from a cartel,** the Court emphasises that that provision is directly linked to the incurrance of the non-contractual civil liability of the perpetrator of the infringement concerned and, consequently, directly affects his or her legal situation. **As such a rule may be classified as a substantive rule, the Court considers that Article 17(2) of Directive 2014/104 is substantive in nature within the meaning of that directive, such that a retroactive application of the provisions transposing it into Spanish law is prohibited.**

Since the fact identified by the EU legislature as giving rise to a presumption of the existence of harm under **Article 17(2) of Directive 2014/104** is the existence of a cartel, **the prohibition of retroactive application of that provision and of the transposing legislation means that they cannot be applicable to an action for damages which, although brought after the entry into force of the provisions transposing belatedly that directive into Spanish law, pertains to an infringement of competition law which ceased before the expiry of the time limit for transposing that directive.**

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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