JURISDICTION BASED ON CONNECTED CLAIMS IN CORPORATE GROUPS AND COMPETITION LAW INFRINGEMENTS

[Commentary on the CJEU (Fifth Chamber) Judgment of 13 February 2025, Case C-393/23, *Athenian Brewery SA, Heineken NV and Macedonian Thrace Brewery SA*]

CONTENTS: Summary. Key-Words. I. Introduction. II. The forum of connected claims under Regulation 1215/2012. III. Corporate Groups and Infringement of Competition Law. IV. Jurisdictional Debate and Substantive Debate. V. Conclusion.

Summary:

The article analyzes the judgment of the Court of Justice of the European Union (CJEU) of 13 February 2025 in Case C-393/23, which concerns international jurisdiction in antitrust cases involving corporate groups. The dispute arose from a claim by Macedonian Thrace Brewery (MTB) against Athenian Brewery (AB) and Heineken, raising the question of whether both companies could be sued in the Member State of the parent company (the Netherlands) under Article 8(1) of Regulation 1215/2012 (forum of connected claims).

The article explores three main issues: the evolution and limits of the forum of connected claims, its potential abuse to attract claims to unfavorable forums, and the CJEU's doctrine on liability for competition law infringements. The article suggests replacing the "decisive influence" criterion with that of "unitary direction" to define the responsible undertaking, thereby better reflecting the economic reality of many corporate groups. The piece also discusses the extent to which a national court can assess factual elements when determining jurisdiction without ruling on the merits.

The judgment reaffirms existing case law but opens the door to potential developments, particularly regarding the application of competition law in complex corporate environments.

Key-words:

Forum of multiple defendants. Corporate groups. Concept of undertaking. Competition law. *Effet utile* of Regulation 1215/2012 and domestic procedural law

I. Introduction

1. In 2014, the Hellenic Competition Commission found that *Athenian Brewery SA* (AB) had abused its dominant position in the Greek beer market, in breach of both Article 102 TFEU and Article 2 of the Greek Competition Act[1]. At that time, AB was almost entirely owned (nearly 99% of its capital) by *Heineken NV* (Heineken), a Dutch company and the parent of the Heineken group[2]. The Greek authority did not consider that Heineken had exercised decisive influence over AB and therefore did not find the Dutch company to have committed any infringement, despite a request from AB's competitor, *Macedonian Thrace Brewery SA* (MTB), for such a finding.

Following the Greek authority's decision, MTB brought an action in Amsterdam against Heineken and AB seeking a declaration that both companies were jointly liable

[1] See paragraph 12 of the CJEU (Fifth Chamber) Judgment of 13 Februaryh 2025, C-393/23, *Athenian Brewery SA, Heineken NV and Macedonian Thrace Brewery SA*, ECLI:EU:C:2025:85. See on this judgment, P. de Miguel Asensio, "Responsabilidad solidaria de la matriz por infracción de las normas sobre competencia y fuero de la pluralidad de demandados", *Pedro de Miguel Asensio*, 13 February 2025, https://pedrodemiguelasensio.blogspot.com/2025/02/responsabilidad-solidaria-de-la-matriz.html.

[2] See paragraph. 11 of the CJEU Judgment of 13 February 2025 (*supra* footnote 1).

for the abuse of a dominant position in the Greek market and, consequently, jointly liable to compensate MTB for the damage caused by the infringement of competition law[3]. After several procedural developments, a request for a preliminary ruling was made to the Luxembourg Court to determine whether Article 8 of Regulation 1215/2012 conferred jurisdiction on the courts of the parent company's Member State in an action brought against a subsidiary domiciled in another country, on the basis that the parent company exercised decisive influence over the subsidiary in relation to a competition law infringement that harmed the claimant. The judgment under discussion answers this question.

While the jurisdictional issue regarding AB was still pending, the proceedings against Heineken continued in Amsterdam. In October 2024, the Dutch company was held liable for the anticompetitive practices of its subsidiary and now faces a potential compensation payment exceeding €160 million[4].

2. The judgment raises three key issues. First, the interpretation of the forum of connected claims under the Brussels I bis Regulation. Second, the relevance of the presumption that the parent company exercises decisive influence over its subsidiary in cases involving competition law infringements. Third, the extent to which the court ruling on its own jurisdiction may examine substantive matters that are nonetheless relevant for determining that jurisdiction.

The Court of Justice of the European Union's reasoning in this case is not new, as it reiterates points already made in earlier rulings on these issues. Nevertheless, it illustrates the interaction between rules on international jurisdiction and the principles established in EU competition law; as well as the (sometimes) difficult coordination between national procedural law (in this case, the rules governing a judge's power to determine jurisdiction) and the need to ensure the effective application of EU Regulations. It also brings us back to a recurring issue in international litigation: the possibility of abusively relying on the forum of connected claims to bring a defendant before an unfavourable court. We will now turn to these three points.

II. The Forum of Connected Claims under Regulation 1215/2012

3. As is well known, the forum of connected claims under the Brussels I bis Regulation has undergone an interesting evolution. When it was first introduced in the Brussels Convention of 27 September 1968, it simply stated that, in the case of multiple defendants domiciled in Contracting States, the claim could be brought before the courts of the domicile of any one of them. The provision did not even require the claims to be connected; however, the Court of Justice added this requirement in its 1988 *Kalfelis* judgment[5], further specifying that the connection between the claims brought against the

[3] See paragraph 13 of the CJEU of 13 February 2025 (*supra* footnote 1).

[4] See "Macedonian Thrace Brewery: Amsterdam District Court Finds Heineken N.V. Joint and Severally Liable for the Market Abuses of its Greek Subsidiary", *Businesswire*, 24 October 2024, https://www.businesswire.com/news/home/20241024229313/en/Macedonian-Thrace-Brewery-Amsterdam-District-Court-Finds-Heineken-N.V.-Joint-and-Severally-Liable-for-the-Market-Abuses-of-its-Greek-Subsidiary.

[5] CJEU (Fifth Chamber) Judgment of 27 September 1988, C-189/87, *Athanasios Kalfelis, Banco Schröder, Münchmeyer, Hengst & Co et alia*, ECLI:EU:C:1988:459.

different defendants must be such that separate proceedings could lead to irreconcilable judgments. This interpretation was not self-evident and ruled out other possible interpretations that could have been considered, given the gap in the wording of the provision (at that time, Article 6(1) of the 1968 Brussels Convention)[6].

This judicial construction was later incorporated into the actual wording of the provision when the Brussels Convention became Regulation 44/2001, which already stated that the forum for multiple defendants (Article 6(1)) applies only where "the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings." Regulation 1215/2012 essentially retains this same wording[7]; thus, the risk of irreconcilable judgments has become the key criterion for applying the provision, resolving the doubts that had previously arisen, notably in the *Réunion européenne* case[8], concerning the possibility of using the forum of connected claims when the action against one defendant was contractual in nature and the one against the other was non-contractual[9].

