SZA SCHILLING, ZUTT & ANSCHÜTZ

July 2026

Major Developments in German Competition Law in the First Half of 2026

During the reporting period, not only did the fuel measures package — which was passed in great haste — take effect, but the details of the 12th Amendment to the Act Against Restraints of Competition (ARC) also began to take shape. In addition, the Supreme Court’s case law on antitrust damages continues to evolve, particularly with regard to damage assessment using the “bathroom model” of the Higher Regional Court of Stuttgart and the limits on consolidated claims.

Topics in this issue:

I. Merger Control

1. Draft of the 12th Amendment to the Act Against Restraints of Competition

The most significant change to merger control is likely to be the **increase in the revenue thresholds** from EUR 500 million to EUR 750 million worldwide and from EUR 50 million to EUR 75 million, and from EUR 17.5 million to EUR 20 million, domestically. The government draft of the 12th Amendment to the Act Against Restraints of Competition (“ARC”), published in mid-July, retains this change, even though the Federal Cartel Office (“FCO”) had criticized that raising the domestic revenue thresholds could limit its ability to effectively prevent the emergence of economic power beyond an economically reasonable level and create a regulatory gap.

The concept of “**significant domestic activity**” in the context of the transaction value threshold was also retained, even though the FCO had advocated using the more practical criterion of domestic impact. However, in the future, it will be sufficient if the target company is "expected to engage in significant domestic activity" within a two-year forecast period.

For mergers that fall below the transaction value threshold, a **preliminary notification procedure (Phase 0)** with reduced disclosure requirements is to be introduced, under which the FCO will decide within two weeks whether a full notification is necessary. Otherwise, the merger is deemed approved. This new provision — as well as the voluntary nature of Phase 0, which was included at the recommendation of the FCO — is to be welcomed, as it allows uncontroversial cases to be processed more quickly. It would seem reasonable to consider extending this option to cases that meet the revenue thresholds.

With regard to **ministerial authorization**, the government's draft bill aims to reverse the restriction on third-party standing introduced by the 9th Amendment to the Act Against Restraints of Competition. This would mean that, even in the event of a complaint against a ministerial authorization, it would again be sufficient for third parties' economic interests to be affected.

2. Clearances Subject to Conditions

In early March 2026, after nearly eight months of review, the FCO approved the acquisition by **Strabag AG** of all shares in the Baden-Württemberg-based road construction company **Stumpp**, subject to the condition precedent that Stumpp sell one of its asphalt mixing plants to an independent purchaser prior to the completion of the transaction.

Strabag is a leading road construction company and already operates several asphalt mixing plants in the region, while Stumpp has two mixing plants there and is one of the major competitors. Their combined market share in the regional market for roller-compacted asphalt between Stuttgart and Lake Constance was well above the 40% threshold for a presumption of dominance. The remaining competitors, predominantly small and medium-sized enterprises, each held market shares of less than 15%. Strabag's market position would also have improved noticeably in the upstream and downstream markets for crushed natural stone and road construction services, respectively.

Due to the subsequent sale of the mixing plant in Zimmern, the combined market share remains well below 40%. The proceedings demonstrate once again that the FCO generally prefers ancillary conditions in the form of conditions precedent (in this case an "upfront buyer").

3. Mergers in the Defense Sector

During the reporting period, the FCO cleared three concentrations involving defense companies in Phase I. All three concerned the creation of joint ventures. Despite the pooling of resources, the FCO deemed the transactions unobjectionable, as they were primarily **complementary in nature** and were likely to have a competition-enhancing effect. In two cases, the FCO explicitly cited the **consortium rationale**, *i.e.*, the concept that competitors may cooperate where the cooperation enables an activity they could not efficiently undertake independently:

The establishment of a joint venture between the Norwegian company **Nammo Raufoss** AS and **Diehl Defence** GmbH & Co. KG stems from a successful joint bid for a large-scale contract from the German Armed Forces to manufacture and supply artillery ammunition. As part of this contract, Diehl—which previously had only limited activities in the production of artillery ammunition — is to construct the necessary production facility in Germany. Nammo, which has no production facility in Germany, is to license the intellectual property rights necessary for production and supply components. The FCO determined that the project raised no competition concerns, as Diehl would not have been able to fulfill the contract on its own due to a lack of in-house development expertise, while Nammo would have had no chance of winning the contract without a German partner. The FCO emphasized that the cooperation enables the parties to become an effective competitor and therefore promotes competition rather than restricting it.

