

CARTEL DAMAGE CLAIMS

- CDC -

Press Release

Action concerning German cement cartel dismissed by first instance court

Brussels, 19 December 2013 – On 17 December 2013, the Regional Court ('Landgericht') of Düsseldorf dismissed the action brought by CDC Cartel Damage Claims SA (CDC SA) in August 2005 against Cemex, Dyckerhoff, Lafarge, Schwenk Zement, HeidelbergCement and Holcim for damages resulting from their participation in the German cement cartel (see [here](#)).

In 2003, the Federal Cartel Office imposed fines on the defendants for participating in market-sharing agreements and other cartel practices which together covered the entire territory of Germany from the early 1990s until 2002. The Higher Regional Court ('Oberlandesgericht') of Düsseldorf widely confirmed these findings in June 2009 after 36 days of trial, a hearing of about 40 witnesses, and a specific expert opinion on the economic effects of the cartel (see the court's [press release of 29 June 2009](#)). That judgment was ultimately upheld by the Federal Court of Justice ('Bundesgerichtshof') in February 2013 (see [here](#)).

It has been particularly established in the administrative proceedings that the cartel members generated substantial profits by their illegal practices. The Higher Regional Court explicitly refrained from skimming off these profits in view of private damages claimed by third parties.

The Regional Court of Düsseldorf did not express itself on the merits of the damage claims and the quantum, but dismissed the action due to assumed invalidity of the transfers of claims by 36 purchasers of cement to CDC SA.

According to the Regional Court, some transfers of claims fell within the scope of the German Act on the Provision of Legal Advice ('Rechtsberatungsgesetz'). These claim transfers took place prior to the registration of CDC SA as a provider of legal services. They therefore allegedly infringed the obligations under that Act. This Act has in the meantime been replaced by the more lenient Act on the Provision of Legal Services ('Rechtsdienstleistungsgesetz'). Comparably extensive rules regarding the provision of legal advice scarcely exist in any other EU Member State.

The transfers of claims which took place subsequent of the registration of CDC SA as a legal service provider did, according to the Regional Court, result in an uneven distribution of cost risks to the detriment of the defendants. In the opinion of the Regional Court, this violated public morals. The court put into question the capacity of CDC SA to cover costs awarded to the defendants. In contrast, the same Regional Court found in 2005 that the economic situation of CDC SA would not be seriously jeopardised if it had to bear the costs of litigation.

Overall, the reasoning of the Regional Court is focused on the particularities of the individual case. It contrasts with the recent judgment rendered by the Helsinki District Court which has confirmed the validity of the transfer of damage claims to another company of the CDC group. The Helsinki court explicitly rebutted arguments that the transfer amounted to a 'sham transaction' (see [CDC press release of 17 July 2013](#)).

CDC SA and its lawyers from law firm Oppenländer Rechtsanwälte are analysing the judgment. It is most likely that CDC SA will appeal the judgment to the Higher Regional Court in Düsseldorf.

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