

CARTEL DAMAGE CLAIMS

- CDC -

Press Release

First Hearing into the Action for Antitrust Damages Brought by CDC Hydrogen Peroxide SA Against Members of the Hydrogen Peroxide Cartel Before the Regional Court of Dortmund on 16 December 2010

Brussels, 10 December 2010 – The first date for conciliation and hearing into the action for damages brought by CDC Hydrogen Peroxide SA ('CDC HP') against five members of the Europe-wide hydrogen peroxide cartel before the Second Chamber for Commercial Matters of the Regional Court of Dortmund (Case 13 O 23/09 [Kart]) is scheduled for 16 December 2010 at 10:00 o'clock. The Regional Court of Dortmund (*Landgericht Dortmund*) is located at Kaiserstrasse 34, 44135 Dortmund, Germany. The case concerns one of the largest claims resulting from a violation of antitrust law lodged before a court in the European Union so far.

CDC HP represented by the law firm Osborne Clarke has filed the lawsuit in the Regional Court on 16 March 2009. Named as defendants are the following companies:

- Akzo Nobel NV, Amsterdam,
- Solvay SA/NV, Brussels,
- Kemira Oyj, Helsinki,
- Arkema France SA (formerly Arkema SA), Paris, and
- FMC Foret SA, Sant Cugat del Vallés (Barcelona).

The action against co-defendant Evonik Degussa GmbH, Essen, has been withdrawn by CDC HP in autumn 2009.

The action encompasses claims on access to information as well as damage claims. According to the European Commission's Decision *Hydrogen Peroxide and Perborate* dated 3 May 2006 (Case COMP/F/38.620), the defendants together with other companies participated in an illegal cartel on the European hydrogen peroxide market at least between 31 January 1994 and 31 December 2000. The practices of the cartel comprised price-fixing, output limitation and sharing of markets and customers in the whole territory of the European Economic Area. The cartel resulted in considerable losses on the part of the purchasers. 32 affected companies from the European pulp and paper industry, which used hydrogen peroxide as a bleaching agent during the cartel period, have sold and assigned their cartel-related damage claims to CDC HP.

On the Private Enforcement of Antitrust Damage Claims

The European Court of Justice has repeatedly held that any individual can claim damages for the loss caused by an infringement of EU competition law. Hence, the Commission has stressed the need to achieve an effective EU-wide minimum standard for the enforcement of antitrust damage claims. The European Parliament appreciates this initiative. Victims of anticompetitive behaviour shall be fully compensated.

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German courts have already awarded antitrust damages to purchasers of vitamins, ready-mix concrete and carbonless paper. The prices charged for these goods were significantly above the prices which would have prevailed in case of effective and undistorted competition. Germany's Federal Cartel Office assumes that the median cartel overcharge amounts to around 20 percent of the cartel price, in international cases even above 30 percent. The European Commission estimates that the total damages caused by cartels in Europe amount to approximately € 25 to 69 billion annually.

On CDC Cartel Damage Claims

CDC HP is a company of the Brussels-based CDC Cartel Damage Claims group ('CDC'). CDC is specialised in the purchase, the preparation and the enforcement of damage claims resulting from the infringement of antitrust law. CDC assesses the effects of anticompetitive behaviour on the prices actually paid in the market in question, and enforces damage claims in its own name and on its own account against cartel members Europe-wide.

In Germany, the Federal Council (*Bundesrat*), the Federal Ministry of Justice and the Federal Cartel Office consider CDC's approach of bundling the damage claims of a multitude of companies by means of assignment as an '*efficient approach on the basis of the law in force*'. In this way it was possible to overcome the obstacles to the enforcement of antitrust damage claims, which have been observed in practice by both the European Commission and the Federal Cartel Office, irrespective of the introduction of new procedural tools in Europe and particularly outside the often criticised US-style class action. CDC's collective approach results in synergies in the complex analysis of the cartel-related damage as well as in the enforcement of the corresponding claims in and out-of-court.

CDC has significant experience in this field. For example, CDC Cartel Damage Claims SA, an affiliate of CDC HP, has already brought a damage action against the members of the German cement cartel. The damage claims purchased from 36 companies using cement amount to more than € 170 million (plus interest). On 7 April 2009, Germany's Federal Court of Justice (*Bundesgerichtshof*), in accordance with the lower courts, ultimately upheld the admissibility of this action. The proceedings in the cement case continue before the Regional Court of Düsseldorf (Case 37 O 200/09 [Kart]). The next hearing is scheduled for 26 May 2011. CDC is currently also in the process of preparing additional cases.

For any further information, please refer to our website www.carteldamageclaims.com or contact Dr Till Schreiber. We further refer to our Press Release dated 23 April 2009.

**CDC Hydrogen Peroxide SA
Avenue Louise 475
B-1050 Brussels
Phone +32 (0) 2 213 49 20
Fax +32 (0) 2 213 49 21
mail@carteldamageclaims.com**