4. The application of the forum for multiple defendants also raises a recurrent issue: the possibility of it being used fraudulently to remove a defendant from their natural forum, i.e., their domicile. The judgment under discussion addresses this question, which has arisen in previous cases decided by the Luxembourg Court.

Once again, this issue highlights a gap in the wording of the provision. While Article 8(2) of Regulation 1215/2012 (and previously Article 6(2) of both the 1968 Brussels Convention and Regulation 44/2001) expressly states that, in third-party or indemnity claims, the jurisdiction of the court seised of the principal action does not extend to the third-party claim if the principal action was brought solely to remove the accessory claim from its natural forum, this safeguard is absent from Article 8(1) of Brussels I bis, as well as from Article 6(1) of Regulation 44/2001 and, naturally, from Article 6(1) of the Brussels Convention, where, as we have seen, there was not even an explicit requirement for the claims to be connected.

However, the Court of Justice has consistently held that the forum of multiple defendants cannot be used "for the sole purpose of excluding one of them from the jurisdiction of the courts of the State of their domicile and thereby circumventing the jurisdiction rule laid down in that provision by artificially creating or maintaining the conditions for its application." [10] In this way, jurisdiction is denied to the courts of the co-

---

[6] See A. Quiñones Escámez, *El foro de la pluralidad de demandados en los litigios Internacionales*, Madrid, Eurolex, 1996, pp. 60-64; R. Arenas García, "El foro de la pluralidad de demandados ante el TJCE: comentario a la STJCE (Sala Tercera) de 11 de octubre de 2007", *AEDIPr*, 2007, t. VII, pp. 627-642, p. 630.

[7] Art. 8 of Regulation 1215/2012: "A person domiciled in a Member State may also be sued: (1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings".

[8] CJEU (Third Chamber) Judgment of 27 October 1998, C-51/97, *Réunion européenne SA et alia c. Spliethoffs Bevrachtinskantoor BV y Capitán commandant le naviere*, ECLI:EU:C:1998:509.

[9] On this issue see. R. Arenas García, *loc. cit.*, pp. 631-636.

[10] See paragraph 23 of the CJEU Judgment of 13 February 2025; paragraph 43 of the CJEU (Fifth Chamber) Judgment of 7 September 2023, C-832/21, *Beverage City & Lifestyle GmbH, MJ, Beverage City Polska sp. z o.o., FE and Advance Magazine Publishers Inc.*, ECLI:EU:C:2023:635; paragraph 27 of the CJEU (Fourth Chamber) Judgment of 21 May 2015, C-352/13, *Cartel Damage Claims (CDC) Hydrogen Peroxide AS and Azko Nobel NV, Solvay SA/NV, Kemira Oyj, FMC Foret, S.A.*, ECLI:EU:C:2015:335; paragraph 78 of the

defendant's domicile when the claim against that co-defendant was brought solely to deprive one of the defendants of their natural forum (i.e., their domicile). This doctrine, however, was nuanced in the *Freeport* judgment[11], where the Court held that the application of Article 6(1) of Regulation 44/2001 (corresponding to Article 8(1) of Regulation 1215/2012) does not require clear evidence that the claims were not brought solely to remove one of the defendants from the jurisdiction of the courts of the State where they are domiciled[12]. The ruling emphasized that the wording of Article 6(1) in Regulation 44/2001 deliberately did not exclude its application where the action had been brought in order to engage a court other than that of the defendant's domicile[13].

5. Clarifying the initial exclusion of the forum of connected claims in cases where one of the defendants is artificially removed from the court of their domicile, and the absence of a requirement to clearly exclude the fraudulent nature of the action, is not straightforward. At one point, it could be argued that the correction seemingly made by *Freeport* to the doctrine established in *Reisch Montage* could be explained by reference to the domestic procedural law of Member States, which may provide specific sanctions for cases of fraud without the need to resort to the exclusion of international jurisdiction. This could be particularly evident in cases where the claim against the defendant domiciled in the forum is dismissed[14]. However, the various decisions issued since *Freeport*, leading up to the one under discussion, suggest rather that, although a thorough consideration of the absence of fraud is not required, the court may still find that fraud exists. In such cases, it will be concluded that jurisdiction under Article 8(1) of Regulation 1215/2012 does not apply, provided there is evidentiary support indicating that the action was indeed fraudulent. This is the doctrine laid down in paragraph 29 of the *Hydrogen Peroxide* judgment[15] and reaffirmed in paragraphs 24 and 25 of the judgment of 13 February 2025. The consolidation of this doctrine explains why a defendant who does not wish to be drawn into the forum of their co-defendant's domicile may invoke the fraudulent nature of the action as an objection to jurisdiction. This is also what happens in the present case, allowing us to explore the nuances in the treatment of this matter.

In the action brought against Heineken and AB in Amsterdam, there is no doubt regarding the jurisdiction of the Dutch courts over the former, as it is domiciled in the Netherlands. Jurisdictional doubts may arise only with respect to the Greek company, which is brought before the Dutch court by virtue of the forum of multiple defendants.

CJEU (Third Chamber) of 1 December 2011, C-145/10, *Eva-Maria Painer and Standard VerlagsGmbH, Axel Springer AG, Süddeutsche Zeitung GmbH, Spiegel-Verlag Rudolf Augstein GmbH & Co KG, Verlag M. DuMont Schauberg Expedition der Kölnischen Zeitung GmbH &Co KG*, ECLI:EU:C:2011:798; paragraph 32 of the CJEU (Second Chambert) of 13 July 2006, C-103/05, *Reisch Montage AG c. Kiesel Baumaschinen Handels GmbH*, ECLI:EU:C:2006:471.

[11] CJEU (Third Chamber) Judgment of 11 October 2008, C-98/06, *Freeport plc y Olle Arnolsson*, ECLI:EU:C:2007:595.

[12] See paragraph 54 of the Judgment.

[13] See paragraph 51 of the Judgment. On the relationship between the doctrine of the Judgments *Freeport* and *Reisch Montage* (*supra* footnote 10), see R. Arenas García, *loc. cit.*, pp. 636-639.

[14] See R. Arenas García, *loc. cit.*, pp. 638-641.

[15] In this case, the alleged fraud would stem from the defendant's claim that the claimant and the defendant company domiciled in the state of the court had reached an amicable settlement, the effectiveness of which was deliberately delayed in order to allow the claim to be filed before the courts of that state and thereby bring the co-defendant under their jurisdiction (see paragraphs 30 to 32 of the Judgment *Hydrogen Peroxide*, *supra* footnote 10).

