THE HIGH COURT

[2024] IEHC 307

Record No. HP 2024/1487

BETWEEN

RYANAIR DAC AND RYANAIR HOLDINGS PLC

PLAINTIFFS

– AND –

THE COMPETITION AND CONSUMER PROTECTION COMMISSION AND AUTORITÀ GARANTE DELLA CONCORRENZA E DEL MERCATO

DEFENDANTS

Judgment of Mr Justice Max Barrett delivered on 21st May 2024.

SUMMARY

In this judgment I explain why I will (i) pursuant to O.12, r.26 RSC set aside the service on the Autorità Garante Della Concorrenza e del Mercato (hereinafter 'the AGCM') of the notice of plenary summons, and (ii) dismiss the proceedings as against the AGCM for want of jurisdiction on the part of the Irish courts.

1. Article 1(1) of the Recast Brussels Regulation[1] provides that:

'This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or

[1] *I.e.* Regulation (EU) No.1215/2012 of the European Parliament and of the Council of 12th December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (O.J. L351, 20.12.2012, 1-32.

administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).'

2. The central question before me is quite simple. I have to decide whether the proceedings that Ryanair DAC and Ryanair Holdings PLC (hereinafter collectively 'Ryanair') have commenced are (1) civil or commercial matters, or (2) concern 'revenue, customs or administrative matters or... the liability of the State for acts and omissions in the exercise of State authority (*acte jure imperii*).' If they come within (1) the Irish courts have jurisdiction in these proceedings. If they come within (2) the Irish courts do not have jurisdiction in these proceedings. I conclude that these proceedings come within (2). I will therefore accede to the request by the second named defendant that these proceedings be dismissed against it for want of jurisdiction on the part of the Irish courts. I explain my reasoning below.

3. I turn first to the facts. These are relatively straightforward. The plaintiffs are currently the subject of an investigation by the AGCM, Italy's national competition authority. It is clear as a matter of Italian law that the AGCM is a public administrative authority. Signor Stazi, AGCM's Secretary General, has averred, *inter alia*, as follows when it comes to the role and legal status of the AGCM when it comes to Italian law:

"7. The AGCM is a public administrative independent authority, established in Italy under Law no.287/1990 of 10 October 1990...which introduced antitrust legislation in Italy and charged the AGCM with the administrative function of protecting fair competition in the marketplace.

8. The AGCM is empowered under Italian legislation *inter alia* to investigate and take decisions in respect of anti-competitive agreements, abuses of dominant position [*etc*.,] and is generally authorised to enforce competition and consumer protection laws in Italy.

9. More specifically, the AGCM has significant enforcement powers in antitrust matters....Such powers are not available to private persons in Italian law....

11. Article 1,§3 of Law No. 196/2009 of 31 December 2009 defines the AGCM as a public administration of the State. As far back as its judgment no.1716 of 25 November 1994, the Italian Supreme Administrative Court (the Council of State) has defined the AGCM as a State administration. More recently, the Italian Constitutional Court in its judgment no.13 of 2019 confirmed that the

AGCM “pursues a specific interest, which is that of the protection of competition and the market....”

4. On 16th January last, the AGCM issued a request for investigative assistance to the CCPC. This was done pursuant to Article 22(1) of Regulation 1/2003[2] and Article 24 of the ECN+ directive.[3] The motivation for the request was that relevant evidence in the competition law investigation could only be obtained in Ireland. The way the cooperative scheme established by Regulation 1/2003 works is that the requested authority (here The Competition and Consumer Protection Commission hereinafter ‘the CCPC’) carries out the requested investigative measure under its national law. In other words once the request is made, nothing further is required of the requesting authority. The requested authority proceeds under its national law. Consequent upon the AGCM’s request, on 8th March 2024 the CCPC sought a warrant from Dublin Metropolitan District Court. On the same day the CCPC conducted an inspection at the Ryanair headquarters in Dublin. The search was conducted by officers

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[2] *I.e.* Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (O.J. L 1, 4.1.2003, 1-25). Article 22(1) of same provides as follows:

> ‘1. The competition authority of a Member State may in its own territory carry out any inspection or other fact-finding measure under its national law on behalf and for the account of the competition authority of another Member State in order to establish whether there has been an infringement of Article 81 or Article 82 of the Treaty. Any exchange and use of the information collected shall be carried out in accordance with Article 12.’

[3] *I.e.* Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (O.J. L11, 14.12.2019, 3-33). Article 24 of same provides as follows (under the heading ‘Cooperation between national competition authorities’):

> ‘1. Member States shall ensure that where national administrative competition authorities carry out an inspection or interview on behalf of and for the account of other national competition authorities pursuant to Article 22 of Regulation (EC) No 1/2003, officials and other accompanying persons authorised or appointed by the applicant national competition authority shall be permitted to attend and actively assist the requested national competition authority, under the supervision of the officials of the requested national competition authority, in the inspection or interview when the requested national competition authority exercises the powers referred to in Articles 6, 7 and 9 of this Directive.
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> 2. Member States shall ensure that national administrative competition authorities are empowered in their own territory to exercise the powers referred to in Articles 6 to 9 of this Directive, in accordance with their national law on behalf of and for the account of other national competition authorities in order to establish whether there has been a failure by undertakings or associations of undertakings to comply with the investigative measures and decisions of the applicant national competition authority, as referred to in Articles 6 and 8 to 12 of this Directive. The applicant national competition authority and the requested national competition authority shall have the power to exchange and to use information in evidence for this purpose, subject to the safeguards set out in Article 12 of Regulation (EC) No 1/2003.’

appointed by the CCPC, six of whom were AGCM staff but whom it seemed to be accepted by Ryanair at the hearing of this application would have been acting as appointed officers of the CCPC.

5. After the inspection was completed, the AGCM staff returned to Italy (on an Aer Lingus flight) with all of the materials that were seized during the inspection. Ryanair is aggrieved by the fact that the warrant issued to the CCPC. It is aggrieved by the manner in which the search was conducted. It is aggrieved too that the AGCM is now the sole custodian of the seized materials which, Ryanair maintains, include documents that are protected by statute-law and common law pertaining to legal professional privilege.

