



CDC lodges EUR600mIn damage claim in Germany against bleaching cartel

23 Apr 09 | 08:57 GMT+1

Author: Lewis Crofts

IN BRIEF

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Belgium-based CDC has been waging a long campaign against members of a German cement cartel (see [here](#)) but now it has started its first claim against a Europe-wide cartel, namely hydrogen peroxide: a bleaching chemical used in paper production.

The claim seeks 430 million euros in damages as well as interest running to 50 percent. It also points towards the European Commission's cartel decision which asserts that for several years of the cartel prices of the product "doubled".

The company runs a model whereby it takes over the claims of purchasers - in this case, major and medium-sized commercial customers of hydrogen peroxide and perborate - runs the case and then returns a percentage of the winnings back to the purchasers.

The firms fined by the commission in May 2006 were Akzo Nobel, Edison, FMC/Foret, Kemira, Snia, Solvay and Total/Elf Aquitaine/Arkema.

Solvay, Arkema and Edison had their fines increased for recidivism while Degussa suffered no financial penalty having blown the whistle on the cartel in December 2002. The initial raids were conducted in March 2003 (see MLex case file [here](#)).

Most of the companies appealed the commission's decision in July 2006 with the notable exception of Kemira which considered it "not worthwhile appealing" its 33 million euro fine.

The cartel members are said to be ready to defend themselves in the proceedings in Dortmund. Some view the amount of the claim as vastly exaggerated.

Around 18 months ago, when the claim was being prepared (see MLex article [here](#)) it was said to be looking for at least 200 euros per tonne of the chemicals. CDC would return 75-80 percent of a winning claim in hydrogen peroxide to the parties; perborate claimants would receive 70-75 percent of their claim back.

The company also sent out 180 letters to encourage companies affected by the cartel to join the cause and it also addressed a meeting of the German Paper Industry Association to drum up support.

The claim has been several years in preparation and has already resulted in litigation in the European courts.

On the search for evidence to bolster its case, CDC requested access to the commission's file to obtain the index, before going to a national court to request disclosure of individual documents. The request was rejected by the commission under transparency rules and this is now being disputed in the Court of First Instance (see [here](#)).

At least one cartel member is said to be intervening on the side of the commission in these proceedings. The Swedish government is understood to be supporting CDC.

Last week, CDC also received a blessing for its claim against members of a cement cartel after the German Supreme Court blocked a defendant's attempt to review the admissibility of the case (see [here](#)).

- Leniency threat? -

The tension between encouraging private enforcement while ensuring cartel whistleblowers come

forward is well documented: the greater the threat of claims, the smaller the likelihood of co-operation, runs the argument.

CDC is keen to pursue claims against cartels which produce materials - such as HP or cement - which have a predictable unit price, rather than highly differentiated products such as lifts or switchgear.

Such industrial products also have the advantage that there are a smaller group of potential purchasers, who, in turn, can be more easily harnessed for a claim.

It may be, however, that leniency applicants in such cartels will be less likely to come forward and expose price-fixing behaviour, knowing that the risk of private enforcement is greater in their sector than others.

Linked Case File(s)

[Cartel Bleaching chemicals - Degussa - Solvay - Total - Arkema](#)

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