January 2026

Major Developments in German Competition Law in the Second Half of 2025

The highlights of the reporting period include the first-ever obligation imposed on a company to notify mergers below the regular notification thresholds, as well as diverging decisions by the lower courts on the determination of cartel-related price overcharges. While the planned 12th amendment to the German Act Against Restraints on Competition (ARC) is still pending, a first draft bill is expected in the course of 2026.

I. Merger Control

The Federal Cartel Office ("FCO") did not render any decisions in in-depth (Phase II) review proceedings during the reporting period, meaning that all approvals were granted in Phase I.

1. On the Acquisition of Significant Competitive Influence

Some of the decisions contribute to defining the relevant criteria for the acquisition of significant competitive influence. This catch-all provision applies below a non-controlling shareholding of 25% if additional rights enable a significant competitive influence to be exerted on the target company.

In August, after thorough examination, the FCO ruled in the **TPG/Techem** proceedings that TPG's acquisition of such a minority stake in Techem was not subject to merger control. In the FCO's view, there were insufficient additional rights to suggest that Techem would take sufficient account of TPG's

interests in its market behavior. The transaction created a structural link between Techem, the leading provider of consumption-based metering and billing of pro-rata energy and water costs in buildings (known as submetering), and TPG's portfolio company Aareon, the largest provider of property management software in Germany. For this reason, the European Commission did not approve TPG's originally planned and later abandoned acquisition of a majority stake in Techem in Phase I.

In contrast, the FCO considered the acquisition of a stake of only around 6.5% by the **German Football League (DFL)** in the operator of the internet-based sports streaming platform "**Dyn**" to be notifiable. Axel Springer and the Schwarz Group also hold stakes of 42.5% each in Dyn. The FCO found that the merger would not lead to a questionable market position for any of the companies involved. In particular, access to the technical service provider Dyn would not strengthen the DFL's strong position in the marketing of Bundesliga media rights. The decision shows that the merger criteria of acquiring significant competitive influence can be met even with a small shareholding.

Even without acquiring a stake, significant competitive influence can be acquired, as the **Warburg Pincus/E.ON/PSI** case illustrates. In this case, the FCO classified not only the takeover of PSI by Warburg Pincus but also the conclusion of an investment and framework agreement between Warburg Pincus, PSI, and E.ON as a notifiable event. Among other things, PSI offers the PSIcontrol software solution, a control system for monitoring, controlling, and simulating power grids, which is used by the operators of the large area power grids in Germany. The FCO assumed that E.ON, as PSI's largest customer, could significantly influence the development of PSIcontrol and therefore concluded that E.ON had a significant competitive influence on PSI.

2. Other Noteworthy Decisions

After Tönnies Group, part of the **Premium Food Group**, was prohibited from acquiring three slaughterhouses from Vion in June (see Newsletter 2025/1), the FCO approved the acquisition of **The Family Butchers** in September despite significant market share gains. With this merger, Germany's largest sausage manufacturer is taking over its second-largest competitor in the market. The FCO emphasized that even after the takeover, the combined market share for most types of sausage would remain below 40% and thus below the legal presumption threshold for market dominance. In addition, there are numerous competing manufacturers and thus sufficient alternatives for customers, especially food retailers, who often have their own sausage production facilities. Even with regard to Tönnies' strong position in the upstream market for pig and cattle slaughtering, the conditions for a prohibition were not met from the perspective of the FCO the. This decision demonstrates that the FCO frequently grants Phase I clearance even where parties hold significant market shares or strong market positions, provided other indicators suggest that effective competition will be maintained.

