



Press and Information

Court of Justice of the European Union

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Judgment in Case C-557/12

Kone AG and Others v ÖBB-Infrastruktur AG

Where a cartel has the effect of leading competitors to raise their prices, the members of the cartel may be held liable for the loss caused as a result

In such a case, the victim may claim compensation even in the absence of any contractual link with the members of the cartel

EU law prohibits anti-competitive agreements, decisions and concerted practices. In that context, undertakings that participate in a cartel are responsible for the loss that other parties may sustain as a result of that infringement of competition law.

In 2007, the Commission imposed on the Kone, Otis, Schindler and ThyssenKrupp groups a fine totalling €992 million for their participation in cartels involving the installation and maintenance of elevators and escalators in Belgium, Germany, Luxembourg and the Netherlands.¹

In 2008, the Austrian authorities also imposed fines on a number of undertakings (including Kone, Otis and Schindler) for implementing, on the Austrian market, a cartel relating to the goods mentioned above. That cartel sought to guarantee for its members a price higher than that which they could have expected under normal competitive conditions.

ÖBB-Infrastruktur AG ('ÖBB'), a subsidiary of Austrian Federal Railways, bought elevators and escalators from undertakings that were not party to the cartel. It is claiming from the members of the Austrian cartel compensation of €1 839 239.74 for loss sustained as a result of ÖBB's suppliers setting a price higher than that which would have been achievable, had the cartel not existed.

Proceedings having been brought before it, the Oberster Gerichtshof (Supreme Court of Austria) asks the Court of Justice whether the cartel members can be found liable for the loss that ÖBB claims to have sustained. Under Austrian law, compensation is not possible since the loss was caused by a decision of the supplier, which was not party to the cartel and was acting lawfully.

In today's judgment, the Court notes, first of all, that the effectiveness of the prohibition on anti-competitive cartels would be jeopardised if applicants could not seek compensation for loss caused by an infringement of the competition rules. In that regard, the Court states that any person is entitled to claim compensation for loss suffered where there is a causal relationship between the loss claimed and the cartel at issue.

Next, the Court states that a cartel can have the effect of leading companies that are not a party to it to raise their prices in order to adapt them to the market price resulting from the cartel, a matter of which the members of the cartel cannot be unaware. Market price is one of the main factors taken into consideration by an undertaking when determining the price at which it will offer its goods or services.

¹Commission Decision C(2007) 512 final, of 21 February 2007, relating to a proceeding under Article 81 [EC] (Case COMP/E-1/38.823 – Elevators and Escalators), a summary of which is published in the *Official Journal of the EU* (OJ 2008 C 75, p. 19). See also Press Release [No 72/11](#) on the judgments of the General Court of 13 July 2011 relating to the applications lodged against that decision and Press Releases [No 97/13](#) and [No 142/13](#) on the judgments of the Court of Justice relating to the appeals filed against the judgment of the General Court.

Accordingly, even if determination of the offer price is regarded as a purely autonomous decision taken by each undertaking that is not a party to the cartel; such a decision may have been taken by reference to a market price distorted by the cartel. Consequently, **where it has been established that the cartel is**, in the circumstances of the case and, in particular, the specific aspects of the relevant market, **liable to result in prices being raised by competitors not a party to the cartel, the victims of this price increase must be able to claim compensation for loss sustained from the members of the cartel.**

In these circumstances, the Court finds that **EU law precludes the Austrian legislation to the extent that, with regard to the compensation of loss resulting from a cartel, it requires, categorically and regardless of the particular circumstances of the case, that contractual links exist between the victim and the members of the cartel.**

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 EU law or the validity of a EU 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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