

Press Release

Sodium Chlorate Cartel: Amsterdam Court of Appeal in landmark judgment rules on limitation periods and confirms validity of assignments

Brussels 4 February 2020 – The Amsterdam Court of Appeal in an important [judgment](#) today ruled that the claims brought by CDC against Kemira Chemicals Oy are not time-barred. The judgment provides additional legal certainty in the field of private antitrust enforcement.

Background

On 31 May 2011, CDC filed an action for damages against Akzo Nobel, EKA Chemicals, Kemira Chemicals and Arkema France before the District Court of Amsterdam. Ten pulp and paper companies with a total of 27 production sites located in nine European countries had previously sold and assigned their claims for damages resulting from the European Sodium Chlorate cartel to CDC. After settlements, CDC pursued damages including interest against the last remaining defendant Kemira Chemicals. Both CDC and Kemira appealed the first instance judgment of 10 May 2017.

Finnish, Swedish and Spanish claims not time-barred

The Court of Appeal considered that the claims governed by Swedish and Spanish law as well as Finnish law (prior to 1 October 1998) are not time-barred. According to the judgment, CDC filed its damage action in line with applicable limitation periods. Based on a detailed assessment of the national laws and the EU law principle of effectiveness, the Court of Appeal notably concluded that limitation periods in follow-on cartel cases cannot start running before the decision of a competition authority becomes final (including appeals). The judgment points to the secret nature of cartels and the economic complexity of assessing cartel damages. Damaged entities should have clarity on the liable cartel members, the scope of the single and continuous infringement and the damage. Notably in cartel cases damaged companies must be able to take notice of the infringement and to duly assess potential claims. The Court of Appeal applies the recent case law of the CJEU in *Cogeco* (Case C-637/17) and stresses that national limitation periods must comply with the EU principle of effectiveness.

Validity of assignments

Further, the Court of Appeal confirmed the validity of the assignments of claims to CDC under Dutch law. It rejected the cross-appeal by Kemira and found that the wording of the assignment agreements is sufficiently clear, precise and substantiated to grant CDC full title over the claims. CDC's full ownership of the claims cannot be put into question.

“The Amsterdam Court of Appeal is the first appeals court to apply the Cogeco principles of the European Court of Justice. The judgment confirms CDC’s model of bundling damage claims Europe-wide.”

– Till Schreiber, Managing Director of CDC

About CDC Cartel Damage Claims

CDC is the first mover and leading company in Europe specialising in corporate claims for damages resulting from infringements of EU and/or national competition law. CDC is exclusively active in the economic analysis, management and enforcement of damage claims relating to competition law infringements and has accomplished unparalleled success in its 18 years of highly specialised activity. CDC has achieved multiple multi-million Euro settlements and landmark judgments in some of the largest antitrust damage actions in the EU.

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