The acquisition of **Block S of the Lippendorf power plant** by the **EP Group** was also approved in Phase I despite a presumed single market dominance. The EP Group is particularly active in the field of electricity generation in Germany and operates several lignite-fired power plants as well as the neighboring Block R of the Lippendorf power plant. The competition review focused on the market for the generation of electrical energy and its initial sale, in which the EP Group is the second-largest supplier after RWE and the seller EnBW is the third-largest supplier. According to the FCO, market shares in this market are only of limited relevance in assessing market power due to its special characteristics. Rather, suppliers can have a high degree of market power even with relatively small market shares well below the presumption threshold of Section 18 (4) ARC. When assessing the market position of suppliers in the electricity wholesale market, the FCO therefore regularly considers the periods during which a company's electricity generation capacities are indispensable for meeting domestic demand (so-called pivotality). The EP Group was just above the relevant pivotality presumption threshold. The FCO left open the question of whether it would hold a dominant position in the forecast period, as a merger-related strengthening of any existing dominant position was not to be expected in view of a market share increase of around 1-2%. Rather, any

strengthening effect would be offset by efficiencies inherent in the merger.

In the **Demant/Kind Group** case, the FCO approved the merger of the third and fourth largest retailers of hearing aids in Germany in terms of number of stores, creating the largest hearing aid chain in Germany with around 1,000 stores. After the FCO identified competition concerns for 17 of the approximately 80 catchment areas under scrutiny, the parties withdrew the notification of their original plan and re-notified the merger after selling three locations. Although competition concerns remained for 15 market areas, these could no longer be taken into account in the overall decision. After the amendments, the total volume of the individual markets in which the merger would have a significant adverse effect on competition was less than EUR 20 million, so that the de minimis market clause in Section 36 (1) No. 2 ARC applied and a prohibition was ruled out.

3. Innovation Competition in the Pharmaceutical Industry

During the reporting period, the FCO ruled on two cases in the pharmaceutical industry, **BionTech/CureVac** and **Novo Nordisk/Akero**, which could serve as prime examples of the scope of application of the transaction value threshold: in both cases, the target companies did not yet have any approved active ingredients and therefore remained below the second domestic turnover threshold. Instead, their competitive potential lay in pipeline products in various stages of development. In both cases, the FCO concluded that the research pipelines of the parties involved did not overlap significantly and that, where overlaps did occur, research projects by other global competitors exerted sufficient competitive pressure. As a result, the FCO did not expect any restriction of innovation competition.

4. Federal Court of Justice on Meta/Kustomer

In its decision of June 2025 in the Meta/Kustomer case, which has now been published, the Federal Court of Justice provided fundamental clarifications on the transaction value threshold under Section 35 (1a) ARC, in particular on the question of when a target company is "operating to a significant extent in Germany." The case concerned the acquisition of Kustomer, a US CRM software provider with minimal sales in Germany, by Meta for around EUR 1 billion.

The Federal Court of Justice clarified that the assessment of domestic activity must not be based solely on the registered office of the target company's contractual partner. Rather, the decisive factor is whether the activity has a competitively relevant connection to Germany. The court recognized the processing of order data for customers based in Germany as a sufficiently significant market-related domestic activity – without requiring direct legal relationships with end customers or a physical domestic presence. The decisive factor is the competitive potential arising from the technically possible access to domestic end customer data.

Regarding the "significance" criterion, the Federal Court of Justice held that only marginal domestic activities were exempt – no high thresholds should be applied to significance. Turnover-related criteria – including the ratio between domestic and foreign turnover – are generally excluded from the determination of significance.

It must therefore be carefully examined whether the target company's activities have a competitively relevant domestic connection, even if it does not have any direct customer relationships in Germany. Simply having access to domestic end customer data can constitute a significant domestic activity within the meaning of the transaction value threshold, especially if this data could be of strategic value to the acquirer.

5. Application of the "Remondis Clause"

In November, the FCO made use for the first time of the power under Section 32f (2) ARC introduced in 2021 and expanded in 2023 – to require a company to notify mergers below the regular notification thresholds. Unsurprisingly, the decision is addressed to the Rethmann Group, which owns the waste management company Remondis, whose acquisitions in the past, which fell below merger control thresholds in the past, presumably helped

inspire the introduction of the enabling provision. The notification requirement applies for three years and covers mergers in non-hazardous household waste collection (residual, organic, bulky waste, PPK, mixed packaging, and glass) and the processing of hollow glass, provided that these are not minor cases and the target company generates sales revenues of at least EUR 0.1 million in the affected areas. The decision is based on the results of the sector inquiry completed at the end of 2023, which attested to the Rethmann Group's nationwide and regional market leadership with significant market shares, almost comprehensive market presence, outstanding access to regional markets, and strong financial strength. Competition could therefore potentially be weakened in the long term by the acquisition of smaller competitors, some of which may only operate regionally, meaning that further acquisitions should be examined by the FCO. The decision is not yet final.

