judgment

AMSTERDAM DISTRICT COURT

Private law division

Judgment of 1 May 2019

in the following matters:

case number / cause-list number: C/13/486440/ HA ZA 11-944 (Equilib I)

EQUILIB NETHERLANDS B.V.,
a private limited company,
with its registered office in Amsterdam,
claimant,
lawyer M.H.J. van Maanen,

v

1. KONINKLIJKE LUCHTVAARTMAATSCHAPPIJ N.V.,
a public limited company,
with its registered office in Amstelveen,
lawyer J.S. Kortmann,
2. MARTINAIR HOLLAND N.V.,
a public limited company,
with its registered office in Haarlemmermeer,
lawyer J.S. Kortmann,
3. SOCIÉTÉ AIR FRANCE S.A.,
a legal entity incorporated under foreign law,
with its registered office in Tremblay en France, France,
lawyer D.A.M.H.W. Strik,
defendants,

and

4. SINGAPORE AIRLINES CARGO PTE LTD,
a company incorporated under foreign law,
with its registered office in Singapore,
lawyer I.W. VerLoren van Themaat,
5. SINGAPORE AIRLINES LIMITED,
a company incorporated under foreign law,
with its registered office in Singapore,
lawyer I.W. VerLoren van Themaat,
6. LUFTHANSA CARGO A.G.,
a legal entity incorporated under foreign law,
with its registered office in Kelsterbach, Germany,
lawyer P.N. Malanczuk,

7. DEUTSCHE LUFTHANSA A.G.,
a legal entity incorporated under foreign law,
with its registered office in Cologne, Germany,
lawyer P.N. Malanczuk,
8. SWISS INTERNATIONAL AIR LINES A.G.,
a legal entity incorporated under foreign law,
with its registered office in Basel, Switzerland,
lawyer P.N. Malanczuk,
9. BRITISH AIRWAYS PLC,
a legal entity incorporated under foreign law,
with its registered office in Harmondsworth, United Kingdom,
lawyer D.J. Beenders,
10. AIR CANADA,
a legal entity incorporated under foreign law,
with its registered office in Saint Laurent, Canada,
lawyer K.A.J. Bisschop,
11. CATHAY PACIFIC AIRWAYS LIMITED,
a legal entity incorporated under foreign law,
with its registered office in Hong Kong, China,
lawyer Ph.W.M. ter Burg,
joined parties,

and

case number / cause-list number: C/13/561169 / HA ZA 14-283 (Equilib II)

EQUILIB NETHERLANDS B.V.,
a private limited company,
with its registered office in Amsterdam,
lawyer M.H.J. van Maanen,
claimant,

v

1. **KONINKLIJKE LUCHTVAART MAATSCHAPPIJ N.V.,**
a public limited company,
with its registered office in Amstelveen,
lawyer J.S. Kortmann,
2. **MARTINAIR HOLLAND N.V**.,
a public limited company,
with its registered office in Haarlemmermeer,
lawyer J.S. Kortmann,
3. SOCIÉTÉ AIR FRANCE S.A.,
a public limited company incorporated under foreign law,
with its registered office in Tremblay en France, France,
lawyer D.A.M.H.W. Strik,
4. LUFTHANSA CARGO A.G.,

a legal entity incorporated under foreign law,
with its registered office in Kelsterbach, Germany,
lawyer P.N. Malanczuk,
5. **DEUTSCHE LUFTHANSA A.G.,**
a legal entity incorporated under foreign law,
with its registered office in Cologne, Germany,
lawyer P.N. Malanczuk,
6. BRITISH AIRWAYS PLC,
a legal entity incorporated under foreign law,
with its registered office in Harmondsworth, United Kingdom,
lawyer D.J. Beenders,
defendants.

The claimants in both matters are hereinafter referred to as Equilib. The defendants and the joined parties are hereinafter jointly referred to as the airlines.

