ORIGINAL

Official report

COURT AMSTERDAM

Private law section

Judgment of 27 July 2022

In the cases with case numbers / roll numbers:

C/13/639718 / HAZA 17-1255
C/13/640200/ HAZA 17-1345
C/13/645758 / HAZA 18-325
C/13/649757 / HAZA 18-617
C/13/651492/HAZA 18-738
C/13/656143 / HAZA 18-1077
C/13/656293 / HA ZA 18-1097
C/13/656508/HAZA 18-1118
C/13/658179/HAZA 18-1231
C/13/659129/HAZA 18-1330
C/13/659995 / HAZA 19-34
C/13/661078 /HAZA 19-127
C/13/661079 /HAZA 19-128
C/13/661080 / HAZA 19-129
C/13/672474 /HAZA 19-993

from

I. the legal person governed by foreign law
RETAIL CARTEL DAMAGE CLAIMS S.A.,
established in Luxembourg, Luxembourg,
plaintiff in Case C/13/639718 / HAZA 17-1255,
hereafter referred to as **'CDC',**
Lawyers: J.A. Mohlmann and M.R. Fidder, Utrecht,

2. the private limited liability company
CHAPELTON B.V.,
established in Amsterdam,
plaintiff in Case C/13/640200 /HAZA 17-1345,
hereinafter referred to as **'Chapelton',**
Lawyers: M.H.J. van Maanen and J. de Jong, The Hague,

3. the foundation
FOUNDATION TRUCKS CARTEL COMPENSATION,
established in Schiphol,
plaintiff in Cases C/13/645758 /HAZA 18-325, C/13/651492 /HAZA 18-738 and C/13/659995 *I* HAZA 19-34,
Hereafter referred to as **"STCC",**
Lawyers: J. van den Brande and J.T. Verheij, Rotterdam,

4. the private limited liability company
KING & DRENTH B.V,
established in Beerta,
5. the private limited liability company
JVB TRANSPORT B.V,
established in Bosschenhoofd,
6. the general partnership
HILVERSUM MOVING SERVICE,
established in Hilversum,
7. the private limited liability company
NOOTEBOOM TRANSPORT B.V,
established in Maasland,
8. the private limited liability company
AUTOMOBIELBEDRIJF VIANEN B.V,
established in Vianen,
9. the private limited liability company
TRANSPORT COMPANY BLOTENBURG B.V.,
established at Lunteren,
10. the one-man business
JAN WILLEM TIMMERMANS TRADE AND TRANSPORT,
established in Veen,
Plaintiffs in case C/13/649757 /HAZA 18-617, hereafter jointly referred to as **'Koning & Drenth',** lawyer: A.L. Appelman, Zwolle,

11. **STEF S.A.** and **91 other legal persons,** established in Paris, France,
plaintiffs in Case C/13/656143 /HAZA 18-1077,
hereinafter jointly referred to as **'STEF',**
lawyers: E.J. Zippro and R. Meijer, Amsterdam,

12. the legal person governed by foreign law
BALTRANS ARUFUVAROZASI KFT,
established in Szazhalombatta, Hungary,
13. the legal person governed by foreign law
ROGER AMSTUTZ TRANSPORTS SA,
established in La Tene, Switzerland,
plaintiffs in Case C/13/656293 /HAZA 18-1097,
hereinafter jointly referred to as **'Baltrans',**
lawyers: E.J. Zippro and R. Meijer, Amsterdam,

14. the legal person governed by foreign law
KLACSKA Asv ANYOLAJTERMEK szALLiTASI KFT.,
established in Budapest, Hungary,
plaintiff in Case C/13/656508 / HA ZA 18-1118,
hereinafter referred to as **'Klacska',**
lawyers: E.J. Zippro and R. Meijer, Amsterdam,

15. the legal person governed by foreign law
VIA LOCATION SAS,
located in Courbevoie, France,
16. the legal person governed by foreign law
VL FINANCES SAS,
established in Paris, France,
17. the legal person governed by foreign law
VIA TRUCK LEASE BENELUX SA,
established in Woluwe-Saint-Lamert, Belgium,
18. the legal person governed by foreign law
LOCATION TRANSPORTS BRIOCHINS SAS,
established in Paris, France,
plaintiffs in the case *Cl131658179 I* HA ZA 18-1231,
hereinafter jointly referred to as **'Via Location',**
Lawyers: M.J. van Joolingen and M.W.J. Jongmans, 's-Hertogenbosch,

19. the private limited liability company
CARTEL DES CAMIONS B.V,
established in Amsterdam,
plaintiff in Case C/131659129 *I* HAZA 18-1330,
hereafter referred to as **'Cartel des Camions',**
Lawyers: E.J. Zippro and R. Meijer in A_msterdam,

20. the legal person governed by foreign law
EB TRANS SA,
established in Luxembourg, Luxembourg,
plaintiff in the case *Cl131661078 I* HA ZA 19-127,
hereinafter referred to as **'EB Trans',**
lawyers: E.J. Zippro and R. Meijer, Amsterdam,

21. the private limited liability company
NLTRUCKKARTEL B.V.,
established in Amsterdam,
plaintiff in Case Cll31661079 *I* HAZA 19-128,
hereafter referred to as **'NLTruck Cartel',**
lawyers: E.J. Zippro and R. Meijer, Amsterdam,

22. the legal person governed by foreign law
CARLSBERG DEUTSCHLAND GMBH,
established in Hamburg, Germany,
23. the legal person governed by foreign law
CARLSBERG DEUTSCHLAND LOGISTIK GMBH,
established in Hamburg, Germany,
plaintiffs in Case Cll31661080 *I* HAZA 19-129,
hereinafter jointly referred to as **'Carlsberg',**
lawyers: E.J. Zippro and R. Meijer, Amsterdam,

24. the foundation
ANTITRUST ACTION TRUCK CARTEL FOUNDATION,
established in Utrecht,
Hereinafter referred to as **"SAATC",**
plaintiff in Case C/13/672474 /HAZA 19-993,
Lawyers: K. Rutten and X.D. van Leeuwen in Utrecht, against

1. the public limited company
DAF TRUCKS N.V.,
established in Eindhoven,
2. the legal person governed by foreign law
DAF TRUCKS DEUTSCHLAND GMBH,
established in Frechen, Germany,
3. the legal person governed by foreign law
PACCAR INC.,
established in Bellevue (Washington), United States of America, defendants,
Hereinafter jointly referred to as **"DAF",**
Lawyers: M. V.E.E. de Monchy and J. K. de Pree, Amsterdam,

4. **TRATON SE,** a foreign legal
person**,** formerly known as **MAN SE, with**
its registered office in Miinchen, Germany,
5. the legal person governed by foreign law
MAN TRUCK & BUS SE, formerly named **MAN TRUCK & BUS AG,**
established in Miinchen, Germany,
6. the legal person governed by foreign law
MAN TRUCK & BUS DEUTSCHLAND GMBH,
established in Miinchen, Germany,
defendants,
Hereinafter collectively referred to as **"MAN",**
Advocaten: J.S. Kortmann, C.R.A. Swaak and M.G. Kuijpers, Amsterdam,

7. the legal person governed by foreign law
AB VOLVO,
established in Gothenburg, Sweden,
8. the legal person governed by foreign law
VOLVO LASTV AGNAR AB,
established in Gothenburg, Sweden,
9. the legal person governed by foreign law
RENAULT TRUCKS SAS,
established in Saint-Priest, France,

10. the legal person governed by foreign law
VOLVO GROUP TRUCKS CENTRAL EUROPE GMBH,
Ismaning, Germany, defendants,
Hereinafter jointly referred to as **"Volvo/Renault",**
lawyers: A. Knigge and H.M. Cornelissen, Amsterdam,

11. the public limited company
CNH INDUSTRIAL N.V.,
established in Amsterdam, the Netherlands,
12. the public limited company
STELLANTIS N.V., formerly named **FIAT CHRYSLER AUTOMOBILES N.V.,**
established in Amsterdam, the Netherlands,
13. the legal person governed by foreign law
IVECO S.P.A.,
established in Turin, Italy,
14. the legal person governed by foreign law
IVECO MAGIRUS AG,
established in Ulm,
Germany, defendants,
Hereinafter collectively referred to as **"CNH/Iveco",**
Lawyers: J.H. Lemstra and M.N. van Dam, Amsterdam,

15. the legal person governed by foreign law
DAIMLER AG,
established in Stuttgart,
Germany, defendant,
hereinafter referred to as **"Daimler",**
Lawyers: W. Heemskerk and E.H. Pijnacker Hordijk, The Hague, and

1. the legal person governed by foreign law
SCANIAAB,
established in Sodertalje, Sweden,
2. the legal person governed by foreign law
SCANIA CV AB,
established in Sodertalje, Sweden,
3. the legal person governed by foreign law
SCANIA DEUTSCHLAND GMBH,
established in Koblenz, Germany,
collectively referred to as **"Scania",**
interveners,
lawyer: C.E. Schillemans, Amsterdam.

