

Press Release

CDC achieves key judgment in the Sodium Chlorate cartel litigation in the Amsterdam District Court

Brussels, 4 June 2014 – Today, the District Court in Amsterdam, the Netherlands, has rendered a key judgment on private damage actions against a pan-European cartel.

The judgment concerns an action brought by a company of the CDC group in May 2011 against Akzo Nobel, Eka Chemicals and Kemira Chemicals Oy for damages resulting from their participation in the European Sodium Chlorate cartel. Following an out-of-court settlement the action against Arkema France had been withdrawn. The action is based on the decision of the European Commission of 11 June 2008 in case COMP/38.695 – Sodium Chlorate which found that the cartel members had fixed prices, had allocated markets and customers, and had engaged in the exchange of confidential information, in violation of the EU cartel prohibition (Article 101 of the Treaty of the Functioning of the European Union) between at least 1994 and 2000. Sodium Chlorate is a chemical mainly used as a bleaching agent by the pulp and paper industry. Previous to the action, CDC had purchased the damage claims from ten European pulp and paper producers.

The Amsterdam judgment provides answers to key procedural questions which arise in the context of “follow-on damage actions” by victims of cartels. In particular, the District Court has confirmed that companies that were found to have participated in a cartel by the Commission can be sued together for damages at the seat of any one of the cartel members, the so-called anchor-defendant. According to the Amsterdam District Court this is also true for parent companies such as Akzo Nobel which are addressees of the Commission decision, as they exercised decisive control over subsidiaries which were directly involved in the cartel meetings.

Furthermore, the Court rejected the argument that it lacked competence due to general jurisdiction and arbitration clauses allegedly contained in the terms and conditions of some supply contracts between the sellers and purchasers of Sodium Chlorate in the cartel period, in particular as the damage claims arose as a consequence of a clandestine market manipulation by all cartel members and not in relation to a contractual relationship.

The argumentation of the Amsterdam District Court convincingly rebuts a number of procedural arguments regularly brought forward by cartel members and confirms the approach recently taken by courts in other EU countries, namely Finland, Austria, and the United Kingdom. In CDC’s view the judgement confirms the judgement of the District Court in The Hague in the Paraffin Wax cartel litigation ([CDC Press Release](#)) and is also highly relevant for current and future damage actions outside the Netherlands. CDC was represented by Martijn van Maanen and Joost Möhlmann of the law firm BarentsKrans, The Hague.

The judgment is publicly available under following link <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2014:3190&keyword=cdc> or via our website www.carteldamageclaims.com

For further information please contact Till Schreiber by telephone +32 (0) 2 213 49 20 or mail at schreiber@carteldamageclaims.com