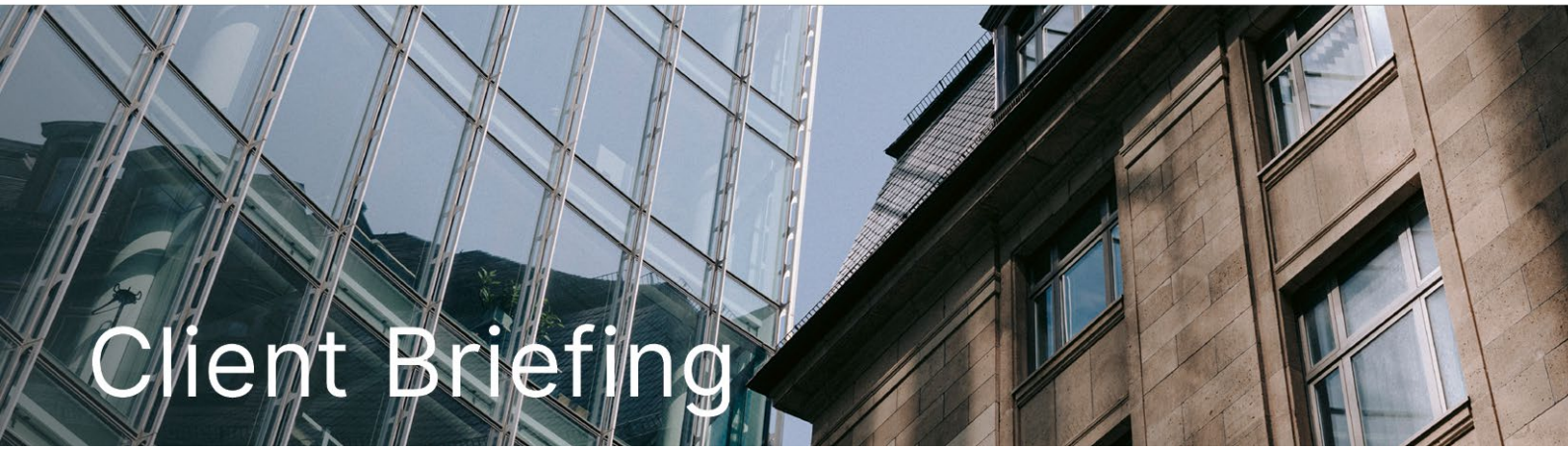

August 2025

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

In addition to the perennial favorites, Section 19a of the German Act Against Restraints of Competition and the Federal Court of Justice ruling on cartel damage cases, the first half of 2025 saw, *inter alia*, fining decisions, mergers in the European defense industry, and, last but not least, news for soccer fans.

I. Competition Policy Goals of the New Federal Government

The new German government is placing the strengthening of Germany's and Europe's competitiveness at the heart of its competition policy. The coalition agreement emphasizes the modernization of antitrust law, the acceleration of procedures, and the consistent enforcement of the Digital Markets Act. The aim is to create fair competitive conditions, promote innovation, and significantly reduce regulatory hurdles for companies. The coalition is dedicating an expert commission to "Competition and Artificial Intelligence" which will be established at the Federal Ministry for Economic Affairs and Energy. Particular attention will also be paid to European sovereignty and security interests, especially in the area of merger control.

II. Merger Control

1. Prohibition of Slaughterhouse Takeover

In mid-June 2025, the German Federal Cartel Office ("FCO") prohibited **Tönnies** from acquiring three slaughterhouses from **Vion**. The vertically integrated Tönnies Group is one of the leading players in pig and cattle slaughtering in Germany. According to the FCO, Vion is currently the market leader in cattle slaughtering in southern Germany.

The FCO was concerned that the transaction would have resulted in the creation or strengthening of a dominant position for Tönnies in several regional slaughter markets. Extensive investigations and the evaluation of various data for the recording of livestock for slaughter showed that the merger would have significantly reduced the alternatives available to producers and customers.

