

(EU) EU/COMPETITION: Several companies suffering from price-fixing given go-ahead to launch private case in German law

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Brussels, 16/05/2008 (Agence Europe) - 36 companies have been authorised to lodge a collective appeal against the members of a price-fixing cement **cartel**. The supreme court (Overlandesgericht) of the 'Land' (region) of Dusseldorf in Germany decided on Wednesday 14 May 2008 that the companies in question were entitled to submit their claims to a third party, namely Belgian company **Cartel** Damage Claims (CDC), which can now take the case to the Landesgericht (regional court) of Dusseldorf on behalf of the companies suffering from the excessively high prices fixed by the **cartel** for several decades. The European Commission is delighted about this as it will make it easier for individuals affected by price-fixing to go to court.

As early as 2001, the European Court of Justice confirmed in the *Courage v. Crehan* case that individuals can invoke EU antitrust legislation at courts of their country, failing which "the full effectiveness of Article 85 of the Treaty (...) would be put at risk," (Case C-453/99). But this is the first time that a court has actually recognised such a collective appeal in an antitrust case. Making a collective appeal is necessary to make the procedure viable for the plaintiffs because the damages and interests involved in each individual case do not warrant the investment required to take the cases to court. The European Commission has welcomed the "possibility for victims of cartels to seek damages before national courts," explained Jonathan Todd, the spokesperson for EU Competition Commissioner Neelie Kroes, at a press conference on Wednesday. He said that this had been the main idea outlined in a recent Commission White Paper on the issue (see EUROPE 9365).

The main innovation here is CDC's approach - in effect, it brought the claims from 36 companies, all customers of cement manufacturers found guilty in a court case in Germany in 2003. Volker Abele, case manager at CDC's Brussels office, said that CDC would then gather all the evidence and recruit a legal representative. The companies would receive an initial payment and a share of any damages granted by the Court of Justice. The companies also benefitted from being able to have the case taken to court, which would otherwise not have been financially feasible. CDC takes all the legal and financial dangers on board, in return for which it receives a share of the damages and interest. In the case in question, the total amount of money at stake may be around €350 million, according to CDC's Germany office. The transfer of rights to take the case to court involves a rather complicated contract but is perfectly feasible in all EU member states, according to a Brussels-based legal specialist, adding that it was only in England and Wales that the procedure might prove tricky. Collective appeals differ from class actions in the United States in that the ruling only covers the parties to the procedure, whereas in a class action, a body can still go to court after the appeal on the ground that it is part of the class (category) in question and can therefore claim damages after the case has been heard.

CDC, set up in 2002, is currently the only provider of such services in this niche market. It has other cases in the pipeline, like on the hydrogen peroxide market for paper manufacture. This **cartel** was found guilty of price-fixing by the Commission in 2006, explained Abele, adding that the Commission should include more details of the functioning of the cartels in the non confidential versions of its decisions if it wants to support these private actions. "Not all figures are trade secrets" he said, expressing the belief that publishing much of the information currently unavailable would be very helpful to such cases without compromising the sensitive aspects of the Commission's decisions. (C.D.)

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