1. The proceedings

1.1. The further course of the proceedings is evident from:
- the interlocutory judgment of 17 January 2018 in the SCC cases against the airlines with case nos. / cause-list nos. C/13/562256 / HA ZA 14-348 (SCC I) and C/13/604492 / HA ZA 16-301 (ECLI:NL:RBAMS:2018:2040) in which a number of legal questions were submitted to the Dutch Supreme Court for an answer by way of a preliminary ruling on the applicable law on the grounds of s. 4(1) of the Dutch Unlawful Act Conflict of Laws Act ("WCOD") to an obligation on account of unlawful competition in the case of a cross-border infringement of the competition rules;
- the preliminary ruling of 16 March 2018 of the Dutch Supreme Court, in which the Supreme Court refrained from answering the questions referred for a preliminary ruling;
- email correspondence between the District Court and the parties regarding the schedule for hearing the oral arguments on 27 November 2018;
- the abridged court record of the oral arguments delivered on 27 November 2018, along with the procedural documents referred to in it;
- the email from M.H.J. van Maanen of 24 December 2018, with a response to the official record.

1.2. That official record stipulates that any comments on it can be notified to the court registry by email within fourteen days of its receipt. The official record was sent to the parties by email on 11 December 2018. The emails of 2 January 2019 from T. Heikens, of 3 January 2019 from M. Portman and of 7 January 2019 from H. Speyart on behalf of the defendants/joined parties with responses to the official record, date from after this fourteen day period. In view of this the emails will, as requested by Th. Verheij (SCC's lawyer), also on behalf of Equilib, in an email of 10 January 2019, be disregarded.

1.3. Finally, judgment was scheduled.

2. The facts

2.
2.1. In a press release, the European Commission (the Commission) stated that in its decision of 9 November 2010 (hereinafter: the old decision) it had ruled that, from December 1999 to 14 February 2006, surcharges for fuel and security covering flights from, to and within the European Economic Area (EEA) and Switzerland had been coordinated by various airlines. That press release stated that the airlines involved had been fined a total of EUR 799,445,000 for participating in an international cartel.

2.2. All the addressees, except for Quantas Airways Limited, filed an appeal against the old decision with the General Court of the European Union (the General Court). In judgments issued on 16 December 2015, the General Court declared the appeals well founded and annulled the Commission's old decision (and annulled it in part with regard to British Airways Plc). The Commission did not appeal these judgments.

2.3. In a judgment of 14 November 2017, the Court of Justice of the European Union (CJEU) denied the appeal lodged by British Airways Plc. against the old decision.

2.4. The Commission issued a press release stating that in its decision of 17 March 2017 (hereinafter: the new decision) relating to proceedings under Article 101 of the Treaty on the Functioning of the European Union (TFEU), Article 53 of the Agreement on the European Economic Area (EEA Agreement) and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (Civil Aviation Agreement) it had once again ruled that a cartel had been operating in the aforesaid period and that it had fined the airlines involved a total of EUR 776,465,000 for participating in that cartel. The majority of the addressees of that new decision filed an appeal against this decision with the General Court. Those proceedings are still pending.

2.5. The following is evident from the provisional non-confidential version dated 17 March 2017 of the new decision (Case AT.39258):
- the decision is directed against 19 legal entities including all the defendants;
- the decision relates to a single and continuing infringement that covered the territory of the European Economic Area (EEA) and Switzerland and in which the addressees coordinated their pricing policy for the provision of air cargo services from, to and within the EEA with regard to the fuel surcharge, the security surcharge and payment of commission on the surcharges;
- the decision relates to the sale of air cargo services: (i) between airports in the EEA in the period from 7 December 1999 to 14 February 2006; (ii) between airports in the EU and airports in third countries [not being Switzerland, added by this Court] in the period from 1 May 2004 to 14 February 2006; (iii) between airports in the EEA (except for airports in the EU) and airports in third countries in the period from 19 May 2005 to 14 February 2006; and (iv) between airports in the EU and airports in Switzerland in the period from 1 June 2002 to 14 February 2006.

2.6. Equilib submits that the fuel surcharges, security surcharges and the commission paid on those surcharges, as referred to in the new decision, were charged to the consignors

of goods that purchased air cargo services (forwarders or shippers, hereinafter shippers), usually through forwarders (or freight forwarders). Nearly all the aviation capacity of the airlines is sold to freight forwarders (for the benefit of shippers/forwarders, the customers of air cargo services that want to have goods transported).

2.7. Since 18 December 2012, Equilib has been the legal successor with universal title of Equilib S.A.R.L. (a legal entity incorporated under French law), following a merger. Equilib is a Dutch company (also referred to as a 'litigation vehicle' or 'claim vehicle') which, by taking legal action, tries to recover damages resulting from infringements of competition law, in this case the claims that a number of shippers consider that they have against the airlines in relation to the cartel in question.

