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JUDGMENT

DISTRICT COURT OF AMSTERDAM
Private Law Division

Case number / Cause-list number: C/13/500953 / HA ZA 11-2560

Judgment in the application proceedings, dated 4 June 2014

in the matter of

CDC PROJECT 13 SA,
a public limited company incorporated under Belgian law,
with its registered office in Brussels (Belgium),
Claimant in the main action,
Respondent in the (conditional) application proceedings,
lawyer: *mr*. M.H.J. van Maanen, practising in The Hague,

v.

1. **AKZO NOBEL N.V.,**
   a public limited company,
   with its registered office in Amsterdam,
2. **EKA CHEMICALS AB,**
   a company incorporated under Swedish law,
   with its registered office in Bohus (Sweden),
   Defendants in the main action,
   Applicants in the (conditional) application proceedings,
   lawyer: *mr*. J.S. Kortmann, practising in Amsterdam,
3. **KEMIRA CHEMICALS OY,**
   a company incorporated under Finnish law,
   with its registered office in Helsinki (Finland),
   Defendant in the main action,
   Applicant in the (conditional) application proceedings,
   lawyer: *mr*. A. Knigge, practising in Amsterdam,

The parties will hereinafter be referred to as CDC, Akzo, Eka and Kemira. The defendants will be jointly referred as Akzo et al.

1. The further course of the proceedings in the (conditional) application proceedings

1.1 The further course of the proceedings is evident from:
- the interlocutory judgment in the application proceedings, dated 19 December 2012 (hereinafter: the "Interlocutory Judgment"), with the procedural documents it mentions;
- Akzo's and Eka's statement in the application proceedings on jurisdiction, dated 27 February 2013, with exhibits;

- Kemira's statement commenting on the application proceedings concerning jurisdiction, dated 27 February 2013, with exhibits;
- CDC's statement regarding the application proceedings concerning jurisdiction, dated 24 April 2013, with exhibits;
- CDC's statement regarding the application proceedings concerning jurisdiction, dated 8 May 2013, with one exhibit;
- Akzo's and Eka's statement commenting on exhibits, dated 5 June 2013;
- Kemira's statement commenting on exhibits, dated 5 June 2013.

1.2. The main action and the application proceedings between CDC and Arkema France S.A. were removed from the cause-list at the joint request of these parties. This judgment will not, therefore, be delivered between CDC and Arkema France S.A.

1.3. Finally, a date was scheduled for judgment in the application proceedings between CDC and Akzo et al.

2. The (further) assessment of the applications

2.1. In the context of the procedural issues raised, the Court proceeds from the following facts, which have been argued by one party and not contested, or not on sufficiently reasoned grounds, by the other party:

2.1.1. Eka and Kemira are manufacturers of sodium chlorate. Akzo is Eka's parent company. Akzo does not actively supply sodium chlorate, nor has it done so in the past.

2.1.2. Akzo et al. and five other legal entities are the addressees of the Decision of the European Commission (hereinafter: the "**Commission**") dated 11 June 2008 (hereinafter: the "**Decision**") in which the Commission concluded that (among others) Akzo et al. had infringed Article 81 of the EC Treaty (now Article 101 of the Treaty on the Functioning of the European Union) and Article 53 of the EEA Agreement by taking part in a complex of agreements and concerted practices (hereinafter: the "**Cartel**") with a view to allocating sales volumes, fixing prices, exchanging commercially sensitive information on prices and sales volumes and monitoring the execution of the anticompetitive arrangements for sodium chlorate in the EEA market in the period from 21 September 1994 to 9 February 2000. The Commission imposed financial penalties on Akzo et al., among others, which penalties were later (partially) cancelled.

2.1.3. Akzo et al. did not appeal against the Decision.

2.1.4. A large number of purchasers of sodium chlorate (hereinafter: the "**Customers**") have assigned their claims for damages against participants in the Cartel to CDC. The Customers have their registered offices in various European countries and their production locations in Sweden, Finland, Norway and Spain, among other places.

