

CARTEL DAMAGE CLAIMS

- CDC -

Press Release

CDC achieves court victory in Hydrogen Peroxide Cartel litigation in Finland

Brussels, 17 July 2013 – On 4 July 2013, the Helsinki District Court in Finland has rendered an interlocutory judgment in the landmark Hydrogen Peroxide Cartel litigation.

The case concerns an action brought by CDC Hydrogen Peroxide SA ('CDC HP') in April 2011 against Kemira Oyj ('Kemira') for damages resulting from Kemira's participation in the European Hydrogen Peroxide Cartel. According to the findings of the European Commission in decision COMP/38.620 of 3 May 2006 – *Hydrogen Peroxide*, the cartel members had fixed and monitored target prices, allocated market shares and customers, exchanged confidential information and limited production.

Prior to the filing of the action, two Finnish pulp and paper companies have sold their damage claims resulting from the Hydrogen Peroxide Cartel as regards hydrogen peroxide purchased from Kemira to CDC HP. CDC HP enforces these claims under its own name and on its own account and risk, using its specific technical and economical know-how in relation to the quantification of cartel-related damages in the European hydrogen peroxide market.

The interlocutory judgment of the Helsinki District Court deals with a number of preliminary questions raised by Kemira. The Court rejected all Kemira's preliminary pleas on which the court ruled in this judgment, confirming (i) its jurisdiction over the matter, (ii) that the damage claims are not time barred in light of the limitation periods commencing by knowledge, and (iii) the validity of the claims transfer.

Firstly, the Court concluded that CDC HP's claims are not arising out of the supply agreements between Kemira and the pulp and paper companies, i.e. confirming the tortious nature of cartel damage claims. Based on the evidence presented, the court concluded that these claims are not subject to contractual arbitration clauses contained in supply agreements: As the cartel was secret, the parties did not explicitly agree that the arbitration clauses would also cover possible claims based on competition law infringements.

Secondly, the Court dealt with the applicable limitation periods. It concluded that the limitation periods based on knowledge did not start prior to the date of adoption of the fining decision by the European Commission on 3 May 2006. The Court thus rebutted the argument that the limitation period started prior to that date, and particularly held that knowledge could not be presumed on the basis of price increase announcements by the cartel members or press articles on the investigation, including a stock exchange release of Kemira confirming the receipt of a statement of objections.

Thirdly, the Court confirmed the validity of the transfer of claims to CDC HP. The damaged companies had primarily tried to settle the claims with Kemira out of court. After the talks had failed, they decided to sell the claims to CDC HP which, due to its particular know how and market knowledge, was in view of the companies better placed to successfully enforce the claims. The Court did not therefore see grounds to conclude that the transfer of the claims would amount to a 'sham transaction'.

As the Court has not granted Kemira a right to appeal the interlocutory judgment, the case will now continue on the merits and the quantum of the claims.

Patrik Lindfors and Teemu Taxell, partners at the law firm Lindfors & Co in Helsinki, representing CDC HP in this matter, see the judgment as an important landmark in the private enforcement of competition law in Finland in general. The judgment is the first one rendered in the several cartel damages cases pending at the Helsinki District Court and is likely to have precedential value in future cartel damages decisions and cases in Finland.

In the opinion of the CDC group, the judgment is also relevant for current and future damage actions outside Finland. It convincingly rebuts a number of procedural arguments regularly brought forward by cartel members in the context of private damage actions. It thus confirms the approach recently taken by courts in other EU countries, namely the Netherlands, Austria, Spain, Germany and the United Kingdom.