A joint venture between **Rheinmetall Digital** GmbH and **OHB** SE was approved to take on a Bundeswehr procurement contract in the field of military satellite communications. The joint venture is to act as a systems integrator and prime contractor, with OHB responsible for the space and ground segments (including satellite production and ground stations) and Rheinmetall Digital responsible for the user and network segments (including end-user terminals). Since the parties operate in different, complementary fields and are merely pooling their expertise to submit a joint bid, the FCO found that the project raised no competition concerns.

Finally, the FCO approved a joint venture between **KNDS** Deutschland Beteiligungs GmbH and the Israeli company **ELBIT Systems Land** Ltd. in the field of artillery rocket systems. The jointly developed EuroPULS system is to be marketed by the joint venture as a complete system and supplemented with “through-life services” such as spare parts supply and maintenance, while development and production will remain with the parent companies. The FCO saw no competition concerns, as KNDS and ELBIT are not close competitors in this sector but rather pool complementary capabilities. There are also strong competitors with comparable product portfolios on the market. Since the joint venture, given its limited business purpose, does not permanently fulfill all the functions of an independent economic entity and thus does not have the character of a full-function JV, the FCO — and not the European Commission — had jurisdiction.

4. Further Clearances in the Preliminary Review Procedure

In April 2026, the FCO approved the acquisition of a controlling interest by **Darling Ingredients** (U.S.) in **PB Leiner**, a subsidiary of the Belgian Tessenderlo Group. Both companies process animal by-products into gelatin and collagen peptides, with Darling Ingredients being the European market leader and PB Leiner the third-largest manufacturer in Europe. After extensive investigations, including a global survey of competitors and customers, the FCO concluded that, despite the significant increase in market share, the merger did not meet the criteria for a prohibition. The high number of competitors and dynamic market conditions were cited as the primary reasons for this decision. The combined market share for collagen peptides of just under 40% was offset by: growth, higher margin expectations, a high degree of flexibility in switching between gelatin and collagen peptides, and significant imports into Europe ensure sufficient alternative sources of supply.

In March 2026, the Federal Cartel Office gave the **LifeFit Group** the green light to acquire 21 fitness studios operated under the “Just Fit” brand in the Rhineland. The LifeFit Group, a portfolio company of the private equity investor Waterland, operates 203 fitness studios nationwide under the “FitnessFirst,” “Barry’s,” “Yoga Six,” and “Elixia” brands. The review focused in particular on downtown Cologne, where LifeFit and Just Fit are in direct competition with each other, each operating a large number of gyms. In the FCO’s view, the sometimes substantial combined market shares were offset by the dynamic competitive situation on the ground: According to the FCO, new openings by competitors—both those that have already taken place and those that have been announced—as well as the expected continued availability of suitable locations resulting from the conversion of vacant retail and office space, suggest that sufficient competitive pressure in downtown Cologne can be expected in the future as well.

Finally, in mid-June 2026, the Federal Cartel Office approved the acquisition of 36 branch locations of **tegut** … gute Lebensmittel GmbH & Co. KG by **Tante Enso** Süd-West GmbH & Co. KG. Tante Enso operates just under 90 predominantly small-scale grocery stores in rural areas, which are managed under a hybrid concept: Staff are on site during certain hours; outside these hours, customers can use the stores autonomously as “smart stores” via a customer card and self-checkout registers. Given Tante Enso’s minor market position and the only minor overlaps with the existing store network, the FCO did not see any significant impediment to effective competition. The merger comes in the context of the announced complete withdrawal of the Migros Zürich cooperative – the parent company of tegut – from the German market. Planned acquisition by companies within the EDEKA network and the REWE Group concerning other tegut branche locations are currently being examined in ongoing in-depth review proceedings and are expected to face higher hurdles than Tante Enso.