That is, is there a close connection between the claim against the Dutch company and the one brought against the Greek company?

6. Based on the content of the claim, there is no doubt as to the existence of such a close connection, since the argument is that the anticompetitive conduct carried out by AB was a result of the influence exercised by Heineken. Later, we will examine the basis for asserting that the parent company (Heineken) had such influence over the subsidiary (AB); but it is undeniable that the litigation concerns a case where the connection between the actions is evident. In fact, the Court of Justice had already indicated that, in cases of competition law infringement, the circumstances that justify the connection of claims exist when there has been a single and continuous infringement of EU competition rules and the co-defendants have participated in it—even if their participation varied in geographical scope and timing[16].

What is more, since Heineken's liability would be inextricably linked to AB's conduct, it is logical that the action be brought against the latter as well. Otherwise, the Dutch company could be held liable based on actions deemed proven by a company—namely the Greek one—that did not even take part in the proceedings. In fact, in a scenario where the defendant may be held liable for actions carried out by a third party, it would not be unusual for the defendant to bring a claim against that third party themselves, relying on the possibility offered by Article 8(2) of Regulation 1215/2012[17].

Another argument to consider is the foreseeability of the forum for the defendant. Foreseeability is a recurring theme in the case law of the Court of Justice concerning international jurisdiction, having played a particularly important role in cases involving the forum for non-contractual obligations[18]. It also applies to the jurisdictional criterion based on multiple defendants, as highlighted in this judgment with references to earlier decisions. In this case, it is stated that when co-defendant companies belong to the same corporate group, they can foresee that any of them may be sued in the Member State where another company in the group is domiciled when a competition law infringement occurs[19].

---

[16] See paragraph 26 of the Judgment of 13 February 2025 and paragraph 21 of the Judgment *Hydrogen Peroxide*, *supra* footnote 10.

[17] About this provision, see I. Heredia Cervantes, "Art. 8.2", in P. Blanco-Morales Limones and others (coords.), *Comentario al Reglamento (UE) nº 1215/2012 relativo a la competencia judicial, el reconocimiento y la ejecución de resoluciones judiciales en materia civil y mercantil. Reglamento Bruselas I refundido*, Cizur Menor (Navarra), Thomson Reuters/Aranzadi, 2016, pp. 301-320; F.J. Garcimartín Alférez, *Derecho internacional privado*, Cizur Menor (Navarra), Aranzadi, 7ª ed. 2023, pp. 149-152. In general, regarding the differences between jurisdictional forums based on the existence of multiple defendants and those available for the intervention of third parties in the proceedings see I. Heredia Cervantes, *Proceso internacional y pluralidad de partes*, Granada, Comares, 2002, esp. pp. 9-12 y 91-94. *Vid.* See also the information about art. 76 of the Regulation published in *OJ*, núm. C 4 of 9 January 2015.

[18] See paragraph 19 of the CJEU Judgment of 19 September 1995,C-364/93, *Antonio Marinari and Lloyd's Bank plc and Zubaidi Trading Company*, ECLI:EU:C:1995:289; paragraph 50 of the CEEU (Grand Chamber) Judgment of 25 October 2011, C-509/09 and C-161/10, *eDate Advertising GmbH and X and Olivier Martinez, Robert Martinez and MGN Limited*, ECLI:EU:C:2011:685; paragraph 33 of the CJEU (First Chamber) Judgment of 12 May 2021, C-709/19, *Veriniging van Effectenvezitters and BP plc.*, ECLI:EU:C:2021:377.

[19] See paragraph 35 of the Judgment. Previously (paragraph 34), paragraph 25 of the *Reisch Montage* Judgment had been cited in support of the requirement of foreseeability of the forum. See *supra* footnote 10.

While the above is true, a nuance must be introduced: as we will see in more detail in the next section, the basis of the action against Heineken, as the parent company, is its alleged influence over the subsidiary's decision-making. Accordingly, it should be foreseeable for the Dutch company that it may be sued in the Member State where any of its subsidiaries is domiciled. But the reasoning does not work exactly the same in reverse, since AB is not held liable for actions committed by Heineken, but for its own conduct. Therefore, it is questionable whether it is also foreseeable for subsidiaries that they may be sued in the Member State where their parent company is domiciled.

Moreover, that parent company may be unforeseeable from the subsidiary's perspective, since control over the subsidiary may be transferred without its consent. From the parent company's perspective, however, and regardless of the control it exercises over the subsidiary's decisions, any structural change affecting the subsidiary (such as an international change of domicile) could lead the parent company to divest from the subsidiary if it considers the change contrary to its interests[20]. Clearly, the reverse is not true—there are no mechanisms for the subsidiary to detach itself from the parent if the latter, for instance, relocates its domicile to another country. Therefore, although there is an obvious connection between the claims brought against Heineken and AB, it does not necessarily follow that the forum of the parent company's domicile is foreseeable for the subsidiary when the issue is the parent's liability for the subsidiary's actions.

7. In any case, even if there is a connection between the claims brought against Heineken and AB, it still remains to be determined whether the action against the former is aimed at forcing the latter to litigate in a forum other than its domicile—that is, whether the first action is merely instrumental in obtaining a result that could not be achieved in the natural forum of the Greek company. This issue is addressed, both in the Advocate General's Opinion and in the judgment, through the debate on whether it can be presumed that the parent company exercised decisive influence over the subsidiary. However, it might also be useful to explore other possibilities, even if only based on the fragmentary information available from the Opinion and the judgment.

Thus, even where the claims are linked, the situation may still amount to fraud if the main action is purely instrumental to the action brought against the co-defendant. Spanish case law offers a good example of this reasoning in a dispute concerning the distribution of car rims that allegedly infringed a registered industrial design[21]. The claimant, holder of the design, was a German company (BMW) that had previously litigated against an Italian company (Acacia S.R.L.) manufacturing and distributing such rims. Italian courts had ruled that the Italian company's actions were covered by Article 110 of Regulation 6/2002 on Community designs[22]. Faced with this, BMW brought an

[20] Even by resorting to the mechanism provided by the domestic rules transposing Article 86 of the Company Law Directive [Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification), as amended, among others, by Directive (EU) 2019/2121 of the European Parliament and fo the Council of 27 November 2019, concerning cross-border conversions, mergers and divisions, *OJ* núm. L 321 of 12 December 2019]. In Spanish law, the relevant provisions are Articles 12 and 87 of the Royal Decree-Law 5/2023, of 28 June, *BOE*, 29-VI-2023.

[21] Judgment of the Supreme Court (*Tribunal Supremo)*, Civil Chamber, First Section of 10 January 2017, ECLI:ES:TS:2017:24.

