

German Federal Court of Justice hands down landmark judgment in Cement Cartel Case

Brussels, 12 June 2018 – In a landmark judgment handed down on 12 June 2018 the German Federal Court of Justice provided long awaited legal certainty on a number of key issues regarding the right to compensation in a case involving antitrust infringements, in particular (i) limitation periods, and (ii) the right to obtain interest as of the date the damage occurred. The judgment concerns an action for damages relating to the German Cement Cartel. However, the judgment has much wider implications and is relevant inter alia for damage claims relating to other infringements such as the German Sugar Cartel and the European Trucks Cartel. The judgment confirms the views of CDC Cartel Damage Claims SA ('CDC') which intervened as third party ('Streithelfer') in the proceedings. CDC Cartel Damage Claims SA was represented by Christian Schwade, assisted by Nadine Herrmann and Joachim Lehnhardt of Quinn Emanuel.

The action was brought by Kemmler Beton GmbH ('Kemmler'), a trader of building materials, against HeidelbergCement AG ('Heidelberg'). Kemmler is claiming damages due to prices overcharged for cement in the years 1993 to 2002. During this period Heidelberg had entered into territorial and quota agreements with other cement manufacturers in violation of antitrust law. A fine was therefore imposed by the Federal Cartel Office in 2003. The fine decision became final in 2013 by a decision of the Federal Court of Justice (BGH, decision of 26 February 2013 - KRB 20/12).

In relation to limitation periods the Federal Court of Justice held that the provision of Section 33 (5) of the German Act on Restraints of Competition ('ARC') (now Section 33h (6) ARC) also applies to claims for damages based on cartel violations committed prior to the entry into force of the provision on 1 July 2005 and not yet time-barred at that time. According to this provision the limitation period for a claim for damages shall be suspended if the Federal Cartel Office or the European Commission initiate proceedings against the infringers. Today's judgment confirms the view of the majority of Higher Regional Courts in Germany, namely the Higher Regional Courts of Düsseldorf, Munich and Erfurt and overrules the interpretation of the Higher Regional Court of Karlsruhe. Based on the interpretation of the Higher Regional Court of Karlsruhe, the Regional Court of Mannheim had dismissed the damage action by CDC against Heidelberg as time barred ([see press release of 21 March 2017](#)). The CDC action is currently pending before the Higher Regional Court of Karlsruhe which is expected to schedule an oral hearing now that the Federal Court of Justice has ruled on the applicable limitation provisions. At the time of filing in September 2015, the value of the claim amounted to more than €138 million in damages including interest.

Another important aspect concerns the right to obtain interest on the damage caused by a competition law infringement. The Federal Court of Justice held that prior to the entry into force of § 33 (3) ARC (now § 33a (4) ARC) the claimant has a right to obtain interest of 4% on the damage amount as of the date the damage occurred.

The case number is: KZR 56/16 and the press release of the Federal Court of Justice can be found [here](#).