The aforementioned defendants are not all parties in every single case.

Plaintiffs shall hereinafter jointly be referred to as the Claimants. Defendants and the Joined Party Scania shall hereinafter jointly be referred to as the Truck Manufacturers.

1. The procedures

1.1. On 12 May 2021, the court ruled in all cases in the safeguard cases raised by Truck manufacturers (except Scania).

1.2. Also on 12 May 2021, the District Court issued a substantive interlocutory judgment (ECLI:NL:RBAMS:2021:2391).

1.3. On 17 June 2021, after taking note of the parties' views on the further course of the proceedings, the court ruled that the parties may re-argue on a limited number of issues.

1.4. On 25 August 2021, the Claimants, with the exception of Koning & Drenth, filed separate replies in all cases. Koning & Drenth delivered a reply on 25 August 2021 separately from the other Claimants.

1.5. On 22 September 2021, the District Court rendered a judgment in the incident brought by CDC in the case C/13/639718 /HAZA 17-1255 on the basis of Article 843a Rv (ECLI:NL:RBAMS:2021:5297).

1.6. The Truck Manufacturers have taken the "Deed of submission of opinion Prof. Dr. E.E.C. van Damme to refute Harrington & Schinkel report" on the rot of 24 November 2021 in all cases.

I.7. On 5 January 2022, the court received a 'Deed of suspension and resumption of business as a result of succession under universal title', together with supporting documents, from MAN in all cases in which it is the defendant. In this document, MAN states that, as a result of a merger decision, MAN SE as the transferring and also vanishing entity merged with TRATON SE as the acquiring entity. TRATON SE became the universal legal successor to MAN SE. The proceedings were then suspended in accordance with Article 225 para. 2 of the Code of Civil Procedure. In accordance with established case law, the proceedings were immediately resumed and the court clerk designated TRATON SE as the defendant. However, the court will retain the joint designation MAN for TRATON SE and the remaining MAN entities in the following.

1.8. The Truck manufacturers each filed an identical statement of rejoinder in all cases on 5 January 2022.

1.9. Scania took a document to join the defendants in Case C/13/672474 /HAZA 19-993 on 19 January 2022.

1.10. Prior to the hearing on 29 March 2022, the parties submitted further documents as follows:

on the part of the Claimants:

a document from Chapelton in Case C/13/640200 /HAZA l 7-1345, together with supporting documents CHAP-0024 and CHAP-0025,
a document drawn up by Cartel des Camions in Case C/13/659129 *I* HAZA 18-1330, together with supporting documents CAMI-0043 and CAMl-0044,
a deed of CDC in case C/l 3/639718 *I* HAZA l 7-1255 with supporting documents CDCR-0058 to CDCR-0063,

by the truck manufacturers:
a document containing exhibits 43 to 53.

l. l l. Minutes were taken of the hearing on 29 March 2022, which, together with the documents referred to therein, including the pleadings, form part of the case documents.

l.12. Finally, judgement was passed in all cases.

2. The further assessment

What is at issue in this judgment

2. l. After the Truck Manufacturers had made their joint submission, the court, after an oral hearing, delivered its opinion in the interlocutory judgment of 12 May 202 l:

l. The question of the scope of the Commission Decision of 19 July 2016 (Chapter 4 of the Truck Manufacturers' Reply),
2. the defence of the truck manufacturers that the Claimants did not suffer any damage as a result of the infringement, so that reference to the statement of damage is not relevant and the claim must be rejected (chapter 6 of the Statement of Objections of the truck manufacturers).

2.2. In view of the step-by-step approach to the cases, the court then decided that the following subjects would be dealt with at the hearing on 29 March 2022:

l. the defence of the Truck manufacturers that the Claimants acting as claimants are inadmissible (chapter 3 of the Truck manufacturers' reply),
2. The law applicable to the tort claims and to the assignments and mandates (Chapters 7 and 8 of the Truck Manufacturers' Reply),
3. the defence of the Truck manufacturers that the assignments and mandates are invalid (chapter 9 of the Truck manufacturers' reply).

These are the topics dealt with in this judgment.

The admissibility of C/aimants

2.3. A third of the Claimants submit claims (only) with regard to damage they claim to have suffered themselves, in connection with trucks purchased by them or used by them in any other way, or at least related damage caused by the trucks.

Infringement (see paragraph 2.8 of the last substantive interlocutory judgment). Other Claimants take the position that they are authorised to collect these claims by means of an assignment, mandate or power of attorney. This concerns the litigation vehicles Cartel des Camions, NLTruckkartel, CDC, Chapelton, SAATC, STCC and EB Trans (hereafter also referred to as: the Claimvehikels).

2.4. The truck manufacturers have put forward the defence that <little>the Claims Organisations that used assignment, mandate and/or mandate models to collect hundreds of claims from buyers, lessees and users of trucks (the "Underlying Parties") and to bring these as a kind of collective action, should be declared inadmissible. The Truck Manufacturers acknowledge <lat use of the assignment or mandate model by professional claim organisations is not prohibited under Dutch law. However, this does not mean that they can evade the guarantees of the collective action right, as laid down in the Settlement of Mass Damage in Collective Action Act (WAMCA), according to the truck manufacturers. With reference to case law[1] they argue that the construction of an assignment or mandate should be ignored. The -
Claims vehicles are in practice indistinguishable from 3:305a entities, at least not for the underlying parties, who for the most part are domiciled outside the Netherlands. Just like 3:305a entities, the Claimvehikels litigate in their own name and act as independent litigants. They present themselves just like 3:305a entities as advocates of interests. They have a large reach, can easily transfer a large amount of claims and claim declarations of right. The claims of the Claimvehikels therefore amount to collective redress in the sense of article 3:305a DCC. Section 3:305a DCC would become an empty shell if a litigation vehicle could circumvent the guarantees of section 3:305a DCC by means of assignment or mandate. Although the WAMCA entered into force only on 1 January 2020, it must be assumed that it has a strong reflex effect so that the claims of the claimants must be tested against the guarantees of article 3:305a DCC and the Claims Code. After all, WAMCA is an expression of standards (as already laid down in article 3:305a DCC (old) and the Claims Code), convictions and principles regarding the manner of conducting proceedings before the Dutch courts which were also generally recognised before the introduction of WAMCA. These standards, convictions and principles are reflected in the open standards of the

[1] Rb Amsterdam 30 November2016, ECLI:NL:RBAMS:2016:7841 and Rb Amsterdam 18 April 2018, ECLI:NL:RBAMS:2018:2476 (Trafigura I and II)
Rb Amsterdam 31 January 2018, ECLI:NL:RBAMS:2018:504 (Claim Participants B. V. v ABN AMRO
Rb The Hague 13 December 2017, ECLI:NL:RBDHA:2017:14512 (Loterijverlies.nl B.V./ Staatsloterij)
Court of Appeal, The Hague 8 October 2019, ECLI:NL:GHDHA:2019:3289 (Loterijverlies.nl B.V./Staatsloterij)
Rb Amsterdam 19 February 2020, ECLI:NL:RBAMS:2020:1058 (X/Kite Capital c.s.)

Dutch (procedural) law. According to the Truck Manufacturers, the Claims Act does not comply with any of the safeguards of collective action law.

2.5. The Claimants dispute that there is a (disguised) collective action with regard to the Claimvehicles. According to the Claimants, the underlying parties have voluntarily and consciously chosen to bundle their claims via assignments and mandates. It was a conscious choice of the Underlying Parties to enter into contractual arrangements with the Claimants and thus to dispose of their claim rights. Herein lies the difference with the class action; after all, in that action it is not the individual injured party who determines his own will.

2.6. The court first of all states that the WAMCA does not imperatively prescribe that collective actions can only be instituted on the basis of 3:305a et seq. of the Civil Code. The regulation is intended as an extension of the existing possibilities. It was created in order to offer an adequate legal remedy to large groups of injured parties, who each have a relatively small claim and who will therefore not be inclined to institute proceedings. In the past, it proved to be problematic to bundle such claims. Nevertheless, the Claimants and the Supporting Parties have succeeded in bundling their claims in these proceedings.