6. A helpful affidavit on Ryanair's perception of the events preceding, during and after the inspection has been filed by Mr Kealy, the 'Head of Competition and Regulatory' with Ryanair DAC. He describes the nature of the alleged competition law breach, the previous dealings of Ryanair with the AGCM, and gives an account of the inspection. This included physical searches of the offices and desks of Ryanair employees, electronic searches of Ryanair staff laptops, interactions between Ryanair, its lawyers and the officers conducting the inspection, and what Ryanair perceives to have been an abrupt halt to the inspection. In his affidavit Mr Kealy refers to the 'AGCM Authorised Officers' and the driving role of the AGCM in what occurred. However, from a legal perspective (and I did not understand this to be disputed at the hearing before me) it was CCPC-authorised officers who conducted the inspection. It just happens (and it seems obvious why it would happen) that the officers authorised by the CCPC were drawn from the AGCM; however, the inspection was conducted by the CCPC. Pervading Mr Kealy's affidavit is a sense of perplexity as to why the inspection was necessary when Ryanair had hitherto (on its version of events) been cooperating with the AGCM investigation. Mr Kealy also takes issue with the fact that the affidavit for the AGCM has been sworn by Sig. Stazi, who was not present at the inspection.

7. There are also sworn affidavits from the solicitors for Ryanair, including one from Mr Horan, a partner with Arthur Cox, Solicitors, who attended during the inspection to protect his client's interests and has expressed some surprise/dissatisfaction at how the inspection was conducted and how the documents that have gone to Italy were seized and removed.

8. On 21st March 2024, Ryanair commenced the within proceedings against the CCPC and AGCM. In the proceedings the following reliefs are sought (I quote from the plenary summons):

‘1. An order of certiorari quashing the search warrant of 8th March 2024....

2. A declaration that the Defendant(s) acted wrongfully, contrary to the Competition and Consumer Protection Act 2014...and/or Regulation No. 1 of 2003....

3. A declaration that the whole or part of all the material seized...is tainted by illegality and inadmissible, ought not to have been removed from the jurisdiction and/or ought not to be used in any forum....

4. A declaration and/or order that some of the Seized Materials are “privileged legal material”....

5. A declaration that the whole or part of the Seized Material is unrelated to the Italian investigation and,...in some cases, also commercially sensitive and/or confidential;

6. A declaration in accordance with s.3 of the ECHR Act 2003 that the Defendant [*sic*] has acted in breach of Arts 6 and/or 8 of the ECHR.

7. A declaration that the Defendants have acted in breach of Articles 7, 8 and/or 47 of the CFEU.

8. A declaration that the Defendants have acted in breach of the Plaintiffs’ right to a fair trial under Art.38.1 of the Constitution...and/or in breach of the rights of privacy of the Plaintiff, its servants or agents under Art.40.3 of the Constitution....

9. An injunction restraining the Defendant(s) from accessing, reviewing or making any use ...of the whole or part of the Seized Material;

10. An order requiring the First Defendant (and/or the Second Defendant) to use all reasonable endeavours to secure the return to the jurisdiction of the Seized Materials and/or the deletion of the Seized Material held outside the jurisdiction...together with a full account as to how and by whom the Seized Material was handled, accessed [etc.]....

11. Damages for breach of duty....

12. Damages pursuant to s.3(2) of the ECHR Act 2003.

13. Damages for breach of the constitutional right to a fair trial and/or privacy....

14. Interest pursuant to statute.

15. Further or other relief.

15. Costs.’

9. When it comes to the validity of the search warrant, the AGCM contends that this is a dispute between the CCPC (which applied for the warrant) and Ryanair. However, it has agreed to be bound by the outcome of that dispute and will hand back the seized documents if the warrant falls.

10. When it comes to whether or not privilege attaches to certain of the seized material, the AGCM has likewise indicated that this is a matter between the CCPC and Ryanair. However, the AGCM has indicated that, subject to the right to review any undertakings that may be sought, it will abide by whatever the court decides (including if the court decides that it is appropriate there should be an application to the court to resolve the issue of privilege).

11. I refer to the central issue that now lies before me, as defined in para.2 above. There is also an issue as regards service of the Ryanair summons. However, as I conclude in this judgment that the Irish courts do not have the jurisdiction to hear the Ryanair proceedings this seems to me to be a matter of little or no remaining consequence. I will address it later below, but briefly. First, I turn to consider some caselaw that is of assistance in deciding the central issue that now lies before me.

Case C-645/11 *Sapir and Ors*[4]

12. In *Sapir* Mr Julius Busse was the owner of a plot of land in what was formerly East Berlin. During the Third Reich he was persecuted under the Nazi regime and, in 1938, he was forced to sell his plot of land to a third party. That plot was later expropriated by the German Democratic Republic and incorporated into a larger plot together with other publicly owned properties. Following German reunification, the ownership of that parcel of land passed partly to the *Land* Berlin and partly to the Federal Republic of Germany. On 5th September 1990, the first 10 defendants in the main proceedings, of whom Ms Sapir, Ms Birgansky, Mr Rumney and Mr Ben-Zadok were domiciled in Israel, Mr Busse in the United Kingdom and Ms Brown

[4] ECLI:EU:C:2013:228.

in Spain, being the successors in title of the original owner, made an application for return of the part of that plot of land which had formerly belonged to the original owner on the basis of the Vermögensgesetz. In 1997, the *Land* Berlin and the Federal Republic of Germany invoked the provisions of Paragraph 1 of the Investitionsvorranggesetz and sold to an investor the entire parcel of land obtained from the consolidation of the plots of land mentioned above. Following the sale, the competent authority held that, under national law, the first 10 defendants in the main proceedings were not entitled to the return of the land but that they were entitled to receive the corresponding share of the proceeds of the sale of the entire parcel of land, or the market value of the property. That authority ordered the *Land* Berlin, which was the applicant in the main proceedings, to pay the first ten defendants in the main proceedings the share of the proceeds of sale corresponding to the plot of land which had belonged to Mr Julius Busse. When making the payment in question, the *Land* Berlin, which also acted on behalf of the Federal Republic of Germany, committed an error. It unintentionally paid the entire amount of the sale price to the lawyer representing the first 10 defendants in the main proceedings, who then distributed that amount amongst those defendants. In the main proceedings, the *Land* Berlin sought to recover from the defendants the overpayment, which it estimated to be €2.5m. It brought an action before the Landgericht Berlin against the first 10 defendants, as the successors in title of Mr Julius Busse, on the basis of unjust enrichment and against the lawyer representing them – the eleventh defendant in the main proceedings – on the basis of a tortious act. Those defendants in the main proceedings opposed that action, arguing that the Landgericht Berlin did not have international jurisdiction to decide the case with respect to the defendants in the main proceedings who were domiciled in the United Kingdom, Spain and Israel, namely Ms Sapir, Mr Busse, Ms Birgansky, Mr Rumney, Mr Ben-Zadok and Ms Brown. They also contended that they could claim an amount greater than the share of the proceeds of the sale due to them because those proceeds amounted to less than the market value of the property which had belonged to Mr Julius Busse. They took the view that the action was therefore unfounded. By an interim decision, the Landgericht Berlin (Regional Court, Berlin) dismissed the action of the *Land* Berlin as inadmissible with respect to the defendants in the main proceedings domiciled in the United Kingdom, Spain and Israel. The *Land* Berlin was also unsuccessful in its appeal against that decision. In that connection, the appeal court took the view that the German courts did not have international jurisdiction to determine the case brought against Ms Sapir, Mr Busse, Ms Birgansky, Mr Rumney, Mr Ben-Zadok and Ms Brown. According to that court, that dispute did not concern a civil matter within the meaning of Article 1(1) of Regulation No 44/2001 (Brussels I), but was a matter of public law

