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Innovations in climate protection: Luther and Aurubis obtain landmark ruling at the ECJ

Düsseldorf – On 25 November 2021, Luther Rechtsanwaltsgesellschaft successfully represented the Hamburg-based copper producer Aurubis AG before the European Court of Justice (ECJ) in connection with innovative contributions to climate protection. In its ruling on a request for a preliminary ruling by the Administrative Court of Berlin, the ECJ rejected the previous position of the German Federal Environment Agency (UBA) that the abandonment of carbon-containing fuels in the smelting of copper should not be rewarded. The MDAX company must now be allocated tradable emission allowances free of charge by the Federal Republic of Germany (Case C-271/20, Aurubis AG v. Federal Republic of Germany).

Today's ECJ ruling concerns technical innovations in the production of copper. Through intensive research and development work over many years, Aurubis has succeeded in largely dispensing with fossil fuels such as heavy oil when smelting copper ore. The German Emissions Trading Authority at the Federal Environment Agency has so far refused to recognise the associated CO₂ emission reduction in the European Emissions Trading System (EU ETS). It considered this to jeopardise the functioning of the most important European climate protection instrument. However, the Advocate General at the ECJ in his opinion from June of this year already highlighted Aurubis' development work as an emission-reducing advance: the EU ETS aims precisely to reward such achievements.

Today, the ECJ followed this opinion. According to the Court, the emissions trading system should provide an incentive to use efficient technologies to reduce greenhouse gas emissions. Part of this incentive system is also the possibility to obtain a monetary advantage in the form

of surplus emission allowances with a current market price of about EUR 70 per tonne of CO₂ by reducing carbon dioxide. The Luxembourg judges have thus acknowledged Aurubis' positive contribution to climate protection.

About Aurubis

Aurubis AG is one of the world's largest copper producers and copper recyclers. The MDAX-listed company produces marketable copper cathodes from copper concentrates, copper scrap and other recycling raw materials. These are processed in the Group into continuous cast wire rod, shapes, rolled products, strips as well as special wires and profiles made of copper and copper alloys. In the last fiscal year, Aurubis generated a profit of EUR 265 million and revenues of EUR 12.4 billion.

On behalf of Aurubis AG

Luther, Environment, Planning, Regulatory: Dr Stefan Altenschmidt (Partner, Lead), Denise Helling (Senior Associate, both Düsseldorf)

On behalf of the Federal Environment Agency of the Federal Republic of Germany

Juliane Steegmann, Anja Leskovar (both German Emissions Trading Authority in Berlin)

Brief profile Luther Rechtsanwaltsgesellschaft mbH

Luther is a leading German commercial law firm that offers comprehensive legal and tax advice. The full-service law firm employs over 420 lawyers and tax advisors and is represented in ten German economic hubs as well as with ten of its own international offices in key investment locations and financial centres in Europe and Asia. Its clients include medium-sized enterprises and large corporations, as well as the public sector.

Luther works closely with other commercial law firms in all the prevailing jurisdictions. Luther is a founding member of unyer (www.unyer.com), a global organisation of leading professional services firms that cooperate exclusively with each other.

Luther Rechtsanwaltsgesellschaft mbH is a law firm with a business approach: our innovative awareness aspires us to provide our clients with customised legal advice that addresses individual needs and delivers the greatest possible economic benefit. All of Luther's lawyers and tax advisors have a solid understanding of interdisciplinary matters and a wealth of experience in collaborating on complex tasks. Luther was

named "Law Firm of the Year 2019" by the German legal publisher JUVE. Further information is available at: www.luther-lawfirm.com

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