[22] *OJ* number. L 3 of 5 January 2002.

action in Spain against a Spanish company (Autohaus Motorsport S.L.) that operated a car repair workshop using rims supplied by the Italian manufacturer. The principal claim was brought against the Spanish workshop based on its domicile in Spain, with the aim of bringing the Italian company before the Spanish courts through Article 6(1) of Regulation 44/2001, the equivalent of Article 8(1) of Regulation 1215/2012. In the end, the Spanish Supreme Court found that the claim against the Spanish workshop was merely instrumental, given the minimal relevance of its activity compared to the Italian company's business, the lack of integration of the Spanish company into the Italian company's structure, and the absence of a contract between them—all elements pointing to the conclusion that the Spanish action sought a ruling against the Italian company that could not be obtained at its domicile[23].

In the present case, if the purpose of the action brought by MTB against AB were to obtain compensation that could not be secured in Greece, there would be grounds for questioning the potentially fraudulent nature of the action brought against AB. However, considering that the claim against Heineken has its own substance—as it seeks compensation from the Dutch company—the additional claim against AB could still be justified (even if it could also be brought in Greece) by the advantages of having the same court rule on two closely connected liability actions. In other words, since there is no doubt as to the legitimacy of the claim brought in the Netherlands against Heineken, given that this is the country where it is domiciled, it would only make sense to raise the issue of fraud under Article 8(1) of Regulation 1215/2012 if the claim against AB were significantly greater in scope than the one against Heineken.

Clearly, this is not the case, as the claim concerns the joint and several liability of both companies, as we will now see. Therefore, this line of reasoning also seems to rule out the possibility of excluding the application of the forum of multiple defendants.

III. Corporate Groups and Infringement of Competition Law

8. Early on, the Court of Justice of the European Union (CJEU) held that competition law rules are addressed to undertakings as economic units, regardless of their legal form[24]. Thus, when Article 101 TFEU refers to agreements between undertakings, decisions by associations of undertakings, and concerted practices, it should not be understood as referring directly to natural or legal persons, but rather to the economic reality behind them. In the case of corporate groups, this means that the group itself, as an undertaking, is the entity subject to the obligations arising under that provision.

---

[23] These issues are discussed in greater detail in R. Arenas García, "Competencia por conexidad y litigios en materia de infracción de modelos industriales registrados. Comentario a la STS (Sala Civil, Sección 1ª) de 10 de enero de 2017", *Comunicaciones en Propiedad Industrial y Derecho de la Competencia*, 2017, number. 80, pp. 107-126, esp. pp. 123-125. On the different dimensions of the legal dispute between BMW and Acacia, with reference also to the Supreme Court Judgment of 10 January 2017, see G. Jacopo, "BMW contra Acacia: competencia judicial internacional y determinación de la ley aplicable a la infracción de los derechos de propiedad intelectual de carácter unitario", *Millennium DIPr*, 2022, number 16, https://www.millenniumdipr.com/archivos/1695897071.pdf.

[24] See J. Alfaro/P. Liñán, "Crítica a la jurisprudencia europea sobre imputación a la Sociedad matriz de las infracciones de competencia cometidas por sus filiales", *Revista Española de Derecho Europeo*, 2012, number 43, pp. 229-250, p. 233. See the Judgment of the Court of First Instance (First Chamber) of 10 March 1992, T-11/89, ECLI:EU:T:1992:33, paragraph 311.

The consolidation of this doctrine by the CJEU is based on the need to prevent legal structures from being used to evade liabilities that may have arisen. As early as the 1960s, the Court established continuity between companies and their successors, based on the notion that a formal legal change in the legal person did not alter the underlying economic reality (the undertaking) [25]. In the same spirit, it ruled that coordinated conduct within the same corporate group could not be considered an agreement, and on that basis[26], it developed the doctrine of the parent company's liability for the conduct of its subsidiary, on the grounds that both were part of the same economic entity—the undertaking. This reasoning, however, raises certain issues of coherence[27]. Moreover, the concept of the undertaking as the liable entity has also affected how fines for anticompetitive conduct are calculated, basing them on the turnover of the entire group (identified as the undertaking under competition law), rather than only on the company that directly committed the infringement[28].

The case law on the undertaking as an economic unit that may encompass several companies developed within the framework of sanctions imposed by the European Commission as the authority responsible for enforcing competition rules[29]. This excluded the possibility that the liability of each company found guilty could be based solely on their integration into the economic unit known as the undertaking, as this would amount to strict liability, which is incompatible with Article 6 of the European Convention on Human Rights (ECHR) [30]. This explains why the CJEU links the liability of the parent company to its ability to influence the decisions of its subsidiary[31], following a line of case law initiated by the *Imperial Chemical Industries* judgment[32]. In that case, the Court

---

[25] See H. Brokelmann, "La *Sentencia Skanska* del TJUE: el concepto de "empresa" en las acciones de daños por infracciones del Derecho de la Competencia", *CDT*, 2020, vol. 12, number 2, pp. 903-912, p. 905, with a reference to the decision of the Commision of 16 June 1969 about the quinine cartel. Also very clear, the Judgment *Skanska* [CJEU (Second Chamber) Judgment of 14 March 2019, C-724/17, *Vantaan kaupunki and Skanska Industrial Solutions Oy, NCC Industry Oy, Asfaltamix Oy*, ECLI:EU:C:2019:204], paragraphs 36 to 39.

[26] See J. Alfaro/P. Liñán, *loc. cit.*, p. 233, on the basis of the ruling in the CJEU Judgment of 31 October 1974, C-15/74, *Centrafarma BV, Adriaan de Peijper and Sterling Drug Inc*, ECLI:EU:C:1974:114, paragraph 41.

[27] See this criticism in J. Alfaro/P. Liñán, *loc. cit.*, p. 233, footnote 6 *in fine*.

[28] See H. Brokelmann, *loc. cit.*, p. 904. It is very interesting the analyses of A. Kalintiri ("Revisiting parental liability in EU competition law", *European Law Review*, 2018, vol. 43, number. 2 pp. 145-166, pp. 4-5) about how the arguments used by the parent company in the case *Stora* [CJEU (Fifth Chamber) Judgment of 16 November 2000, C-286/98P, *Stora Kopparbergs Bergslags AB* ECLI:EU:C:2000:630] helped confirm that the liability of the parent company stemmed from the economic unit it formed with the subsidiary, with the parent's control over the company that had directly infringed competition rules becoming a secondary consideration.

[29] That is the subject of the Judgment of 14 July 1972 (C-48/69, *Imperial Chemical Industries Ltd. v. Commission of the European Communities*, ECLI:EU:C:1972:70) and of 25 October 1983 (C-107/82, *Allgemeine Elkticitäts Gesellschaft AEG-Telefunken AB v. Commission of the European Communities*, ECLI:EU:C:1983:293); and the Judgment of the Court of First Instance (First Chamber) of 10 March 1992 (*supra* footnote. 24).