Akzo's and Eka's objection to the substance of CDC's statement

2.2. Akzo and Eka object to the substance of the statement filed by CDC on 24 April 2013. Their objection specifically takes issue with chapters II.A and II.B of that statement. There, according to Akzo and Eka, CDC (again) discusses topics that were verbally discussed at length during the hearing in the application proceedings, but the Interlocutory Judgment merely offered the parties the opportunity to explain the criterion for interpreting

agreements in accordance with the applicable law. They therefore ask this Court to disregard chapters II.A and II.B.

2.3. The objection is dismissed. The objection should have been brought to the attention of the cause-list judge immediately. Akzo and Eka failed to do so. Moreover, it has not been asserted, nor is there any evidence, that CDC put forward more or different submissions in the contested statement than were discussed during the hearing in the application proceedings. Given that there is also a lack of interest, the objection does not require any further discussion.

furthermore in the application proceedings concerning jurisdiction

2.4. In the application proceedings concerning jurisdiction the question has been raised as to whether a Dutch court has jurisdiction to hear the claims in the main action. In this regard Akzo et al. has contested the jurisdiction of the Dutch court on the grounds of the Brussels I Regulation and moreover, each of the parties have individually invoked numerous choice of forum and arbitration clauses agreed in their individual relationships with the Customers. According to Akzo et al. these clauses, which use standard wording that is customary commercial transactions (see [3.1] of the Interlocutory Judgment), preclude a Dutch court from having jurisdiction to hear the dispute in the main action.

2.5. CDC bases its claim on the following. Pursuant to the Decision, it has been established that Akzo, Eka and Kemira, all of them addressees of the Decision, infringed the cartel prohibition. The mere fact that they took part in one and the same continuous prohibited practice (infringement of the cartel prohibition) means that, on the basis of European or national law, each of them acted unlawfully towards the Customers and is jointly and severally liable for the total damage sustained by each of the Customers as a result of the Cartel and/or the fact that it was maintained.

jurisdiction in relation to Akzo

2.6. Akzo has a place of business in Amsterdam. This Court therefore has jurisdiction to hear the claim against Akzo (Article 2(1) of the Brussels I Regulation) unless this Court must decline jurisdiction due to the choice of forum and arbitration clauses (see below).

jurisdiction in relation to Eka and Kemira

2.7. Eka and Kemira do not have a place of business in the Netherlands, but rather in Sweden and Finland respectively.

2.8. If there is more than one defendant in the same set of proceedings, the defendants may be summonsed before the court where one of them is domiciled, provided the claims against the various defendants are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings (Article 6(1) of the Brussels I Regulation). CDC has based the jurisdiction of the Dutch courts in relation to Eka and Kemira on Article 6(1) of the Brussels I Regulation, referring to Akzo, which has a place of business here, as the 'anchor defendant'.

2.9. Article 6(1) of the Brussels I Regulation sets the condition that there must be a close connection (within the meaning of that provision) between the *claims* instituted against the various defendants. In contrast to what Akzo et al. argue, it is not required (provided that one defendant has a place of business in the territorial jurisdiction of the court before which

the case is brought) that the (other) parties, or the claims as such, have a close connection with the Netherlands or with the Dutch legal sphere.

2.10. It follows from the judgments of the European Court of Justice that, in answering the question of whether the various claims instituted before that court are related and whether hearing them separately would entail a risk of irreconcilable judgments, the national courts must give consideration to all necessary elements of the file (cf. ECJ 11 October 2007, case C-98/06 (*Freeport v Arnoldsson*) at [41], and ECJ 1 December 2011, case C-145/10 (*Painer v Standard Verlags GmbH*) at [83]). More specifically, decisions cannot be deemed to be irreconcilable within the meaning of Article 6(1) of the Brussels I Regulation merely on the grounds of some divergence between the decisions on the dispute; there is only a risk of irreconcilable decisions if the divergence arises in the context of the same situation of both fact and law (cf. ECJ 13 July 2006, case C-539/03 (*Roche Nederland v Primus*) at [26], ECH 11 October 2007, case C-98/06 (*Freeport v Arnoldsson*) at [40] and ECJ 1 December 2011, case C-145/10 (*Painer v Standard Verlags GmbH*) at [79]).