II. Abuse of Dominance

1. FCJ in the Wikingerhof v. Booking.com II Case

In the far-reaching ***Wikingerhof v. Booking.com II*** decision, the German Federal Court of Justice (“FCJ”), the highest German civil court, strengthened the rights of companies *vis-à-vis* dominant platforms on 24 February 2026.

The Hotel Wikingerhof had deemed several of Booking’s practices to be abusive and filed a lawsuit more than ten years ago. Specifically, the lawsuit targeted Booking’s advertising of alleged discounts without the hotel’s consent, its withholding of direct guest contact information, and its linking of a higher ranking to the hotel’s payment of higher commissions. The hotel operator demanded that the booking platform cease these practices.

The FCJ largely overturned the appellate ruling, which favored Booking and remanded the case to the appellate court. It clarified that a company potentially affected by such conduct **does not have to prove that damage has already occurred** when asserting a claim for injunctive relief based on market abuse. In this regard, according to the FCJ, it is sufficient that the conduct is objectively capable of impairing the company's ability to compete. The FCJ assumed this to be the case for Booking withholding customer data. The FCJ further ruled that the element of demanding unreasonable fees is satisfied merely by the serious offer of abusive terms, even if the dependent company does not accept them — as is the case, for example, with an overpriced "ranking booster." It remains to be seen what position the appellate court, to which the case has been referred again, will take in light of the FCJ's ruling. In any case, the FCJ has now established some legal guidelines.

2. The Fuel Measures Package

In response to sharply rising fuel prices — triggered in particular by the war in Iran and the blockade of the Strait of Hormuz — the German Bundestag passed the so-called fuel measures package on 26 March 2026, in an exceptionally swift legislative process.

The package, which took effect on 1 April 2026, brings about far-reaching changes to the Act Against Restraints of Competition: **Section 29a ARC** introduces a new offense of market abuse, punishable by fines, that targets companies in the upstream fuel markets (wholesalers and refineries). These entities may not abuse their market power by charging fuel prices that unreasonably exceed costs. The key provision of Section 29a ARC is a reversal of the burden of proof: The affected company must, in particular, demonstrate and prove the reasonableness of the specific cost-price ratio.

In addition, **Section 32f ARC** and the measures regulated therein following sector inquiries by the FCO have been tightened (for a current proceeding under the provision introduced in 2023, see Section III.4. below). Section 32f ARC now allows the FCO, in streamlined proceedings following a sector inquiry, to order far-reaching remedial measures if a significant distortion of competition has been established. These measures may also affect companies for which no individual misconduct has been proven. It stands to reason that the provision will cause a stir outside the fuel sector. In any case, the sector inquiry tool is being significantly strengthened.

In response to the fuel measures package, the FCO has reorganized one of its decision-making divisions and formed project teams to address the topics of the Market Transparency Office (price data monitoring at gas stations), Section 29a ARC, and Section 32f ARC. However, in a series of press statements, FCO President Mundt repeatedly emphasized that the agency is a "competition authority, not a pricing authority" and cannot lower gasoline and diesel prices "by pushing a button."

3. Update on Section 19a of the Act Against Restraints of Competition

During the reporting period, the FCO continued to pursue proceedings against (digital) companies of exceptional cross-market significance under Section **19a ARC**.

Of particular note was the FCO's decision against **Amazon** regarding the company's price control mechanisms (see Newsletter 1/2025). Amazon was accused of limiting the visibility of retailers' offers or removing them entirely if their prices were deemed too high, which could lead to significant losses in sales for the retailers. The FCO assessed these practices as price manipulation on Amazon's part and thus as an abuse of its dominant cross-market position (Section 19a ARC) as well as a violation of the general abuse rules under Sections 18 et seq. ARC. FCO President Mundt emphasized that price manipulation by Amazon — in the form of price caps — is permissible only in absolutely exceptional cases, such as price gouging, given its dual role as both a marketplace provider and a retailer. Otherwise, there is a risk that the price level on the marketplace will be steered according to Amazon's preferences and used as a competitive tool against the rest of the online retail sector outside of Amazon. For the affected retailers, these interventions in pricing could result in their inability to cover their own costs, which, in the worst-case scenario, could lead to their displacement from the marketplace.

