

Advocate General issues Opinion on jurisdictional aspects of aggregating cartel follow on claims

11 December 2014

Advocate General Niilo Jääskinen issued his opinion on 11 December 2014 with regard to cartel follow on court proceedings that are pending before the courts in Germany. The questions submitted by the district court in Dortmund relate to questions of jurisdiction in this very relevant area of the law in which cartel victims cooperate against frequently much larger cartelists in order to recover the losses they have suffered, over a long period of time, at the hands of the cartelists.

The cartelists have been found by the relevant authorities, in this case the competition authorities in Germany, to have acted unlawfully, and have been fined very material amounts for their anticompetitive misconduct. The Advocate General's opinion is in essence supportive of the claimant's chosen path to aggregate claims and pursue them before one court in one member state against all cartelists. Cartelists are jointly and severally liable for losses they have caused under German law.

In Calunius' view the Opinion is dominated by common sense considerations which would, if adopted by the Court of Justice, allow (i) claims to be brought in one place, i.e. without fragmentation across multiple jurisdictions in circumstances where the cartel covered all of the relevant jurisdictions, and (ii) proceedings to continue in the court seized even where the 'anchor defendant' were to drop out of the proceedings by way of settlement shortly after the proceedings have started. It remains to be seen if Court of Justice will adopt the suggestions in the Opinion.

The Opinion is publicly available in many languages, a link to the press release by the Court of Justice of the European Union can be found at

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-12/cp140170en.pdf>

Calunius has been and continues to be actively involved in the funding of claimants who pursue cartel follow on cases. An example of Calunius' public involvement can be found here

http://www.calunius.com/media/6432/121004%20press%20release%20cdc_calunius_final.pdf

Calunius Capital LLP, January 2015