

Companies can sue foreign "giants" domestically according to an EU decision

The Court of Justice of the European Union (CJEU) has ruled in favor of domestic companies: for a damage claim resulting from an infringement of competition even the largest foreign platforms can be sued in the Member State of the company with which they enter into contract.

A preliminary ruling by the CJEU was requested by a German hotel, which experienced commercial practices considered to be contrary to competition law after it entered into contract with a large Dutch company specializing in offering lodging online.

Initially, the case was dismissed by the domestic courts, claiming that they don't have jurisdiction due to the international character of the contract between a domestic and a foreign company. However, upon reviewing the case, the CJEU ruled that although the conduct in question was committed in the context of a contractual relationship, the special rule of jurisdiction in matters relating to tort, delict or quasi-delict or to an action arising out of such an act provided for in the Brussels Ia Regulation applies. This means that domestic companies which entered into contract with a foreign company can, as a general rule, sue the latter in the courts of the Member State where the former (domestic) company is located to order the cessation of any abuse of a dominant position.

The ruling is a timely response to the current practices of today, where it is now standard practice for businesses to contract foreign companies for online services. These contracts used to carry uncertainty in a dispute, as foreign service providers often do not have a domestic physical presence. In these situations where a company might suffer damage due to unilaterally applied or prescribed contractual clauses of a large foreign platform, the ruling grants them the option to initiate compensation before a domestic court, thus it will be much easier to enforce their claims.

The ruling of the CJEU can also provide confirmation for domestic companies in other situations. The CJEU has held that foreign-based companies, including even the largest online platforms can be sued in a domestic court if the damage is not merely due to a breach of their contract. The judgment may apply in all cases where the harm to a business user results from a further conflict of law - such as an infringement of competition law - that goes beyond the contract between the platform and the business partner.