to which that regulation did not apply. On appeal on a point of law, the applicant in the main proceedings sought to obtain a ruling from the Landgericht Berlin on the substance of its claims, also with respect to those defendants in the main proceedings. The Bundesgerichtshof decided to stay the proceedings and to refer a number of questions to the CJEU for a preliminary ruling. In the course of its judgment, the CJEU observed, *inter alia*, as follows:

> "32 ...[T]he scope of Regulation No 44/2001 is, like that of the Brussels Convention, limited to the concept of 'civil and commercial matters'. It follows from settled case-law of the Court that that scope is defined essentially by the elements which characterise the nature of the legal relationships between the parties to the dispute or the subject-matter thereof....
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> 33 The Court has thus held that, although certain actions between a public authority and a person governed by private law may come within the scope of Regulation No 44/2001, it is otherwise where the public authority is acting in the exercise of its public powers...".

Case C-292/05 *Lechouritou and Ors*[5]

13. In *Lechouritou*, the main proceedings had their origins in the massacre of civilians by soldiers of the German armed forces which was perpetrated on 13th December 1943 and of which 676 inhabitants of the municipality of Kalavrita (Greece) were victims. In 1995 the plaintiffs in the main proceedings brought an action before the Polimeles Protodikio Kalavriton (Court of First Instance, Kalavrita) for compensation from the Federal Republic of Germany in respect of the financial loss, non-material damage and mental anguish caused to them by the acts perpetrated by the German armed forces. In 1998 the Polimeles Protodikio Kalavriton, before which the Federal Republic of Germany did not enter an appearance, dismissed the action on the ground that the Greek courts lacked jurisdiction to hear it because the defendant State, which was a sovereign State, enjoyed the privilege of immunity in accordance with Art.3(2) of the Greek Code of Civil Procedure. In January 1999 the plaintiffs in the main proceedings appealed against that judgment to the Efetio Patron (Court of Appeal, Patras) (Greece) which, after holding in 2001 that the appeal was formally admissible, stayed

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[5] ECLI:EU:C:2007:102.

proceedings until the Anotato Idiko Dikastirio (Superior Special Court) (Greece) had ruled, in a parallel case, on the interpretation of the rules of international law concerning immunity of sovereign States from legal proceedings and on their categorisation as rules generally recognised by the international community. More specifically, that case concerned, first, whether Art.11 of the European Convention on State Immunity – signed at Basle on 16th May 1972, but to which the Hellenic Republic was not a party – according to which 'a Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State in proceedings which relate to redress for injury to the person or damage to tangible property, if the facts which occasioned the injury or damage occurred in the territory of the State of the forum, and if the author of the injury or damage was present in that territory at the time when those facts occurred', was to be regarded as a generally recognised rule of international law. Second, the further question was raised as to whether this exception to the immunity of the Contracting States covered, in accordance with international custom, claims for compensation in respect of wrongful acts which, while committed at the time of an armed conflict, adversely affected persons in a specific group or a particular place who had no connection with the armed clashes and did not participate in the military operations. In 2002 the Anotato Idiko Dikastirio held in the case brought before it that, "as international law currently stands, a generally recognised rule of international law continues to exist, according to which it is not permitted that a State be sued in a court of another State for compensation in respect of a tort or delict of any kind which took place in the territory of the forum and in which armed forces of the State being sued are involved in any way, whether in wartime or peacetime", so that the State being sued enjoyed immunity in that instance. In accordance with Art.100(4) of the Greek Constitution, decisions of the Anotato Idiko Dikastirio are "irrevocable". Also, under Article 54(1) of the Code on the Anotato Idiko Dikastirio, a decision by it determining whether a rule of international law is to be regarded as generally recognised "applies erga omnes", so that a decision of the Anotato Idiko Dikastirio which has removed doubt as to whether a particular rule of international law is to be regarded as generally recognised, and the assessment in that regard set out in the decision, bind not only the court which referred the matter to it or the litigants who made the relevant application, but also every court and body of the Hellenic Republic before which the same legal issue is raised. After the plaintiffs in the main proceedings had pleaded the Brussels Convention, in particular Art.5(3) and (4) which, in their submission, abolished States' right of immunity in all cases of torts and delicts committed in the State of the court seised, the Efetio Patron had doubts as to whether the proceedings brought before it fell within the scope of that Convention, observing in this regard that the question whether the

defendant State enjoyed immunity and, consequently, the Greek courts lacked jurisdiction to hear the case before it turned on the answer to disputed questions of law. The Efetio Patron therefore decided to stay proceedings and to refer to the Court a number of questions for a preliminary ruling. In the course of its judgment, the CJEU observed, *inter alia*, as follows:

"29 ...It is...clear from the Court's settled case-law that 'civil and commercial matters' must be regarded as an independent concept to be interpreted by referring, first, to the objectives and scheme of the Brussels Convention and, second, to the general principles which stem from the corpus of the national legal systems...

30 According to the Court, that interpretation results in the exclusion of certain legal actions and judicial decisions from the scope of the Brussels Convention, by reason either of the legal relationships between the parties to the action or of the subject-matter of the action....

