Despite being a relatively old cartel, the Elevators and Escalators Cartel has given rise to extensive litigation across Europe, which has been shaping the follow-on litigation landscape. Several landmark judgments stemming from this cartel – most recently a December 2019 decision from the Court of Justice of the European Union (CJEU) - now form an important set of case-law for claimants in damages actions. Ongoing cases have also set out important evidentiary thresholds impacting claims beyond the Elevators Cartel. We recap below.

**The cartel**

On 21 February 2007, the European Commission imposed fines over €900 million on Otis, KONE, Schindler and ThyssenKrupp for having operated cartels for the installation and maintenance of elevators and escalators in Belgium, Germany, Luxembourg and the Netherlands (the Elevators and Escalators Cartel).[1] Between 1995 and 2004, the cartelists rigged bids for procurement contracts, fixed prices and allocated projects to each other, shared markets and exchanged commercially important and confidential information. At the time, the Commission pointed out in its press release that the effects of this cartel could continue for twenty to fifty years as the cartelised installation resulted in a market distortion on the maintenance market as well, also operated by the cartelist.

**Umbrella damages**

In the ÖBB Infrastruktur AG judgment dated 5 June 2014, , the Court of Justice of the European Union (CJEU) confirmed that victims of cartels may claim compensation from cartelists for inflated prices paid to non-cartel members, or so-called “umbrella damages”. [2] The CJEU held that even companies that have not bought products directly or indirectly from suppliers involved in the cartel, but which have paid higher prices to the cartelists’ competitors than would have been the case absent the cartel (because of the general softening of price competition in the relevant market), may be able to claim damages from the cartelists.

**Losses caused on other markets**
In a recent judgment dated 12 December 2019,[3] relating to another referral to the CJEU from Austria, the CJEU provided further important guidance on compensation for indirect losses: parties who suffered indirect losses as a result of a cartel should be able to seek compensation for the harm suffered in civil and administrative jurisdictions. In a case brought before the Supreme Court of Austria, Land Oberösterreich (a regional authority) claimed damages arising from the loans it granted for the financing of building projects which were based on a percentage of the construction costs. The claimant reasoned that the cartel had increased elevator installation costs thus inflating overall construction costs as well as the total value of the loans granted. Absent the cartel, Land Oberösterreich would have granted smaller loans and could have invested the difference at the average interest rate for federal loans which would have been more profitable.

The question before the CJEU was whether or not persons operating in a different market, and not as suppliers or customers in the cartelised market, can obtain compensation for their indirect losses?

According to the CJEU, in order to ensure the effective application of Article 101 TFEU, any loss having a causal connection with an infringement of the EU competition law must be capable of giving rise to compensation, even if such loss arose in a separate market than the market affected by the cartel.

**Evidence and causation**

Follow-on cases stemming from the Elevators and Escalators Cartel have been occupying the Courts in Belgium and the Netherlands too, putting strong emphasis on the key issue of substantiation of damages. Interestingly, the European Commission itself brought a claim before the Brussels Commercial Court seeking damages for the maintenance of elevators in the EU institution buildings, giving rise to confirmation from the European Courts that, despite the Commission’s role in the investigation, it was nevertheless entitled, like any other person, to damages.[4] Various operators brought claims in the Netherlands which are also ongoing.

Most of these are still in relatively preliminary stages (or at the appeal stage) and so far courts have put strong emphasis on the need to demonstrate the existence of a loss and quantify it, notwithstanding the rebuttable presumption of harm introduced by the Damages Directive.[5] These cases will no doubt provide very interesting guidance for any follow-on claims.

**Conclusion**

Whilst to date, most competition damages claim have been initiated by direct or indirect customers[6] of cartelists, more claims may follow in connected markets in light of the recent CJEU judgment. However, the recognition of umbrella damages had also been seen in the past as opening the floodgate to indirect cartel damages claims, when in fact the practical effect has been modest. CJEU findings are indeed only a first step towards effective compensation and national courts are the gatekeepers, setting out the required thresholds to assess the existence, extent, and causal link of cartel losses.