It is particularly noteworthy that the FCO made use for the first time of the option — reformed in 2023 — to recoup the economic advantage gained through conduct violating antitrust law. Accordingly, Amazon was ordered to forfeit an economic advantage amounting to EUR 59 million.

4. Developments in the Energy Sector

The topic of energy once again played a prominent role in the first half of 2026.

At the end of February 2026, the FCO concluded its investigation into Check24 regarding the use of price parity clauses (sometimes referred to as most-favored-nation or best-price clauses). The proceedings had been initiated in July 2025 due to suspicions that Check24 was contractually preventing energy suppliers from offering their own energy tariffs at lower prices through other distribution channels (primarily on their own websites or through other comparison portals). In its decision, the FCO declared the commitments offered by Check24 to be binding. In these commitments, Check24 undertakes to cease the contested practice and to refrain from using such price parity clauses in the future. This also includes refraining from so-called “dimming,” a practice in which tariffs from energy suppliers that do not comply with price parity requirements are given a lower ranking.

Also in February 2026, the FCO presented its sixth Market Power Report on electricity generation (covering the period from May 2024 to April 2025). One of the report’s key findings is that the market power of the leading electricity generators — RWE, LEAG, and EnBW — has increased significantly following the expiration of the reactivation of reserve power plants in early 2024 and the associated decline in controllable generation capacity. The FCO announced that it would closely monitor this development going forward.

5. Higher Regional Court of Düsseldorf: Continuation of Tchibo v. Aldi

Just over a year after the Regional Court of Düsseldorf on 16 January 2025 (see Newsletter 1/2025), the Higher Regional Court of Düsseldorf issued its decision in the appeal proceedings.

Like the lower court, the Higher Regional Court held that it was permissible under antitrust law for Aldi to offer coffee products from the group’s own roasting facilities at costs below production, at least during limited-time promotional weeks. The court thus dismissed an injunction sought by Tchibo, which viewed this pricing practice as an impermissible abuse of superior market power within the meaning of Section 20(3) ARC. The Higher Regional Court clarified that the statutory prohibition on selling food below cost price does not apply here, since Aldi processes the goods within its own group. Therefore, there is no contractually agreed-upon cost price for a product resold in its original form.

The decision is not yet final. Due to the fundamental significance of the case, the Higher Regional Court has granted leave to appeal to the FCJ.

III. Prohibition of Cartels

The draft bill for the 12th Amendment to the Act Against Restraints of Competition also introduces interesting developments in the area of the prohibition of cartels, aimed at implementing the goals enshrined in the German government’s coalition agreement of more effective antitrust enforcement and expediting proceedings.

The new **Section 32h ARC**, supplemented by an amendment to Section 114 ARC, is intended to enable the FCO to conduct procurement screening in the above-threshold sector in order to uncover bid-rigging. Under this provision, the FCO could systematically analyze procurement data for indications of violations of the prohibition of cartels – regardless of any specific suspicion. In an initial statement on the draft, the FCO expressly welcomed this expansion of its powers. It is expected that this will not only make it significantly easier to uncover antitrust collusion among bidders in public procurement procedures but also serve as a deterrent even before such collusion occurs. This would be in line with various measures taken by the FCO in recent years aimed at counteracting a decline in antitrust fine proceedings due to fewer leniency applications. The AFCO’s decision-making power under Section 32c ARC — which companies have previously been able to invoke for certain particularly significant horizontal collaborations — is to be extended to vertical issues. The previously time-limited exemption allowing newspaper publishers to cooperate under Section 30(2b) ARC is to be made permanent.

In the area of antitrust fine proceedings, the draft primarily provides for procedural clarifications and simplifications. They concern, among other things, questions of service, judicial jurisdiction, and the interruption of the statute of limitations. This is intended to expedite fine proceedings and reduce opportunities for formal challenges.