2.11. In the opinion of this Court, in the present case there is a close connection, within the meaning of Article 6(1) of the Brussels I Regulation, between the claims filed against the various defendants.

2.12. With regard to, on the one hand, CDC's claim against Akzo and, on the other hand, the claims against the other defendants, this Court finds for now that, in contrast to what Eka and Kemira argue, they involve the same situation of fact. In essence, CDC bases its claim on market distortion which, in its view, leads to all the asserted damage in relation to the purchase of sodium chlorate, regardless of how and from which supplier the sodium chlorate was bought.

Akzo et al., on the other hand, emphasise specific deliveries in every actual relationship between supplier and customer, and they are of the opinion that these specific deliveries (which, according to CDC, were made at excessive prices) led to the asserted damage.

For the present this Court is of the opinion that CDC has sufficiently clarified the asserted market distortion to be able to rule at this stage that the claims are based on the same situation of fact. As CDC has sufficiently clarified for the present, Eka and Kemira took part in the same market distortion and they always knew, by the very nature of the matter, that the other Cartel members were doing the same. The fact that Akzo itself did not supply sodium chlorate, and Eka and Kemira did, does not alter the foregoing. After all, CDC has also based its claim against Akzo on the same situation of fact (market distortion). For the present, in view of this basis of CDC's claim, Akzo et al. have made insufficient submissions for it to be assumed that specific circumstances in the individual delivery relationships between supplier and Customer will be of decisive importance to the assessment of the main action.

2.13. Furthermore, in the opinion of this Court, CDC has based its claims against the various defendants on the same situation of law: according to CDC, on the grounds of both European and national law each Cartel participant is jointly and severally liable under civil law for the damage caused by the Cartel to each of the Customers, regardless of the particular acts carried out by the infringer or its share in the market in which the cartel infringement took place. Akzo et al. counter by submitting that (according to the European Commission as well) Akzo did not take part in the Cartel, that for Akzo to be liable under civil law more is required than its liability under competition law for the infringement committed by Eka, that the position of Akzo as the parent company is fundamentally different to the position of Eka and Kemira, which did take part in the Cartel, and that different law applies to each of the

individual claims against Akzo, Eka and Kemira. This Court does not concur with these arguments of Akzo et al. In the provisional opinion of this Court, the claims in the main action against all defendants concern the question of the civil-law consequences of the infringement established by the European Commission in its Decision and the resulting liability of the Cartel under Community competition law. For the present, this Court does concede that the position of Akzo et al., which is the parent company of Eka, among others, (according to the Decision) cannot automatically be equated to that of Eka and Kemira. For the time being, however, the assessment in the main action will focus on the market distortion submitted by CDC (together with the nature and extent of its consequences). As CDC has sufficiently explained in the context of these application proceedings, the addressees of the Decision must be deemed to have committed the same infringement, the consequences of which, in the provisional opinion of this Court, must to a significant extent be assessed under the same law (which law is a question for later and which the parties have not yet discussed). For this reason it must be assumed that, for the time being, the matter involves the same situation of law. In view of the foregoing, the circumstance that (in assessing the alleged damage) consideration may have to be given to different legal systems (Akzo et al. has made this submission and CDC, in the alternative, has concurred) does not, for the time being, alter the fact that the same situation of law must be assumed, as is required for a close connection to exist within the meaning of Article 6 of the Brussels I Regulation.

