



9 April 2014

## PRESS SUMMARY

### **Deutsche Bahn AG and others (Respondents) v Morgan Advanced Materials Plc (formerly Morgan Crucible Co Plc) (Appellant) [2014] UKSC 24**

On appeal from [2012] EWCA Civ 1055

**JUSTICES:** Lord Neuberger (President), Lord Mance, Lord Sumption, Lord Toulson and Lord Hodge

### **BACKGROUND TO THE APPEALS**

In breach of Article 81 of the EC Treaty (“TEC”) (now Article 101 of Treaty on the Functioning of the European Union (“TFEU”)), the appellants participated in an illegal cartel in electrical and mechanical carbon and graphite products. The appellants disclosed the existence of the cartel to the European Commission and a Commission Decision finding that article 81(1) had been infringed by the members of the cartel was issued on 3 December 2003. The appellants, as whistle-blowers, escaped any fine. The other cartel members received heavy fines. A number of the other cartel members appealed the Commission Decision to the General Court of the Court of Justice of the European Union. The General Court dismissed the appeals, and the time limit for pursuing any further appeal to the Court of Justice expired on 18 December 2008.

On 15 December 2010, the respondents filed claims for damages with the Competition Appeal Tribunal for loss alleged to have resulted from the operation of the cartel. These claims are ‘follow-on’ claims brought under section 47A of the Competition Act 1998 (the “1998 Act”). Follow-on claims are based on a prior Commission decision that an infringement has occurred, which is treated as binding on the domestic Tribunal. Section 47A(8) of the 1998 Act provides that no follow-on claim may be brought during the period up to the expiry of the time limit for pursuing any appeal against the relevant Commission decision or the determination of any such appeal if pursued. The relevant Tribunal rules state that the time limit for bringing any follow-on claim is two years from the end of the period specified in section 47A(8).

The issue before the Supreme Court is whether the respondents’ follow-on claim against the appellant should be struck out for being brought more than two years after the end of the period for appealing the Commission Decision. This, in turn, depends on whether the Commission Decision is viewed: (i) as a decision made against the appellants, which they chose not to appeal; or (ii) as a decision made against all the cartel members, appealed by most of them, and finally upheld by the General Court. On the former approach the two-year limitation period began on 13 February 2004 (when time expired for an appeal by the appellants) and expired before the follow-on claims were brought on 15 December 2010. On the latter approach it began only on 18 December 2008 (when time expired for an appeal to the Court of Justice by those who had appealed to the General Court) and the follow-on claims were brought in time. The Court of Appeal, overturning the decision of the Competition Appeal Tribunal, preferred the latter approach and held that the claim against the appellant could proceed.

### **JUDGMENT**

The Supreme Court unanimously allows the appeal. Lord Mance (with whom Lord Neuberger, Lord Sumption, Lord Toulson and Lord Hodge agree) gives the only judgment.

**The Supreme Court of the United Kingdom**

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The decision to which section 47A of the 1998 Act refers is the Commission Decision, the nature of which is a matter determined by European Law [16]. Decisions of the Court of Justice establish that a decision by the Commission regarding the existence of a cartel constitutes a series of decisions addressed to its individual addressees, which remain binding against an individual addressee who does not appeal even if there is a successful appeal by another addressee [17–21]. The only relevant decision establishing infringement in relation to an addressee who does not appeal is the original Commission decision [22, 24–25]. That decision, in relation to the appellant, is the Commission Decision made on 3 December 2003, in respect of which the time period to appeal expired on 13 February 2004 [28]. Therefore, the claim by the respondents was brought more than two years after the relevant decision and is out of time.

## REASONS FOR THE JUDGMENT

The detailed rules governing the recovery of any loss resulting from the operation of an illegal cartel are matters of domestic law, so long as they comply with the general principles of European law. It is a general principle of European law that domestic courts cannot take decisions running counter to a Commission decision finding that a prohibited agreement or practice exists. This is reflected in section 47A of the 1998 Act, which contains important cross-references to a decision by the Commission made under European law. To understand the nature of that decision, regard must necessarily be had to European law. [10–11, 16]

The relevant provisions of the treaties (Article 249 TEC and now article 288 TFEU) leave open whether a decision operates as a single decision against all addressees, or as a decision against each addressee separately. However, the European Court of Justice has determined this question in Case C-310/97 *AssiDomän Kraft Products AB v Commission of the European Communities*, holding that “a decision which has not been challenged by the addressee within the time-limit ... becomes definitive as against him”, regardless of any appeal that may be brought by another addressee. The same principle was recently reiterated by the General Court in Case T-462/07 *Galp Energía España SA v Commission*. [17–21]

It follows that, even if the appeals by the other cartel members had succeeded, the Commission Decision would have remained in full force and effect against the appellants. That being the only decision against the appellants in European law, it is also the only decision to which section 47A of the 1998 Act can refer. [22–25]

*References in square brackets are to paragraphs in the judgment*

### **NOTE**

**This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<http://www.supremecourt.uk/decided-cases/index.shtml>