2.7. It is important to note that this case will almost exclusively concern professional parties who have purchased a truck. After all, it is not very likely that consumers will buy a medium-sized truck. Some of them are trying to get compensation for the alleged damage through one of the claim vehicles. At the meeting it was explained that many of the parties behind the claim are relatively small businesses. Apparently, they have found a workable method for them to collectively face the problem outlined above that injured parties are often reluctant to initiate proceedings if their loss is relatively small in relation to the expected costs. This without resorting to collective action as provided by law. The fact that the Claims phrases do not have to comply with the conditions which the law imposes on a legal entity wishing to institute a collective action as meant in article 3:305a DCC (or the old article 3:305a DCC viewed in conjunction with the Claims Code) does not carry sufficient weight for the court. Those conditions are mainly intended to protect non-professional injured parties, often consumers. This is less the case here. The Court also deemed the jurisprudence to which the truck manufacturers refer inapplicable here. In short, the cases in question always concern the appearance that a claimant improperly appropriates claims and that the validity of the alleged authority based on mandate or assignment must be doubted. In this case, there are no concrete indications of this, especially after the Claimants have brought the underlying documentation for their claims into the proceedings.

2.8. In view of the above, the argument of the Truck Manufacturers must be disregarded. Even if injured parties have made a free choice to combine their interests in some other way, a (disguised) collective action must in any case meet the safeguards of Section 3:305a of the Dutch Civil Code. It also plays a role that the injured parties do not necessarily need the legal protection of the WAMCA. Typical for a collective action is that the representative acts in his own name without

concrete mandate of the individual injured parties, which may make it difficult for them to address the representative. This problem is less acute in the legal relationship between the claimants and the underlying parties because that relationship is fixed in the agreement which they have concluded with each other, be it an assignment or a mandate. That agreement determines the rights and obligations mutually. If a disagreement arises in this relationship, the Underlying Parties may take their case to court on that basis.

2.9. Finally, the District Court considered it important that this case concerns a cartel that was already active long before 15 November 2016, which, on the basis of the transitional law applicable to the WAMCA, would mean that a collective claim would have to be judged, both substantively and formally, according to old - i.e. pre-1 January 2020 - law. This would mean that one could only ask for a declaration of right. After all, collective recovery of damages is excluded under the old law. Although in this case only a referral to the state of damage procedure is requested, it is apparent that the Claimants wish to collectively initiate the state of damage procedure as well. This would not be possible under the old law and in this sense a collective action would offer less possibilities to the Claimants.

2.10. The conclusion is that, since it concerns professional parties who have knowingly entered into an agreement without making use of the instrument of collective action as provided by law, there is no ground to rule that the Claim vehicles could only bring a claim on the basis of Section 3:305a of the Dutch Civil Code. The defence of the Truck manufacturers fails. In view of the above - and unlike the Truck Manufacturers - the District Court sees no reason to ask preliminary questions.

Applicable rec/11 on receivables

2.11. Initially, the Claimants took different positions on the law applicable to the claims they brought. At the hearing of
29 March 2022, all Claimants (insofar as they had not done so previously) made an explicit choice for Dutch law on all instituted claims. The Claimants state that this choice of law results in all 'claims being governed by Dutch law. For loss-causing events that occurred after the entry into force of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), i.e. on or after 11 January 2009, Rome II shall apply directly. The damaging event in this case is the participation of the Truck Manufacturers in the Cartel in the period 1997-2011. Rome II does not apply to damaging events prior to 11 January 2009. However, according to the Commission Decision, the Cartel constitutes a single and continuous infringement of European competition law, which continues even after the end of the cartel period.
11 January 2009. According to Claimants, the moment at which the continuing loss-causing event ceased to exist is the reference point. Reference is made to the judgment of the Supreme Court of 22 March 2019 (Parkeergarage Zandvoort).[2] That

[2] ECLI:NL:HR:2019:412

means that Rome II is applicable. Article 6 sub b of Rome II offers Claimants the possibility to choose the law of the lex fori. Claimants have done so; they have made an explicit choice for Dutch law.
In so far as Rome II is not directly applicable, common Dutch international private law must be applied. The now repealed Conflict Law on Wrongful Acts (WCOD) does not offer a solution in the event that competitive relations in several countries are simultaneously affected by a single infringement of European competition law, whereby each time there is a single claim for damages per injured party. Referring to the judgment of the Court of Appeal of Amsterdam of 6 July 2021 (Aircargo)[3] , Claimants state that this loophole should be filled in this case by determining the applicable law in a manner corresponding to article 6.3 sub b Rome II, resulting in a choice of law for Dutch law.

2.12. The truck manufacturers contest the application of Article 6 (3) (b) Rome II. According to them, Article 4 (I) WCOD applies to the vast majority of the claims. To the remaining part, Article 6.3(a) Rome II applies. Under both conflict of laws regimes, the claims of Claimants are governed by the market rule: the applicable law is the law of the state whose market is directly affected. Contrary to the Claimants' assumption, the alleged claims for damages arose per individual transaction. Therefore, in order to determine the applicable law, the place of the actual transaction must be taken into account. There is no gap in the WCOD, as the market affected by the infringing acts can be located in a specific place. In this case, the law of the State in which the first customer of a new truck is established must be applied. The first link in the distribution chain is thus decisive. A choice of law on the basis of Article 6(3)(b) of Rome II is therefore not appropriate, since it has not been argued or shown that application of the market rule would lead to the applicability of several systems of law to an individual claim by a Hirer in respect of an individual purchase of one or more trucks.

2.13. In line with the judgment of the Court of Appeal of Amsterdam of 6 July 2021 (Aircargo)4 , it is ruled as follows. The Commission has established that there has been a *single and continuous infringement,* committed by the addressees of the Decision, including the Truck manufacturers. This single and continuous infringement harmed individual customers and caused damage, according to the Claimants. In these proceedings, compensation for those damages is sought, either by the customers themselves or by a claim vehicle to which they have assigned their claim. Since the trucks were generally not purchased directly from the manufacturer, while it is the manufacturer's actions that caused the alleged damage, these are in principle claims in tort, more specifically claims for compensation for damage due to unlawful acts of competition. Under Dutch compensation law, an unlawful act of competition, such as an infringement of a dominant position, causes damage to a company.

[3] ECLI:NL:GHAMS:2021:1940
[4] ditto

cartel damage as soon as a transaction is entered into whose price is adversely affected by it.

2.14. According to the Decision, the Cartel Period ran from 17 January 1997 to 18 January 2011. The applicable law to the claims of the Claimants should be determined by reference to the rules of conflict of laws that apply in the Netherlands during that period. For the claims that arose before 11 January 2009, these are the rules of article 4 paragraph l WCOD. For claims that arose after 11 January 2009, Article 6 paragraph 3 sub a Rome II applies.

2.15. Article 4(1) of the WCOD stipulates that obligations arising from impermissible competition are governed by the law of the State on whose territory the act of competition has an effect. In order to be able to apply article 4 (I) of the WCOD, it is necessary to examine in which country the unlawful act of competition has affected the competitive relationships relevant for the injured party. In previous cartel damage cases, the answer to this question was generally based on the place where supply and demand meet, i.e. where the agreement was concluded.[5] In this case, it has been argued that the prices for virtually all trucks manufactured in Europe and offered in the EU were influenced by the cartel. It was therefore virtually impossible for customers in the EU to acquire a truck without price influence during the Cartel period. It is then difficult to
It is considered that the conditions of competition are only affected where supply and demand meet; those conditions were affected almost everywhere within the EU. This in itself also leads to discussion, as is evident from the parties' positions. The truck manufacturers are of the opinion that the law of the state where the first customer of a new truck is established should be applicable, while the Claimants are of the opinion that the law of the state where the injured customer is established should be applicable, even if this is not the first customer. The Claimants also pointed out that the Cartel may have resulted in a party refraining from purchasing a truck, for instance because that customer postponed the purchase until new emission technologies were available, in which case damage was suffered without a transaction having taken place. Even in that case, it is not clear what the starting point is for determining the effect on competition.

2.16. Furthermore, it is important that the WCOD, as the Court of Appeal also considered, does not contain an exhaustive regulation regarding the international unlawful act. Also with regard to the special rule that is included in article 4, paragraph I of the WCOD for unlawful acts of competition, it was already recognized at the time of its creation that it "does not offer a uniform solution in the situation that the unlawful act of competition affects the competitive relationship on the territory of several States" *(Parliamentary Papers II,* 1998/99, 26 608, no. 3 p. 8). In the opinion of the Court, the legislator did not (could not) foresee cases like the one at issue here. After all, the WCOD entered into force on I June 2001, while cartel damage claims such as the one in question have only been pending since the

[5] District Court The Hague 17 December 2014 (CDC/Shell), ECLI:NL:RBDHA:2014:15722; District Court Amsterdam IO May 2017 (CDC/Kemira), ECLI:NL:RBAMS:2017:3166

judgment of the ECJ of 20 September 2001 (Courage/Crehan)[6] and only since then have they been widely brought before the courts, for some time also through the use of so-called claim vehicles or through mass claims, with the result that claims from claimants from all over the EU are bundled. Traditional conflict of laws often gives the judge to whom such mass claims are presented the answer that he will have to apply a multitude of legal systems. In doing so, the conflict of laws, once intended to designate an applicable legal system, essentially overshoots its mark. beyond its purpose. The possible solutions for this problem thought up by the legislator when the WCOD was drawn up - the accessory connection of article 5 WCOD or a joint choice of law as referred to in article 6 WCOD - cannot be applied in this case either. This puts the court before the question which criterion it should apply in the application of article 4 WCOD, <later, as said, was never meant to be a conclusive regulation.