II. Abuse of Dominance

1. Developments in the Energy Sector

During this reporting period, the FCO once again focused its abuse control activities on the national energy markets and various market participants.

In October 2025, the FCO published the results of its investigation into potentially abusive pricing in the wholesale electricity market during the so-called “dark doldrums” at the end of 2024. The aim of this investigation was to rule out any withholding of capacity by the five largest electricity producers that was prohibited under antitrust law and relevant to electricity prices. In fact, the FCO found no evidence of any violation during the period in question. Parallel investigations by the Federal Network Agency also found no evidence of abusive behavior.

In December 2025, the FCO announced that the abuse proceedings in energy price caps had largely been completed. The FCO had examined whether energy suppliers had increased prices without objective justification when the price cap laws were introduced during the 2022/2023 energy crisis, thereby receiving higher state compensation payments. A total of 70 investigation procedures were initiated, of which almost 90% have now been completed. These investigation procedures resulted in returns to the state budget of around EUR 200 million.

The monitoring report published by the FCO and the Federal Network Agency on 26 November 2025, outlined current developments on the German electricity and gas markets. From a competition perspective, the unbundling of generation, transmission, and distribution is proving to be a success. According to the authorities, the markets are characterized by a high degree of supply diversity. Among other things, the high willingness of electricity customers to switch providers can be interpreted as an indicator of confidence in functioning market mechanisms.

2. News on Section 19a ARC

As part of proceedings against Apple under Section 19a ARC, the FCO is subjecting Apple's proposed solutions for the App Tracking Transparency Framework (ATTF) to a market test. The FCO announced this at the beginning of December 2025.

In February 2025, the FCO had expressed its preliminary assessment of the current design of the ATTF and, among other things, assumed a violation of Section 19a ARC. The FCO considers Apple's new proposals to contain a potential solution to the identified competition law issues. Apple's proposals include, among other things, a neutral design of the two central consent banners regarding user data and a simplification of the previously complex query architecture for third-party apps. App publishers, media and advertising industry associations, content providers, and the relevant data protection supervisory authorities will be involved in the market test. Following the formal market test, the FCO will decide whether the proposed solutions are suitable for eliminating the preliminary competition concerns.

3. Discontinuation of Proceedings against Deutsche Post

In July 2025, the FCO discontinued proceedings against companies belonging to Deutsche Post AG (DPAG) and companies belonging to the Max Ventures Group in the letter consolidation services sector. The companies dissolved existing corporate

links between them, which, in the opinion of the FCO, has strengthened competition with the market-dominating Deutsche Post AG and opened competition overall.

4. News regarding Lufthansa / Condor

In August of last year, the Higher Regional Court of Düsseldorf dealt with the highly conflict-ridden relationship between the airlines Lufthansa and Condor.

In 2022, the FCO found, among other things, that Lufthansa's termination of the Special Prorate Agreement between Lufthansa and Condor constituted a violation of national and European abuse of dominance provisions. This special agreement secured Condor access to Lufthansa feeder flights on favorable terms.

Following an appeal by Lufthansa, the Higher Regional Court of Düsseldorf declared the FCO's decision to be formally unlawful and therefore overturned it. The court was of the opinion that the members of the FCO's decision-making body had given rise to concerns of bias, in particular by transmitting a meeting memo in the context of Lufthansa's inspection of the files, the content of which did not correspond to the original. The Higher Regional Court stated that this procedural error was sufficient to raise doubts as to in the impartiality of the members of the decision-making division.

III. Prohibition of Cartels

The FCO's fines for companies and responsible persons remain at a very modest level. After only around EUR 20 million in 2024 (see Newsletter 02/2004), fines totaling around EUR 10 million were imposed in 2025.