2.14. In addition, this Court considers it important that, if the claims are heard separately by different national courts, then, on the basis of the same body of facts (put briefly, the alleged market distortion) and, as this Court assumes for the time being, on the grounds of CDC's sufficiently substantiated submissions, each of those individual courts will have to decide, (largely) applying the same rules of law, whether the defendants acted unlawfully towards the Customers. If they answer this question in the affirmative, each of these individual courts would have to assess the total damage sustained by each of those Customers as a result of the existence of the Cartel. This would lead to a risk of irreconcilable decisions. In this connection CDC has pointed out that, if this Court were to decline jurisdiction, in assessing the claims the various national courts would find themselves confronted with the same ‘preliminary questions’ regarding the establishment of the facts, the application of European law, the joint and several liability submitted by CDC (CDC holds each defendant severally liable for all damage sustained by the Customers in connection with the alleged market distortion) and the recourse that is the subject of the applications for third parties to be added to the action. All these preliminary questions may well be answered differently, resulting in irreconcilable decisions. It is therefore expedient for the claims to be heard and determined together. The foregoing means that, in the provisional opinion of this Court, the risk of irreconcilable decisions is sufficient to assume in this case that, on the grounds of Article 6(1) of the Brussels I Regulation, this Court has jurisdiction to hear CDC's claims.

2.15. This Court defers to Akzo et al.'s opinion that the cultures of different countries can differ to such an extent that, insofar as foreign law is applicable, this Court might not always employ the applicable law in the same way as a court of the country where that law is applicable. However, this possibility, which will be less likely to occur in accordance with the extent to which the parties inform the Court in simple, clear and objective terms about the applicable law and the use of that law in the jurisdiction concerned, arises from the system of Article 6(1) of the Brussels I Regulation and, in view of the foregoing, it is insufficient for a different finding to be made about the jurisdiction of this Court on the basis of Article 6(1) of the Brussels I Regulation.

2.16. This Court does not agree with Eka's and Kemira's defence that they could not foresee that they might be summonsed to appear before a Dutch court. In view of the nature of the practice of which they are accused (participating in the Cartel referred to in the Decision), it must have been completely foreseeable for each of them that they could be summonsed before a court in a Member State in which one of the other addressees of the Decision had a business address. In this regard the Court takes into consideration CDC's submission, which has not, for the present, been sufficiently contested, that in the market it has always been sufficiently well known that Akzo is Eka's parent company. In particular, CDC submits that the name AkzoNobel appears on Eka's invoices above the name Eka.

2.17. It also follows from the foregoing that it cannot be said, as Kemira has submitted, that CDC has only involved Akzo in the present proceedings to remove Kemira from the jurisdiction of the court that would be competent (pursuant to Article 6(2) Brussels I Regulation),.

2.18. The final conclusion in the application proceedings concerning jurisdiction is that this Court has jurisdiction in relation to Akzo et al. (save for the choice of forum and arbitration clauses - see below) to hear the claims in the main action.

the choice of forum and arbitration clauses

2.19. There is an exception to the basic premise that a Dutch court has jurisdiction if, pursuant to Article 23 of the Brussels I Regulation or Section 1074 of the Dutch Code of Civil Procedure ("**DCCP**"), the parties have designated a court or an arbitration tribunal of a different Member State as the forum with jurisdiction. Article 6(1) of the Brussels I Regulation cannot be invoked against a party that successfully relies on an agreed (exclusive) choice of forum clause (Dutch Supreme Court, 24 September 1999, NJ 2000/552) or arbitration clause. Akzo et al. have invoked choice of forum and arbitration clauses agreed with their respective Customers which, according to them, preclude a Dutch court from having jurisdiction. In the Interlocutory Judgment it was ruled that these clauses had been (lawfully) agreed. CDC has not disputed that, as an assignee, it is, in principle, bound by the choice of forum and arbitration clauses agreed by its assignors. The question now is whether – as submitted by Akzo et al., but contested by CDC, stating reasons – the choice of forum and arbitration clauses also apply to the present case.