31 Thus, the Court has held that, although certain actions between a public authority and a person governed by private law may come within the scope of the Brussels Convention, it is otherwise where the public authority is acting in the exercise of its public powers....

32 It is pursuant to this principle that the Court has held that a national or international body governed by public law which pursues the recovery of charges payable by a person governed by private law for the use of its equipment and services acts in the exercise of its public powers, in particular where that use is obligatory and exclusive and the rate of charges, the methods of calculation and the procedures for collection are fixed unilaterally in relation to the users....

33 Similarly, the Court has held that the concept of 'civil and commercial matters' within the meaning of the first sentence of the first paragraph of the Brussels Convention does not include an action brought by the State as agent responsible for administering public waterways against a person having liability in law in order to recover the costs incurred in the removal of a wreck, in performance of an international obligation, carried out by or at the instigation of that administering agent in the exercise of its public authority....

34 Disputes of that nature do result from the exercise of public powers by one of the parties to the case, as it exercises powers falling outside the scope of the ordinary legal rules applicable to relationships between private individuals...”.

Case C-102/15 *Siemens Aktiengesellschaft Österreich*[6]

14. Siemens, a company domiciled in Austria, was fined 159,000,000 Hungarian forints (HUF) (approximately €507,000) by the Hungarian Competition Authority for breaching competition law rules. Siemens challenged that fine before the Hungarian administrative courts. However, as such a legal action does not have suspensory effect in Hungarian law, it paid the fine. At first instance, the administrative court reduced the amount of the fine to HUF 27,300,000 (approximately €87,000). That decision was upheld on appeal. On the basis of the judgment of the Administrative Court of Appeal, on 31st October 2008, the Competition Authority repaid Siemens HUF 131,700,000 (approximately €420,000), representing the difference between the amount of the fine as originally set by that authority and the amount deducted by the administrative courts at first instance and on appeal. The Competition Authority also paid Siemens HUF 52,016,230 (approximately €166,000) for interest accrued on that sum on the basis of Art.83(5) of the Law on unfair market practices. However, the Competition Authority brought an appeal against the judgment of the Administrative Court of Appeal and the Kúria (Supreme Court, Hungary) held that the fine originally imposed was justified. As a consequence, on 25 November 2011, Siemens repaid to the Competition Authority HUF 131,700,000, but refused to repay HUF 52,016,230, corresponding to the interest paid by that authority. On 12th July 2013, the Competition Authority brought an action for recovery of sums not due on the ground of undue enrichment before the Fővárosi Törvényszék (Municipal Court, Budapest, Hungary), pursuant to Art.361(1) of the Civil Code, seeking the repayment of HUF 52,016,230 plus interest on late payment, which began to run on 2nd November 2008, the first working day after the date of the improper repayment of the sum of HUF 131,700,000 to Siemens. The Competition Authority also requested Siemens to pay it HUF 29,183,277 (approximately €93,000), corresponding to interest calculated on the HUF 131,700,000 for the period between 2nd November 2008 and 24th November 2011, the day before the date on which the latter sum was repaid to the Competition Authority, claiming

[6] ECLI:EU:C:2016:607.

that that sum should have been in its possession from the time its initial decision was deemed to be legal *ex tunc*. Before the Fővárosi Törvényszék (Municipal Court, Budapest), the Competition Authority submitted that unjust enrichment falls within tort, delict or quasi-delict, so that the rule of special jurisdiction laid down in Art.5(3) of Regulation No 44/2001 was applicable. Siemens raised a plea of lack of jurisdiction, by which it sought the discontinuation of the proceedings, arguing that Art.5(3) of Regulation No 44/2001 was not applicable to the present case and that, therefore, in accordance with Art.2(1) thereof, it was the Austrian courts and not the Hungarian courts which had jurisdiction over the proceedings at issue. As the Fővárosi Törvényszék (Municipal Court, Budapest) upheld the plea of lack of jurisdiction, by order of 12th June 2014, the Competition Authority brought an appeal against that order before the referring court. The referring court observed that the case-law of the Court did not provide any clear indications enabling it to decide whether the Hungarian courts had special jurisdiction within the meaning of Art.5(3) of Regulation No 44/2001 to adjudicate on a dispute such as that at issue in the main proceedings. It considered that the debt allegedly owed by Siemens to the Competition Authority was not a contractual debt. However, it took the view that the application of the rule of special jurisdiction laid down in that provision could not be excluded. In particular, that court was unsure whether the principle of an independent but strict interpretation, which applied to Art.5(3) of Regulation No 44/2001, had to be interpreted as meaning that that rule of special jurisdiction could be applied in a case, such as that in the main proceedings, in which the defendant's liability was based exclusively on unjust enrichment and not on the existence of a fault or other ground of liability. In those circumstances, the Fővárosi Ítélőtábla (Regional Court of Appeal, Budapest, Hungary) decided to stay the proceedings and referred a number of questions to the CJEU for a preliminary ruling. In the course of its judgment the CJEU observed, *inter alia*, as follows:

> "30 In order to ensure, as far as possible, that the rights and obligations which derive from Regulation No 44/2001 for the Member States and the persons to whom it applies are equal and uniform, 'civil and commercial matters' should not be interpreted as a mere reference to the internal law of one or other of the States concerned. That concept must be regarded as an independent concept to be interpreted by referring, first, to the objectives and scheme of that regulation and, second, to the general principles which stem from the corpus of the national legal systems....

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34 In that connection, it must be observed that, while private actions brought to ensure compliance with competition law fall within the scope of Regulation No 44/2001...it is equally evident that a penalty imposed by an administrative authority in the exercise of the regulatory powers conferred upon it under national legislation comes within the concept of 'administrative matters', excluded from the scope of Regulation No 44/2001 in accordance with Article 1(1) thereof. That applies, in particular, to a penalty imposed by reason of an infringement of provisions of national law prohibiting restrictions on competition."

