

Dyckerhoff disputes right of appeal in cement cartel damages claim

By Lewis Crofts

Dyckerhoff, one of the firms subject to a damage claim against a German cement cartel, has taken steps at Germany's Federal Supreme Court to challenge the fact that a judgment on admissibility from a leading regional court didn't grant the companies a right of appeal.

The Higher Regional Court in Duesseldorf ruled on 14 May this year that a bundled 113 million euro claim by Belgian firm Cartel Damages Claims on behalf of 29 cement purchasers was admissible, allowing proceedings on the substance to advance.

However, what is now disputed is the section of the higher court's decision which explicitly ruled out the cement producers' right to appeal to the Federal Supreme Court.

Dyckerhoff has decided to take up this issue and has lodged a case with the 'Bundesgerichtshof', Germany's Federal Supreme Court, since the issue is of "fundamental significance", according to a spokesperson.

On expiry of the appeal deadline on 30 June, the other five cement firms, which include Cemex, Lafarge and Holcim, are understood to have declined to take similar steps at the Supreme Court.

The court now allows Dyckerhoff another month to submit the grounds for its appeal.

If the company chooses to pursue its appeal to the end, this decision may give the Bundesgerichtshof the chance to pass comment on the case more broadly, as well as on concepts of admissibility and standing which have so far been raised.

In the meantime, the higher regional court's prior ruling on admissibility becomes binding on five firms, in principle allowing the regional court to continue with proceedings on the substance.

However, the (lower) regional court has stated that it would most likely stay proceedings until a final decision from the Bundesgerichtshof.

The question now arises whether the Supreme Court will choose to accept the appeal and then re-examine the issue of admissibility as regards possible claims against Dyckerhoff.

The damages action itself stems from a Bundeskartellamt decision in 2003 to fine cement companies around 660 million euros for price-fixing.