2.20. Put briefly, Akzo et al. have submitted that the Customers' claims are covered by these clauses. In this regard they submit that the clauses are broadly formulated and that, because CDC's claims are related to the contractual deliveries, they are covered by the clauses. According to Akzo et al., this is not altered by the fact that these claims are based on infringements of competition law. CDC counters this by submitting that its claims in the main action, which are based on Akzo et al.'s concerted practices in the market, the resulting market distortion and the ensuing damage, are outside the scope of the clauses. According to CDC, the disputes did not arise "on the basis of or in connection with" the purchase agreements concerned.

2.21. First and foremost, according to the case law of the European Court of Justice, a choice of forum clause is governed by the Brussels I Regulation (or the Lugano Convention) (cf. ECJ 3 July 1997, case C-269/95 (*Benincasa v Dentalkit*), at [25] of the judgment), which must be interpreted independently. Regarding choice of forum clauses, Article 23(1) of the Brussels I Regulation requires parties to have designated a court that is to settle any disputes which have arisen or which may arise in connection with a *particular legal relationship*. In its judgment in *Powell Duffryn* (10 March 1992, case C-214/89) (issued under the EEC Brussels Convention, but which is also relevant to the interpretation of the Brussels I Regulation), the

European Court of Justice held that the scope of an agreement conferring jurisdiction must be limited solely to disputes which arise from the legal relationship *in connection with which* the agreement was entered into (para. [31] of the judgment). Its purpose is to avoid a party being taken by surprise by the assignment of jurisdiction to a given forum as regards all disputes which may arise out of its relationship with the other party to the contract and stem from a relationship other than that in connection with which the agreement conferring jurisdiction was made. The requirement that a dispute arise in connection with a particular legal relationship within the meaning of Article 23 of the Brussels I Regulation is satisfied if the forum clause contained in the delivery agreements may be interpreted as referring to the disputes between the supplier and customer as such. The question whether, in the present case, the clause conferring jurisdiction is to be regarded as having such an effect is a question of interpretation which is a matter for the national court to resolve.

2.22. In the Interlocutory Judgment it was held that most of the clauses invoked by Akzo et al. use standard wording that is customary in commercial transactions, i.e. that all disputes "on the basis of or in connection with" the agreement in question must be submitted to the chosen forum. The fact that such a clause is worded broadly does not, however, automatically suffice to refer the matter to the agreed forum or for arbitration. As held above with regard to the choices of forum, and as also follows from the wording of the choice of forum and arbitration clauses, a connection with the agreement is required. Contrary to what Akzo et al. argue, this Court finds that the scope of the choice of forum and arbitration clauses is not so broad that they also cover infringements of competition law (or claims arising from them), which is the basis of the claim against Akzo et al. in the main action. Referring to the Decision, CDC submits that the competition law infringements consisted in the fact that Eka and Kemira distorted the sodium chlorate market by participating in a cartel with a view to dividing up the sodium chlorate market by allocating sales volumes and setting and/or maintaining the prices of the product in the EEA market. CDC submits that the participants in the Cartel also exchanged information to facilitate and/or check on the implementation of the arrangements, and that they had a strategy which consisted of stabilising the sodium chlorate market so that they could ultimately divide up the sales volumes for sodium chlorate among themselves, coordinate the policy on prices to be charged to Customers, and thus maximise the margins. For now, assuming that this accusation is correct, having for the present been sufficiently explained by CDC on the basis of the Decision, this Court finds that it cannot be said that Eka and Kemira, given the wording of the clauses and the business experience that they and their Customers have, were reasonably entitled to conclude from the clauses that disputes about this accusation would have to be submitted to the chosen forum or for arbitration. The fact is that Eka and Kemira could not reasonably have concluded from the clauses that such accusations arose from or were connected with the agreements. For now, given the wording of the clauses, the Customers were not reasonably required to bear in mind that disputes about such (secretive) conduct by their suppliers would have to be settled by the chosen forum or by arbitration. Other than the wording of the clauses, no relevant specific statements were made or actions carried out.