[30] See A. Mickonyté, *Presumption of Innocence in EU Anti-Cartel Enforcement*, Leiden/Boston, Brill Nijhoff, 2018, p. 9 y 143-174. This inconsistency would arise because it involved a sanction. In the case of private law damages, as we will see, that contradiction does not exist.

[31] See paragraph 50 of the Judgment *Allgemeine Elkticitäts Gesellschaft AEG-Telefunken AB v. Commsision of the European Communities* (*supra* footnote 29): "However, such a check appears superflous in the case of TFR which, as a wholly-owned subsidiary of AEG, necessarily follows a policy laid down by the same bodies as, under its statutes, determine AEG's policy".

[32] Judgment of 14 July 1972 (*supra* footnote 29), paragraphs 132 to 141.

established that where the subsidiary does not have genuine autonomy, the parent and its subsidiaries form a single economic unit[33], such that the conduct of the subsidiary may be attributed to the parent, as it is the parent that controls the subsidiary's actions[34]. This avoids attributing strict liability to the parent company, which, as noted, could raise issues of compatibility with the ECHR.

The relevance of the parent's control over the subsidiary has been reaffirmed in later rulings, such as the *Stora* judgment of 2000[35] and the *Akzo Nobel* judgment of 2009[36]. According to these decisions, the parent may be held liable for the conduct of its subsidiary based on a presumption that it exercises control over the subsidiary's activities. However, this presumption can be rebutted by proving that the subsidiary acted independently[37].

From this, we can conclude that, on one hand, the CJEU holds that competition law infringements are attributable to the undertaking as an economic reality, not to the individual companies that comprise it. On the other hand, the liability of the parent company does not arise solely from its integration in the infringing undertaking, but from its ability to control the subsidiary that engaged in anticompetitive conduct.

This might lead to the conclusion that the Court's case law is inconsistent, as it simultaneously attributes unlawful conduct to the economic unit (the undertaking) and to one part of it—the company that actually carried out the conduct in breach of competition rules. However, we will not dwell on this inconsistency. We simply note that the connection between the two lines of reasoning lies in the assumption that, where the parent does not exercise control over the subsidiary, there is no genuine economic unit, and thus the undertaking is identified with the infringing subsidiary alone, excluding the parent or other companies within the group[38]. This is the approach followed by the European Commission, which, in its guidelines on the application of Article 101 TFEU, states that two companies will be considered a single undertaking when one exercises decisive influence over the other. The same applies to sister companies, where both are subject to decisive influence by the same parent[39]. That said, it is possible to have an economic unit without the parent company exercising decisive influence over its

---

[33] See paragraph. 134 of the Judgment of 14 July 1972.

[34] See paragraphs 135 to 137 of the Judgment of 14 July 1972.

[35] See paragraph 28 of the Judgment *Stora* (*supra* footnote 28).

[36] CJEU (Third Chamber) Judgment of 10 September 2009, C-97/08P, *Azko Nobel NV, Azko Nobel Nederland BV, Azko Nobel Chemicals International BV, Azko Nobel Chemicals BV, Azko Noberl Functional Chemicals BV and Commission of the European Communities*, ECLI:EU:C:2009:536.

[37] See paragraph. 62 of the Judgment *Azko Nobel*: "That being so, it is sufficient for the Commission to show that the entire capital of a subsidiary is held by the parent company in order to conclude that the parent company exercises decisive influence over its commercial policy. The Commission will then be able to hold the parent company jointly and severally liable for payment of the fine imposed on the subsidiary, unless the parent company proves that the subsidiary does not, in essence, comply with the instructions which it issues and, as a consequence, acts autonomously on the market".

[38] See A. Mickonyté, *op. cit.*, p. 10; C. König, "The Boundaries of the Firm and the Reach of Competition Law", en M. Corradi/J. Nowag, *Intersections Between Corporate and Antitrust Law*, Cambridge University Press, 2023, pp. 63-85, p. 66.

[39] See paragraph 11 of the Communication from the Commission "Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements", *OJ*. C 11, of 14 January 2011. See N.A. Palma Paredo, "Doctrina de la unidad económica en el derecho de la competencia: aplicación y límites", https://centrocompetencia.com/wp-content/uploads/2022/08/Nicolas-Palma-2022-Doctrina-de-la-Unidad-Economica.pdf;

subsidiaries. For example, in cases involving succession of undertakings[40], or where the group is not organised in a hierarchical structure—just one of many possible arrangements[41].

While in the former case (succession of undertakings), the lack of control by the predecessor over the successor does not prevent them from being treated as the same economic entity, in the latter, where the parent company does not exert influence over the subsidiary's conduct, there would be no undertaking encompassing both companies—even though they may operate as part of the same economic and operational reality.

In this latter scenario, the group would consist of separate undertakings[42], which does not reflect the actual economic situation. The absence of control by one company over the others does not prevent the existence of a unified direction, meaning that the group as a whole may act in a coordinated manner[43].

It may therefore be appropriate to revisit this approach and allow for an interpretation that is faithful to the economic reality of corporate groups, while also safeguarding the fair attribution of liability to the various entities within the group.

9. The first point to consider is that, even though anticompetitive conduct is attributed to the undertaking, understood as an economic entity, actions—whether by competition authorities or affected parties—must be brought against legal persons; that is, against one or more of the companies forming part of the group[44]. This requirement applies both to actions by the Commission (e.g. for imposing fines) and before courts when damages are sought for harm caused by anticompetitive conduct. Furthermore, neither the fine nor the compensation can be imposed on the undertaking as such, but rather on one or more of the companies that comprise it. Thus, first, the economic entity responsible for the infringement must be identified, and then the legal persons who will

---

[40] See *supra* footnote. 25.

[41] See K. Hopt, "Groups of Companies. A Comparative Study on the Economics, Law and Regulation of Corporate Groups", *ECGI Working Paper Series in Law*, 2015, nº 286/2015, p. 2; C. Keller, "Organisation und Führung der Holding", in M. Lutter and others (eds.), *Holding-handbuch: Konzernrecht-konzernsteuerecht- konzernarbeitrecht-betriebswirschaft*, Otto Schmidt KG, 2015, pp. 111-289, pp. 115-116; J. Dine, *The Governance of Corporate Groups*, Cambridge University Press, 2004, pp. 39-40; A.J. López Expósito, "Aspectos societario-mercantiles de los grupos de sociedades", in J.M. López Jiménez (dir.), *El control societario en los grupos de sociedades*, Hospitalet de Llobregat (Barcelona), Wolters Kluwer, 2017, pp. 85-133, p. 90; J.F. Duque Domínguez, "Concepto y significado institucional de los grupos de empresas", in *Libro-Homenaje a Ramón Mª Roca Sastre*, vol. III, Madrid, Junta de Decanos de los Colegios Notariales, 1976, pp. 525-586, pp. 536-539; J.M. Embid Irujo, *Introducción a los grupos de sociedades*, Granada, Comares, 2003, pp. 6-7, 59 y 81-89.