Case C-98/22 *Eurelec Trading*[7]

15. Eurelec, a company incorporated under Belgian law, was a central price and purchasing negotiation body established by the E. Leclerc group and the Rewe group, which were retailers' cooperatives incorporated, respectively, under French and under German law. Scabel, a company incorporated under Belgian law, acted as an intermediary between Eurelec and Leclerc's French and Portuguese regional central purchasing bodies and provided administrative and technical services for Eurelec. The Groupement d'achat des centres Édouard Leclerc (GALEC) was the national central purchasing body of the Leclerc group, which negotiated annual framework contracts with French suppliers that are implemented by the regional central purchasing bodies. The Association des centres distributeurs Édouard Leclerc (ACDLEC) was responsible for developing the long-term strategy of the Mouvement E. Leclerc and initiated the alliance between the E. Leclerc and Rewe brands in Europe. Between 2016 and 2018, the ministre de l'Économie et des Finances (Minister for the Economy and Finance, France) conducted an investigation which led it to suspect the existence of possible restrictive practices implemented in Belgium by Eurelec in relation to suppliers established in France. According to that investigation, Eurelec forced suppliers to accept price reductions for no consideration, in breach of the Commercial Code, and required them to accept the application of Belgian law to the contracts concluded in order to circumvent French law. Taking the view

[7] ECLI:EU:C:2022:1032.

that the existence of the suspected practices had been confirmed by inspections and seizures of documents carried out during February 2018 on the premises of GALEC and ACDLEC, the Minister for the Economy and Finance, by documents served by the court bailiff dated 19th July and 27th September 2019, pursuant to Article L 442-6 of the Commercial Code, brought proceedings against Eurelec, Scabel, GALEC and ACDLEC before the tribunal de commerce de Paris (Commercial Court, Paris, France) requesting that the court declare that those practices subjected their trading partners to obligations creating a significant imbalance in the rights and obligations of the parties, order those companies to cease those practices and order them, *inter alia*, to pay a civil fine. The companies being sued raised an objection alleging that the French courts lacked jurisdiction to hear the action brought by the Minister for the Economy and Finance in so far as it was directed against Eurelec and Scabel, companies established in Belgium, pursuant to the provisions of Regulation No 1215/2012. By interim ruling of 15 April 2021, the tribunal de commerce de Paris (Commercial Court, Paris) rejected the objection alleging lack of jurisdiction and declared that it had jurisdiction to hear the action. Eurelec and Scabel lodged an appeal against that ruling with the cour d'appel de Paris (Court of Appeal, Paris), the referring court, arguing that the action brought by the Minister for the Economy and Finance did not fall under 'civil and commercial matters', within the meaning of Regulation No 1215/2012, and, therefore, that that court did not have jurisdiction in so far as the action was directed against them. The Minister for the Economy and Finance considered that the requests fell within the scope *ratione materiae* of Regulation No 1215/2012. Indeed, since the purpose of the action being brought was to defend France's economic public policy, the minister considered that it must be heard by a French court. As regards the use of the powers of investigation, the minister considered it necessary to draw a distinction between the investigation phase and the phase of the court proceedings, maintaining that the applicability criterion of Regulation No 1215/2012 was the use made of such evidence and not the manner in which it was gathered. The minister added, finally, that the action was contained within a relationship of equal standing with the companies being sued, in so far as the minister was also subject to the rules of the code de procedure civile (Code of Civil Procedure) applicable to all the parties to the proceedings. In those circumstances, the cour d'appel de Paris (Court of Appeal, Paris) decided to stay the proceedings and to refer a question to the CJEU for a preliminary ruling. In its judgment the CJEU observed, *inter alia*, as follows:

"26 ...[I]t is apparent from the referring court's decision that, first, the action at issue in the main proceedings, the purpose of which is to defend

France's economic public order, was brought on the basis of evidence obtained from inspections on the premises and seizures of documents. However, such powers of investigation, even if their exercise requires the prior authorisation of a judge, nonetheless fall outside the scope of ordinary law, in particular because they cannot be implemented by private individuals and because, under the relevant national provisions, any person obstructing the exercise of such measures incurs a prison sentence and a fine of €300,000.

[In the case before me, what is at play is an investigation by the Italian competition authority exercising Italian state power.]

27 Second, the action in the main proceedings seeks, *inter alia*, the imposition of the civil fine referred to in the second paragraph of Article L 442-6, III, of the Commercial Code. However, although it is true that such a fine must be imposed by the competent court, only the minister responsible for the economy and the Public Prosecutor's Office may request its imposition. In particular, under Article L 442-6 of the Commercial Code, the victim of restrictive practices may only claim compensation for damage caused by those practices and request the cessation of those practices or that the clause concerned be declared invalid.

28 In that regard, the action at issue in the main proceedings is different from the one at issue in the case which gave rise to the judgment of 16th July 2020, *Movic and Ors* (C-73/19, EU:C:2020:568), since, in that case, the competent public authorities did not request the imposition of a fine against the companies alleged to have committed commercial infringements, but only the making of a cessation order in respect of those infringements, a power which interested persons and consumer protection associations also had....

29 In those circumstances, by bringing the action at issue in the main proceedings, the Minister for the Economy and Finance is acting "in the exercise of State authority (*acta iure imperii*)" within the meaning of Article 1(1) of Regulation No 1215/2012, so that that action is not

> covered by the concept of 'civil and commercial matters' referred to in that provision; this, however, is a matter for the referring court to determine."

16. An attempt was made by Ryanair to distinguish *Eurelec* from the case before me. However, *Eurelec* seems to me to be a case that has a factual matrix which in many respects is analogous to the within proceedings. And analogy, not identicality is the basis on which caselaw proceeds. There will always be factual differences between one case and another. *Eurelec* and the present proceedings, it seems to me, have enough in common for me to consider *Eurelec* to be an analogous case, and I do not see any reason in any event why the principles it identifies do not fall properly to be applied by me in the within application.

Colclough v. ACCA
[2018] IEHC 85

17. Mr Colclough was an ACCA chartered certified accountant with an auditing qualification. Following a professional standards monitoring visit carried out by a London-based employee of ACCA, Mr Colclough was referred to a disciplinary committee which decided that he was not a fit and proper person to retain an audit qualification and, *inter alia*, required that he be issued with a fresh practising certificate, this time without an audit qualification. Mr Colclough applied within the ACCA process for permission to appeal. This permission was refused. Mr Colclough sought to appeal this decision but the Appeal Committee concluded that it would not consider the refusal of permission to appeal. Mr Colclough contended that this decision was *ultra vires*, irrational, and in breach of fair procedures. Mr Colclough was then granted leave by the High Court to bring judicial review proceedings. Thereafter, ACCA issued a strike-out motion on the basis of want of jurisdiction. In dismissing the judicial review proceedings, I held that ACCA is not amenable to judicial review in Ireland. (It is amenable to judicial review in England and Wales). In the course of my judgment I undertook a synthesis of the principles arising under the Recast Brussels Regulation by reference to applicable CJEU caselaw and the judgment of Feeney J. in *Criminal Assets Bureau v. J.W.P.L.* [2009] 4 I.R. 526. Among the more pertinent of the principles that I so synthesised are the following:

"a. Scope of Regulations

(1) 'In order to determine whether a matter falls within the scope of Regulation No 1215/2012, it is necessary to identify the legal relationship between the parties to the dispute and to examine the basis and the detailed rules governing the bringing of the action' (Case C-551/15 *Pula Parking d.o.o. v. Tederahn*, para.34).

