



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 170/14

Luxembourg, 11 December 2014

Advocate General's Opinion in Case C-352/13
Cartel Damage Claims Hydrogen Peroxide SA v Evonik Degussa GmbH and
Others

Advocate General Jääskinen: victims of an illegal cartel may claim compensation for their loss before the courts where one of the participants in the infringement is domiciled

In the context of a complex cartel extending throughout the EU, a jurisdiction rule based on the place where the harmful event occurred is inoperative

The Brussels I Regulation¹ 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 Brussels I Regulation provides that in matters relating to tort, delict or quasi-delict, a person domiciled in a Member State may be sued in the courts for the place where the harmful event occurred or may occur, even if that court is in another Member State.

Moreover, the Brussels I Regulation allows the parties to determine which court of a Member State is to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship. Subject to a few exceptions, that jurisdiction is to be exclusive and prevail over what is otherwise provided for in the Regulation.

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

Cartel Damage Claims Hydrogen Peroxide SA (CDC) is a Belgian company to which a number of companies transferred their rights to damages suffered in connection with that infringement.

In March 2009, CDC brought a joint action for damages before the Landgericht Dortmund (Regional Court, Dortmund, Germany) against six of the companies³ fined by the Commission. As they 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.

¹ 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).

² 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).

³ They were: Evonik Degussa GmbH (Germany), Akzo Nobel NV (Netherlands), Solvay SA (Belgium), Kemira Oyj (Finland), Arkema France SA (France) and FMC Foret SA (Spain).

The other defendant companies in the action brought by CDC challenge the international jurisdiction of the German court. They argue that the supply contracts concluded with the companies having suffered injury contained jurisdiction and arbitration clauses designating the courts having jurisdiction in the event of disputes arising from those contracts.

In doubt as to whether it has international jurisdiction, the Landgericht Dortmund referred to the Court of Justice a number of questions concerning the interpretation of the Brussels I Regulation.

In today's Opinion, Advocate General Niilo Jääskinen observes, first, that under **the specific jurisdiction rule governing in matters relating to tort, delict or quasi-delict**, the court where the harmful event occurred is to have exclusive jurisdiction, this concept referring both to the place of the causal event giving rise to the alleged damage and to the place where that damage occurred. That rule, the purpose of which is to limit the number of concurrent proceedings and to identify the court having a particularly close link with the dispute, nevertheless cannot properly be applied in an action for damages arising from an infringement of the competition rules such as that in the main proceedings. The cartel at issue here is a special case because it has existed for a long time and has restricted competition throughout Union territory, with a highly complex structure and has given rise to a series of agreements and collusive practices, resulting in both the participants and the victims of the alleged damage being spread over a large number of Member States. The Advocate General accordingly takes the view that the rule **is inoperative in the present case**.

Secondly, the Advocate General observes that, in its decision on the cartel at issue, the Commission found that it was a single, continuous infringement of the EU competition law rules and that the conduct in which the participants had engaged could be attributed to each of them as co-perpetrators, irrespective of their own individual contribution. The Advocate General adds in that regard that since there may be wide variations in national rules governing the apportionment of liability between cartel members, **there is in the present case a real risk that each of the participants in the same unlawful cartel might be ordered to pay different amounts of damages if courts in different Member States were to rule separately**. In the context of such a risk, the Regulation allows proceedings to be brought before a single court against several defendants established in different Member States.

In the same vein, the Advocate General considers that **the fact that the applicant withdrew its action against the only co-defendant domiciled in the jurisdiction of the court seised does not in itself affect jurisdiction of that court to hear the proceedings brought against the other co-defendants**. However, the provision in the Regulation which allows several defendants to be sued before a single court **must not be applied abusively**. That would be the case here if it were to be established that CDC and Evonik Degussa had deliberately delayed the formal conclusion of their out-of-court settlement until after proceedings had been instituted, with the sole aim of establishing jurisdiction in Germany for the other cartel participants.

Thirdly, the Advocate General takes the view that **jurisdiction or arbitration clauses included in commercial contracts can be applied to disputes involving compensation for damage resulting from an unlawful cartel agreement only where the victim consented specifically to those clauses, in full knowledge of the cartel and the damage caused thereby**. The Advocate General further states, however, that clauses conferring jurisdiction on a court outside the EU and arbitration clauses can be relied on as against provisions of the Regulation only in so far as compliance with EU competition law is fully guaranteed before that court or arbitration body.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 Opinion is published on the CURIA website on the day of delivery.

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