1. FCO Approves Continued Operation of Glasfaser Nordwest

At the end of March, the FCO once again reviewed the cooperation between EWE AG and Telekom Deutschland GmbH in the joint venture Glasfaser Nordwest (GFNW) — in place since 2020 — against the prohibition of cartels. It subsequently closed the proceedings after the parties had addressed the FCO’s remaining concerns by offering new commitments under Section 32b ARC. The review was triggered by the failure to meet certain marketing targets and the impending expiration of a temporary cease-and-desist order.

However, the review revealed that the situation had evolved significantly and that the original competition concerns had largely been resolved. A self-sustaining expansion dynamic had developed in the region covered by the cooperation: By the end of 2026, approximately 90% of households and business locations are expected to be accessible via a fiber-optic network, which is significantly above the national average. In addition, the Federal Network Agency had meanwhile reviewed and approved the offer from the perspectives of technical and economic replicability.

Non-discriminatory access on competitive terms continues to be safeguarded by commitments. The new commitments also include the extension of the proven shortlist mechanism, which prevents GFNW from thwarting competitors' projects by undertaking its own expansion at short notice. The commitments are valid until the end of 2030. The pending appeal before the Higher Regional Court of Düsseldorf against the merger control clearance for the company's formation is not affected by the closure of the proceedings.

2. FCO Approves Press Distribution Reform

In mid-February, the FCO concluded its antitrust review of the so-called "Fit-For-Future" (FFF) project — aimed at fundamentally reforming German press distribution—and closed the administrative proceedings. Under this model, the Presse-Grosso-Allianz (PGA) — a single, centralized press wholesaler — will replace the 13 wholesalers that have previously operated as regional monopolists. The PGA is structured as a "low-profit company" and is owned by a publishing holding company, a system partner holding company, and the wholesaler 4Press.

The review focused on two requirements: Press distribution must be non-discriminatory for all publishers, and press products must remain available nationwide — also in less densely populated regions. To ensure neutrality, responsibility for product assortment was transferred to an independent procurement company. In addition, an independent clearinghouse was established to handle complaints. The previously applicable markup conditions will remain unchanged until the end of 2030.

The reform is driven by the economic necessity of cost savings in light of the sustained decline in sales of print media. From a competitive standpoint, the plans will have little impact: Even today, there are hardly any relevant competitive elements in press distribution, as the 13 existing wholesalers each operate as regional monopolists. The FCO's approval is based on a discretionary decision that is largely based on the guiding principles of Section 30(2a) ARC — namely, non-discriminatory and comprehensive press distribution. The FCO leaves open whether the proposed transaction itself falls under the exemption provided by Section 30(2a) ARC and reserves the right to reopen the proceedings.

3. FCO on the Identifiability of Electricity Control Reserve Bids

Due to competition concerns raised by the FCO and in consultation with the Federal Network Agency, the four German transmission system operators have changed their disclosure practices regarding bids for electricity balancing reserves. As of the end of November 2025, disclosures will no longer specify which of the four control areas a bid originates from. Since the power plants of the major suppliers are concentrated in specific regions, the control zone assignment had previously made it possible in many cases to identify the suppliers. According to the FCO, this de facto transparency posed the risk of stifling competition and encouraging leading control reserve suppliers to exploit their strategic leeway in the highly concentrated control reserve markets.

4. Fuel Wholesale: Higher Regional Court of Düsseldorf Halts Investigation Under Section 32f ARC

The first application of the competition disruption procedure introduced in 2023 (Section 32f(3) ARC) is facing legal hurdles. In March 2025, the FCO had initiated proceedings based on a sector inquiry to examine whether there was a significant and ongoing disruption of competition at the wholesale level for fuels. The focus was on the price information services Argus Media and S&P Global, which provide market participants with detailed, up-to-date price information and could thereby increase the risk of collusion (see Newsletter 1/2025).

