

Germany: court admits cartel damage claim against cement producers

On 21st February 2007 the Düsseldorf Regional Court declared the claim – unique so far in terms of procedural law – of the Belgian company Cartel Damage Claims (CDC) against six leading German cement producers to be admissible. The company is taking the action to enforce a claim for at least € 114 million, including interest, by 29 commercial clients based on “excessive prices”. The case had already caused a sensation in 2003 when the Federal Cartel Office imposed heavy fines on HeidelbergCement, Schwenk, Lafarge, Dyckerhoff, Cemex (formerly Readymix) and Holcim. However, all the companies, apart from Readymix, have lodged appeals with the Düsseldorf Higher Regional Court against the fines for which a decision is still to be made.

In its interim decision the court also made it clear that the new competition law regulations would apply. These substantially simplify the implementation of claims for compensation but came into force on 1st July 2005 and therefore only after the cartel had already ended. The court stressed that the new regulations only confirmed the former legal position, and thus contradicted the defendants, i.e. the cement producers, who wanted to have their case judged on the basis of the older legal position.

A spokeswoman for the German market leader Heidelberg Cement rejected the accusation. She said that an appeal against the decision of admissibility is being considered and also that, in the company's view, the complaint is unfounded. The proceedings will continue in late summer at the earliest.

The Düsseldorf Regional Court has in fact not finally decided whether the six cement producers must actually pay compensation. In spite of this, the court has already entered new legal territory with this interim judgement. In particular, the role of the CDC was disputed in the verbal negotiations in December. The company had bought the claims from the 29 clients and is now presenting the claims to the court in its own name. The companies received a purchase price of € 100 for this and have contributed an advance payment towards the costs of the proceedings. In return they would receive about 85 % of the proceeds from the court if the CDC were successful with its action. The judge stressed that “there are no objections to the basic validity of the transfer”.

EPA cuts mercury, hydrocarbon emission levels for new cement plants

The U.S. Environmental Protection Agency announced in December 2006 new emission limits for cement kilns, with the hope of cutting annual emissions of mercury and hydrocarbons. According to an EPA statement, “These limits will help protect public health from mercury and total hydrocarbon emissions from portland cement kilns, through amendments to an air toxics standard issued on December 8.”

The amendments set mercury and hydrocarbon levels for all cement kilns built after December 2, 2005, and will reduce annual mercury emissions by about one ton and annual

hydrocarbon emissions by about 1100 tons, according to EPA. Kilns built before that time must meet work practice requirements, such as removing cement kiln dust when it can no longer be recycled and operating kilns properly to ensure complete combustion.

In addition, the amendments prohibit all cement kilns from using fly ash from utility boilers equipped with certain utility mercury emission controls (such as activated carbon injection), unless the cement kiln can demonstrate that use of that fly ash will not increase mercury emissions.

While EPA proposed setting limits for hydrogen chloride for cement kilns, the agency determined they were unnecessary, since such emissions at cement kilns are better than levels considered protective of public health.

In a separate action, EPA announced that it will reconsider the mercury and hydrocarbon emissions for new kilns and take immediate steps to obtain additional information about mercury reductions achieved at kilns equipped with wet scrubbers. The information will include results of field testing at kilns equipped with these scrubbers, and EPA says it will make this information available for public review and comment.

The agency estimates costs for meeting both new emission standards at US\$ 26 million to US\$ 28 million a year five years after the amendments are published in the Federal Register.

Bundesverband Baustoffe – Steine und Erden: Produktion hat zugelegt

Um 5,4 % ist die Produktion in der Baustoff-, Steine- und Erdenindustrie zwischen Januar und September 2006 gegenüber dem gleichen Zeitraum 2005 gewachsen. Insgesamt wird die Produktionstätigkeit nach Einschätzung des Bundesverbands BBS im Jahresdurchschnitt 2006 voraussichtlich um rd. 4 % über dem Wert des Vorjahrs liegen. Während von Januar bis September 2006 die Zahl der Beschäftigten nur noch um 2,5 % abnahm, lag die entsprechende Rate im Jahr 2002 noch bei einem Minus von 8,2 %. Trotz Mehrwertsteuerverhöhung erwartet der Verband, dass die Bauinvestitionen 2007 um 1,5 % bis 2,5 % zunehmen. Die Produktion der Baustoff-, Steine- und Erdenindustrie werde 2007 voraussichtlich um 2 % steigen, sagte BBS-Präsident Dr.-Ing. Gernot Schaefer.

Auch mit der Kapazitätsauslastung ist der BBS seit Jahren erstmals zufrieden. Sie lag zwischen Januar und September 2006 durchschnittlich bei 80 %, die Vergleichszahl für 2005 hatte noch bei 74 % gelegen. In einigen wenigen Fällen sei es aufgrund der hohen Nachfrage und der abgebauten Kapazitäten zu Lieferschwierigkeiten gekommen. Teilweise seien Aufträge auch nicht sofort abgefragt sondern angesammelt worden, sodass durch das Vorgehen der Kunden ein unnötiger Engpass entstanden sei. Ein Problem sind die Strom- und Gaspreise: Die Baustoffbetriebe müssen Mehrkosten von etwa 35 % schultern. „Angesichts der Wettbewerbssituation wurden die Preiserhöhungen bislang nicht an die Kunden weitergegeben“, sagte der BBS-Präsident. Möglicherweise werde aber noch ein Angleich erfolgen, denn diese Zusatzkosten seien „auf Dauer von der Branche nicht zu erbringen“.