(2) More particularly, '[I]n order to determine whether an act is an *act iure imperii* and, therefore, not subject to the Brussels Convention, regard must be had, first, to whether any of the parties to the legal relationship are a public authority, and, second, to the origin and the basis of the action brought, specifically to whether a public authority has exercised powers going beyond those existing, or which have no equivalent, in relationships between private individuals.' (Per AG Colomer in Case C-292/05 *Lechouritou and ors v. Dimosio tis Omospondiakis Dimokratias tis Germanias*, para.46; though not drawn from a judgment of the CJEU the observation appears consistent with the thrust of European Union case-law generally).

(3) 'Where the action under a right of recourse is founded on provisions by which the legislature conferred on the public body a prerogative of its own, that action cannot be regarded as being brought in 'civil matters'' (Case C-271/00 *Steenbergen v. Baten*).

(4) The concept of 'civil matters' only encompasses an action 'provided that the basis and the detailed rules relating to the bringing of that action are governed by the rules of the ordinary law'. (*Steenbergen*, para.37).

(5) '[A]ctions between a public authority and a person governed by private law fall outside the scope of the Brussels Convention only in so far as that authority is acting in the exercise of public powers' (Case C-167/00 *Verein für Konsumenteninformation v. Henkel*, para.26).

...

c. ‘[R]evenue, customs or administrative matters’

(8) The concept of ‘revenue, customs or administrative matters’ must be assimilated to the concept of a “public authority...acting in the exercise of its powers” (see generally *JWPL*; however, the last-quoted text is taken from *Lechouritou*, para.31).”

Some Conclusions

18. I should note that the principles that are identifiable (and identified) in the above case-law are not the subject of some raging dispute in caselaw and I do not even understand them to be contested by Ryanair. They *are* the applicable principles. Bringing those principles to bear in the context of the present proceedings it seems to me that the following conclusions might safely be reached (I respectfully borrow from the written submissions for the AGCM in this regard):

“[1] All actions taken by the AGCM to date which the Plaintiffs seek to challenge in the within proceedings and all reliefs sought by the plaintiffs from the Irish courts in respect of the AGCM’s actions are inextricably bound up with the exercise by the AGCM of its uniquely public law powers to carry out the Investigation commenced by it and specifically to request assistance from the CCPC under Regulation 1/2003 and the ECN+ Directive....

[2] The actions of the AGCM of which the Plaintiffs complain are definitively not actions which would be available to private persons or interested parties other than the national competition agency....

[3] At all material times...the AGCM must be properly regarded as a public administrative authority exercising public law ‘powers of investigation falling outside the scope of the ordinary legal rules applicable to relationships between private individuals’ (*Eurelec* para.30)....

[4] The uncontroverted evidence before the court is that the Plaintiffs’ complaints concern actions of the AGCM which are exclusively derived from the public regulatory powers granted to the AGCM as a matter of statute, and thus which are definitively not available to other interested parties....

[5] ...[T]o the extent that the Plaintiffs wish to pursue any matter against the AGCM arising out of its actions in the Investigation heretofore...as confirmed by...[Signor] Stazi, the Plaintiffs will be permitted to bring any such claims against the AGCM before the Italian courts, which will enjoy jurisdiction to hear and determine them in accordance with Italian law.'

Some Points Made By Ryanair

19. I turn now to deal with the principal submissions made by Ryanair and what I respectfully consider to be deficiencies in those submissions.

The Questions Arising for Determination

20. First, the questions arising here for determination, *i.e.* the questions which determine the issue of jurisdiction are relatively simple. Was the AGCM exercising public law powers in what it did? And if it was, was it doing so only in a way that any private individual could also do? If the answer to those questions is that the AGCM was exercising public law powers in what it did and that it was exercising powers of the type that a private individual does not have, then the authorities are clear: the Irish courts have no jurisdiction. That is the test and, with respect, after a day's hearing and despite comprehensive and interesting submissions, Ryanair has not engaged with the test. It has pointed to how the impugned events have taken place largely in Ireland, it has pointed to aspects of the Competition and Consumer Protection Act 2014 as provisions which would fall to be applied in the event that the Irish courts have jurisdiction. But these are not issues that fall to be applied in the test as to jurisdiction.

What This Case Is About

21. Second, it was put to me by Ryanair that at issue in this case is how public authorities use the assistance facilities available under Regulation 1/2003 and ECN+ Directive. But this application is 'front and centre' a case about jurisdiction. And when it comes to identifying whether or not the Irish courts have jurisdiction, either the AGCM is exercising public law powers or it is not. And my view, for the reasons stated in this judgment, is that it is.

What the Recast Brussels Regulation Does

22. Third, the Recast Brussels Regulation deals with jurisdiction. Therefore, it necessarily deals with cases in which there is a question as to whether a case proceeds in one country or another. So when the exclusion in Art.1 of the Regulation was created, it was clearly created (it could only have been created) on the assumption that there would be cases that might more naturally be centred in a different jurisdiction but which could not be pursued in that jurisdiction because they were excluded by Art.1. With every respect, in contesting for an exception based on the fact that, for example, the impugned events have taken place largely in Ireland or that there are provisions of the Competition and Consumer Protection Act 2014 which would fall to be applied in the event that the Irish courts have jurisdiction, Ryanair has come to the court contesting for an exception which just does not exist under Art.1.

The AGCM as a Creature of Statute

23. Fourth, it was put to me by Ryanair that the engagement of the AGCM was unconnected with the exercise of Italian public law power. With respect, however, I do not see that this could be so. The AGCM is, to a use a hackneyed phrase, 'a creature of statute' (here an Italian statute). It commenced its investigation pursuant to statutory powers. Pursuant to a statutory power it asked for the CCPC's assistance. Pursuant to its statutory powers it now has the seized documents. These are all examples of it having exercised public powers at all relevant times.