[42] See F. Díez Estella, "En búsqueda de un concepto de "empresa" en el Derecho de la competencia: la STJUE Sumal c. Mercedes Benz", *CDT*, 2022, vol. 14, number 2, pp. 319-347, p. 331: "En otras palabras, el TJUE en las sentencias *Knauf Gips* y *Dow Chemical* ya había ligado el concepto funcional de empresa a una finalidad económica, a un objetivo económico específico y a una finalidad funcional específica, abriendo así la puerta a más de un objetivo económico específico -es decir, varias unidades económicas- dentro de un grupo de empresas" (*In other words, in the* Knauf Gips *and* Dow Chemical *judgments, the CJEU had already linked the functional concept of an undertaking to an economic purpose, a specific economic objective, and a specific functional aim, thereby opening the door to more than one specific economic objective—that is, multiple economic units—within a group of companies*).

[43] See A.J. López Expósito, *loc. cit.*, pp. 99-100, which refers to the fact that, despite the importance of unified direction, Spanish law has opted for control as the defining element of a corporate group. The same can be said of EU practice and case law.

[44] See paragraph 57 of the Judgment *Azko Nobel.* See also A. Mickonyté, *op. cit.*, pp. 138-139.

bear liability or be subject to proceedings for the undertaking's conduct must be determined.

If we clearly separate these two issues—on the one hand, identifying the entity to which the anticompetitive conduct is attributed, and on the other, the distribution of liability within the corporate group that committed the competition law infringement—we can better appreciate certain nuances in the matters examined so far.

First, the attribution of anticompetitive conduct to the group, based on the conduct of its member companies, should not be limited only to cases where one company controls the actions of its subsidiaries; it could also extend to cases where, even in the absence of such control, there is a unified direction not necessarily exercised by a parent company. This may be particularly relevant when calculating fines, as the turnover taken into account would be that of the group as a whole, and not only that of the infringing company, especially in cases where no single company can be identified as directly controlling those involved in the infringement.

Second, it becomes necessary to determine which companies within the group should be targeted by competition authorities' actions, as well as by potential claims from injured parties. Currently, such actions are brought against both the companies that directly committed the infringement and those that effectively control them, or their successors if the infringing companies no longer exist. Moreover, liability rules are based on joint and several liability between the subsidiary and the parent, though the latter may be released from liability if it successfully rebuts the presumption that—where it owns nearly all the subsidiary's capital—the subsidiary acted under its instructions. If we accept that the undertaking, as an economic entity, is not limited to vertically structured groups, then more flexible rules are needed for allocating liability within the group. This second point also requires distinguishing between administrative liability (fines) and claims for compensation brought by victims of anticompetitive conduct.

10. As regards the first aspect—administrative sanctions imposed for breaches of competition law—and in light of the requirement that there can be no penalty without fault, it would not be enough to sanction a company merely for being part of a group that, as an economic entity, committed the infringement. The sanctioned company's involvement in the infringement must be established. In this respect, presumptions about a company's influence over others may still operate, but with the same caution previously highlighted: such presumptions must not result in strict liability, lest they violate Article 6(2) of the European Convention on Human Rights[45]. In the absence of such influence or participation, it seems impossible to sanction companies that are merely part of the same group as the infringer[46].

In the case of compensation claims brought by injured parties, however, the perspective may differ. Here we are not dealing with a sanction, but with a private law relationship. In this context, the ECtHR case law does not preclude the possibility of strict liability. Nevertheless, to avoid arbitrariness, such liability must be based on a legitimate

[45] See *supra* footnote 30.

[46] See Article 23.2 of the Council Regulation (EC) 1/2003 of 16 December 2002, on the implementation of the rules on competition laid down in Articles 81 and 92 of the Treaty, *OJ* L 1 of 4 January 2003, that imposes that fines must be imposed when the infringement was intentional or negligent. See e.g. the Conclusions of the General Advocate, Ms. Juliane Kokott in the affaire C-501/11 P (*Schindler Holding Ltd and others versus European Commission*), 18 April 2013 (ECLI:EU:C:2013:248) paragraphs 112 to 123.

and proportionate link between the party held liable and the party who directly caused the harm. The fact that both are part of the same business organisation—understood as a group of companies acting in a coordinated manner—may be sufficient to establish the potential for joint liability of all group members for anticompetitive conduct committed by one of them, when such conduct has caused harm to third parties.

Indeed, the Court of Justice of the European Union has already opened the door to such liability through group membership in the *Sumal* case[47], where it held that a subsidiary could be held liable for the anticompetitive conduct of the parent company, provided both formed a single economic unit. However, in that case, in line with existing case law, the condition for the existence of a single economic unit was the parent's control over the subsidiary. Therefore, if the criterion of control were replaced by that of unified direction, continuing the reasoning from *Sumal* would lead to the conclusion that all companies within the group could potentially be held jointly and severally liable for damages caused by anticompetitive conduct.

That initial liability should, however, be mitigated or excluded for companies that can prove either that they did not participate in the anticompetitive conduct, or that their involvement or benefit was limited. This nuance stems from the *Sumal* judgment, in which the CJEU held that the subsidiary must be able to challenge both the infringement itself and the fact that it formed part of the same economic unit as the parent company. To this, we could add the further arguments just mentioned—regarding the degree of participation in the conduct or the benefits derived from it. But the baseline would be that, if no such rebuttal is made, participation in the corporate group would suffice to establish joint and several liability—regardless, of course, of any recourse actions that might be pursued within the group itself.

This joint liability would also facilitate the compensation of injured third parties, in line with the principle of full compensation established in Article 3 of the Directive on actions for damages for infringements of competition law[48].

11. Considering horizontal groups as undertakings for the purposes of applying competition law would also have implications for how agreements and practices within the group are treated. It should be recalled that the doctrine of the undertaking as an economic unit initially emerged to explain that the rules on concerted practices do not apply where companies—because they are controlled by another—lack the genuine capacity to reach agreements[49]. In the case of groups with unified direction, but without a clearly identifiable company exercising control over the others, it becomes necessary to distinguish between agreements related to group management and those that may have anticompetitive character.

---

[47] CJEU (Sixth Chamber) Judgment of 6 October 2021, C-882/19, *Sumal, S.L. and Mercedes Benz Trucks España, S.L.*, ECLI:EU:C:2021:800. See on this decision C. Herrero, "De matrices y filiales: reflexiones a la luz de la Sentencia TJUE de 6 de octubre de 2021, Sumal", *Orizzonti del Diritto Commerciale*, 2021, number. 3, pp. 1149-1193.