In April 2026, the Higher Regional Court of Düsseldorf ordered, in summary proceedings, that the appeals filed against the FCO's orders to provide information have suspensive effect, meaning Argus Media and S&P Global do not have to comply with those requests until the appeals have been decided. It expressed several fundamental doubts: First, it was questionable whether the FCO was even permitted to issue binding requests for information to companies in proceedings under Section 32f(3) ARC. Second, even if a distortion of competition were established, the price information services should not be called upon to remedy it, as they do not themselves trade in fuels. Furthermore, the court expressed serious doubts regarding the proportionality of requiring the price information services to disclose the identities of those market participants who forward price information to them. The protection of sources under press law must be given greater weight than the public interest in enforcing Section 32f(3) ARC. The Higher Regional Court expressly extended its legal opinion — to the stricter revised version of Section 32f(3) ARC, which entered into force on 1 April 2026 (see Section II.2. on this point).

The FCO has filed an appeal against denial of leave to appeal with the FCJ and has suspended proceedings under Section 32f(3) ARC pending clarification by the FCJ. Investigations under the new Section 29a ARC, which prohibits market-dominant suppliers from imposing unreasonable price markups at the refinery or wholesale level, are continuing, however.

5. Higher Regional Court of Düsseldorf on Commission Pass-Through

In mid-May, the Higher Regional Court of Düsseldorf ruled that a cruise line may not prohibit its travel agent from passing on a portion of the commission in the form of vouchers or bonus points to end customers. The agency agreement concluded between the parties was not a "genuine" commercial agency agreement, under which the passing on of commissions could be excluded under certain circumstances. The agent acts as a "non-genuine" commercial agent, as she is not integrated into the defendant's business but instead independently arranges trips for numerous tour operators. The contractual prohibition on passing on commissions therefore violates the prohibition of cartels (Art. 101(1) TFEU, Section 1 ARC), as it prevents price competition in a manner contrary to the prohibition of cartels. The termination of the agency agreement based on this prohibition is invalid.

6. Higher Regional Court of Frankfurt on the Review of Arbitration Awards

In a decision of significance for arbitration practice, the Higher Regional Court of Frankfurt set aside a partial arbitral award on the grounds of a violation of Article 101 TFEU. The case concerned a non-competition clause agreed upon as part of a business acquisition agreement, which was, in principle, permissible as an ancillary agreement to the concentration. However, under the interpretation adopted by the arbitral tribunal, the exceptions — particularly those regarding the acquisition of equity interests for purely investment purposes — were defined too narrowly. The non-compete clause was therefore excessive and violated Article 101 TFEU.

The court clarified that arbitral awards are subject to unrestricted review by state courts with respect to antitrust provisions — both in terms of fact and law. The decisive factor for a possible violation of ***ordre public*** within the meaning of Section 1059(2)(2)(b) of the German Code of Civil Procedure is not whether the arbitral tribunal reasonably assessed antitrust concerns or failed to address them at all, but rather whether substantive antitrust concerns apply to the content of the arbitral award. Articles 101 and 102 of the TFEU, like German antitrust law, form part of *ordre public*. The case was remanded to the arbitral tribunal for further proceedings and a new decision pursuant to § 1059(4) of the German Code of Civil Procedure.

IV. Cartel Damages

In the area of antitrust damages law, two issues in particular continue to be at the center of judicial decision-making: the determination of the cartel-induced price premium and the consolidated assertion of damages through assignment models. In its recently published Main Report 2026, the Monopoly Commission also devotes a detailed section to each of these two issues. In particular, the Monopoly Commission provides an in-depth analysis of the estimation model used by the Higher Regional Court of Stuttgart in its bathroom fittings decision from November 2025 (see Newsletter 2/2025). In light of the persistently long duration of antitrust damages proceedings, the Monopoly Commission recommends that the legislature adjust the procedural framework to make the proceedings more efficient, faster, and more manageable. However, such legislative relief is not expected in the foreseeable future. The current government draft of the Amendment to the Act Against Restraints of Competition contains — with the exception of a provision regarding jurisdiction for appeals in class action proceedings — neither procedural nor substantive provisions on antitrust damages law. In particular, contrary to some calls, the draft does not provide for a statutory presumption regarding the amount of damages.