What the AGCM Is or What the AGCM Does?

24. Fifth, it was put to me by Ryanair that it has not come challenging the AGCM's exercise of a public power but that it is challenging the functions carried out by the AGCM in this jurisdiction.[8] However, the AGCM has no independent function in Ireland. Again, the questions

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[8] Although this submission was made by Ryanair, I should perhaps note in passing that in fact it does not seem to me to be correct that Ryanair's proceedings are concerned solely with what occurred in Ireland. If one returns to the plenary summons, as detailed above, Ryanair seeks, *inter alia*, '[a] declaration that the whole or part of all the material seized...is tainted by illegality and inadmissible, ought not to have been removed from the jurisdiction and/or ought not to be used in any forum..' and '[a] declaration that the whole or part of the Seized Material is unrelated to the Italian investigation and...in some cases, also commercially sensitive and/or confidential'. Those are claims which, I would respectfully suggest, cannot but be seen as intended to affect the course of an Italian

arising here for determination, *i.e.* the questions which determine the issue of jurisdiction, are relatively simple. Was the AGCM exercising public law powers in what it did? And if it was, was it doing so only in a way that any private individual could also do? The answers to those questions are 'yes' and 'no' and that, by virtue of the Recast Brussels Regulation, places this case outside the jurisdiction of the Irish courts (and within the jurisdiction of the Italian courts).

The Competition and Consumer Protection Act 2014

25. Sixth, it was put to me by Ryanair that there is a provision of Irish legislation (s.33 of the Competition and Consumer Protection Act 2014) that on its face appears to apply to any person who has possession of the documents.[9] But the fact that there may be an Irish Act that covers possession of documents does not suffice to upset the allocation of jurisdiction under the Recast Brussels Regulation. That is an EU regulation which has to be applied by this Court. The fact that s.33 may or may not apply to the AGCM being in possession of the documents is just not

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investigation being conducted under Italian law.

[9] In its written submissions, Ryanair submits as follows in this regard:

> "22. Further, the AGCM (and/or its AOs) is a proper defendant for the purpose of Ryanair's remedy under s.33(3) CPPA 2014. That section provides:
>
> > '(3) Without prejudice to *subsection (4)*, where, in the circumstances referred to in *subsection (2)*, information has been disclosed or taken possession of pursuant to this Act, the person—
> > (a) to whom such information has been so disclosed, or
> > (b) who has taken possession of it,
> > shall (unless the person has, within the period subsequently mentioned in this subsection, been served with notice of an application under *subsection (4)* in relation to the matter concerned) apply to the High Court or, in respect of proceedings under Parts 2C, 2D and 2G of the Act of 2002, an adjudication officer appointed under the Act of 2002 for a determination as to whether the information is privileged legal material and an application under this section shall be made within 30 days after the disclosure or the taking of possession.'
>
> 23. Section 33(5) allows the Court to make interim orders for the preservation and inspection of the privileged material, pending a determination on whether privilege applied; those reliefs could only be ordered against the AGCM (and/or its AOs).
>
> 24. The AGCM has taken possession of the Seized Materials *via* the Italian AOs, rendering it a potential applicant for a determination on privilege under s.33(3)(b) CPPA 2014 and, most importantly, the logical respondent to Ryanair's application under s.33(4). The CPCC is not the respondent envisaged by CPPA 2014; for example, the CPPC could not be subject to a document preservation order under s.33(5)(a), nor could it implement an order requiring the examination of the Seized Materials under s.33(5)(b)(i).
>
> 25. Further, quite apart from the fact that the question of legal privilege is connected with the Warrant, the legal privilege issue derives from s.33(5) and must be litigated in Ireland. In addition, Irish law on privilege is wider than that under Italian law (vid. Mr Libertini's affidavit, para.5.37)."

relevant in this regard. Section 33 does not give jurisdiction and cannot give jurisdiction in the face of the Recast Brussels Regulation.

The Competition Act 2002

26. Seventh, on a related note I was also referred by counsel for Ryanair to s.15AQ of the Competition Act 2002. That provides, *inter alia*, as follows:

> "(1) A competent authority may request a competition authority of another Member State to carry out an inspection, interview or other fact-finding measure on its behalf.
>
> ...
>
> (3) The competent authority and the competition authority of another Member State may exchange and use in evidence any material, including confidential information, for the purpose of this section, subject to the following limitations:
>
> > (*a*) information provided to the competent authority by the competition authority concerned pursuant to this section shall only be used in evidence for the purpose of applying Article 101 or Article 102 of the Treaty on the Functioning of the European Union and in connection with the subject-matter for which it was collected by the competition authority concerned, save that the information may also be used for the purpose of applying *section 4* or *5* in the same proceedings;
> >
> > (*b*) information provided to the competent authority by the competition authority concerned pursuant to this section may be used in evidence to impose sanctions on a natural person where –

(i) the law of the Member State providing the information provides for sanctions of a similar kind in relation to an infringement of Article 101 or Article 102 of the Treaty on the Functioning of the European Union, or

(ii) the information has been collected in a way that affords the same level of protection of the rights of defence of natural persons as is provided for under the law of the State but, in these circumstances, the information provided to the competent authority may not be used in subsequent proceedings before the courts to impose custodial sanctions on a natural person."

27. Again, as with s.33 of the Competition and Consumer Protection Act 2014, nothing in s.15AQ of the Competition Act 2002 suffices to upset the allocation of jurisdiction under the Recast Brussels Regulation. Again, that is an EU regulation which has to be applied by this Court. Section 15AQ does not give jurisdiction and cannot give jurisdiction in the face of the Recast Brussels Regulation.

A Case About Torts and Other Wrongs?

28. Eighth, it was put to me by Ryanair that its proceedings do not involve public law challenges, that they are concerned with torts and other wrongs. This, it was put to me, render the within proceedings a 'civil and commercial matter'. But it is clear from the authorities that the point is not the format of the proceedings. Again, the questions arising here for determination, *i.e.* the questions which determine the issue of jurisdiction, are relatively simple. Was the AGCM exercising public law powers in what it did? And if it was, was it doing so only in a way that any private individual could also do? It is not answer to those questions to say 'I am suing you for a tort', 'I am suing you over some constitutional right', 'I am suing you for breach of statutory duty'. So, for example, in *Siemens* the action in issue was about what in Ireland would be a form of unjust enrichment but that was irrelevant to the question which had

to be answered, *viz*. whether the Hungarian Competition Authority was or was not exercising powers of a public nature.