The FCO considered Tönnies' proposals to address these concerns, which included the sale and lease of sites to buyers selected by Tönnies, to be insufficient. Tönnies has since lodged an appeal against the FCO's decision with the Higher Regional Court in Düsseldorf.

Notwithstanding the prohibition of the Vion transaction, Tönnies is already working on the next project that will have to be cleared by the FCO: its subsidiary **Zur Mühlen Gruppe** intends to acquire a majority stake of 50.05% in its competitor **The Family Butchers**. This transaction would not be the first acquisition of struggling sausage manufacturers by Zur Mühlen Group and could strengthen Tönnies' position in the German sausage market.

2. Mergers in the Defense Sector

The **European defense industry** is gearing up for the significant investments expected from EU member states. This is evidenced not least by several transactions during the reporting period, each of which was approved by the FCO in the phase I.

January saw the approval of a joint venture ("JV") between **Rheinmetall AG** and the Italian company **Leonardo S.p.A.** The JV, Leonardo Rheinmetall Military Vehicles (LRMV), will be based in Rome and will act as the main contractor and system integrator for the Italian Ministry of Defense in the field of military armored vehicles (in particular combat and infantry fighting vehicles). According to the ministry's specifications, at least 60% of the value added must be generated in Italy. Rheinmetall will contribute its platforms for the Panther and Lynx tanks, while Leonardo will contribute the defense electronics. The FCO cleared the project, as none of the parties would have been able to bid for the expected projects on their own. In addition, it considered the parties' activities largely complementary.

Rheinmetall is also party to another cross-border JV, which was approved in April based on similar considerations. This JV involved **Rheinmetall**, **KNDS Germany**, **KNDS France** and **Thales SIX GTS France** and is created to develop the Modular Main Ground Combat System ("MGCS"). The **MGCS Project Company** will be based in Germany and will be responsible for the industrial development of a multi-platform system for armored vehicles, which is expected to replace the KNDS' Leopard 2 and Leclerc battle tanks from the 2040s onwards. The JV's customers will be the German and French governments.

The German-French defense group **KNDS**, created by the merger of Krauss-Maffei Wegmann and Nexter, has also increased its strategic stake in **RENK Group AG** to 25% + 1 vote. RENK is a leading supplier of transmissions and suspension systems for military vehicles used by the Armed Forces of Germany, the US, and other NATO countries. In addition to KNDS, other total system providers also purchase gearboxes and other components from RENK. The FCO concluded that RENK's high production capacities meant that no foreclosure effects or other competitive disadvantages for the remaining customers were to be expected. Finally, it found that KNDS's influence on RENK would remain limited due to the lack of control.

3. Further Noteworthy Clearances in Phase I

The **UniCredit/Commerzbank** case also involved a non-controlling minority shareholding. UniCredit S.p.A., one of Europe's largest banking groups, in April received green light from the FCO to acquire up to 29.99% of the shares in Commerzbank AG. In its investigation, the FCO focused on the impact on

competition in the German private and corporate customer business, where both banks offer standard banking and financial services. The authority concluded that, despite a strengthening of UniCredit's market position, a large number of significant competitors – including savings banks, the cooperative banking sector (*Volks- und Raiffeisenbanken*) and other private banks – would remain post-transaction. Even in the segments particularly affected, such as SME financing and foreign trade, there were numerous alternatives available to customers, so that the FCO did not except a significant impediment to competition.

Although the acquisition of a 10% stake in **airBaltic Corporation AS** by **Deutsche Lufthansa AG** remained well below the 25% threshold, it did confer significant competitive influence due to additional rights regarding decision-making at airBaltic, as well as significantly expanding the parties' wet lease cooperation. The clearance granted in June was preceded by an investigation into the effects on competition, in particular on flight connections between Germany and the Baltic States. Lufthansa and airBaltic are in direct competition on several of these routes, with the number of alternative airlines being limited. Although the FCO considered this to be problematic, it had to approve the transaction because the routes concerned were so-called ***de minimis* markets**, in respect of which a prohibition is not possible.