2.17. In the meantime, the Union legislator has come up with a pragmatic solution to this same problem, insofar as this <literal> issue arises under the aforementioned Article 6(3) Rome II (<literal> applicable in this case to claims arising after 11 January 2009): a choice of law *by the injured party* for the law of the court seized. Article 6(3)(a) of Rome II provides, in brief, that tortious action arising out of a restriction of competition is governed by the law of the country whose market is affected or likely to be affected. Article 6(3)(b) of Rome II reads as follows:

> However, where the market is, or is likely to be, affected in more than one country, a person seeking damages in the courts for the defendant's domicile may choose to base his claim on the law of the court seised, provided that the market in that Member State is one of those directly and substantially affected by the restriction of competition out of which the non-contractual obligation on which the claim is based arises.
> Where the plaintiff sues, in accordance with the applicable rules on jurisdiction, more than one defendant in that court, he may choose to base his claim on the law of that court only if the restriction of competition on which the claim against each of those defendants is based also directly and substantially affects the market of the Member State of that court.

The possibility of making a choice of law provided for in Article 6(3)(b) Rome II is, however, subject to strict limitations. The choice of law rule (i) applies only if the market is (likely to be) affected in more than one country, (ii) applies only if the defendant is sued in the courts of his domicile, (iii) is limited to the *lex Jori,* (iv) provided that the market in that Member State is directly and substantially affected by the restriction of competition. Furthermore, if more than one defendant is sued before the court of his domicile, the lex <(v) the injured party may only opt for the *lex Jori* if the restriction of competition on which the action is based against each of the defendants also directly and substantially affects the market of the Member State of the court.

[6] ECLI:EU:C:2001:465

2.18. In this case, the choice of law of the Claimants meets the requirements mentioned above. The Commission found in the Decision that *"the infringement covered the entire EEA*", so that it must be assumed that the infringement affected competition in more than one country. DAF Trucks, CNH Industrial and Stellantis were sued as defendants before the courts of their domicile. The claimants made a choice of law in favour of Dutch law, the *lex Jori.* That the competitive situation in the Netherlands is directly and substantially affected by the restriction of competition is sufficiently plausible on the basis of the Decision. After all, high fines were (also) imposed on DAF, CNH Industrial and Stellantis. Since they played an important role in the cartel, the applicability of Dutch law was also sufficiently foreseeable for the other truck manufacturers that were summoned to appear before the District Court of Amsterdam. The general requirement that in determining the applicable law it must be borne in mind that there is some connection between the applicable law and the (facts underlying the) claims has also been met in the sense that - in the absence of a uniform European private law - Dutch law is one of the obvious legal systems in this case. This leads to the conclusion that the claims for which the applicable law should be assessed under Article 6(3) Rome II should be assessed under Dutch law.

2.19. The following then applies to the claims for which the WCOD provides the framework of review. Like the Court of Appeal in the Aircargo case, the Court of Appeal is of the opinion that, with due observance of the principle of effectiveness, the law applicable to claims under Article 4 of the WCOD should be determined in a manner corresponding to Article 6 (3) (b) of Rome II (Ground 5.15.3), in which reference is made to the Dutch Supreme Court 8 July 2016 (Tennet/ABB)7). Also with regard to the v66r
I January 2009, the stipulations of the 9th previous legal section therefore apply. This leads to the conclusion that all claims of the Claimants are governed by Dutch law.

Legal validity of assignments

2.20. The Claimants CDC, Chapelton, EB Trans, NLTruckkartel and STCC claim (primarily) that they have acquired the claims of the Sellers by assignment. The Truck Manufacturers took the position that in order to assign a claim that is (partly) based on an assignment, it should be assessed whether the Claimants in question have become entitled to the original claim of the assignor. Therefore, they raise the question whether the claim has been validly assigned.

2.21. First of all, the applicable law must be assessed. An assignment is a contract. If there are cross-border aspects, the applicable law is determined by Regulation (EC) No 593/2008 on the law applicable to contractual obligations (hereinafter: Rome I), which entered into force on 24 July 2008. Section I 0:135 DCC also contains a regulation for assignment, but since Rome I as a rule of higher order prevails over the Dutch Civil Code, the court will continue to apply this rule.

[7] ECLI:NL:HR:2016:1483

do not address this issue. Since the Commission's decision dates from 19 July 2016, it can reasonably be assumed that all assignments are posterior in date, so that Rome I provides the framework for review. Article 14 Rome I sets out the rules for assignment. A distinction is made between the relationship between assignor and assignee (here: the Underlying Parties and the Claimants), for which the first paragraph provides the rules, and the relationship between them on the one hand and the debtor (the Truck Manufacturers) on the other, for which the second paragraph of Article 14 provides the rules.

2.22. The relationship between assignor and assignee is, according to article 14 paragraph 1 Rome I, governed by the law of the assignment agreement (the connecting document). The Claimants argue that in the assignment documentation a choice of law was made for Dutch law. The Truck manufacturers did not contest this, giving reasons. However, the Truck manufacturers reserve the right to contest the validity of these assignments if at a later stage of the proceedings it becomes apparent that certain assignment agreements deviate from the standard documentation and are therefore governed by law other than Dutch law. This may be so, but it does not mean that for now the assessment of the applicable law cannot take place and must wait. The Claimants have brought the documentation in the proceedings and the Truck manufacturers have been able to take note of it. In so far as the Truck manufacturers want to put forward a defence on this point at a later stage, it will have to be assessed whether this is in accordance with the due process of law. For now, it must be assumed that a choice of law was made for Dutch law when the assignments were made. Pursuant to Article 3 Rome I, in the event of a choice of law, the law of the contract is determined by that choice. This means that pursuant to article 14 paragraph 1 Rome I the assignments as far as the relationship between the Claim vehicles and the Underlying parties is concerned are governed by Dutch law.

2.23. The relationship between the Claimvehikels and the Second Party on the one hand and the Truck manufacturers on the other hand is, according to article 14 paragraph 2 Rome I, governed by the law applicable to the claim being ceded (the connecting factor to the claim status). As has been considered above, this case concerns claims in tort that have been assigned by the Sellers to the Claims Manufacturers. The rule of cessation of liability in article 14 Rome I also applies to the assignment of such claims. It has already been determined above - based on the WCOD and Rome II - that Dutch law applies to the tort claims in question. Insofar as the truck manufacturers argue that the assignments cannot be held against them, it must be assessed under Dutch law whether this is correct. In this respect it is important that Dutch law does not have a general prohibition of assigning claims in tort.

2.24. The truck manufacturers submit that they cannot defend themselves on the question of the assignability of the claim until the law applicable to the assignment of the claims has been determined. In their view, the applicable law determines a) the assignability of the claim, b) the relationship between assignee and debtor, c) the conditions under which the assignment may be invoked against the debtor, and d) The question whether the debtor has been discharged by payment. On all these aspects, the truck manufacturers have not yet been able to put forward a defence, they argue, due to a lack of clarity as to the applicable law to the assigned claims.

2.25. As to the question of whether the claims can be assigned, the following is considered. In the interlocutory judgment of 15 May 2019 (the compulsory purchase order), the court ordered the Claims Receivers to adequately substantiate the assignments (with documents, the assignment documentation). To the extent that they had not already done so, these parties subsequently brought the cessation documentation into the proceedings. It would have been in the Truck manufacturers' interest to discuss the transferability of the claims in the Statement of Reply. The fact that the law applicable to the claim had not yet been determined was irrelevant in that regard. This case concerns claims for damages for infringement of European competition law. The truck manufacturers point out in the conclusion of the reply that - based on their view of the law applicable to the claims - eleven legal systems are applicable, including the Dutch one. In their conclusion in reply, the truck manufacturers did give a number of examples of foreign rules that could possibly stand in the way of transferability of the claim to the law of that specific country, but they did not do so with regard to Dutch law. As noted above, under Dutch law there is no general rule prohibiting the assignment of a claim for damages in tort or delict. To the extent that the Truck manufacturers claim otherwise, it would have been their duty to address this. Against this background, the District Court sees no reason to give the Truck manufacturers this opportunity after all. The Court assumes that the claims are transferable.