1. Damages Assessment Based on the "Bathroom Model" of the Higher Regional Court of Stuttgart

As expected, the innovative estimation model developed by the Higher Regional Court of Stuttgart in the bathroom fittings cartel case is not only the subject of legal and economic debate but has also been directly adopted by the courts (notwithstanding the pending appeal proceedings). For example, in two parallel advisory rulings dated 4 February 2026, concerning the pesticide cartel, the Dortmund Regional Court commented on the estimation of damages and, in doing so, addressed in particular the "step-by-step-estimation model" of the Higher Regional Court of Stuttgart. The Regional Court of Dortmund appears to assume, in principle, that the Higher Regional Court Stuttgart's model is a valid methodological approach for determining the cartel-induced price markup. However, it clarifies that even the application of this model requires a sufficiently substantiated submission by the plaintiff that specifically addresses the defendant's arguments. This applies in particular when the plaintiff is not only in a position to commission an economic expert opinion but has already had one prepared and merely omitted to introduce it into the proceedings.

In addition to the question of the assessment of the quantum of the damage, the Regional Court of Dortmund also addresses the question of whether, in the case of a single and continuous infringement, each transaction gives rise to a separate claim for damages or whether a single aggregate damage arises that must be assessed as a whole. In this context, it refers to the pending preliminary ruling proceedings initiated by the Dutch Hoge Raad before the ECJ (Case C-426/25 – Air Freight Cartel). The ECJ will have to clarify whether EU law mandatorily requires the assumption of a single aggregate amount of damages in cases of single and continuous infringements, or whether the assessment is reserved to national law. Even though the preliminary ruling proceedings expressly relate only to the question of applicable law, the answer is likely to have implications for the substantive legal assessment in Germany as well. Should the ECJ conclude that EU law mandatorily leads to a single aggregate amount of damages, this could call into question the FCJ's existing case law. To date, the FCJ has assumed that there are separate claims for each procurement transaction (as in the judgments in the Rail Cartel V and Steel Blasting Media cases).

2. Consolidated Claims (Truck and Round Timber Cartel)

In its ruling of 12 May 2026, regarding the so-called class-action debt collection case against the truck cartel, the FCJ made fundamental statements regarding the limits of consolidated antitrust damages claims. The case involved a class-action lawsuit filed by a debt collection service provider that had bundled claims from 3,266 domestic and foreign assignors from 21 countries in connection with over 70,000 transactions. While the Cartel Panel confirmed, in line with its "financialright" case law, that antitrust damages claims can generally be asserted through a class action, it clarified that a heterogeneous and unstructured consolidation of claims may, in exceptional cases, render effective legal protection practically impossible. In such a case, the court may issue orders to the plaintiff debt collection agency to prepare for a separation of proceedings. If the plaintiff fails to comply with these orders within a period of no more than six months, this may result in the action being dismissed as inadmissible due to the abusive exercise of procedural powers.

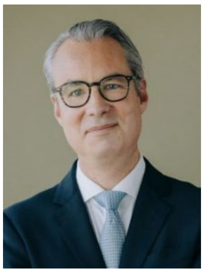
At the same time, the FCJ clarifies that the grouping of assignors from different market levels — such as direct and indirect customers — does not, *per se*, constitute a conflict of interest under Section 4 of the German Act on Out-of-Court Legal Services that would render the assignment null and void, provided that the debt collection service provider has contractually committed to bundling claims of the same nature. It remains unclear, however, whether the agreement concluded between the plaintiff and its litigation financier gave rise to a structural conflict of interest relevant to the validity of the assignments. In this regard, the FCJ has instructed the appellate court (Higher Regional Court of Munich) to review the litigation financing agreement, which has not yet been submitted.

