

Dutch court awards claimants €33 million in cathode ray tube case

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A Dutch court has ordered two members of the international cathode ray tube cartel to pay three Brazilian claimants damages of more than 190 million reais (€33 million) in the country's first successful follow-on claim stemming from the conspiracy.

Electronic device manufacturers Cemaz, Eletrônica and Itaotec filed the claim, which stems from a decision issued by Brazil's Administrative Council for Economic Defence, before the Court of East Brabant in 2019.

In 2015, CADE [fined](#) LG Electronics, Philips and LP Displays a combined 24.3 million Brazilian reais (then €7.4 million) for colluding to fix prices, share markets and restrict their output of colour cathode ray tubes from 1996 to 2006.

The sixth cartel member, Samsung SDI, applied for leniency in 2008 and fully escaped fines.

Before the Dutch court, the claimants alleged that they suffered damages because of the cartel's overcharging for cathode ray tubes. Cemaz and IGB urged the court to award them a total of 2.48 billion Brazilian reais (€434 million), while Itaotec said it needed more time to calculate the exact damages.

IGB also claimed that the cartelists' conduct allowed them to charge lower prices for televisions in Brazil, squeezing it out of the market as it was unable to compete with those prices. Meanwhile, Itaotec asked the court to order Samsung Amazônia to be held liable for damages, despite it not being a part of CADE's 2015 decision.

The claimants filed their claims in the Netherlands using Dutch-based Philips as the anchor defendant. They subsequently settled with LG Electronics and Philips, leaving Samsung SDI and LP Display as the two remaining defendants.

Those companies argued that the claimants should not be awarded any damages because any overcharging by the manufacturers will have been passed on to their customers through higher prices.

Samsung SDI further argued that the claimants had not shown sufficient evidence of its participation in the international cartel, or the specific harm it caused to competition in the cathode ray tube market in Brazil.

The remaining defendants also insisted that the claimant's proposed damages should be recalculated in light of the settlements, as the estimates still reflected the damages caused by the cartel as a whole.

In October, the Court of East Brabant reserved its full judgment for March after agreeing that the total damages needed recalculating.

At that time, the court also rejected Itautec's claim that Samsung Amazônia was liable for damages after finding insufficient evidence that it was involved in the cartel.

The company did not appear in either the European Commission's or CADE's investigations and Itautec failed to put forward any further evidence, it held. The commission conducted its own investigation into the international cathode ray tube cartel and imposed a €1.47 billion fine on seven cathode ray tube makers in December 2012.

However, the court also ruled that Samsung SDI's leniency agreement with CADE was an acknowledgement of its participation in the cartel and this made it liable for the damages suffered by the claimants.

Under Brazilian law, CADE will only conclude a leniency agreement if the company acknowledges it has infringed competition rules, the court noted. It said Samsung SDI attempted to "downplay" the value of the leniency agreement but this argument failed.

The Dutch court in November heard the claimants' amended damages actions and any further defence arguments from Samsung SDI and LP Display.

It issued its final decision in three separate judgments handed down on 15 March, ordering Samsung SDI and LP Display to pay IGB 37.3 million Brazilian reais (€6.5 million), Cemaz 152.8 million Brazilian reais (€23.4 million) and Itautec an undisclosed amount of damages.

The court noted that LP Display did not appear before it in November to argue any final defences, but that this does not exempt the company from receiving the same decision as its fellow cartel member.

A spokesperson for Philips said the company had noted the judgment.

Samsung SDI, Samsung Amazônia and LG Electronics were contacted for comment. LP Display, Itautec, Cemaz and IGB Eletrônica could not be reached for comment.

'Quite exceptional'

Bas Braeken, a partner at bureau Brandeis in Amsterdam, said the case is significant as it is one of the first follow-on damages cases litigated before a Dutch court and led to a substantial damages award.

However, he said it remains to be seen whether the judgment will open the floodgates for follow-on claims, particularly because of jurisdictional issues.

The Court of East Brabant assumed jurisdiction to rule on the claims in this case by using Netherlands-based Philips as its anchor defendant, but the ability to use that strategy will obviously depend on the case at hand and whether it involves a Dutch company, Braeken said.

He noted that there is currently one other pending claim in the Netherlands stemming from the cathode ray tube cartel, which was filed against Philips in 2012 by consumer association Consumentenbond and foundation Aequitas.

The claim was based on a provision in the Dutch Civil Code that allows courts to issue declaratory judgments on unlawful behaviour.

In October, the District Court of Oost-Brabant ruled that the collective action was inadmissible as the company's conduct had already been declared unlawful by both the European Commission and CADE in their own infringement decisions.

The court also ruled that it could not order Philips to pay any damages because the Dutch collective action regime was not applicable to the claim. The case has not yet been closed as several individual claimants have also filed damages actions against Philips, which are currently pending before the same court.

Maverick Advocaten partner Cyriel Ruers in Amsterdam said the ruling proves once again that the Netherlands is a "friendly" jurisdiction for competition follow-on damages claims.

He noted that the case is "quite exceptional" as two of the three decisions were "judgments by default" because several of the companies – including a now-defunct Dutch LP Display subsidiary – failed to appear in court.

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