

Listed companies in funded disputes – example of Kemira's settlement of a cartel follow on case

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When companies listed on one of the world's stock exchanges become involved in litigation or arbitration disputes, the applicable stock exchange disclosure rules may require the company to disclose certain key features of the dispute, including the existence of litigation funding if it is viewed as a material contract. For example, Calunius has two separate investments in listed mining companies who are undertaking Investment Treaty Arbitrations and who have, as a matter of regulatory compliance, disclosed to the markets that a litigation funding agreement had been entered into. Those companies also have had to comply with a regulatory obligation to provide regular updates on the proceedings. Such public acknowledgement of disputes is otherwise relatively rare due to the sensitivities that invariably surround commercial disputes.

This is particularly the case when disputes come to be settled, since confidentiality obligations often prevent the curiosity of onlookers from being satisfied. A recent example of a public stock market announcement of the settlement of funded proceedings came from Kemira, a chemical industry group headquartered in Helsinki, Finland. Kemira had been sued by CDC, a group of companies in which the Calunius Fund is publicly acknowledged as an investor. The proceedings related to claims for damages arising from Kemira's involvement in the Hydrogen Peroxide Cartel. CDC was pursuing the claims of cartel victims who had suffered loss as a result of the Cartel's anticompetitive conduct.

Kemira's press release at the time of the settlement, which it was obliged to make as a consequence of being a listed company, was relatively straightforward and summarised the content of the settlement agreement that had been reached; in extract the announcement read as follows: 'CDC has agreed to withdraw the damage claims and Kemira has agreed to pay to CDC a compensation of EUR 18.5 million and will compensate CDC for its legal costs. Kemira is satisfied with the settlement as it removes the uncertainty related to the litigation outcome.'

Kemira's announcement is a regulatory update to the stock market but also, making a virtue of the necessity of making an announcement, sends a message to Kemira's shareholders that the settlement constitutes a good and rational example of risk management. The Calunius Fund was also satisfied with the settlement. Perhaps this transparency is not such a bad thing, after all!

Calunius Capital LLP, February 2015