In 2025 as a whole, two proceedings were concluded, namely concerning manufacturers of audio products (see Newsletter 01/2025) and road repair companies (see Newsletter 01/2025). SZA successfully represented companies in both proceedings.

Nevertheless, the FCO emphasizes that antitrust enforcement remains one of its primary tasks. Around 600 tips from whistleblower systems, external reports, and leniency applications from a few companies provided grounds for initiating new proceedings. In ten cases, unannounced searches were carried out in the past year, some in cooperation with international competition authorities. In this context, President Mundt emphasizes the relevance of modern investigative approaches. In particular, the use of new IT-supported evaluation tools had proven effective in addition to the whistleblower system.

1. FCO Approves Information Exchange for Semiconductor Remnants in the Automotive Industry

In October 2025, the German Association of the Automotive Industry (VDA) received the green light to set up an information exchange on semiconductor remnants. This is to serve as a platform for the corresponding trade within the European automotive industry. The background was the considerable shortage of semiconductors – well-publicized in the press at the time – , particularly those from the company Nexperia, which are used in many vehicle components.

In the end, no competition concerns were identified. Although the participating automotive suppliers and manufacturers would be competing for semiconductor procurement, various precautions had been taken to counteract any anti-competitive effects. These include the operation of the exchange by a neutral body for a maximum of six months and posting offers anonymously without price expectations. Expressions of interest would be forwarded bilaterally and negotiations between suppliers and interested parties would be conducted outside the exchange. Ultimately, due to the shortage situation, the exchange would benefit not only the industry but also end consumers.

This shows once again that even cooperation between competitors has a good chance of receiving approval from the FCO if it is well prepared and any potentially anti-competitive effects are assessed and eliminated at an early stage under antitrust law. This applies regardless of the fact that such cooperation is not subject to mandatory notifications to the antitrust authorities outside of

merger control, but can be presented on a voluntary basis.

2. FCO Investigates Temu

In October, the FCO initiated proceedings against Whaleco Technology Limited (Temu), based in Dublin (Ireland), to investigate potentially unlawful conduct by Temu on the German online marketplace towards retailers operating there. Temu was only founded in 2022 to give consumers worldwide access to products from the People's Republic of China and has grown rapidly. In Germany alone, the platform is said to have over 19.3 million active users.

In April 2025, the German Trade Association (HDE) filed a complaint with the FCO, pointing out Temu's possible influence on retailers' pricing, including by setting retail prices (so-called retail price maintenance). Temu operates various trading platforms without being active as a seller itself. Such pricing setting would therefore be inadmissible, as they constitute significant restrictions on competition and ultimately also result in price increases on other distribution channels.

In addition to the FCO, competition and consumer protection authorities in numerous other countries are currently examining Temu's business model, including the European Commission and Switzerland. Since May 2024, Temu has also been designated as a "Very Large Online Platform" (VLOP) within the meaning of the Digital Services Act (DSA), which entails transparency obligations vis-à-vis the EU. Temu, on the other hand, sued rival Shein in the UK, accusing Shein of imposing exclusive supply arrangements on its retailers, thereby excluding Temu and other competitors from the market.

3. Higher Regional Court of Düsseldorf on the Stainless Steel Cartel

In its ruling of 10 December 2025, the Higher Regional Court of Düsseldorf ordered Lech-Stahlwerke GmbH to pay a fine of EUR 21 million.

In 2021, the FCO imposed fines totaling around EUR 355 million in the stainless steel proceedings. The amount of individual fines was not published. The fines were imposed for antitrust violations relating to price components and the exchange of competitively sensitive information between 2002 and 2016. Ten stainless steel companies were involved, including Lech-Stahlwerke GmbH and BGH Edelstahlwerke GmbH, as well as two industry associations and seventeen responsible persons. Almost all the companies had agreed to a settlement, with only Lech-Stahlwerke GmbH and BGH Edelstahlwerke GmbH appealing against the fine.