2.23. Akzo et al. counter this argument by submitting that, according to the applicable law, such clauses are deemed to cover the settlement of all disputes between the parties in connection with the agreements, regardless of the legal basis (agreement, unlawful act, deception) or the scope (joint and several liability) of the claim, including all disputes which the parties had not thought of or which they were not required to have borne in mind when they agreed the clause. According to Akzo et al., the scope of such clauses is very wide in Sweden, Finland and Norway and they are also intended for disputes that are more vaguely (indirectly) connected with the business that the parties have done with each other. The scholarly legal opinions submitted by Akzo et al. about the applicable Swedish, Finnish and Norwegian law

confirm Akzo et al.'s position. This Court finds for now, however, that Akzo et al. wrongly conclude from this position that this Court does not have jurisdiction to hear CDC's claims. The fact is that, as outlined above, CDC has accused Akzo et al. of distorting the market, which, in the opinion of this Court, is not connected with the agreements or the resulting deliveries. According to the aforementioned scholarly legal opinions, only disputes that are (directly or indirectly) connected with a particular agreement which includes the clause are submitted to the chosen forum or for arbitration. For now, Akzo et al. have not sufficiently countered CDC's submissions that the Customers who bought sodium chlorate from Eka and Kemira would, if they had not bought it from Eka or Kemira, have bought the same product at the same price (the generally applicable market price which had been fixed by the distortion of the market) from another supplier, and that their damage, for which they are now seeking compensation from Akzo et al., also includes the damage that they sustained because while the Cartel was being maintained they consistently paid other suppliers (also outside the Cartel) a price that was too high. It may be deduced from CDC's explanation, which for now has been sufficiently substantiated, that in these circumstances the identity of the seller/supplier is unimportant, which also applies to products sold at a trade fair. Akzo et al.'s argument that the claims of CDC (the Customers, in fact) in the main action are connected, directly or indirectly, with the supplies agreed with the Customers (merely because in the absence of the supply relationships the Customers would not be Customers) does not, for now, help them either. Against this background, Akzo et al.'s reliance on a decision of the Swedish Supreme Court (NJA 2008, s 120) is also unfounded. The District Court's finding in this regard could have been different if it had been sufficiently explained that the supply contracts were fundamentally relevant to the assessment of the main action. However, no such explanation has been given.

2.24. Given the foregoing, the question as to whether Akzo may rely on the clauses to which Eka is a party requires no further discussion. This also goes for the parties' discussion about the questions as to whether a valid choice of forum clause was agreed between Eka and the Customer [X] and whether, given the European principle of effectiveness, the clauses may be allowed. Given the foregoing, Akzo's and Eka's offer to produce evidence about the validity and the wording of the choice of forum and arbitration clauses is therefore irrelevant to the decision.

2.25. Akzo et al.'s submissions about CDC's business model (buying and enforcing claims) are irrelevant to the decision in the application proceedings.

2.26. The final conclusion regarding the application proceedings concerning jurisdiction is that this District Court has jurisdiction over Akzo et al. and is competent to hear the claim in the main action.

in the (conditional) applications to add third-parties

2.27. Akzo and Eka have, on the condition that this Court declares that it has jurisdiction to hear the claim in the main action, applied for permission to summons the other addressees of the Decision to appear as third parties:

1. Finnish Chemicals Oy (currently called: Kemira Chemicals (Oy), with its registered office in Helsinki (Finland);
2. Erikem Luxembourg SA, with its registered office in Luxembourg (Luxembourg);
3. Arkema France SA, with its registered office in Colombes (France);
4. Ecros SA (formerly: Aragonesas Industrias y Energia SA (U)), with its registered office in Barcelona (Spain);
5. Uralita SA, with its registered office in Madrid (Spain).