Ryanair's Grievances

29. Ninth, it is obvious from the written and oral submissions of Ryanair that it is considerably aggrieved by the various alleged legal wrongs in respect of which it has commenced its plenary proceedings and, in particular, by the notion that its remedy for those alleged wrongs lies in another jurisdiction. But Ryanair's sense of grievance cannot counter the due operation of the Recast Brussels Regulation. There may be many cases in which an Irish person is aggrieved by events, even events that occurred in Ireland, but nonetheless is not entitled to sue in Ireland but rather must sue in another country which has jurisdiction under the Recast Brussels Regulation. And of course it is not the case that a person who cannot establish jurisdiction in Ireland does not, as a necessary consequence, lose a remedy. The application for remediation of the perceived wrong just lies to be sought in another jurisdiction. – though as it happens the major issues with which Ryanair seems to be concerned do not actually present, given the reasonable position (described previously above) that the AGCM is taking as regards the warrant and privilege.

30. Tenth, although Ryanair has iterated many grievances at the hearing of these proceedings (echoing what it has stated in its written submissions) there was generally no linkage of those points to what was being sought of me. What the AGCM has come seeking is not a discretionary remedy in which I could decide what is the most appropriate way in which to proceed by reference to all the facts presenting. Under Art.1 of the Recast Brussels Regulation, either the Irish courts have jurisdiction or they do not. And, for the reasons stated, they do not.

31. Eleventh, repeated complaint has been made that the AGCM staff left Ireland with the seized documents. Again, however, that complaint does not decide the issue of jurisdiction under the Recast Brussels Regulation. The questions arising here for determination, *i.e.* the questions which determine the issue of jurisdiction, are relatively simple. Was the AGCM exercising public law powers in what it did? And if it was, was it doing so only in a way that any private individual could also do? The answers to those questions are 'yes' and 'no' and that, by virtue of the Recast Brussels Regulation, places this case outside the jurisdiction of the Irish courts.

The Threat to Sue AGCM Staff

32. Twelfth, Ryanair has indicated that if I hold against it on the issue of jurisdiction vis-à-vis the AGCM it may elect to sue the individual staff members of the AGCM who attended in Dublin. However, Ryanair's possible future actions have no bearing on the present issue of jurisdiction.

Reference to the CJEU

33. Ryanair sought that I make a preliminary reference to the CJEU in this matter. It handed me in the text of a proposed question which states, *inter alia*, that 'In summary it [the question referred] would be whether Art.47 of the EU Charter [*i.e.* the CFEU][10] and Art.19 TEU[11] precludes the AGCM from seeking to avoid jurisdiction in the proceedings by relying on Art.1(1) of the Brussels I Recast as this would deny Ryanair a remedy in the circumstances'. I will not make the proposed reference. Article 267 TFEU allows, *inter alia*, for the making of a preliminary reference where a court or tribunal 'considers that a decision on the question is necessary to enable it to give judgment'. I do not so consider: a question as to where jurisdiction lies in any one case by reference to the Recast Brussels Regulation is a fairly standard issue of EU law; and, as the above-considered caselaw shows, is also a fairly well-settled area of the law, with it being clear how I should approach matters in order to give proper and correct judgment in the application now before me.

34. Though it is of academic interest in light of what I have stated in the preceding paragraph (*i.e.* as to no question presenting that makes it necessary for me to seek a preliminary ruling in

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[10] Article 47 CFEU ('Right to an effective remedy and to a fair trial') provides as follows:

> "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice."

[11] Article 19 TEU provides, *inter alia*, as follows:

> "Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law."

order that I might give judgment) I could not in any event have posed the question as proposed by Ryanair as it proceeds on two false assumptions. First, it assumes that the AGCM is somehow seeking to avoid a court battle with Ryanair. However, as I understand matters the AGCM is perfectly prepared to do legal battle with Ryanair but simply wishes that battle to take place in the courts of the country which rightly has jurisdiction under the Recast Brussels Regulation. Second, the question assumes that the Recast Brussels Regulation in allocating jurisdiction necessarily involves denying a party of a remedy. That is fundamentally to misunderstand the notion of jurisdiction and the purpose of the Regulation. It is not the case that a person who cannot establish jurisdiction in Ireland necessarily loses some available remedy as a consequence. Remediation for a perceived wrong simply lies to be sought in another jurisdiction – though again, as it happens, the major issues with which Ryanair seems to be concerned do not actually present, given the reasonable position (described previously above) that the AGCM is taking as regards the warrant and privilege.

Service

35. I do not consider that I need to consider the issue of service in any great detail. Under O.12, r.26 RSC "A defendant before appearing shall be at liberty to serve notice of motion to set aside the service upon him of the summons or of notice of the summons, or to discharge the order authorising such service."

36. Here, Ryanair served the AGCM in Italy in reliance, it appears., on O.11A RSC. However, O.11A(1) RSC commences by stating that:

> "The provisions of this Order only apply to proceedings which are governed by Article 1 of Regulation No.1215/2012 [the Recast Brussels Regulation]".

37. The second sentence of Art.1(1) provides that there are certain matters to which the Regulation does not extend and, for all the reasons that I have offered in this judgment, these proceedings fall within an excepted category. That it seems to me is an end of matters: by virtue of O.11A(1), O.11A does not apply.

Delay

38. The AGCM has indicated that there is some time pressure presenting in terms of receiving this judgment, that until it gets to look at the documents that it claims that it was entitled to seize under the warrant, its investigation has substantively been stalled. Ryanair placed some affidavit evidence before me from an expert in Italian competition law (Professor Libertini) which suggests that such time limits have been removed on occasion. While I accept that this is so (and am grateful for this expert input), respectfully it does not seem to me that such evidence suffices to alter the fact that the AGCM's investigation appears necessarily to be adversely affected by the existence of this litigation.

Conclusion

39. For the reasons stated in the preceding pages, I will (i) pursuant to O.12, r.26 RSC set aside the service on the AGCM of the notice of plenary summons, and (ii) dismiss the proceedings as against the AGCM for want of jurisdiction on the part of the Irish courts.

40. I will hear the parties as to costs.