The court ruling was preceded by a deal, because of which Lech-Stahlwerke partially withdrew its appeal against the fine and limited it to legal consequences. In return, a fine range of EUR 20 million to EUR 30 million was proposed, which the court then imposed at the lower end of the scale. The Senate also found that there had been a delay in the FCO's antitrust proceedings that was contrary to the rule of law.

The court proceedings against BGH Edelstahlwerke GmbH and one responsible person will continue.

4. Higher Regional Court of Schleswig: No Breach of Ordre Public due to Violation of the Prohibition of Cartels

In the summer of 2025, the Higher Regional Court of Schleswig dealt with a possible *ordre public* violation (Art. 34 Brussels I Regulation, old version) due to an alleged violation of antitrust law.

The parties to these proceedings have been in dispute since 2006 over trademark rights to a double-stitching pattern on jeans. In February 2023, the Cour d'appel of Brussels ordered the respondent to pay a substantial contractual penalty for the unlawful use of the applicant's trademark. These proceedings arise from a settlement concluded in 2006. Several Belgian interlocutory judgments confirmed the validity of that settlement, though none of those judgments addressed—nor was any required to address—its permissibility under competition law. In May 2024, the applicant applied to the Regional Court of Kiel for enforcement of the judgment, which the court granted in July 2024. The respondent lodged an appeal, arguing that the settlement violated antitrust law, which constituted a breach of public policy (*ordre public*). The

respondent contends that the applicant, having concluded similar settlements with several market participants, contractually extended the scope of protection of the trademark rights included in the settlement beyond the statutory scope of protection, thereby impermissibly perpetuating its trademark rights and restricting competition. The respondent argues that the applicant has thus created its own trademark system by contractual means.

The Higher Regional Court of Schleswig dismissed the appeal. The Court was unable to find any violation of antitrust law, as it was bound by its final interim judgment confirming the validity of the settlement. A substantive reassessment ("révision au fond") in the enforcement proceedings was not permitted.

As a result, the court distinguishes between strict arbitration law review with extended antitrust review and the Brussels I Regulation's public policy review, emphasizing mutual trust in the decisions of EU Member States. Even if antitrust issues are raised, this does not justify a substantive reassessment in exequatur proceedings as long as there is no obvious violation of fundamental provisions such as Art. 101 TFEU/Section 1 ARC. The decision is not yet final, as the respondent, which is represented by SZA in antitrust matters in this case, has lodged an appeal with the Federal Court of Justice.

IV. Private Enforcement

1. Regional Court of Munich I (Truck and Rail Cartel) vs. Higher Regional Court of Stuttgart (Bathroom Fittings)

The debate on antitrust damages law continues to focus on the question of how to properly determine a cartel-related price overcharge. The Regional Court of Munich I and the Higher Regional Court of Stuttgart recently stood out with particularly different approaches.

The Regional Court of Munich I relies heavily on the economic expertise of court-appointed experts to determine the cartel-related price premium. This recently led to an unusually complex taking of evidence in a series of proceedings against members of the truck cartel. For the five-day hearing, the Regional Court had to have an event hall converted into a courtroom to accommodate the numerous lawyers and party experts discussing the court experts' report. In other damages proceedings, such as those against members of the rail and switches cartel, the Regional Court of Munich I also relies on the expertise of economists to at least approximate the damage caused by the cartel.

In contrast, the Higher Regional Court of Stuttgart took a radically different approach in the bathroom fittings cartel in a ruling dated 20 November 2025. In the proceedings, in which SZA represented the defendants, the Higher Regional Court refrained from taking any evidence and ignored both the regression analysis submitted by the plaintiff and the economic statements of the defendants. Instead, it estimated the cartel surcharge at 17.5% using an estimation model it had developed itself. This came as a surprise to all parties involved. Even the plaintiff had only asserted a surcharge of around 13% in its regression analysis.

