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**Persons not operating as suppliers or as customers on the market affected by a cartel may request compensation for loss caused by that cartel**

By its judgment today, the Court provided important clarification concerning the link between provisions of EU law and those of national law regulating actions for compensation for loss caused by a cartel by holding that Article 101 TFEU must be interpreted as meaning that a public body which granted promotional loans to purchasers of products covered by a cartel may request compensation for loss caused by the cartel.

The case pending before the Oberster Gerichtshof (Supreme Court, Austria) followed an action for compensation brought inter alia by the Land Oberösterreich ('the applicant') against five companies active on the market for the installation and maintenance of lifts and escalators, whose participation in anti-competitive behaviour in the context of a cartel had already been established. The applicant had not suffered loss as a purchaser of the products covered by the cartel. By contrast, increased construction costs caused by the cartel led it to grant subsidies, in the form of promotional loans for the purpose of financing construction projects affected by the cartel, in a higher amount than would have been the case in the absence of that cartel, depriving the applicant of the possibility to use that difference more profitably. According to the Oberster Gerichtshof, the principles governing, under national law, compensation for purely material losses restrict compensation to losses which the rule infringed was intended to prevent, which is likely to exclude compensation for losses suffered by persons who do not operate as suppliers or as customers on the market affected by the cartel.

Questioned by the Oberster Gerichtshof concerning the compatibility of such a restriction with Article 101 TFEU, the Court, first of all, noted that Article 101(1) TFEU produces direct effects in relations between individuals and confers the right to request compensation in particular on any person who has suffered loss caused by a contract or conduct which is liable to restrict or distort competition, where there exists a causal connection between the loss and the infringement of the competition rules. Moreover, the Court also stated that the national rules relating to procedures for exercising that right to compensation must not undermine the effective application of Article 101 TFEU.

The Court considered that effective protection against the negative consequences of an infringement of EU competition rules would be seriously undermined if the right to compensation for losses caused by a cartel was from the outset restricted to suppliers and customers on the market affected by the cartel. In the case in the main proceedings, the restriction provided for by national law relating to compensatable loss results precisely in excluding compensation for the loss alleged by the applicant, since it is not a supplier or customer on the market affected by the cartel. Subject to the possibility of the participants to a cartel not being held liable to compensate all the losses they could have caused, it is not necessary that the loss suffered by the person affected present a specific connection with the objective of protection pursued by Article 101 TFEU.

According to the Court, Article 101 TFEU therefore implies allowing any person who does not operate as a supplier or as a customer on the market affected by a cartel, but who granted subsidies, in the form of promotional loans, to purchasers of products offered on that market, to

request compensation for loss it suffered as a result of the fact that, since the amount of those subsidies was higher than it would have been in the absence of that cartel, it was unable to use that difference more profitably. Finally, the Court points out that it is for the national court to determine whether the applicant had the possibility to make more profitable investments and whether the applicant had established the existence of a causal connection between that loss and the cartel at issue.

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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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