Most recently, in its ruling of 28 July 2026, the FCJ also ruled on the round timber cartel (lower court: Higher Regional Court Stuttgart), ruling that the plaintiff debt collection service provider — which had sought damages of at least EUR 270 million from the State of Baden-Württemberg based on rights assigned by 36 sawmills in connection with alleged antitrust violations — was entitled to assert its claim. In particular, the FCJ found no structural conflict of interest in this case that could have constituted a violation of Section 4 of the German Act on Out-of-Court Legal Services. The full text of the FCJ ruling has not yet been published. However, the FCJ thus appears to support the position of the Higher Regional Court of Koblenz (ruling of 19 February 2026) regarding standing to sue, which also assumed the admissibility of the class-action debt collection model for antitrust damages claims arising from the round timber cartel. In particular, the Higher Regional Court of Koblenz had rejected the objection that the special complexity of antitrust damages law precluded authorization to collect damages.

From a substantive perspective, however, the FCJ's ruling in the round timber cartel case is likely to represent a setback for the plaintiffs. This is because, unlike the Higher Regional Court of Stuttgart in its appellate ruling, the FCJ does not yet consider a cartel violation by the defendant state to be established. There is a lack of sufficient findings regarding the content and scope of the specific agreements between the forestry authorities and the municipal forest owners, as well as the economic and legal context in which these agreements existed. Consequently, the FCJ was unable to assess whether more competition would have been possible without these agreements. The FCJ also found that other facts supporting the claim were not sufficiently established. On the one hand, this concerned the question of fault on the part of the employees of the state forestry administration. On the other hand, there was no sufficient basis for assuming that the alleged timber purchases actually took place — an issue that plays a significant role in a large number of pending claims for damages. The FCJ also did not consider the proof of damages to have been established so far. The proceedings were therefore referred back to the Higher Regional Court of Stuttgart for further fact-finding.

SZA SCHILLING, ZUTT & ANSCHÜTZ

This client information contains only a non-binding overview of the subject area addressed in it. It does not replace legal advice. Please do not hesitate to contact us for this client information and for advice:



Dr. Michael Holzhäuser
Partner
Frankfurt
Antitrust & Competition Law

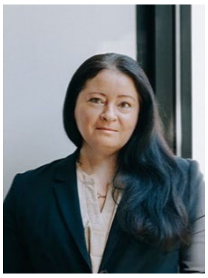
T +49 69 97 69 6010
E Michael.Holzhaeuser@sza.de

Dr. Stephanie Birmanns
Partner
Brussels
Antitrust & Competition Law |
Foreign Trade Law

T +32 2 89 35 121
E Stephanie.Birmanns@sza.de

Hans-Joachim Hellmann
Of Counsel
Mannheim
Antitrust & Competition Law

T +49 621 42 57 212
E Hans-Joachim.Hellmann@sza.de



Dr. Christina Malz
Counsel
Mannheim
Antitrust & Competition Law

T +49 621 42 57 212
E Christina.Malz@sza.de

Sebastian Gröss
Counsel
Brussels
Antitrust & Competition Law |
Commercial | Litigation & Arbitration

T +32 2 89 35 124
E Sebastian.Groess@sza.de

Dr. Maria Held
Counsel
Munich
Antitrust & Competition Law |
Foreign Trade Law

T +49 89 4111 417 215
E Maria.Held@sza.de

Fabian Ast
Principal Associate
Mannheim
Antitrust & Competition Law

T +49 621 42 57 225
E Fabian.Ast@sza.de

Dr. Svenja Huemer
Associate
Mannheim
Antitrust & Competition Law

T +49 621 42 57 212
E Svenja.Huemer@sza.de

SZA Schilling, Zutt & Anschütz Rechtsanwaltsgesellschaft mbH **www.sza.de** **info@sza.de**

Taunusanlage 1
60329 Frankfurt a. M.
T +49 69 9769601 0
F +49 69 9769601 102

Otto-Beck-Strasse 11
68165 Mannheim
T +49 621 4257 0
F +49 621 4257 280 102

Maximiliansplatz 18
80333 Munich
T +49 89 4111417 0
F +49 89 4111417 280

Square de Meeûs 23
1000 Brussels
T +32 28 935 100
F +32 28 935 102 280 102