

## EU institutions' elevator-cartel damages battle resumes in Belgian appeal court

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By [Lewis Crofts](#) and Niki Boussemaere

Elevator makers Kone, Otis, Schindler and ThyssenKrupp saw the EU's executive arm return to court today in its long-running battle to get money from them for elevators and escalators installed in EU buildings but allegedly overpriced due to cartel conduct. After 16 years of litigation in the Belgian courts, the European Commission told judges today that a cartel had seen elevator makers protect their own market shares to the detriment of customers.

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The case stems from a decision in 2007 by the commission, as the EU antitrust regulator, to fine the companies 990 million euros for running a cartel in Germany, Belgium, Luxembourg and the Netherlands from 1995 to 2004.

Then in 2008, the commission, in a rare example of it appearing as a private plaintiff on behalf of all the EU institutions, wrote to the four manufacturers, asking for 7 million euros (\$7.6 million today) in damages on grounds that units installed in institution buildings were purchased at inflated prices.

But their pursuit of a payout has struggled. In 2011, the case was referred to the EU Court of Justice for guidance over whether the commission could act as investigator and plaintiff in the same case. The court ruled there was nothing to stop it doing so in EU law.

In 2014, judges at the Brussels commercial court sided with the manufacturers and dismissed the EU's claim in its entirety (see [here](#)).

Today, the commission's lawyers appeared before a panel of three judges at the Belgian Court of Appeal to challenge that ruling and argue their case afresh.

Denis Philippe, an external lawyer acting for the commission, opened with a history of the "exceptionally long" cartel, stating that four large companies controlled almost the entire market, leaving no space for competitors.

Managers from the elevator makers colluded on prices for tenders, driving up the costs for those buying escalators and elevators. The illegal conduct also extended to related maintenance contracts, he said. The EU's lawyer added that previous court rulings had confirmed that the cartel had caused damage.

Ihsan Karatas, also representing the EU institutions, explained that the elevator companies were trying to protect their existing market shares by colluding on "projects." A compensation mechanism between the companies also underpinned a "very thorough" cartel, he said.

Isabelle Buelens, representing the EU institutions, said that even though the cartel technically lasted from 1996 to 2004, it had continued effects on the market. She also said that every service contract for an installation came from one of the cartel members.

"A cartel cannot be stopped from just one day to the other," she told the court.

She said the EU's economists had reworked their analysis of the damage suffered to address criticisms at earlier stages of the proceedings.

The hearing continues over the next two weeks.

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