The estimation model used by the Higher Regional Court of Stuttgart is essentially based on average price premiums as published in various meta-studies. From this, the Higher Regional Court of Stuttgart derives an "estimation corridor" between 5% and 25%. The Higher Regional Court of Stuttgart then classifies the cartel in dispute within this estimation corridor on the basis of various "areas of impact" (content and duration of the infringement, organization, market conditions, and demand response). Since the plaintiff was only an indirect purchaser of bathroom fittings, the Higher Regional Court of Stuttgart then also estimated the proportion of the cartel damage thus determined that was passed on from the first to the second market level, using a "model calculation formula" based on the model of Cournot competition.

In the pending appeal proceedings, the Federal Court of Justice will now have to clarify, among other things, whether this schematic approach, driven by considerations of procedural economy, takes sufficient account of the specifics of the individual case. In addition, the question arises as to whether the approach is still covered by the power to estimate damages in court under Section 287 of the

German Code of Civil Procedure (ZPO), or whether the Higher Regional Court of Stuttgart has assumed expertise in competition economics that it does not actually possess.

2. Idealo vs. Google (Shopping)

The Regional Court of Berlin also made use of its judicial power to estimate damages when, in November 2025, it ordered Alphabet (Google) to pay around EUR 374 million to the price comparison service idealo. In parallel proceedings brought by the comparison service testberichte.de (Producto), it ordered Google to pay around EUR 107 million. According to the findings of the European Commission in the *Google Shopping* case, Google had abused its dominant position in the market for general search services by giving its own comparison services preferential positioning and presentation on the general results page of its search service compared to competing comparison services.

Unlike in classic antitrust damages proceedings, the damages claimed were not based on the price surcharge for products affected by the antitrust violation. Rather, Google's competitors demanded compensation for the profits they had lost because of the infringement.

The Regional Court based its estimate on a simplified "comparative market analysis." To estimate the amount of damages, the Regional Court took the plaintiff's actual traffic prior to the violation as a starting point and extrapolated this using the growth rates of total sales in the e-commerce sector to determine the plaintiff's hypothetical traffic. On this basis, the court determined the lost sales and, after deducting the relevant costs, the lost profits. The court refused to obtain an expert opinion because even an expert could not determine with a "useful degree of reliability" how Google would hypothetically have proceeded with regard to the design of its general results page.

In addition to the damage estimate, it is particularly noteworthy that the Regional Court only partially relied on the binding effect of the European Commission's decision to determine the antitrust violation. The decision only found a violation of the antitrust prohibition of abuse until mid-2017. However, based on its own findings of fact, the court assumed that the infringement causing damage would continue until 2024. Nevertheless, the damages awarded, amounting to EUR 374 million, ultimately fell significantly short of the amount claimed, which was around EUR 3.5 billion.

3. Enforcement of the DMA before National Courts (Google)

Alphabet was also a defendant in another important case during the reporting period. This concerned an injunction brought by the email provider 1&1 for violations of obligations under the Digital Markets Act (DMA). The defendant, Alphabet Inc., is the addressee of these special behavioral restrictions for so-called gatekeepers based on a corresponding designation decision by the European Commission. These apply directly, regardless of the outcome of parallel administrative proceedings by the European Commission and can be enforced in national courts through civil proceedings.

In August 2025, the Regional Court of Mainz ordered the company to allow the setup of Android OS, Google Play, YouTube, and Chrome even without a Gmail address, using alternative email providers. The Regional Court of Mainz saw Google's previous practice as an illicit bundling practice under Art. 5 (8) DMA. Put simply, this provision prohibits gatekeepers from requiring their users to subscribe to or register for certain platform services in order to use other platform services of the gatekeeper. In the opinion of the Regional Court of Mainz, this was incompatible with Google requiring users without an existing personal email address to register with Gmail.

Although Google had argued that it was in regulatory dialogue with the European Commission regarding the implementation of its obligations under the DMA, the Regional Court of Mainz refrained from suspending the proceedings until the conclusion of this dialogue. In the court's view, a suspension under Article 39(5) DMA was not an option in these informal proceedings because there was no decision that could have been contrary to the decision of the national court.

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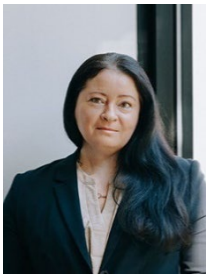

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