2.26. The subsequent question of whether the claims in tort have actually been assigned must, as considered above, be judged according to the law of the assignment statute. This is also Dutch law. The question is whether the Claimants have become entitled to the original claim of the alleged assignor. In this respect, it is first of all important to establish how far the (initial) claim of the Claimants goes.

2.27. In this respect, the Claimants have invoked article 3:119 paragraph 1 of the Dutch Civil Code. As possessor of the assigned claims, the Claimants are presumed to be entitled to the claims which they claim to have obtained by means of assignment. The Truck manufacturers dispute that the evidence requirement of Section 3:119 of the Dutch Civil Code applies to claims. The District Court is of the opinion that the presumption of proof does apply and refers in this respect to the judgments of the Court of Appeal of Amsterdam of 10 March 2020 in Aircargo[8] , in which the Court of Appeal ruled that under Dutch law possession may also extend to registered claims, which means that the possessor of a registered claim may also invoke the presumption of proof contained in Section 3: 11 9 DCC. To the extent that the Truck Manufacturers argue the contrary with reference to the judgment of the Supreme Court of 9 February 1939[9] , their argument is rejected. This judgment was rendered under old law and does not relate to the possession of a registered claim.

2.28. Against this background, the court is of the opinion that if the documentation submitted in the proceedings contains per
(ii) the deed of assignment and (iii) it is clear that they were signed/issued by the decedent,

[8] ECLI:NL:GHAMS:2021:1940
[9] ECLI:NL:HR: 1939:32, NJ 1939/865 (Woldijk/Nijman)

Therefore, it is sufficiently established that the claimants are entitled to the claims, unless there are concrete indications, to be provided by the truck manufacturers, that a legally valid assignment has not taken place. The point is that the Truck manufacturers as debitor cessus (and the court) must be able to establish from the documentation that the decedent and assignee actually assigned their claim(s). The Claimants' initial burden of proof does not go any further.

2.29. The Truck manufacturers rightly point out that the Claimants must bring the aforementioned documentation into the proceedings in such a way that the Truck manufacturers and the court can check whether the underlying parties have actually and validly assigned their claim. According to the truck manufacturers, this requirement was not met. They claim that the documentation submitted is voluminous, difficult to search and not uniformly arranged. Vee! Underlying parties are legal entities of which the power of representation of the officers who signed the assignment agreements should be established on the basis of articles of association, shareholder resolutions and declarations, among other things. These documents are often missing from the case file and if they have been submitted, they are often drafted in a foreign language and must be assessed according to foreign legal systems. In this context, the truck manufacturers point to a judgment of the court of appeal in 's-Hertogenbosch of 27 July 2021[10] with regard to the substantiation of authority documents. There, the court demanded an explanation of the data evidenced by the public registers and the reasons why these data corresponded to the documentation submitted for the assignments. According to the Truck Manufacturers, this was not satisfied in this case. Therefore, the Claimants claim, they are litigating in violation of the due process and the duty of explanation.

2.30. On this point, the following is considered. The Claimants state that they have indeed brought the documentation concerned into the proceedings in a structured manner. In the reply to the statement of defence (section 6.2.1.) they explained this with examples. The truck manufacturers have not explained why they were nevertheless unable to check the assignments for validity. In view of the large volume of claims, it may be that it costs the Truck manufacturers correspondingly more research than in smaller-scale proceedings to get an idea of the assignments, but the mere fact that this research costs a lot of work does not make it impossible and constitutes a violation of the proper order of procedure. The fact that the authority documentation is drawn up in a multitude of foreign languages does not make this any different. The Truck manufacturers must be deemed capable of examining documentation in foreign languages - also languages that are less common than French, German, English, Spanish and Italian - or having it examined, especially since it is likely that these will always be languages from countries in which they themselves are economically active and where their trucks were purchased by the Intermediaries. The Truck manufacturers may therefore be expected to specify this to the extent that they believe that documentation of specific assignments is lacking. Now that this has not happened, it must be assumed that the documentation is complete. Subsequently, it is up to the truck manufacturers to put forward a targeted defence and to dispute, giving reasons, that assignments were legally valid, for example because the assignor was not legally represented, because he did not want the assignment or because the assignment had no legal effect for another reason. They have not done so either

[10] ECLI:NL:GHSHE:2021:2341

done. The mere example that was given during the oral hearing from the Cartel des Camions case does not lead to a different opinion. Although the truck manufacturers claim that the example illustrates that they have to guess at the power of representation, this is not a concrete indication that there is something wrong with the power of representation in all or most cases.

2.31. The court ignores the appeal to the judgment of the Bossche Court. It concerns a direction decision. It is not clear from the judgment why the court gave the instruction in question. It does not give the district court sufficient reason to deviate from the assessment framework referred to above under 2.23 and to rule that in all cases where an (intemational) assignment is involved, the explanation referred to by the court must be provided by the assignee.

Determinability requirement assignments

2.32. The Truck manufacturers further argue that a valid title is lacking for part of the assignments. According to them, this means that Section 3:84 (2) **of the Dutch Civil Code** has not been met**,** on the grounds of which the claims of the underlying parties must be described with sufficient certainty. Referring to chapter 5 of the conclusion of the reply, the Truck manufacturers also claim that the requirement of certainty is not met, because from the approximately 2,000 folders with claim documentation submitted by the Claim vehicles and EB Trans, it appears that in very many cases it is not possible at all to identify the transferred claims. The Claimants argue against this defence that the scope of the defence is unclear. The argument of the Truck manufacturers that "for a part of the assignments" a valid titre would be missing, because the assigned claims in the assignment documentation would "not always" be described with sufficient certainty, is according to them too general.

2.33. The basic principle of the requirement of certainty is that the deed of assignment must have been executed at the time of the assignment.
of the delivery must contain such information as to make it possible to determine (subsequently) which claims have been assigned. This question mainly arises if it is not or no longer entirely clear between assignor and assignee who is authorised to collect the claim, which is especially the case in the event of insolvency of one of the parties. In its jurisprudence, the Supreme Court interprets the requirement of certainty in a broad sense: if it can be determined in retrospect which claims have been assigned, that is sufficient. The provision does not aim to protect the debtor, who can, if it is unclear to whom the payment should be made in liberation, invoke the uncertainty exception. Against this background, a debtor who asserts that an assignment is not legally valid because the title does not describe the claim with sufficient precision may be expected to give concrete form to this defence. The defense of the Truck manufacturers does not meet this requirement. It has neither been stated nor proved which assignments are involved and to what extent the claims in those cases fall short of the element of determinability.

Fiduciary prohibition on assignments

2.34. The Truck manufacturers argue that the assignments of the claims of the Subordinate Parties in many cases lack the purport of the claims after the

transfer actually into the assets of the Claimvehikels and EB Trans. Insofar as the assignments are governed by Dutch law, they are therefore in violation of the fiduciary duty prohibition (Article 3:84 (3) Dutch Civil Code). The Truck manufacturers refer to the judgment of the Court of Appeal of Amsterdam of 4 February 2020 in the case CDC/Kemira[11] - According to the Truck manufacturers, the Court of Appeal determined in that case that an assignment may be in breach of the prohibition on fiduciary duty if it is plausible that: (i) the purchase price does not correspond to the fair market value of the receivables assigned, (ii) the receivables represent significant value to the Subordinate Parties, which remained with them after the assignment, and (iii) the relationship between the purchase price and the value of the receivables is relevant to the nature and validity of the assignment.

2.35. The District Court agrees with the Claimants that the defence of the Truck manufacturers is based on a wrong reading of the CDC/Kemira judgment. From what the Court of Appeal considered in that case under 3.14. l. and 3.14. l.2. it does not follow that the Court of Appeal established general criteria for the assessment of the question whether an assignment might be in breach of the prohibition of fiduciary duty. The Court of Appeal has only indicated to what extent the defendant in that case should have substantiated its defence in order for its appeal to be successful. That also applies in this case. The Truck Manufacturers only point to - in summary - the large difference between the purchase price for the claims and the value that the Claimants believe they would have, the fact that the Underlying Parties would be entitled to 65% to 80% of the proceeds if the claims were upheld by the Court, and the fact that the value of the claims remained with the Underlying Parties even after the sale. However, no explanation has been given as to why these circumstances lead to a breach of the fiduciary duty and to a prohibited transfer by way of security.

Applicability of priority rules

2.36. The Truck manufacturers claim that the tort claims have been assigned by the underlying parties in the country where they have their habitual residence. Therefore, pursuant to Article 9 (3) Rome I, the priority rules of the country of habitual residence of the underlying parties must be applied. That article reads - as far as relevant here - as follows:

> I. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.
> (...)
> 3. The court may also give effect to the overriding mandatory rules of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory rules render the performance of the contract unlawful. In determining whether to accept these

[11] ECLI:NL:GHAMS:2020:194

account shall be taken of their nature and purpose and of the consequences which might arise from their application or non-application.

