



Press and Information

Court of Justice of the European Union

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Judgment in Case C-352/13

Cartel Damage Claims (CDC) Hydrogen Peroxide SA v Akzo Nobel NV and Others

## **Victims of an unlawful cartel may claim compensation for their loss before the courts where one of the participants in the infringement is domiciled**

*A victim's withdrawal of its action against the sole participant domiciled in the same Member State as the court seised does not, in principle, affect the jurisdiction of that court to hear and determine actions brought against the other participants*

The Brussels I Regulation<sup>1</sup> provides that persons domiciled in a Member State must, as a rule, be sued in the courts of that Member State. Nevertheless, when there are several defendants, a person may also be sued in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings in different Member States.

The present dispute follows a decision of 3 May 2006 by which the Commission found that several companies supplying hydrogen peroxide and sodium perborate had participated in a cartel contrary to EU competition rules, by reason of which some of those companies were ordered to pay fines.<sup>2</sup>

Cartel Damage Claims Hydrogen Peroxide SA (CDC) is a Belgian company to which a number of companies operating in the industrial pulp and paper processing industry transferred their rights to damages suffered in connection with that cartel.

In March 2009, CDC brought an action for damages before the Landgericht Dortmund (Regional Court, Dortmund, Germany) against six of the companies<sup>3</sup> fined by the Commission. As those companies were established in various Member States, CDC stated in its application that the German courts had jurisdiction to rule in respect of all the defendants because one of them, Evonik Degussa GmbH, had its registered office in Germany.

In September 2009, CDC withdrew its action against Evonik Degussa, following an out-of-court settlement.

The other companies which are defendants in the action brought by CDC challenge the international jurisdiction of the German court. They argue that the supply contracts concluded with the companies which were wronged contained jurisdiction clauses designating the courts having jurisdiction in the event of disputes arising from those contracts. Harboured doubts as to whether it had international jurisdiction, the Landgericht Dortmund referred to the Court of Justice several questions concerning the interpretation of the Brussels I Regulation.

In today's judgment, the Court finds, in the first place, that the Commission's decision of 3 May 2006 does not determine the requirements for potentially holding the companies which participated in the cartel at issue liable in tort, since this is to be determined by the national law of each

<sup>1</sup> Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

<sup>2</sup> Commission Decision C(2006) 1766 final of 3 May 2006 in Case COMP/F/38.620 – Hydrogen Peroxide and Perborate (OJ 2006 L 353, p. 54).

<sup>3</sup> Namely, Evonik Degussa GmbH (Germany), Akzo Nobel NV (Netherlands), Solvay SA (Belgium), Kemira Oyj (Finland), Arkema France SA (France) and FMC Foret SA (Spain).

Member State. The Court adds that, since the various national laws may differ on that point, there is a risk of irreconcilable judgments if the victim of the cartel were to bring actions before the courts of various Member States. In that regard, the Court states that, **in the event of such a risk, the regulation provides for an action to be brought before the courts of one single Member State against several defendants domiciled in various Member States.** Furthermore, companies which have participated in an unlawful cartel must expect to be sued in the courts of a Member State in which one of them is domiciled.

On the same point, the Court finds that **an applicant's withdrawal of its action against the sole co-defendant domiciled in the same Member State does not, in principle, affect its jurisdiction to hear and determine actions brought against the other co-defendants.** Nevertheless, the provision of the regulation which allows several defendants to be sued before the same courts must not be abused. In this instance, that would be the case if it were found that CDC and Evonik Degussa had knowingly delayed the conclusion of their out-of-court settlement until an action had been brought for the sole purpose of the German courts having jurisdiction over the other participants in the infringement.

In the second place, the Court makes clear that a **person wronged by an unlawful cartel has the alternative of bringing its action** for damages against several companies having participated in the infringement **either before the courts of the place where the cartel itself was concluded, or one specific agreement which implied the existence of the cartel, or before the courts of the place where the loss arose.** That place is identifiable only for each alleged victim taken individually and is located, in general, at that victim's registered office. The Court emphasises that the courts thus identified have jurisdiction to hear an action brought either against any one of the participants in the cartel or against several of the participating companies. However, since the jurisdiction of those courts is limited to the loss suffered by the undertaking whose registered office is located in its jurisdiction, an applicant such as CDC, who has counted on those courts having jurisdiction and consolidated several undertakings' potential claims for damages, would need to bring separate actions for the loss suffered by each of those undertakings before the courts with jurisdiction for their respective registered offices.

In the third place, the Court holds that **the court seised of a matter is, in principle, bound by a jurisdiction clause** which derogates from the application of the specific provisions of the regulation concerning the case of several defendants and their liability in tort, delict or quasi-delict. However, the Court makes clear that **disputes concerning the payment of damages arising from an unlawful cartel can be encompassed by jurisdiction clauses only if the victim has consented thereto.**

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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