

**GLOBAL
COMPETITION
REVIEW****Germany gives green light to damages claim**

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Germany's Higher Regional Court in Düsseldorf has ruled that a damages claim against cement companies is admissible, even though German law has no provisions for class actions.

The decision, announced today, means that Belgian claims company Cartel Damage Claims (CDC), is able to sue six cement companies, which allegedly operated a cartel between 1998 and 2002. In 2003, the companies - Alsen, Dyckerhoff, HeidelbergCement, Lafarge Zement, Readymix and Schwenk Zement - were fined a total of €660 million by Germany's Federal Cartel office in 2003 for their conduct.

In an appeal to the higher regional court, the companies argued that the suit was inadmissible because it was vague stated and the regional court did not have jurisdiction.

Today's decision also prohibits the companies from further appealing against the case's admissibility, though they can still appeal against the prohibition. The case should, in theory, continue in the Düsseldorf regional court on its substance.

Marc Besen, Partner at Clifford Chance in Düsseldorf, says the ruling is an "important step" in the case. "Whether the claim is justified is another matter," he says. "The really major steps are still ahead."

CDC purchases claims from companies that have suffered financial damage because of anti-competitive activity, and then pays the legal and administrative costs of an action. In this case, it has purchased the claims of 36 cement companies, allegedly damaged by the cartel. Under its agreement with the companies, CDC is entitled to a percentage of the damages (believed to be 20 per cent) awarded. The company is seeking €113 million in damages, which represents an estimate of the actual damages incurred by the 36 companies.

Because class actions do not exist in Germany, and individual companies are often dissuaded from bringing claims because of the high costs of litigation, sources say that purchasing claims is the only way to get these sorts of cases heard.

Christian Bahr, partner at Lovells LLP in Brussels, says the case could have a significant impact in Germany, opening the way for more cases to be brought in the future. "There will likely be more scope for damages companies in the market," he says. "A number of companies and lawyers are awaiting the outcome of the case."

But the case is likely to take years. With the potential for further appeals and delays, it may still be some time before similar claims are commonplace.

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