[48] Directive 2014/104/UE 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 Text with EEA relevance *OJ* L 349 of 5 December 2014. The Directive was transposed in Spain through the Royal Decree-law 9/2017 of 26 May (*BOE*, 27-V-2017).

[49] Judgment *Centrafarma* of 1974. See *supra* footnote 26. See also M. Germain/L. Vogel, *Traité de droit comercial. G. Ripert/R. Roblot*, París, L.G.D.J., 17ª ed. 1998, pp. 608-609.

The former—those that organize the group's internal functioning—may take the form of agreements between companies, protocols, or even informal practices followed by the governing bodies of the various companies. From the perspective relevant here, what matters is that such agreements or practices result in each company within the group adjusting its conduct to the directives of the unified direction. If that is the case, practices of the various group members that might otherwise appear anticompetitive should not be regarded as concerted practices under Article 101 of the Treaty on the Functioning of the European Union, as they would not result from an autonomous decision-making capacity but from instructions issued by the group's central direction.

At present, however, and according to the approach followed by the European Commission, where no single company exercises control over the others, anticompetitive practices stemming from the direction of a horizontal group would still be regarded as agreements or concerted practices.

If, by contrast, the agreements or practices under scrutiny are not the result of group direction, they should be considered as collusive agreements or practices. It is the link between the competition-infringing conduct and the group's direction that determines whether we are dealing with concerted practices or not. According to the proposal advanced here, the criterion of unified direction should replace that of control.

12. In the present case, however, the matter is considerably simpler, as Heineken owned 99% of the capital of the Greek company AB. In other words, the Dutch company's capacity to influence the Greek subsidiary was clear, and the only issue to be discussed is whether that capacity was actually exercised. Heineken's claim that it had not exercised such influence—combined with the fact that the Greek competition authority had not considered AB's anticompetitive conduct to be the result of instructions from Heineken—was used as an argument to deny the jurisdiction of the Dutch courts over the Greek company. This will be examined in the next section.

IV. Jurisdictional Debate and Substantive Debate

13. As already noted, there appears to be no serious doubt that there is a sufficient connection between the claim brought against Heineken and the one filed against AB, since the former seeks to hold the Dutch company liable for conduct that was materially carried out by AB. The basis for the liability of the Dutch company is the influence it allegedly exercised over the Greek company, causing it to act in breach of competition rules. Thus, if such decisive influence did not exist, the issue would not so much concern the lack of jurisdiction of the Amsterdam courts over the Greek company, but rather the lack of foundation for the claim against Heineken itself. It is therefore understandable that the defendant companies argued that, in this particular case, the presumed iuris tantum decisive influence of the parent over the subsidiary—based on the fact that the former owned nearly all the shares of the latter—did not exist. However, it remains to be seen how this argument affects the determination of international jurisdiction.

14. The first question is whether the aforementioned *iuris tantum* presumption applies in this case. The doubt arises because the decision declaring AB's infringement of competition law was not issued by the Commission, but by Greek authorities, and those

authorities explicitly stated that the presumption of parental influence did not apply, maintaining that there were no grounds to presume that Heineken had exercised direct influence over AB[50]. From this, two issues arise: first, whether a presumption originally intended for Commission decisions can apply in a case that does not concern an infringement procedure but instead a claim for damages; and second, whether the fact that the Greek authority found no evidence of Heineken's influence over AB is enough to rebut the presumption.

As for the first point, the Court maintains that the *iuris tantum* presumption also applies in damages actions arising from anticompetitive conduct[51]. The judgment justifies this approach on the grounds of the need for a unified concept of "undertaking" under EU law, and that no distinction should be made between the rules governing Commission sanctions and those governing compensation claims—citing the *Sumal* judgment[52]. One could object, however, that the basis for liability in *Sumal* was not the parent's decisive influence over the subsidiary, since that case concerned the subsidiary's liability for actions of the parent company—not, as here, the reverse. Nonetheless, regardless of the precise applicability of *Sumal,* it would seem unreasonable to apply the presumption in sanction proceedings but not in damages actions.

A further question regarding the presumption concerns its original scope: it was developed for Commission decisions, yet here we are dealing with a decision from a national authority. The Court resolves this issue by stressing that what matters is that we are dealing with an "undertaking" in the sense of an economic unit, since it is from this concept that the responsibility of the various companies arises[53]. It is true, however, that the Court uses this argument to justify the application of Article 8(1) of Regulation 1215/2012, not directly to support the use of the *iuris tantum* presumption of parental influence—something that would indeed be odd, considering that the Greek authorities had explicitly stated there was no evidence of such influence. Therefore, in the specific case at hand, the Greek decision would rather support the conclusion that Heineken did not exercise decisive influence over AB. That said, from a broader perspective, there is no doubt that the presumption may still apply whenever there is an economic unit in the sense of the CJEU's case law, regardless of whether a Commission decision has made such a finding. As a result, the forum of connected claims would apply in order to avoid the risk of conflicting judgments[54].

15. What remains to be resolved is how the evidence presented by the defendants to rebut the presumption of influence by the parent over the subsidiary should be considered. In this case, the decision that found the infringement did not establish the existence of such influence, so it is not surprising that the defendant companies would argue that jurisdiction should not be based on the alleged influence.

As previously noted, in this specific case—and given that Heineken's liability is based on the conduct of AB—there is no reasonable way to deny the existence of a connection between the claims brought against each company. However, setting that aside

[50] See paragraph 12 of the Judgment of 13 February 2025.
[51] See paragraph 39 of the Judgment of 13 February 2025
[52] See paragraph 40 of the Judgment of 13 February 2025.
[53] See paragraph 30 of the Judgment of 13 February 2025.
[54] See paragraph 32 of the Judgment of 13 February 2025.

and assuming that the presumption of influence is relevant for determining jurisdiction, it is necessary to establish how this issue can be addressed at the initial stage of the proceedings.

This is not a new issue; rather, it is a classic problem in international jurisdiction: to what extent may substantive questions be addressed during the preliminary stage of the procedure? This problem is not limited to international jurisdiction, but also appears in domestic jurisdictional disputes[55], with procedural solutions varying across different national legal systems. On this matter, the Court of Justice of the European Union holds that the procedural law of the court seised must apply, provided it does not undermine the *effet utile* (practical effectiveness) of Regulation 1215/2012[56].