The question is whether such national priority rules apply and whether they affect assignments.

English law: champerty and maintenance doctrine

2.37. In their reply, the Truck manufacturers argued that under English law an assignment can be invalid if it violates the rules of *"champerty and maintenance".* These rules prohibit the assignment of a claim to a buyer who does not have a legitimate commercial *interest* in the claim and who - in the event that the claim is upheld by the court - receives all or part of the compensation. Violation of those rules results in nullity of the assignment. That is what happened here, according to the truck manufacturers. In their rejoinder they added that the Claimvehikels and EB Trans have not been assigned a right to a specific amount, but only a right to institute legal proceedings. Such a *"bare cause of action"* is impossible to assign under English law. According to the Truck Manufacturers, these rules do not only apply if the claim statute is English law. They are rules to ensure that the purity and fairness of English law must also be safeguarded outside English *litigation*. Only then can the integrity of the English legal system be fully protected. Therefore, there is a priority rule within the meaning of Article 9 (3) Rome I. The same applies to a mandate or power of attorney.

2.38. Against the reliance on the *champerty and maintenance doctrine*, the Claimants firstly argue that the Truck Manufacturers do not argue that and why a specific assignment would be in breach of the rules *of champerty and maintenance.* Furthermore, the defence only relates to assignments of claims that would be governed by English law. The geographical scope of *champerty and maintenance* is limited to contracts relating to English *litigation.* For proceedings outside England, the rules do not apply, because it concerns the protection of the integrity of the English legal system. Finally, the Claimants argue that the Truck Manufacturers misinterpret the rules of *champerty and maintenance* under English law.

2.39. It is up to the truck manufacturers to substantiate such a reliance on foreign law. In the District Court's opinion, this did not happen sufficiently. The starting point is that the discussion here concerns assignments. An assignment concerns the transfer of a right of claim. This includes substantially more than just "the transfer of the right to institute a claim", as the Truck manufacturers stated in their rejoinder. It amounts to taking legal action in one's own name on behalf of another, which under Dutch law would be an order, thus a completely different legal form. The fact that the latter would not be allowed under English law, as the Truck manufacturers argue, does therefore not mean that there cannot be legally valid assignments. Moreover, it is hard to see why proceedings based on assignments such as the one at issue here would be regarded as *'.frivolous'* under English law (very) briefly put, and the *champerty and maintenance doctrine* comes into the picture. An adequate explanation of this is lacking. The argument put forward only after the reply that, moreover, this would be a case of brief

Finally, a priority rule as meant in article 9 paragraph 3 Rome I ignores that this is also a rule that the foreign court - in this case the Dutch court - *can* apply. It is up to the party that relies on a provision of especially imperative law of the country where the obligation was fulfilled (this could be English law if the assignments were agreed and executed in England) to explain why it is necessary that English law is applied here. The last sentence of Article 9 (3) Rome I is very clear in this respect. It should also be borne in mind that this is a situation in which different legal systems conflict; against that background the circumstance that neglect of the alleged rule may affect the integrity of the English system requires precise substantiation. The latter is lacking. As things stand, the defence of lack of foundation is disregarded.

German law: Rechtsdienstleistungsgese_tz

2.40. The truck manufacturers claim that, in so far as there are German Subordinate Parties, the assignments, procedural orders and mandates are null and void because they violate the German Rechtsdienstleistungsgesetz (ROG). This would constitute a priority rule as referred to in Article 9 (3) Rome I. According to the truck manufacturers, the ROG applies because German law is applicable to a number of claims, as legal services were performed in Germany. The ROG sets requirements for debt collection service providers such as litigation vehicles. Firstly, debt collection service providers must register in the ROG register. Only CDC has a ROG registration. In any case, the assignment and encumbrance agreements with all other Claim vehicles are in violation of the ROG and therefore void, according to the Truck Manufacturers.
Secondly, debt collection service providers must limit their activities to regular out-of-court debt collection services. Thus, the Claimvehikels are not allowed to provide any debt collection services that are from the outset aimed at judicial claims, not even if they have a ROG registration by law. They are therefore in breach of the law because their activities are from the outset directed towards legal proceedings for the recovery of thousands of heterogeneous claims. Thirdly, debt collection service providers are not allowed to provide services where the interests to be served are in conflict. According to the truck manufacturers, this requirement is not met either. There is a conflict of interest between the Claims Collector and the Litigant on the one hand and the Claims Collector and the Litigant on the other hand. According to a judgment of the Oberlandesgericht Schleswig, a business model in which the interests of a litigation financier also have to be involved is to the detriment of the parties behind the litigation. This is not compatible with the CPC. According to the same court, a plaintiff with thousands of intervening parties can never do justice to each individual interest.

2.41. The Claimants contest the applicability of the ROG and argue that there is no priority rule as meant in article 9 subsection l Rome I. Moreover, article 9 paragraph 3 Rome I only deals with priority rules of the country where the obligations under the contract have to be or have been fulfilled. The place of performance must be determined by the statute of limitations. This is Dutch law. Assignment concerns the purchase of a property right. The underlying parties therefore had the obligation to 'deliver' their claims to the Claimvehicles. This is done by means of an

deed. This is a declaration which, in order to be effective, must have reached the recipient, i.e. the Claimant. As none of the claimants is domiciled in Germany, the obligation to deliver has always been performed in a country other than Germany. Even if the performance were to relate to the provision of services, the place of performance would not be in Germany. The Claimvehikels are established outside Germany and litigation takes place in the Netherlands. Therefore, no services are provided in Germany. The ROG only applies if the provider of legal services is permanently and purposefully active in the German market and the services are directed to Germany. This is not the case here. In addition, nullity for breach of the ROG would benefit the truck manufacturers, not the German hinterland parties, whereas it is precisely the litigants whose interests the ROG seeks to protect.
The nullity of the assignments would also mean that the course of legal transactions in the Netherlands would be disrupted. After all, the assignments are legally valid under Dutch law, but would then be null and void. The Truck manufacturers' argument is that the ROG aims to protect the interests of the German Sellers. However, it is not up to the Truck manufacturers to guard these interests and to plead for the nullity of the assignments. The nature and the do! of the ROC, as well as the consequences which would result from the application of the ROC, justify that the ROC is not given effect. This is also in line with the Cartel Damage Directive. This is also in line with the Cartel Damage Directive as Articles 2(4) and 7(3) expressly recognise that an action for damages may not only be brought by an aggrieved party but also, for example, by a person acting on behalf of one or more aggrieved parties or by a person who has acquired the claim for damages.
Finally, application of the CPC must also be compatible with the fundamental freedoms of the internal market. The freedom of the German parties and the claimants would be illusory if the restrictions of the CPC would still apply as a priority rule that would thwart their choice for Dutch law. In literature it is therefore generally assumed that priority rules that restrict free movement can only be applied if there is a justification or other compelling reason in the general interest. This is not the case. In the Netherlands the relevant interests are adequately protected by the Law on Advocates, the application of the ROG is neither proportionate nor necessary and less restrictive measures are available. Moreover, the CPC would only be applied to the German Joined Parties and not to the other Joined Parties. In s'lotte, if the interest of a priority rule of the host country (Germany) is sufficiently protected by equivalent rules of the country of origin, the priority rule of the host country does not have to be respected. That is also the case here. The litigants that the ROG aims to protect are already sufficiently protected against legal services by unfit and unreliable persons (which is not the case at all) by the Lawyers Act, according to the Claimants.

2.42. Assuming, hypothetically, that the activities of the claimants are prohibited under national German law in Germany under the ROG, the following applies. The question is then whether a German Subrogated Party may conclude an agreement with a legal entity established outside Germany which aims at assigning a tort claim. In the given circumstances, the legal validity of this assignment must in principle be assessed under Dutch law, as follows from what has been considered above. It is further established that none of the claimants is domiciled in Germany. Given this state of affairs, it would have been in the

Truck manufacturers are invited to explain why, despite the provisions of Paragraph I(2) of the Rechtsdienstleistungsgesetz, that regulation should take precedence here. It provides that:

> "Wird eine Rechtsdienstleistung ausschliesslich aus einem anderen Staal heraus gebracht, gilt dieses Gesetz nur, wenn ihr Gegenstand deutsches Recht ist."

In view of this provision, without further explanation, which the truck manufacturers did not provide, it is not clear how this can be a priority rule which would require the Dutch court - which, it should be noted, has a choice in this matter - to hold that the assignments in question are void under German law. This defence too is therefore rejected.

German law: assignment contrary to public policy and morality?

