

MANDATE

10.02.2017

CLASS ACTION CONCERNING CEMENT CARTEL: HEIDELBERGCEMENT ONCE AGAIN VICTORIOUS IN DISPUTE OVER CARTEL DAMAGES WITH THE HELP OF GLEISS LUTZ

Belgian company Cartel Damage Claims (CDC) specialising in class actions has failed in its second attempt to bring an action for damages against HeidelbergCement. After CDC had been unsuccessful in its first attempt to obtain damages on account of antitrust violations from the cement manufacturers before the Düsseldorf Regional and Higher Regional Courts, the Mannheim Regional Court has now also dismissed CDC's second action. CDC had bought claims from parties who allegedly suffered losses from the cement cartel and demanded the payment of a three digit million amount.

In its judgment, the Mannheim Regional Court endorsed the view put forward by Gleiss Lutz on behalf of HeidelbergCement, namely that the rule of suspension of section 33(5) Act Against Restraints of Competition cannot – given the clear and unambiguous wording of the provision and the underlying system – be applied to what are known as “legacy cases”. This meant that the claims asserted by CDC had at any rate become statute-barred, regardless of various further objections.

The Mannheim Regional Court's judgment has significant implications for private antitrust litigation in Germany and other EU Member States.

In November 2016, the Karlsruhe Higher Regional Court already had to rule on an action brought by an individual cement buyer and followed Gleiss Lutz's line of argument for HeidelbergCement to the effect that section 33(5) Act Against Restraints of Competition does not apply to “legacy cases”. An appeal on points of law has in the meantime been filed against this judgment with the Federal Court of Justice.

HeidelbergCement is being advised by Dr. Ulrich Denzel (lead, partner, competition/antitrust, Stuttgart), Dr. Andrea Leufgen (lead, partner, litigation, Frankfurt), Dr. Carsten Klöppner (counsel, competition/antitrust, Stuttgart) and Dr. Florian Wagner (litigation, Frankfurt)

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