

**ANTI-COMPETITIVE PRACTICES:  
JURISDICTION OF COURTS SPECIALIZED IN DAMAGE CLAIMS**

**13 FEBRUARY 2013**

By court order dated 15 November 2012, the Court of First Instance (« TGI ») of Saint Malo ruled that it had no jurisdiction over a dispute regarding a damage claim brought under Article 1382 of the French civil Code and changed the venue of the trial to the TGI of Rennes in its quality of jurisdiction specialized in competition law disputes. This order sheds light onto the subject-matter jurisdiction of the specialized courts designated by Article L.420-7 of the French commercial Code.

**Specialized judges ...**

Infringements upon competition may be the subject of claims for damages or for an order to cease brought by the victims of such practices. Such actions may be brought absent any decision from a Competition Authority (in France the *Autorité de la Concurrence* or the European Commission) or after such decision is rendered (*private enforcement*).

Article L. 420-7 of the French commercial Code acknowledges the principle of specialization of courts of general jurisdiction, which have jurisdiction over « *disputes relating to the implementation of the rules provided for by Articles L. 420-1 through L. 420-5 as well as Articles [101 and 102 of the Treaty on the Functioning of the European Union (“TFUE”)] and disputes in which those provisions are invoked* ». Hence, eight TGIs and eight commercial courts (Bordeaux, Fort-de-France, Lille, Lyon, Marseille, Nancy, Paris, Rennes) enjoy exclusive jurisdiction over anti-competitive practices disputes since 1 January 2006. The Court of Appeal of Paris has exclusive jurisdiction over appeals against the decisions rendered in disputes regarding the implementation of competition law.

**... with affirmed jurisdiction**

Whereas the exclusive jurisdiction of specialized courts no longer is challenged when actions are brought based upon Articles L. 420-1 to L. 420-5 of the French commercial Code or Articles 101 et 102 of the TFUE, at least when they are invoked to support a claim or a counterclaim, and not solely as a

defense (*CA Versailles, 24 May 2007, n°07/01287*), the decision of the TGI of Saint Malo clarifies the principle of specialization of Article L. 420-7 of the commercial Code by applying this article to a damage claim brought under Article 1382 of the French civil Code.

In this case, the plaintiff, an agricultural union, requested that a company sanctioned by the European Commission in a 2010 decision be ordered to pay damages under Article 1382 of the civil Code in reparation of the damage arguably caused to it by the defendant's sanctioned anti-competitive practices. The defendant company argued that the TGI of Rennes, and not the TGI of Saint Malo, had jurisdiction as a specialized court pursuant to Articles L. 420-4 and R. 420-4 of the commercial Code.

By rejecting the plaintiff's claim, pursuant to which Article L. 420-7 of the commercial Code only applied to disputes regarding anti-competitive practices themselves and not to the claims regarding the consequences of such practices (in this case, the pricing made by the companies party to the cartel), the TGI of Saint Malo declared itself incompetent, noting that “*the particularly broad terms of Article L. 420-7 of the commercial Code include [...] not only those disputes relating to the sanctions of practices violating competition, but also disputes relating to the pecuniary consequences of the wrong doing which occurred*”.

This decision is particularly important since it grants jurisdiction over the thriving issue of damage claims granted to third parties which consider themselves the victims of anti-competitive practices, in which France may play a role as important as the role currently played by UK jurisdictions.

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