2.8. Equilib purchases claims, pools them and then proceeds to collect them in its own name. In order to do so, Equilib has its 'clients' (the shippers) assign their (alleged) claims to it.

3. The dispute

3.
3.1. Put briefly, following an increase and a reduction of claim, Equilib is applying for a judgment which, to the extent possible, is immediately enforceable:
I. issuing a declaratory ruling that the airlines are liable under the applicable law because of imputable unlawful acts against the shippers listed in Exhibit 3 to the statement of 9 November 2016;
II. issuing a declaratory ruling that the airlines are jointly and severally liable for the losses sustained by these shippers as a result of the acts referred to in the declaratory ruling referred to sub I;
III. jointly and severally ordering the airlines to pay Equilib full compensation (including statutory interest) for the losses sustained by these shippers as a result of the acts referred to in the declaratory ruling sub I, which compensation is to be assessed later during separate follow-up proceedings;
IV. to order the airlines jointly and severally to pay the costs of these proceedings.

3.2. As was agreed with the parties, at this stage the question being debated in this ruling is which law is applicable to the shippers' claims for damages (which were assigned to Equilib).

3.3. In an interlocutory judgment of 2 August 2017 in the matters of SCC against the airlines this Court, inter alia, formulated possible connecting factors for determining the applicable law to the damage claims of the shippers (see para. 1.1 for case nos.).

3.4. In the interlocutory judgment of 17 January 2018 in the SCC cases against the airlines (see 1.1) the District Court submitted a number of legal questions to the Dutch Supreme Court for an answer by way of a preliminary ruling on the applicable law on the grounds of s. 4(1) WCOD to an obligation on account of unlawful competition in the case of a cross-border infringement of the competition rules.

3.5. In a preliminary ruling of 16 March 2018 the Dutch Supreme Court refrained from answering the questions referred to it for a preliminary ruling (ECLI:NL:HR:2018:345). In view of this, the parties were given the opportunity at the delivery of the oral arguments on 27 November 2018 to elaborate their positions with respect to the applicable law, also in light of the possible connecting factors for determining the applicable law to the shippers' claims for damages formulated by this Court in its interlocutory judgment of 2 August 2017.

The parties' positions

3.6. According to Equilib, the relevant connecting factor for determining the applicable law is the place where the service is provided. If the service is provided in more than one country, this means that both in the country of departure and in the country of arrival the competitive conditions are affected within the meaning of s. 4 WCOD. That provision therefore allows for two damages claims. The foregoing applies in full if the place of departure or arrival is in a third country where European competition rules do not apply. It is irrelevant whether an air cargo service on a flight from, for example, Nairobi to Paris would also result in a claim based on an unlawful act under Kenyan law, since Equilib has only filed *Courage v Crehan* claims that are based on a violation of European competition rules in France as the country of arrival. This is why Equilib has requested declaratory rulings under the laws of 17 European jurisdictions that have acted as either a country of departure or a country of arrival. According to Equilib this may lead to some degree of fragmentation, but it claims that this is intrinsic to international cartels.

3.7. According to the airlines, the relevant connecting factor is the airport of departure, because in practice the negotiations on the conditions relating to an air cargo service almost always took place (and take place) from a branch or agency of a freight forwarder at the airport of departure, with a branch or agency of the airline offering the route concerned. The place where 'the competitive act affects competitive conditions' will therefore in nearly all cases coincide with the place of departure. Moreover, the necessary formalities for international air cargo transport have to be completed at the place of departure. On the grounds of s. 4(1) WCOD, the connecting factor for the applicable law was the place where negotiations were held on a specific route between the freight forwarder and the airline that provided the transport, according to the airlines. This usually coincides with the country of departure. They refer to the judgments of the District Court of The Hague of 17 December 2014 in the paraffin wax cartel case *CDC v Shell* (ECLI:NL:RBDHA:2014:15722, para. 4.49) and of this Court of 10 May 2017 in the sodium chlorate cartel case *CDC v Kemira* (ECLI:NL:RBAMS:2017:3166, para. 4.24).

The airlines submit that this connecting factor leads to a predictable and uniform application of s. 4(1) WCOD and does justice to the principle of the closest connection. A practical advantage of this is that the law that applies to the claims of the freight forwarders will then be the same as the law that applies to the shippers' claims, still according to the airlines.

