

Cartel members may also be liable for damages from sales by non-cartelists

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cartel did indeed give rise to umbrella pricing.

Cartel members may soon have to worry not only about potential fines by competition authorities and damages claims by cartel victims, but also about providing compensation to customers of non-cartel members. The European Court of Justice recently ruled that cartel members may be liable for damages resulting from umbrella pricing. Umbrella pricing occurs when non-cartel members, unknowing of the cartel's existence, charge higher prices than they would have done under normal competitive conditions. This ruling will probably lead to an increase in the number of damages claims against cartel members based on umbrella pricing, but it is unlikely to result in an avalanche of claims.

The case relates to a request for a preliminary ruling by the Austrian Supreme Court in a case where a customer of a non-cartel member is suing four companies involved in an elevator cartel for damages before the Austrian civil courts on the basis of the "umbrella effect". According to the customer, the non-cartel members, unknowing of the cartel's existence, charged higher prices than they would have done under normal competitive conditions. Austrian national law categorically excludes the liability of cartel members for umbrella pricing.

The [European Court of Justice](#) considered the categorical exclusion at odds with the cartel prohibition laid down in Article 101 of the Treaty on the Functioning of the European Union. The full effectiveness of the cartel prohibition would be at risk if individuals could not claim damages for losses caused by a contract or by conduct that could restrict or distort competition. Any person is thus entitled to claim compensation for harm suffered where there is a causal relationship between that harm and an agreement or practice caught by the cartel prohibition. Consequently, the victim of umbrella pricing may obtain compensation for the loss caused by purchasing products from non-cartelists at higher prices, where it is established that:

- the cartel at issue was, in the circumstances of the case and, in particular, the specific aspects of the relevant market, liable to have the effect of umbrella pricing being applied by third parties acting independently
- those circumstances and specific aspects could not be ignored by the members of that cartel.

The ECJ left it up to the national court that referred the case to determine whether those conditions are satisfied. This ruling will probably lead to an increase in the number of damages claims against cartel members based on umbrella pricing. However, it is unlikely to result in an avalanche of claims, since it will always be necessary to carry out a comprehensive assessment of the relevant circumstances and evidence to determine whether a