

## Press Release

### EU Court sides with Commission and CDC on publication of more detailed version of cartel decision

Brussels, 28 January 2015 – Today, the General Court of the European Union rendered a key judgment on the scope of information contained in decisions published by the Commission.

The judgment concerns an action brought by Akzo Nobel NV, Akzo Chemicals Holding AB and Eka Chemicals AB against the decision of the Commission to publish a more detailed version of its cartel decision of 2 May 2006 in Case COMP/F/38.620. The three companies together with other chemical producers were found to have participated in the European Hydrogen Peroxide Cartel. A first, widely blackened, version of the decision was published in 2007.

The dispute arose following a request by CDC Hydrogen Peroxide SA (CDC) to the Commission for access to the confidential version of the cartel decision. In March 2009, CDC filed a legal action for damages against several members of the Hydrogen Peroxide Cartel with the Regional Court of Dortmund, Germany. Akzo Nobel and its subsidiaries as well as Evonik Degussa challenged the publication of the more detailed non-confidential version before the General Court in Luxembourg. In the proceedings CDC intervened on the side of the Commission.

The Court held that the publication of the new version of the cartel decision does not breach obligations of confidentiality or professional secrecy. It held that the publication describes constituent elements of the infringement. It would allow CDC to “*more easily establish the civil liability*” of cartel members, in particular as regards the scope of damages caused. The Court stressed that the interest of cartel members in the non-disclosure of details of the infringement does not merit protection: The “*applicants cannot legitimately oppose the publication (...) of information revealing the details of their participation in the infringement*” on the ground that “*such publication would expose them to an increased risk of having to bear the consequences, in terms of civil liability, of their participation in that infringement.*”

Further, the Court confirmed that the envisaged publication does not conflict with legitimate expectations of cartel members. The Court also emphasised that commitments under the Leniency Notice “*only*” concern the “*disclosure of documents which were voluntarily submitted by undertakings seeking to benefit from the leniency programme and statements made by those undertakings*”. However, this would not apply in relation to all information voluntarily submitted.

The Court stressed that the Commission enjoys a broad margin of discretion when publishing information. Article 30(2) of Regulation 1/2003 “*does not limit the Commission’s power to publish the full text, or at the very least, a highly detailed version of its decisions, if, resources permitting, it considers it appropriate to do so, subject to the protection of business secrets and other confidential information*”. This would also apply as regards a potential change of its practice. The Court held: “*That conclusion is all the more pertinent in the present case since the publication of detailed information on an infringement of EU law is liable to facilitate the establishment of the civil liability of the undertakings responsible for such an infringement and thereby reinforce the application of EU law in the private sphere.*”



In CDC's view the judgement is highly relevant for current and future damage actions, as it gives guidance on the scope of information that should be contained in cartel decisions published by the Commission.

The judgment is available under following link:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=161841&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=78697>

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