2.43. The truck manufacturers also claim that the assignment agreements are contrary to public order and decency under German law. They rely on the judgment of the Oberlandesgericht Dilsseldorf of 18 February 2015. In that case, the OLG Dilsseldorf ruled that an assignment agreement was contrary to public policy and morality if the assignment is misused by putting forward a less solvent party - an empty litigation vehicle - as a litigant, making recovery of litigation costs impossible and the litigation vehicle and the underlying parties aiming to avoid having to pay the litigation costs of the opposing party in the event of a loss. In this case, only CDC has provided security for the litigation costs.

2.44. The Claimants argue that the Truck Manufacturers do not argue that and why specific assignment agreements would be contrary to public policy and morality. They argue only that the Claimants, with the exception of CDC, have not provided security for any litigation costs order. That is not true, Chapelton provided security. Moreover, based on the ruling of the OLG Dilsseldorf, it must be objectively established, on the one hand, that:
(a) the transferee will not be able to pay any legal costs, whereas
(b) the assignors would be in a position to pay an order for costs; and
(c) The transfer of the risk of having to pay the legal costs order was the main reason for the assignments.
In addition, the OLG Dilsseldorf ruled that the subjective requirement of actual knowledge must also be met. This means that it is not sufficient that the assignors and the assignee only foresaw that the litigation vehicle might not be able to pay the costs. What is required is that both assignors and assignee(s) knew (or were grossly negligent in not knowing: *'vorhandene Kenntnis oder grobfahrlassige Unkenntnis')* that the litigation vehicle was actually unable to meet a possible costs order.
Both the objective and subjective criteria are not met in this case. Finally, under German law it is decisive that proceedings are actually conducted in Germany or in a jurisdiction with a comparable, very high
order to pay the costs of proceedings. The Netherlands is not such a jurisdiction, according to the Claimants.

2.45. The latter is correct, in the Netherlands a fixed system applies to the legal costs of article 237 et seq. of the Dutch Code of Civil Procedure whereby the lawyer's fees - which usually constitute the lion's share of the costs a party has to incur - are determined on the basis of the so-called Liquidation Rate. In general, the amounts awarded for this purpose are (far) below the actual legal costs incurred by a party. The OLG Oilsseldorf has - in so far as relevant - considered the following:

> "(...)
> 72. Ein Rechtsgeschaft ist nach §138 Abs. I 8GB nichtig, wenn es nach seinem aus der Zusammenfassung von lnhalt, Beweggrund und Zweck zu entnehmenden Gesamtcharakter mit den guten Sitten nicht vereinbar ist. It is not just the objective nature of the purchase, but also the circumstances that led to its creation and the expectations and requirements of the parties involved that need to be taken into account. It is not necessary to be aware of the existence of discrimination and to have an obligation to disclose it; it is sufficient for the trader to know the facts from which the discrimination arises, although it is the same when someone consciously or rudely disregards the knowledge of such facts. (...) When it comes to agreements made at the expense of third parties, sittenwidrigkees Verhalten voraus, <lass beide Vertragsbeteiligten die die Sittenwidrigkeit begrilndendenden Tatsachen kennen bzw. sich der entsprechenden Kenntnis verschlie8en (...). The first time a particular element is singled out when all circumstances are taken into account, this element alone may result in the emergence of nitrogen trait (...).
>
> 73. Hinsichtlich Forderungsabtretungen sowie Prozessflihrungsermiichtigungen und hiervon ausgehenden Verlagerungen von Prozesskostenerstattungsrisiken hat der Bundesgerichtshof Ma8stabe aufgestellt, um eine den genannten Handlungen womoglich anhaftende Sittenwidrigkeit zu beurteilen. Im Ausgangspunkt ist zu berilcksichtigen, dass grundsiitzlich kein Beklagter Anspruch darauf hat, von einem zahlungskraftigen Klager verklagt zu werden (...). lndes dilrfen Forderungsabtretungen wie auch Prozessflihrungsermachtigungen nicht dazu missbraucht werden, den Prozessgegner wie auch den Staat der Moglichkeit zu berauben, ihren Rechtsanspruch auf Erstattung oder Zahlung der Prozesskosten zu verwirklichen (...). Ein solcher Missbrauch ist grundsiitzlich anzunehmen, wenn eine unvermogende Partei zur gerichtlichen Durchsetzung von Ansprilchen vorgeschoben wird und dies bezweckt, das Kostenrisiko zu Lasten der beklagten Partei zu vermindern oder auszuschlie8en; dies kommt namentlich dann in Betracht, wenn der Zedent bzw. der Rechtstrager einen wesentlich besser finanziellen Rilckhalt als der Zessionar bzw. der zur Prozessflihrung Ermachtigte hat (...).
>
> 74. In zeitlicher Hinsicht kommt es darauf an, ob das zu beurteilende Rechtsgeschlift bei seiner Vornahme sittenwidrig gewesen ist. (...)".

2.46. After this sketch of the assessment framework, the OLG devoted extensive considerations to the financial position of the claimant in the proceedings at the time of concluding the assignment agreement, with the conclusion that this position was such that the claimant herself would not be able to bear any order to pay the costs of the proceedings. Both the claimant and the decedent were aware of this when the assignment agreement was concluded; apparently a conscious decision was made to shift the risk of legal costs. None of this is relevant in this case. Moreover, there are no indications that the claimants will not be able to bear a possible cost order - which will be limited in size due to the system with liquidation tariffs used in the Netherlands -, which is where all the defence of the truck manufacturers comes to an end.

Charges

2.47. Cartel des Camions, CDC, Chapelton, SAATC and STCC are litigating (whether in the alternative or in the absence of an invalid assignment) on the basis of a procedural order or mandate. The Truck Manufacturers dispute the validity of this.

Applicable law to the mandates

2.48. Parties agree that the rules of referral relevant for mandate follow from the Hague Convention on Representation and from article l 0:12 of the Dutch Civil Code. The applicable law to the relationship between the representative (the Claimants) and the represented (the Subsequent Parties) shall be determined on the basis of articles 5 and 6 of the Hague Convention on Representation. The Claimants have, based on
The parties have made a choice of law for Dutch law in accordance with article 5 of the Hague Representation Treaty. This is not in dispute between the parties.

2.49. No choice of law has been made with respect to the legal relationship between the represented parties and third parties (in this case the Truck manufacturers). In accordance with the main rule of article 11 paragraph l of the Hague Representation Convention, the existence and extent of the powers of the Claimants, as well as the consequences of the actual or alleged exercise of their powers, are governed by the law of the country where the Claimant (the representative) had its office at the time it acted. The parties agree that Chapelton, STCC, SAATC and Cartel des Camions have their offices in the Netherlands, so that with regard to their mandate agreements, Dutch law applies to the relationship between the Claimants and the Truck manufacturers.

CDC

2.50. The truck manufacturers claim that CDC has its office in Luxembourg, so that Luxembourg law is applicable. CDC disputes the latter. It appeals to article 11 (2) (b) of the Hague Convention, which stipulates that, contrary to the main rule, the law of the state where the representative (CDC) has acted must be applied if the third party (one or more Truck manufacturers) is also established in that state. Article 13 of the Hague Representation Convention, invoked by the Truck Manufacturers, on the basis of which CDC would be deemed to have acted at the place of its office in Luxembourg, is not applicable in that case, according to CDC.

2.51. Under the main rule of Article 11(1) of the Hague Convention, the law of the State in which the representative has his office applies. In the case of CDC, this is Luxembourg law. Only insofar as it has acted in a state in which a third party (here: a Truck manufacturer) has its office, the law of that state applies. In that case, the first question is whether CDC has acted in the Netherlands. If so, Dutch law would apply with respect to the Truck manufacturers established in the Netherlands, being OAF and CNH/Iveco. The question of whether CDC acted in the Netherlands must be answered with due regard for the provisions of Article 13 of the Convention. That provision amounts to

If the contact took place via a means of communication such as by post or telephone (or otherwise), the representative is deemed to have acted from his usual place of residence (here: Luxembourg). It is therefore up to CDC to explain why it has actually concluded contracts for services in the Netherlands. It did not do so. Given this state of affairs, it must be assumed that CDC's mandates are to be assessed under Luxembourg law.

2.52. With regard to the notices submitted by CDC, it was also argued by the Truck manufacturers that they do not comply with Dutch law, more specifically Article 7:414 (I) of the Dutch Civil Code. As the instructions must be judged according to Luxembourg law, this argument lacks significance. However, it has also been argued <that CDC's notices are invalid under Luxembourg law. According to the Truck Manufacturers, a party's request to initiate proceedings is only admissible under Luxembourg law if that party has a personal and legitimate interest <like the one existing at the time the claim is brought. Only under certain circumstances can a mandate be given to a public interest organisation. However, CDC, as a commercial party, does not meet the requirements for bringing an action on that basis. It is a commercial party, does not represent a public interest, has no members for whom it acts and has no legitimate and personal interest in the proceedings it institutes, according to the Truck Manufacturers.