The FCO also felt compelled to clear the acquisition of **Medienholding Süd** by **Neue Pressegesellschaft** despite considerable competition concerns. The authority feared that the merger of the parties' respective regional newspapers under one roof could lead to the creation of a dominant market position, as these two titles were the only competitors in the regional daily newspaper sector in some regions of Baden-Württemberg. However, the markets affected were again *de minimis* markets with very low turnover. In both cases, the FCO was unable to conceal its dissatisfaction with what it considered to be an unsatisfactory outcome.

4. Federal Court of Justice on the Consideration of Commitments

In February, the Federal Court of Justice ("FCJ") rendered an interesting decision assessing the formation of a JV between **Deutsche Telekom GmbH** and **EWE AG** for the construction and operation of a fibre optic network under the so-called "*Doppelkontrolle*" i.e. a review under both antitrust and merger control rules.

In procedural terms, the FCJ clarified that, under the law in force since 2021, rulings in which the Higher Regional Court did not allow for an appeal to the FCJ, only those parties to the proceedings who actually fought for an admission to appeal can later be admitted to appeal. The **possibility of appeal** is thus **limited to successful appellants** who have lodged an appeal against non-admission (*Nichtzulassungsbeschwerde*). This is a change with regard to the prevailing interpretation of the previous law.

However, the focus of the FCJ's decision was on the substantive question of how to deal with commitments previously declared binding in antitrust proceedings in the context of merger control. The initial case had been examined in 2019 following a **double review** for compatibility with the prohibition of cartels under Section 1 of the Act Against Restraints of Competition ("ARC") and under merger control law. In the cartel proceedings, the FCO had declared **temporary commitments** made by the parties binding and had taken these commitments into account in its decision in the merger control proceedings. Upon appeal, the Higher Regional Court of Düsseldorf assumed that the commitments in dispute were insufficient in terms of structure and timing and could not eliminate the harmful effects of the merger identified by the Authority. It therefore overturned the clearance decision on appeal by Vodafone, a third party.

Following the successful appeal against non-admission by FCO and Telekom, the FCJ now emphasized that the question whether the merger would significantly impede effective competition, must be assessed on the facts as they stand after the conclusion of the antitrust proceedings, taking into account any commitments made. Accordingly, commitments made in antitrust proceedings must also be taken

into account in merger control decisions, even if they are temporary and behavior-oriented. This applies even if such behavioral commitments would be inadmissible as ancillary provisions under merger control law due to the prohibition of ongoing behavioral control (Section 40(3) sentence 2 ARC). However, the FCJ clarified that there must be no circumvention of the merger control provisions and instructed the Higher Regional Court of Düsseldorf to examine this question, taking into account the parties' submissions.

III. Abuse of Dominance

1. Focus on Digital Companies (Section 19a ARC)

During the reporting period, the FCO continued to pursue several proceedings against (digital) undertakings of paramount significance for competition across markets.

In February, the Authority raised concerns regarding **Apple's** App Tracking Transparency Framework (ATTF). Introduced just over four years ago, the ATTF requires app providers in Apple's iOS App Store to obtain (additional) user consent before they can access certain user data for advertising purposes. However, this requirement only applies to third-party app providers and not to Apple itself. In its preliminary assessment, the FCO considers this self-preferential treatment by Apple to be a violation of both Section 19a(2) ARC and the 'classic' abuse provision of Article 102 TFEU. The authority's view is particularly close to that of the European courts and the EU Commission. The latter had imposed a billion-euro fine on Alphabet/Google for self-preferencing in Google Shopping (2017) which was confirmed in European courts (2021, 2024).

In April, the FCO announced a success in one of the proceedings under Section 19a ARC against **Alphabet/Google**. According to the press release, the company has committed to ending several features of the Google Maps Platform and Google Automotive Services areas that were criticized by the authority (detailed in newsletters 1/2023 and 1/2024). Given the choices and combinations now available to Alphabet/Google customers, the FCO feels its restrictive approach has been vindicated.