2.28. Kemira has, on the condition that this Court declares that it has jurisdiction to hear the claim in the main action, applied for permission to summons the other addressees of the Decision to appear as third parties. This Court understands that the parties concerned are:
1. Akzo;
2. Eka;
3. Erikem Luxembourg SA, with its registered office in Luxembourg (Luxembourg);
4. Arkema France SA, with its registered office in Colombes (France);
5. Uralita SA, with its registered office in Madrid (Spain);
4. Ecros SA (formerly: Aragonesas Industrias y Energia SA (U)), with its registered office in Barcelona (Spain);
5. Elf Aquitaine SA, with its registered office in Courbevoie (France).

2.29. Put briefly, Akzo, Eka and Kemira have (given CDC's submission of joint and several liability and if they are ordered to pay damages to CDC) based their application to add third parties on the submission that they may each claim a contribution from the other addressees of the Decision. For that reason Akzo, Eka and Kemira submit that they have an interest in summonsing the other addressees of the Decision.

2.30. CDC has deferred to the opinion of this Court.

2.31. The condition for adding the third parties has been satisfied. This Court finds that Akzo, Eka and Kemira have sufficiently substantiated their position that the third parties to be added have the obligation towards them to bear, either wholly or in part, any adverse consequences of a judgment against Akzo, Eka and/or Kemira in the main action. Akzo, Eka and Kemira are therefore to be granted permission to add the third parties referred to by them.

in the (conditional) application to consolidate proceedings (section 222(1) DCCP

2.32. Kemira has also (on the condition, as this Court understands, that this Court declares that it has jurisdiction on the basis of Article 6(1) of the Brussels I Regulation) applied to this Court to consolidate the third-party proceedings between it and Erikem Luxembourg SA (Cause-list number 2011/2565) with the main action. In this regard Kemira has argued that the main action and the third-party proceedings against Erikem Luxembourg SA are connected with each other. CDC has deferred to the opinion of this Court.

2.33. The condition for consolidating the proceedings has been satisfied. Kemira has sufficiently substantiated its position that the proceedings between it and Erikem Luxembourg SA (registered with this Court under Cause-list number 2011/2565) are sufficiently connected with the proceedings in the main action. The application to consolidate the proceedings will therefore be allowed.

in the (conditional) application proceedings pursuant to section 118 DCCP

2.34. Akzo and Eka have applied for permission, on the basis of section 118 DCCP, to summons the other addressees of the Decision referred to above to appear in the main action. In this regard they submit (essentially) that, if they are not permitted to do so, their defence against CDC would be unnecessarily impeded. Akzo and Eka submit that they could then have to defend themselves against prejudicial acts which were committed exclusively or principally by third parties without having sufficient information about the actions of those third parties.

2.35. First and foremost, in assessing this claim CDC is free (except in the event of an abuse of the law) to file a claim against those parties which it wishes to sue. Section 118 DCCP provides a (limited) exception to that basic premise. Section 118 DCCP only concerns instances in which

third parties must participate in the proceedings because such participation is required by law. Such participation is required by law if (i) it is prescribed the law, (ii) there are legal relationships which are procedurally indivisible and (iii) the dispute also involves the interests of third parties and it would be pointless to issue a decision in that regard without including their position as well. This third category includes the situation in which a judicial decision would not be enforceable in practice because one or more parties to the legal relationship in suit have not participated in the proceedings and, accordingly, are not bound by the decision issued in it. The mere fact, argued by Akzo and Eka, that a decision in the main action would form the basis for third party proceedings to be issued by Akzo and Eka against the other addressees of the Decision is (also in combination with the possibility that, in presenting their defence in the main action, Akzo and Eka may have less information than they would have had if third parties had participated in the proceedings) is insufficient for this Court to find that participation by those parties is required by law. The fact is that even if the other addressees of the Decision do not participate in the main action, a decision can still be given on the question as to whether Akzo et al. is jointly and severally liable for the damage that CDC claims it has sustained. If in the main action it transpires (as Akzo and Eka have argued) that Akzo and Eka have to defend themselves in relation to actions carried out exclusively or principally by third parties, then there are sufficient procedural possibilities for Akzo and Eka to obtain the information they require and, in the eventuality that they do not obtain that information, that will also, if necessary, be taken into consideration in answering the question as to whether they have sufficiently explained their defence.