Findings of this Court

3.8. This Court finds first and foremost that this cartel, according to Equilib and the Commission's decision, relates to the agreement made between the airlines to increase the

base price of air cargo on a worldwide basis by a number of surcharges, including the fuel surcharge. Depending on the increase or decrease to the fuel price index, the fuel surcharge was increased or decreased by a fixed amount per kilogram of air cargo. The impact of that agreement was therefore the same around the world.

3.9. This Court finds it important to establish that the dispute between the parties relates to possible civil-law consequences of (according to Equilib) unlawful acts arising from a single and continuing infringement of Article 101 TFEU that was committed by several companies based in several states (including Member States) (hereinafter also the cartel) and whose numerous injured parties are also based in several states (including Member States). The causes and effects of the alleged damage relating to those acts may therefore be geographically fragmented.

3.10. This Court furthermore finds that the law that applies to Equilib's claims must be established on the basis of s.4 WCOD and that there is no scope for anticipating the application 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")

3.11. Section 4(1) WCOD provides that obligations on account of unlawful international competition are governed by the law of the state in which the competitive act affected competitive conditions. According to the Explanatory Memorandum, this term should be interpreted broadly; it generally involves unlawful acts that affect competition, all this at the discretion of the civil court (Parliamentary Papers II 26 608, no. 3, p. 8).

3.12. This Court recalls that when the cartel commenced, Dutch private international law did not have a statutory or Community reference rule to determine the law that applied to obligations on account of an unlawful act. The conflict rule in the WCOD (effective from 1 June 2001) is however closely in line with the rule that previously applied, as developed by the Dutch Supreme Court in the *Cova* judgment (Dutch Supreme Court, 19 November 1993, ECLI:NL:HR:1993:ZC1148). This Court finds that the reference rule laid down in s.4 WCOD can also be applied to the period before the WCOD's entry into force (see also the Arnhem-Leeuwarden Court of Appeal, 28 August 2018, ECLI:NL:GHARL:2018:7753, para. 3.14).

3.13. This Court must (of its own motion) determine the applicable law (the law applicable to the claim) for every claim of every individual shipper on account of an unlawful act (the cartel) against every individual airline. That the claims are currently bundled (by way of assignment) with Equilib does not make any difference to determining the law that applies to the individual claim on account of an unlawful act.

In other words, the applicable law must be determined for every obligation on account of an unlawful act of an individual airline (the debtor) for damages to an individual shipper (the creditor of that obligation). The parties submit (as this Court understands it) that there may be several obligations on account of an unlawful act per airline against an individual shipper, namely as many obligations as flights purchased by that individual shipper. This Court does not follow this argument. The question of whether an obligation qualifies as an obligation on account of an unlawful act within the meaning of the WCOD must be answered according to Dutch law (*lex fori*) on the grounds of s.4 WCOD. This Court finds that, under Dutch law,

(continuing) participation in the cartel is, for every individual airline, a continuing unlawful act that could lead to different damage items for individual shippers. Contrary to what the parties submit, participation by an airline in the cartel cannot be classified as several acts by an airline that would each individually qualify as an unlawful act. This finding is consistent with the fact that, according to settled case law, cartel members can be held jointly and severally liable on the grounds of an unlawful act for the damage inflicted by that cartel, even when such damage does not arise from the services provided or goods supplied by the cartel member concerned but from those of other cartel members (that participated in the cartel at that point).

3.14. What is at issue is how s.4(1) WCOD should be applied in this matter, given that the cartel affected prices and thus competitive conditions worldwide. The Explanatory Memorandum notes in that regard, with respect to s. 4(1) WCOD (Parliamentary Papers II 26 608, No. 3, p. 8), where relevant here, as follows:

"(...) The formulation of subsection 1, in which the terminology “law of the market” does not occur, mitigates the objection that with the increasing internationalisation of trade “the market” is difficult to localise and there is increasingly less often a real national market. (...)
I [Minister of Justice, added by this Court] note that the proposed conflict of laws rule does not provide a uniform solution in the situation in which the unlawful competitive act influences the competitive conditions in the territory of more than one state. This will inevitably lead to a fragmentation of the applicable law. In such a case linking up with the governing law choice provided in section 6 or the accessory connecting factor provided in section 5 may offer a practical solution(…)."