Amazon was also not spared from regulatory activity under Section 19a ARC during the reporting period. In June, the FCO informed Amazon of its view that price caps on the Amazon Marketplace violate antitrust abuse provisions. This is based on Amazon's business practice of not allowing what it considers to be 'significantly high' or 'uncompetitive prices' from Marketplace sellers to appear in the product-specific Buy Box. According to its own statements, Amazon wants this approach to ensure that it is perceived as an attractively priced online platform and to offer consumers the lowest possible prices. Without providing any details, the FCO seems particularly concerned that there is no transparency in this regard, and that the mechanisms interfere with the sellers' freedom to set their own prices. The further course of the proceedings remains to be seen. Amazon's initial reaction to the FCO's criticism was that the authority's view made 'no sense'.

A current overview of all proceedings under Section 19a ARC is available (in German) on the website of the FCO.

2. News on Dependency of Undertakings

In a decision handed down in March 2025, the FCJ had the opportunity, after a longer period of time, to once again set out fundamental considerations on corporate dependency pursuant to Section 20(1) ARC. The provision is designed to cover abuses below the threshold of market dominance in cases where one undertaking has relative market power *vis-à-vis* another market participant.

Beyond the specific case (re-leasing of a quarry without considering the previous lessee), the FCJ described the purpose of Section 20 ARC in general terms. In doing so, it states that the provision is intended to prevent market-powerful undertakings from exploiting their scope for action, which is not sufficiently controlled by competition, to the detriment of third parties and thereby disrupting market activity. However, the intention is not to provide purely unilateral social protection or protection against poor business decisions.

In terms of timing, the FCJ confirms its view that the examination of sufficient and reasonable alternative options (in the decision, the lease of another quarry)

is based on the time of the possible impediment or discrimination. Whether and to what extent a company-related dependency existed in the past and who caused it is only to be taken into account when balancing the interests.

Ultimately, the FCJ found that there was unreasonable impediment and unlawful discrimination in this specific case, particularly because the failure to consider the previous lessee was allegedly intended solely to restrict competition between neighboring quarry operators.

The decision illustrates clearly that the provision of Section 20 ARC can also be relevant in rather atypical cases beyond the usual constellations of refusal to supply or access to distribution systems.

3. Tchibo vs. Aldi Süd: Offers below 'Cost Price'

Section 20 ARC was also relevant in a ruling by the Regional Court of Düsseldorf from January 2025. The proceedings were based on a lawsuit filed by the coffee company Tchibo against the discount supermarket chain Aldi Süd. Tchibo accused the food retailer of offering coffee products under its own brand name at below cost price, thereby violating Section 20(3) sentence 1 ARC.

The court dismissed the action as unfounded. This was primarily justified on the grounds that the prohibition on selling below cost price relates solely to trade in goods and services sourced from third parties. The ban did not apply to the sale of coffee produced by Aldi itself. Furthermore, the Regional Court of Düsseldorf emphasized that Aldi was free to use low prices to encourage customers to shop in its stores.

4. Update on District Heating Proceedings

Following the opening of proceedings against seven municipal utilities and district heating suppliers at the end of 2023 (see Newsletter 2/2023), the FCO provided an update on the status of the case in March.

Based on its investigations to date, the authority considers the initial suspicion to be substantiated, namely that utilities have used unlawful price adjustment clauses to the detriment of consumers. The companies can now respond to the allegations and present their arguments. Given their respective regional monopolies in district heating supply, it is doubtful whether they will be able to change the FCO's initial assessment.

IV. Prohibition of Cartels

1. Fine Proceedings

In mid-May, the FCO imposed fines totaling EUR 10.5 million on seven **road repair companies** for **customer allocation and bid rigging**. SZA represented one of the companies involved, Gerhard Herbers GmbH, in these complex antitrust proceedings, and secured a significant reduction in the fine by way of a settlement.

