

CARTEL DAMAGE CLAIMS

- CDC -

Press Release

CDC Cartel Damage Claims files action against members of the hydrogen peroxide cartel

Brussels, 23 April 2009 - On 16 March 2009 Cartel Damage Claims Hydrogen Peroxide SA ("CDC HP") has filed an action against six members of the Europe-wide hydrogen peroxide cartel. This is one of the largest claims resulting from a violation of antitrust law lodged before a European court so far.

The defendants are namely:

- Evonik Degussa GmbH, Essen, Germany,
- Akzo Nobel N.V., Amsterdam, Netherlands,
- Solvay SA/N.V., Brussels, Belgium,
- Kemira Oyj, Helsinki, Finland,
- Arkema SA, Paris, France, and
- FMC Foret SA, Sant Cugat del Vallés (Barcelona), Spain.

The action was filed before the Landgericht Dortmund (Regional Court Dortmund), Germany, with reference number 13 O 23/09 [Kart]. In the proceedings CDC HP is represented by the international law firm Osborne Clarke, Cologne.

The enforced claims result from the violation of European and national competition law by the members of the European hydrogen peroxide cartel. Hydrogen peroxide is a bleaching agent mainly used in the pulp and paper manufacturing industry. The action encompasses claims on access to information as well as damage claims (action by stages).

Prior to the filing of the action, 32 companies from the pulp and paper industry have sold and assigned their cartel-related damage claims resulting from hydrogen peroxide purchases to CDC HP ("Assignors"). These damaged companies have a total of 94 production sites, located in 13 European countries, which purchased hydrogen peroxide during the cartel period. According to Dr. Ulrich Classen, director of CDC HP, *"the case clearly shows the need for an effective private enforcement of cartel-related damage claims in Europe. Against this background the CDC-model has proved to be attractive to companies of all sizes, including large corporations, in particular as CDC bears the entire legal and financial risk of the claims enforcement. We are very confident that our model to recover damages will be successful, not only with regard to the hydrogen peroxide cartel, but also in future cartel cases or cases of abusive conduct."*

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The case is based on the European Commission's decision COMP/F/39.620 – *Hydrogen Peroxide and Perborate* of 3 May 2006.¹ According to the decision the defendant companies together with other companies participated in a cartel in the European hydrogen peroxide market at least between 31 January 1994 and 31 December 2000. In numerous meetings the cartel members fixed (target) prices and monitored their implementation, allocated customers as well as market shares and exchanged commercially important and sensitive information. Pursuant to the Commission, the agreements consisted of a “*complex behaviour having a single economic aim, namely to distort the normal movement of prices.*” The defendants largely acknowledged their participation in the anti-competitive agreements. Furthermore, all defendants except FMC have provided evidence relating to the infringement under the Commission's Leniency Program.

The analysis by CDC HP of the relevant transaction and market data has confirmed that the cartel resulted in an artificial increase of the hydrogen peroxide prices during the entire cartel period. Furthermore, as a result of the artificially high price level at the end of the infringement, the cartel had long-lasting price effects even after its termination. As a consequence, purchasers of hydrogen peroxide sustained significant damages. According to the Commission's officials in charge of the investigation, “*from late 1997 to 1999 the prices for HP [...] doubled. At several meetings the participants welcomed the good degree of implementation of the cartel agreements regarding prices.*”² It can therefore be assumed that the cartel resulted in an artificial price increase of 100 % alone between 1997 and 1999. A preliminary damage scenario by CDC HP indicates that the Assignors suffered financial damages of more than €430 million. The damage amount for which the defendants will be liable will significantly increase by interest as of the first day of the infringement. At the date of lodgement of the claim, the interest already amounted to approximately 50 % of the financial damages. The total amount may further increase if additional companies decide to assign their damage claims to CDC HP. CDC HP has taken provisions regarding a potential extension of the claim.

“*In view of their joint and several liability for the damages caused and in order to comply with their accounting obligations, the defendants will have to set aside significant financial reserves*”, points out Ulrich Classen. “*The Assignors on the other hand, by taking the decision to assign their damage claims to CDC HP, have complied with their obligation to thoroughly assess effective ways of enforcing valuable assets and thus act in the best interest of the companies and their shareholders.*”

On Cartel Damage Claims (“CDC”)

CDC HP is part of the Brussels-based Cartel Damage Claims group (“CDC”). CDC is specialised in the European-wide purchase and enforcement of damage claims resulting from competition law infringements. CDC enforces the claims in its own name and at its own account and risk. The collective approach results in significant synergies in the complex economic analysis of the cartel-related damage as well as in the procedural enforcement of the claims. Thus, CDC provides a model which is based on existing legal concepts and which allows for an effective

¹ Available at <http://ec.europa.eu/competition/antitrust/cases/decisions/38620/en.pdf>. See also press release of the European Commission on its decision in the hydrogen peroxide cartel, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/560&format=HTML&aged=0&language=EN&guiLanguage=en>.

² EC Competition Policy Newsletter 3/2006, page 31, available at http://ec.europa.eu/competition/publications/cpn/cpn2006_3.pdf

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private enforcement of cartel-related damage claims in a different way than the often criticised US-class action system and in the absence of similar procedural tools in Europe.

CDC has significant experience in the enforcement of damage claims resulting from infringements of competition law. For example, CDC has also instituted legal proceedings against the members of the German cement cartel to recover damage claims of a total value of approx. €170 million (plus interest). On 7 April 2009 the German Supreme Court ultimately upheld the admissibility of CDC's damages action (reference number KZR 42/08).³ Also the previous instances had decided in favour of CDC. The case will now be heard with regard to the substance of the claim before the first instance Landgericht (Regional Court) in Düsseldorf, Germany. CDC is currently in the process of preparing additional cases.

On Private Enforcement

Private enforcement of antitrust damage claims is a hot topic in Europe. The European Commission has identified the need to achieve an effective protection of the rights of victims of anticompetitive conduct and has published a White Paper on damages actions for breach of EC competition law in April 2008.⁴ On 26 March 2009 the European Parliament has adopted a resolution which welcomes the Commission's White Paper and stresses the need for a more effective system of private enforcement in Europe.⁵ Accordingly, the aim has to be the full compensation of victims of anticompetitive behaviour.

For any further information, please refer to our website www.carteldamageclaims.com or contact Dr Till Schreiber, Dr Martin Seegers or Volker Abele in Brussels.

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³ See press release of the German Supreme Court, available at <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2009&Sort=3&nr=47698&anz=80&pos=0&Blank=1>

⁴ White Paper on damages actions for breach of the EC antitrust rules, available at http://ec.europa.eu/competition/antitrust/actionsdamages/files_white_paper/whitepaper_en.pdf

⁵ European Parliament resolution of 26 March 2009 on the White Paper on damages actions for breach of the EC antitrust rules, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0187+0+DOC+XML+V0//EN>