2.53. The Cl imants state with reference to two opinions of G. Cuniberti, Professor of Private International Law and Comparative Law at Luxembourg University,
<lat CDC is also authorised under Luxembourg law to act as agent for the Underlying Parties.

2.54. For the time being, the court does not see sufficient ground to settle this debate on questions of Luxembourg law. After all, CDC litigates on the basis of both assignment and mandate. From what has been considered above, it follows that <la-ter as yet there is insufficient ground to assume that the assignments - which must be assessed according to Dutch law:.... are notlegally valid. It is true that it cannot be excluded at this stage that in an individual case it may turn out that the assignment is not valid, after which the question will have to be answered under Luxembourg law with regard to CDC whether the mandate is valid, but that mere possibility does not give the District Court sufficient ground to already decide on this in a general sense while the facts of the case have not been established.

RDG a/s mandatory?

2.55. With regard to the applicable law, the truck manufacturers also invoked Article 16 of the Hague Regulations. This stipulates that <later>effect can also be given to the mandatory rules of a country with which the case is actually connected, if and in so far as those rules, according to the law of <later country
The law of the country of origin should apply, regardless of which law is designated as applicable by the conflict-of-laws rules of the Hague Convention. Therefore, the priority rules from the RDG should also be followed within the scope of mandates, since there is an actual connection to Germany with regard to German Interlocutors, according to the Truck manufacturers.

2.56. The Claimants dispute that the ROG applies as a priority rule.

2.57. In this case, it is not sufficiently apparent from the statements of the truck manufacturers that, in view of the provisions of Paragraph 1(2) of the ROG, the ROG is applicable under German law in this international case and that there is therefore a mandatory provision under German law. The argument is dismissed.

Advertising policy / notices

Power of representation in the mandate agreements

2.58. The truck manufacturers argue that they cannot verify whether the underlying parties were validly represented when they entered into the assignment agreements. Because the arguments they put forward in this respect are the same as those they put forward in respect of the authority to represent at the time of entering into the assignment agreements, the District Court, for the sake of brevity, refers to what it has already ruled on this matter above.

Cartel of Camions

2.59. The Truck Manufacturers claim that the mandates to Cartel des Camions are invalid. Cartel des Camions is bringing legal actions in its own name on behalf of the Reversing Parties. However, the mandate agreements state the following:

> "(...) Sous reserve de !'article 2, la Societe mandate la Structure, entite juridique qui, conformement a ses statuts, a pour objectif de defendre l'interet commun de plusieurs entreprises se trouvant dans une situation similaire ou identique a celle de la Societe, afin d'agir en son nom et pour son compte pour le recouvrement des Reclamations, de far;on individuelle ou collective, ce qui comprend notamment."

La Societe is the Underlying Party, la Structure is Cartel des Camions. It follows from the quoted provision that Cartel des Camions is authorised to act in the name and on behalf of the Underlying Party and is therefore not authorised to act in its own name. It is therefore acting in breach of the mandate agreement. Moreover, it does not follow from the above quoted provision nor from any other provision of the mandate agreement that Cartel des Camions (the agent) has committed itself towards the hinterland party (the principal) to perform legal acts. Thus, the requirement of article 7:414 of the Dutch Civil Code has not been met. Therefore, there is no valid mandate, as a result of which Cartel des Camions should be declared inadmissible in its claim, according to the Truck manufacturers.

2.60. The Claimants argue against this that Cartel des Camions is free to choose whether to act in its own name or in the name of the Underlying Parties. The issue here is what the parties to the charge agreement intended. The literal wording of an agreement is not decisive for its interpretation and scope. The mere fact that the agreement does not literally state that Cartel des Camions has committed itself towards the Relevant Underlying Party to perform legal acts in its own name, does not make Cartel des Cam ions unauthorised to do so. Cartel des Camions and the Relevant Underlying Party fully agree that they intended to

That Cartel des Camions is not only authorised to act in the name of those Behind parties (the most far-reaching form), but also in its own name (the less far-reaching form). The more is the less. That is what the parties actually meant. The interpretation of this French-language agreement is about the actual party intentions and not about what third parties such as the Truck Manufacturers think about it. Finally, the Claimants argue that the absence of an obligation to act in the mandate agreement does not invalidate that agreement.

2.61. The District Court put first and foremost that, when interpreting an agreement such as the one at issue here - in which an assignment is given to another party - it cannot be automatically assumed that the one who is allowed to do the greater is also allowed to do the lesser. This is quite apart from the question of whether acting in another person's name can be regarded as 'more' than acting in one's own name in a case where the other person is acting on one's behalf. It will have to be clarified that Cartel des Camions acts in its own name with the consent of its principals. Contrary to the Truck manufacturers' opinion, this does not provide any ground for the opinion that the mandate agreement - which, as considered above, must be judged according to Dutch law - is not legally valid as such. Cartel des Camions will have to provide the requested clarity before the final judgment. If it fails to do so, it must be held that it is acting in these proceedings without adequate mandate from its principals.

Proxy SAATC

2.62. The Truck Manufacturers dispute that SAATC is litigating on a proxy basis. SAATC claimed that it was authorised to bring legal actions in its own name on behalf of the Underlying Parties. It also claims to be authorised to do so on the basis of a power of attorney. Because SAATC only instituted legal actions in its own name, the possibility that it also did so on the basis of a power of attorney was excluded, according to the Truck Manufacturers.

2.63. The Claimants argue that SAATC has explained in peripheral number 2.4 of its summons that, in addition to being mandated, it was also authorised to institute the claims of its Affiliates. According to established case law of the Dutch Supreme Court, it is sufficient that the summons shows that the plaintiff is (also) acting as the attorney-in-fact of a named principal. It is evident from the summons that SAATC (also) acts as attorney-in-fact of the Underlying Parties mentioned by name in production SAAT-0004 to the summons.

2.64. The District Court rejected the Truck Manufacturers' argument. While it is not disputed that SAATC is in any event lawfully acting on its own behalf on the basis of a mandate, it can be left open whether it might also be authorised to act on behalf of the Relevant Underlying Parties on a proxy basis. It is sufficient for the Truck Manufacturers to know from whom the claims for damages brought by SAATC originate.

Finally: the 'pragmatic proposal

2.65. Then there is the argument of the Truck manufacturers that it is very plausible that if a Stern Party would be asked whether the assignment to which it participated had the intention to have the claim fall into the assets of the Claimvehikels and EB Trans after transfer, the answer would be negative. Partly for this reason, they requested the court to agree to their so-called "pragmatic proposal" which entails that they write to the Sellers requesting them to confirm on their own letterhead a number of things, after which the Truck Manufacturers would be prepared to waive a number of defences against the parties in question.

2.66. The District Court sees no reason for this. As explained above, now that the Claim vehicles have submitted the underlying documentation, it is up to the Truck manufacturers to substantiate why proceedings cannot be conducted on the basis of the alleged assignments (and mandates). From what has been considered above it follows that for now there are no indications that all or even entire categories of assignments or instructions should be disregarded. This does not mean that all assignments or mandates are automatically correct. Even at a later stage it may turn out that in individual cases the claim has not been transferred or that the claim is insufficiently substantiated or does not exist at all. But in that case too, it is up to the truck manufacturers to take the necessary steps. They must be sufficiently able to do so on the basis of the documentation submitted. If any information is missing or there are doubts about its accuracy, they can choose whether to request further information about it from the other party (possibly in the manner suggested in their pragmatic proposal) or to take legal action. In the latter case, it should be taken into account that there are ample possibilities for redress within that framework. Against this background, the District Court sees no reason to accede to the request made by the truck manufacturers in their 'pragmatic proposal'. It is evident that if at a later stage of the proceedings it turns out that a claim does not exist, the Truck manufacturers will not be obliged to pay damages.

Continued

2.67. After having resolved the issues in this judgment, the court now wishes to address all remaining issues and decide on the claims of the Claimants (whether referral to the damages assessment procedure is in order). To this end, an oral hearing should be scheduled. This will take place - as previously communicated to the parties - in the first quarter of 2023. The parties will be requested to state their dates of prevention for the first three months of 2023. The case will be referred to the rot for this purpose.

3. The decision

The court

3.1. Refers the case back to the rotating table of 7 **September 2022** for the parties to give their dates of prevention,

3.2. shall reserve any further decision.

This judgment has been rendered by R.A. Dudok van Heel, M.A.M. Vaessen and K.A. Maarschalkerweerd, Judges, assisted by J.P.W. Mand, Registrar, and pronounced in public by P. Vrugt on 27 July 2022.