Through this concept of *effet utile*, the CJEU has introduced certain requirements that must be considered when applying national procedural law. First, the judge must be able to determine jurisdiction without needing to assess the substance of the case[57], though they may take into account clear and relevant circumstances presented by the interested party[58]. In practice, jurisdiction can, in principle, be based on the claimant's allegations without anticipating the examination of the merits[59]. The exception to this rule arises when the allegations or submissions made by the defendant indicate that the facts justifying the court's jurisdiction do not correspond to reality.

This is the conclusion reached by the Court in the judgment under discussion. After stating that it is not necessary to carry out an exhaustive assessment of disputed facts, it goes on to say that the decision on jurisdiction must take into account all the available information, including the defendant's objections[60].

16. The CJEU's case law on this matter is best understood by distinguishing between cases involving doubts about the interpretation of the jurisdictional forum and those involving a dispute about the correspondence between reality and the facts alleged by the parties. An example of the former would be situations where the contractual forum is invoked, even though one party argues that the contract in dispute is null or nonexistent. In such cases, the Court has clarified that the contractual forum also applies when the subject of the dispute is the contract's existence or validity.

Different, however, is the situation in which the parties disagree over the facts upon which jurisdiction is based. How this issue is addressed will depend on the procedural rules governing the verification of jurisdiction—especially whether those

---

[55] For territorial jurisdiction in Spain, see the classic study by J. Carreras "El principio de prueba en las contiendas sobre competencia territorial", *RDProc*, 1964, number 3, pp. 29-57.

[56] See paragraph. 42of the Judgment of 13 February 2025.

[57] See paragraph 27 of the CJEU (Sixth Chamber) Judgment of 3 July 1997, C-269/95, *Francesco Benincasa v. Dentalkit Srl*, ECLI:EU:C:1997:337.

[58] See paragraph 7 of the CJEU (First Chamber) Judgment of 4 March 1982, C-38/81, *Effer SpA y Hans-Joachim Kantner*, ECLI:EU:C:1982:79. In this case, the possibility was raised of using the specific forum for contractual matters in a situation where the defendant contested the very existence of the contract. It might have been more appropriate here to clearly state that the forum for contractual matters also applies to disputes concerning the very existence of the contract—an argument that the Court itself also employs in this case. Other decisions of the Court pointing in this direction include the CJEU (First Chamber) Judgment of 25 October 2012, C-133/11, *Folien Fischer AG, Fofitec AG and Ritrana SpA*, ECLI:EU:C:2012:664, paragraph 50.

[59] See paragraph 20 of the CJEU Judgment of 3 April 2014, C-387/12, *Hi Hotel HCF SARL and Uwe Spoering*, ECLI:EU:C:2014:215.

[60] See paragraph 65 of the Judgment of 13 February 2015.

rules provide for a specific evidentiary phase. In the Spanish system, there is no such evidentiary phase, but since the claimant's supporting documents will already have been submitted with the claim, it is not impossible for the court to examine them. Similarly, the defendant may submit documents or preliminary evidence in their jurisdictional objection, and the other parties will have the opportunity to respond or submit additional materials[61]. Thus, under Spanish law, the court may assess the facts brought into the proceedings. However, given the procedural stage at which jurisdiction must be decided—and as mentioned earlier—the decision must be based on preliminary evidence rather than fully developed proof.

The Spanish solution appears quite reasonable[62] and is consistent with the case law of the CJEU, since it not only allows the court to consider all materials submitted but also enables the parties to present arguments and evidence before a jurisdictional decision is made. By contrast, a national procedural system that required the judge to base the decision solely on the claimant's assertions would be incompatible with the CJEU's doctrine. In any event, most legal systems likely follow an approach similar to that found in Spain's Civil Procedure Act[63].

That said, in the case at hand—and as previously noted—the question of Heineken's influence over AB is less a matter of jurisdiction and more one of substance. It is true that the CJEU has held that there is a presumption of a connection between claims when the defendants are a parent company and a subsidiary within the same economic unit, with that unit defined by the influence exerted by the parent over the subsidiary.

However, in this specific case, since the claim against Heineken (the main claim) is based on actions carried out by its subsidiary, the connection between the two claims should not be in doubt. In any case, it would not be reasonable to dismiss the existence of such influence at the initial stage of the proceedings—when no full evidence has yet been taken—even if the defendant presents strong indications to the contrary, such as the Greek authority's finding that there were no signs of such influence.

V. Conclusion

17. Jurisdiction based on connected claims in actions brought against the parent company and subsidiaries of the same group in competition law disputes raises several interesting issues, which have been addressed in various judgments of the Court of Justice of the European Union, including the judgment of 13 February 2025.

The CJEU's case law rests on the existence of an economic unit between the parent company and the subsidiary when the former exercises decisive influence over the latter. From this, it follows that it is possible to bring an action against one in the domicile of

[61] Art. 65.1 of the Spanish Civil Procedure Act.

[62] For a more detailed commentary on the procedural rules for verifying international jurisdiction under the Spanish Civil Procedure Act, I refer to R. Arenas García, "Falta e impugnación de la competencia judicial internacional en la LEC (2000)", *AEDIPr*, 2001, t. I, pp. 155-199, pp. 179-198.

[63] See § 281 of the German Code of Civil Procedure (*Zivilprozessordnung*), Article 75 of the French Code of Civil Procedure (*Code de procédure civile*) or Article 11 of the Italian Private International Law Act.See D. Bureau/H. Muir Watt, *Droit international privé. Tome I. Partie Générale*, París, Themis, 4ª ed. 2017, p. 219; R. Geimer, *Internationales Zivilprozeßrecht*, Colonia, Dr. Otto Schmidt, 1997, pp. 469-470.

the other under the connected claims forum provided for in Article 8(1) of Regulation 1215/2012. This doctrine, however, may require certain refinements.

18. First, it is not entirely clear that foreseeability—regarding the possibility that the parent company might be sued in the forum of the subsidiary—applies in reverse; since the subsidiary generally has no control over the transfer of its shares, it may turn out that the parent is located in a forum that is unforeseeable for the subsidiary. Second, the control-based criterion used by both the European Commission and the CJEU excludes cases in which a group may operate under unified direction, but where no single company holds a majority shareholding in the subsidiaries or exercises effective control over them. It may be worth exploring whether groups with unified direction could also be regarded as a single economic entity for the purposes of applying competition law, which would require rethinking the rules governing ownership structures within the group.

The judgment of 13 February 2025 also addressed the weight that the court seised must give to the arguments presented by the defendant when determining its jurisdiction. The need to coordinate national procedural law with the requirement to ensure the effet utile of Regulation 1215/2012 suggests a clear distinction should be made between issues relating to the interpretation of the scope of each jurisdictional forum and disputes about the factual accuracy of the claimant's allegations. However, it is likely that most national procedural systems already conform to the requirements set out in the CJEU's case law, which insists that, even without a full evidentiary examination, the jurisdictional decision must take into account the elements submitted by all parties.