2.36. The application to add the other addressees of the Decision to the main action will therefore be denied.

in the application proceedings

2.37. Given the findings made in the various application proceedings, the parties' other submissions in the applications do not require any further assessment.

in the main action

2.38. Akzo and Eka have applied for the main action to be stayed pending the European Court of Justice's response to a request for a preliminary ruling from a German court regarding the applicability of Article 6(1) of the Brussels I Regulation to a case concerning (put briefly) a damages claim arising from an infringement of competition law established by the European Commission. This Court finds that the European Court of Justice's response to this request is not required for the decision regarding the application proceedings concerning jurisdiction. Nor have any submissions been made showing that a decision on the request for a preliminary ruling can be expected soon, particularly since, according to the uncontested submission of Akzo and Eka, the request was only filed with the European Court of Justice by an interlocutory decision of 29 April 2013. The application to stay the main action will therefore be denied.

in the application proceedings

2.39. Given the parties' interests, this Court finds (contrary to the main rule that an appeal may only be filed simultaneously with final judgment (section 337(2) DCCP) that there is reason to allow the parties to file an interim appeal against this judgment.

2.40. As the largely unsuccessful party, Akzo et al. will be ordered, jointly and severally, to pay the costs of the application proceedings which, for CDC, are estimated at EUR 1,130.00 up to today's date (2.5 points x EUR 452.00 tariff).

3. The decision

This Court

regarding the application proceedings concerning jurisdiction

3.1. denies the claims and declares that it has jurisdiction to hear the claims in the main action;

in the (conditional) applications to add third parties

3.2. allows Akzo and Eka to summons:
1. Kemira Chemicals Oy, with its registered office in Helsinki (Finland);
2. Arkema France SA, with its registered office in Colombes (France);
3. Erikem Luxembourg SA, with its registered office in Luxembourg (Luxembourg);
6. Elf Aquitaine SA, with its registered office in Courbevoie (France).
5. Ecros SA (formerly: Aragonesas Industrias y Energia SA (U)), with its registered office in Barcelona (Spain);
4. Uralita SA, with its registered office in Madrid (Spain),

to appear as third parties on **30 July 2014;**

3.3. allows Kemira to summons:
1. Akzo;
2. Eka;
3. Erikem Luxembourg SA, with its registered office in Luxembourg (Luxembourg);
4. Arkema France SA, with its registered office in Colombes (France);
5. Uralita SA, with its registered office in Madrid (Spain);
4. Ecros SA (formerly: Aragonesas Industrias y Energia SA (U)), with its registered office in Barcelona (Spain);
5. Elf Aquitaine SA, with its registered office in Courbevoie (France),

to appear as third parties on **30 July 2014;**

in the (conditional) application to consolidate proceedings

3.4. consolidates the main action with the case, pending before the District Court, with case number / Cause-list number 501013 / HA ZA 11-2565;

in the (conditional) application pursuant to section 118 DCCP

3.5. denies the application;

furthermore in the application proceedings

3.6. orders Akzo et al., jointly and severally, to pay the costs of the application proceedings which, for CDC, are estimated at EUR 1,130.00 up to today's date;

3.7. declares that this judgment is open for appeal;

in the main action

3.8. refers the case to the cause-list of **27 August 2014** for the filing of a statement of defence;

3.9. stays any further decision.

This judgment was delivered by L.S. Frakes, presiding judge, and M.E.M. James-Pater and K.M. van Hassel, judges, and pronounced in open court on 4 June 2014.

In the absence of the presiding judge, this judgment has been signed by the most senior judge.
[signature]

stamped and signed