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Judgment of the Court in Case C-253/23 | ASG 2

Compensation for harm caused by a cartel: national legislation preventing a group action for collection may infringe EU law

This will be the case where national law does not provide for any other collective means of bringing together individual claims of persons harmed by a cartel and where it is impossible or excessively difficult to bring an individual action for damages

EU law allows any person to claim damages for loss caused to him or her by an infringement of competition law. It is for each Member State to determine the rules governing the exercise of that right, in the light in particular of the principle of effectiveness. To prohibit a group action for collection, brought by a legal services provider on the basis of compensation rights assigned to it by a large number of injured persons may compromise the effectiveness of EU law. That is the case where national law does not provide any other collective means of grouping together individual claims and where it is impossible or excessively difficult to bring an individual action seeking to assert that right to compensation.

Thirty two sawmills established in Germany, Belgium and Luxembourg claim to have suffered on account of a cartel in respect of which the Land Nordrhein-Westfalen (*Land* of North Rhine-Westphalia, Germany) charged, at least from 28 June 2005 to 30 June 2019, inflated prices for the sale to those sawmills of roundwood from that *Land*.

Each of the sawmills in question assigned its right to compensation for the harm to the company ASG 2. As a 'provider of legal services', within the meaning of the German law, that company brought a group action for damages before a German court against the *Land*, in its own name and at its own expense, but on behalf of the sawmills, in return for fees in the event of success.

The *Land* disputes ASG 2's legal standing to bring proceedings. It submits that the German legislation, as interpreted by certain national courts, ¹ does not entitle that provider to bring a group action for collection in the context of an infringement of competition law.

According to the German court, a group action for collection is, in Germany, the only collective procedural mechanism capable of implementing effectively the right to compensation in cartel cases. Therefore, that court asks the Court of Justice whether EU law ² precludes an interpretation of a national rule preventing persons harmed by a cartel from having recourse to that type of action.

The Court points out that **EU law confers on any person harmed by an infringement of competition law the right to claim full compensation for that harm**. An action for damages may be brought either directly by the person who enjoys the right or by a third person to whom that right has been assigned.

However, EU law does not govern the detailed rules governing the right to compensation for harm caused by an infringement of competition law. Accordingly, **it is for each Member State to determine them in the light, in particular, of the principle of effectiveness**.

In the present case, **it is for the German court to ascertain whether the interpretation of national law that would prohibit the recovery of damages for harm caused by a cartel by means of the group action in question satisfies the requirement of effectiveness.** If it were to conclude i) that German law does not provide any other collective remedy capable of ensuring that that right to compensation is implemented effectively and ii) that an individual action makes the exercise of that right impossible or excessively difficult and undermines effective judicial protection, the German court would be obliged to find an infringement of EU law.

In such a situation, it should seek to interpret the national provisions in a way that complies with EU law. Should an interpretation that is consistent with EU law be impossible, **the German court should disapply the national provisions prohibiting the group action for collection of individual compensation claims** in question.

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 an 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 and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ The group action for collection was accepted by the German Federal Court of Justice in various legal areas, in particular in tenancy law and for claims based on air passenger rights. However, that court has not yet had the opportunity to take a position in the specific context of compensation for harm caused by a cartel. By contrast, such an action is not accepted by certain lower courts.

² Article 101 TFEU and [Directive 2014/104/EU](#) of the Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.