The alleged conduct exhibits classic elements of bid rigging. Among other things, the companies are said to have divided up public-sector clients from three federal states in Eastern Germany, including municipalities and state road construction authorities. To this end, they has used a map to outline regions allocated to one or more of the participating companies. In upcoming tenders, the company assigned to the relevant district was then to be awarded the contract.

This affected tenders issued by public contracting authorities for road repair measures (surface dressing, patching, crack repairs) or the supply of bitumen emulsion or grit. In cartel cases that affect public procurement enforcement usually is not limited to the liability of legal entities and their representatives, but potential criminal responsibility of individuals (under Section 298 of the German Criminal Code) is also taken into account. Against this background, parallel proceedings were conducted by the FCO and the Düsseldorf Public Prosecution Office.

In May, the FCO also concluded its proceedings regarding **audio products** against our client Sennheiser and against Sonova concerning **consumer electronics products** and imposed total fines of just under EUR 6 million on the two companies and three individuals for vertical price fixing. Sonova is a Swiss group that acquired Sennheiser's relevant consumer

electronics products during the period in question. The acquired business produces and distributes audio products, particularly headphones.

At the same time, the Austrian Federal Competition Authority (FCA) also conducted proceedings concerning vertical price fixing, which are currently still pending at the Higher Regional Court in Vienna as the antitrust court and will also be concluded by way of a settlement. The dawn raid in September 2022 in Germany was initially carried out by the FCO at the request of the Austrian FCA and the two authorities continued to coordinate their actions throughout the proceedings.

2. Soccer 1: 50+1 Rule

The debate about the implementation of the **50+1 rule** is a long-running issue in German professional soccer. At the request of the German Soccer League (DFL), the FCO has since 2018 been looking into the question of what limits should be set for external investors in the first and second Bundesliga (see Newsletter 1/2024).

Pursuant to a statement published in mid-June, the FCO still has no fundamental concerns against the 50+1 rule even taking into account the latest ECJ rulings in the *Super League*, *ISU* and *Royal Antwerp* cases. According to the FCO, the 50+1 rule restricts competition but can benefit from an exception to the cartel prohibition because the rule ultimately promotes the public interest of ensuring that broad sections of the population have opportunities to participate in decision-making.

However, in order to ensure that the rule continues to be applied in a legally compliant manner, concrete measures must be taken, which is why the FCO has supplemented its latest statement with specific recommendations. Essentially, all sports clubs must be able to compete on a level playing field. The DFL must therefore ensure in its licensing practice that all clubs in the first and second Bundesliga consistently offer their fans the opportunity to become voting members. In addition, it must be ensured that the 50+1 rule is strictly observed in votes. Finally, grandfathering rules for former sponsor clubs must be improved.

3. Malfunctioning of Competition in the Wholesale of Fuels

In March, the FCO made use of its **new competition tool** introduced in Section 32f(3) ARC for the first time, applying it to the wholesale fuel sector. The tool provides for a multi-stage procedure and allows the authority, following a sector inquiry, to determine that there is a **significant and continuing malfunctioning of competition**. On this basis, remedial measures can be imposed even without a specific finding of an infringement of antitrust law. The instrument is subsidiary to the FCO's other powers.

A sector inquiry launched in April 2022 and completed in early 2025 revealed indications of significant competitive risks posed by price information services used in the wholesale fuel market. The publication of detailed market information increases the risk of collusion, *i.e.*, a tacit agreement to set prices above the competitive level. In the FCO's view, there is also a risk that market participants will systematically manipulate price assessments. According to the FCO, its conventional powers are not sufficient to permanently remedy a possible lack of competition. The authority is now examining the effects of the two most widely used price information services provided by Argus Media and S&P Global.

4. Federal Court of Justice on Managing Director Liability

The FCJ has referred the question to the European Court of Justice ("ECJ") as to whether it is compatible with EU law for a company against which a fine has been imposed for a violation of antitrust law to be able to take recourse against its managing directors or board members.