3.15. A practical solution as referred to in the final sentence of this quote is not available in this case, since the parties did not agree on a joint choice of law as referred to in s.6 WCOD and, in the absence of another (existing or former) (contractual) legal relationship between the shipper and the airline, there is no scope for an accessory connecting factor as referred to in s.5 WCOD. However, this Court finds it hard to imagine that ‘fragmentation of the applicable law’ means that all the legal systems in the world could all apply at the same time to the claim of an individual shipper against one or more defendants. This cartel has affected competitive conditions worldwide, which means that under the ‘market rule’ in s.4(1) WCOD any conceivable legal system could apply. Apparently, with s.4 WCOD the legislature did not envisage a worldwide cartel such as this one. Nor does s.4 WCOD provide a priority rule in the event that more than one legal system applies. The foregoing applies all the more as airlines are being held jointly and severally liable. It must therefore be concluded that the ‘market rule’ of s.4(1) WCOD does not lead to a workable result.

3.16. It has been established that the cartel infringement had a worldwide impact. There is therefore no one state (or a limited number of states) where the competitive act affected competitive conditions within the meaning of s.4(1) WCOD.
In the Netherlands, too, competitive conditions were distorted by the cartel. Partly in view of the fact that the present damage claims are based on an unlawful act, it could be argued that Dutch law (as *lex fori*) must be applied to all the claims that Equilib has filed. That would offer a practical solution such as envisaged by the legislature when it introduced the WCOD and it would indeed faciliate an efficient settlement of the cartel damage, which is in line with the principle of effectiveness that is set out in Directive 2014/104/EU of the European Parliament

and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ 5 December 2014, L 349/1) (the Cartel Damages Directive). The fact is that the Directive seeks to safeguard the effective exercise of the right to compensation. Recital 11 clearly states:

"All national rules governing the exercise of the right to compensation for harm resulting from an infringement of Article 101 or 102 TFEU, including those concerning aspects not dealt with in this Directive such as the notion of causal relationship between the infringement and the harm, must observe the principles of effectiveness and equivalence. This means that they should not be formulated or applied in a way that makes it excessively difficult or practically impossible to exercise the right to compensation guaranteed by the TFEU or less favourably than those applicable to similar domestic actions."

Although the Cartel Damages Directive was not yet effective when the present claims came into being, the principle of effectiveness should be regarded as having been likewise leading at that time. Moreover, the due process of law requires that an ineffective administration of justice and unreasonable delays (Article 20 of the Dutch Code of Civil Procedure ("DCCP")) must be prevented.

3.17. According to the airlines, as stated earlier, the relevant connecting factor is the airport of departure, where demand and supply for the individual air cargo service met at the desk of (the agent of) the airline involved. They refer in this regard to the judgments of the District Court of The Hague in the paraffin wax cartel case (*CDC v Shell*) and of this Court in the sodium chlorate cartel case (*CDC v Kemira*) as referred to in para. 3.7.

3.18. This Court does not share the airlines' view on this point.
The competitive conditions in this case were affected when the arrangements were made to introduce and apply the surcharges. As a result of those arrangements, the airlines' head offices (or their representatives) then made the surcharges mandatory worldwide. This means that the worldwide cartel affected competition even before a specific airline and a specific freight forwarded entered into negotiations on the price of air cargo services. The fixed surcharge (agreed between the cartel members) was added at the end on top of the agreed price for the individual air cargo service. It is moreover important that Equilib invokes the cartel in its entirety against the defendants, irrespective of whether the airline concerned did or did not provide air cargo transport to one or more shippers. In view of this, this Court finds, unlike the airlines, that the place where the freight forwarders *negotiated* the air cargo transport with the airlines' local desks is not the correct connecting factor. This is aside from the fact that where the price was set in each individual case cannot verified, as the airlines themselves argue that the place where the flight concerned was negotiated was '*generally*' and '*usually*' and therefore *not always* the airport of departure.

Likewise, in the *CDC v Shell* and *CDC v Kemira* cases, the law that applied to the claim on account of an unlawful act was not based on the place where the agreement was concluded or where the pricing negotiations were conducted, but on the place where the products were *actually purchased*. In this Court's opinion, this connecting factor means that in practice the law of the *Erfolgsort* (the place where the damage occurred) applies. In this case, however,

(unlike in those other cases) it is not so easy to determine where the air cargo services were *actually purchased*. The fact is that the place of the *actual purchase* of an air cargo service could be localised at the airport of departure, but just as well 'in the air at all places of the flight route' or at the airport of arrival as argued by Equilib.

3.19. The law of the state where the airlines have their registered office does not provide a relevant connecting factor either. In practice, this would mean connecting to the (notional) *Handlungsort*, the place where the harmful event occurred. In order to determine the law that applies to the claim of an individual shipper it is not necessary to determine whether the airline concerned did actually provide air cargo services to that shipper, as the airlines are all being held liable for participation in the cartel, on the grounds of which they helped drive up prices. Based on this connecting factor, the claims filed on account of an unlawful act against each of the airlines held liable would be assessed according to each of the airlines' own law. This would be a good connecting factor in terms of foreseeability. The airlines have, however, argued that in some countries pricing arrangements were not prohibited in the relevant period but were in fact encouraged, meaning that no unlawful act had been committed. This is an argument against this connecting factor as cartel members would themselves then be able to ensure which law would apply to a claim on account of an unlawful act arising from a cartel.

3.20. Another option would be to link up with the place in which the injured parties are domiciled. In that regard it should be noted that injured parties are often companies that are part of a group. If companies are bound together in a group (cf. Article 2:24b Dutch Civil Code ("DCC")), this Court does not see a legal ground for applying the law of the group's head office, i.e. the law of the country in which the group's parent company is domiciled, to the claims of all group companies. In the case of an international group and especially where the claims are filed by a litigation vehicle, linking up with the domicile of the injured parties would not therefore automatically lead to the efficient settlement of the cartel damage claims. It is correct in itself that the airlines could justifiably argue with respect to this connecting factor that the fact that it would lead to the applicability of a multitude of legal systems in these proceedings is, strictly speaking, the result of Equilib's bundling of claims. For this Court, however, that problem would also have occurred if the shippers had each individually issued separate proceedings. Once again, this seems to be inconsistent with the rationale underpinning the Cartel Damages Directive which must see to the full compensation of damage caused by infringements of EU competition rules.

3.21. Another objection against this connecting factor is that it is not only shippers (as in these proceedings) that claim they have sustained damage as a result of the cartel agreements but in other proceedings freight forwarders have also filed damage claims. The DB Barnsdale A.G. litigation vehicle is litigating in Germany on behalf of a large number of freight forwarders (which have transferred their claims to this vehicle). Linking up with the country of the injured parties' domicile might therefore mean that two legal systems could apply to damage relating to one air cargo service (booked by a shipper via a freight forwarder), depending on the party that files the claim, and that this could lead to different outcomes for the two injured parties (e.g. because one legal system takes a different view of the 'passing-on defence' than the other).

3.22. Linking up with the injured parties' domicile is therefore arbitrary. The fact is that quite aside from these objections, it has not been established that competitive conditions were actually affected in all the states in which the injured shippers are domiciled.

3.23. Given the above, this Court dismisses the connecting factors suggested by the parties which would lead to many different legal systems being applicable to the damage claim.

3.24. In conclusion, this Court finds that the unlawful competition agreements did affect the competitive conditions in many states, including the Netherlands, meaning that the conflict rule of s.4 WCOD does not provide a uniform solution and, in the absence of a priority rule, a practical solution has to be found, as envisaged by the legislature when it introduced s.4 WCOD. This Court also considers that in the legislature's choice for the main conflict rule of s.3 WCOD great importance was attached to the compensatory function of the obligation on account of an unlawful act, i.e. the importance of settling the damage (Dutch Lower House 1989/1999, 26608 no.3, p.6).
The principle of effectiveness and the due process of law therefore satisfactorily justify the applicability of Dutch law to the shippers' damage claims (assigned to Equilib). This Court will rule accordingly.

3.25. Today this Court is making a corresponding ruling on the applicable law in the cases with case and cause-list nos. C/13/562256 / HA ZA 14-348 (SCC I) and C/13/604492 / HA ZA 16-301 (SCC II).

3.26. This Court will allow the parties to file an interlocutory appeal against this interlocutory judgment. Any further decision will be stayed.

4. The decision

This Court

4.
4.1. issues a declaratory ruling that Dutch law applies to the shippers' damage claims (assigned to Equilib),

4.2. allows the parties to file an interlocutory appeal against this judgment;

4.3. stays any other decision.

This judgment was delivered by R.A. Dudok van Heel, A.E. de Vos and M.E.M. James-Pater, judges, assisted by J.P. van der Stouwe, clerk of the court, and pronounced in open court on 1 May 2019.