In the underlying case, two companies belonging to a group (a limited liability company (GmbH) and a public limited company (AG)) sued their former managing director and chairman of the board for reimbursement of an antitrust fine imposed on the limited liability company and for compensation for IT and legal costs. The background to this was the defendant's participation in a price cartel in the steel industry. The lower courts dismissed the action, arguing that the purpose of antitrust fines – to sanction the company – would be undermined if the company

could pass on the burden of the fine to its management. The FCJ sees a need for clarification on this point and asks whether EU law excludes liability on the part of managing directors and board members, as this could impair the effectiveness and deterrent effect of antitrust fines. It will be interesting to hear the ECJ's position on this highly relevant question.

5. Higher Regional Court on Aluminium Cartel

Two rulings by the Higher Regional Court of Düsseldorf in the aluminium cartel show that it can be worthwhile to appeal against a fine imposed by the FCO. At the end of 2020, the FCO fined five aluminium smelters approximately EUR 175 million in total. Three of the companies cooperated and admitted the allegations in a settlement, whereas the remaining companies, Leiber Group and Otto Fuchs, contested the fines.

In February, Leiber Group initially achieved a consent decree (*Verständigungsurteil*). In this decree, the court reduced Leiber Group's fine by almost 80%. In addition, it restricted the charge, stating that although there had been an exchange of information in violation of antitrust law, there had been no price fixing.

In March, a contested judgment was handed down in the case of Otto Fuchs. The court levied a fine of EUR 30 million on the manufacturer of aluminium parts. This represented a EUR 115 million fine reduction compared to the amount imposed by the FCO. In determining the amount of the fine, the Higher Regional Court took into account that the exchange of information was often vague and that the price components discussed only accounted for a small proportion of costs, so that the potential damage was low despite high turnover affected by the cartel. The aluminum forgers were also said to have been in a 'sandwich position' between aluminium suppliers and car manufacturers. The FCO lodged an appeal against the decision with the FCJ.

Three executives were also fined, including a personally liable shareholder at the time. He was convicted of violating his supervisory duties because he had not taken the necessary supervisory measures to prevent antitrust infringements within the company.

V. Cartel Damages

1. Federal Court of Justice: Trucks Cartel VI

The series of FCJ decisions in the trucks cartel complex has been extended by another episode. In its Trucks VI decision, the FCJ essentially confirmed the principles already established in the Trucks IV and V decisions, particularly with regard to the standard of proof for the determination of damages and has now also applied them to cases involving truck leasing. According to the FCJ, it is therefore possible, within the framework of Section 287 of the German Code of Civil Procedure (ZPO), to estimate a minimum amount of damages by way of an overall assessment of all circumstances, not only for truck purchases but also in the case of leasing.

In addition, the FCJ maintained its strict approach regarding the remittal of cases to the court of first instance. Referring to its Trucks V judgment (see also Newsletter 2/2024), the FCJ declared the Higher Regional Court of Stuttgart's remittal to the Regional Court for the taking of evidence to be inadmissible and required the Higher Regional Court to conduct this comprehensive taking of evidence itself.

2. Estimation of Damages by the Courts of Instance

The question of estimating antitrust damages was also of particular significance at the level of the regional and higher regional courts during the reporting period. Increasingly, courts are making use of the option to estimate damages themselves pursuant to Section 287 of the German Code of Civil Procedure, most recently, for example, the Higher Regional Court of Schleswig in connection with the so-called drugstore cartel (*KWR-Produkte II*).

The Regional Court of Kiel had dismissed the action brought by a drugstore chain on the grounds that, in its view, the anti-competitive exchange of information by the defendants had not caused any damage. Taking into account the Schlecker case law of the FCJ, according to which even a mere exchange

of information gives rise to a factual presumption of damage, the Higher Regional Court of Schleswig overturned the first-instance judgment. According to the Higher Regional Court, at least some damage had occurred with the requisite degree of probability.

On this basis, the court considered that an independent estimation of damages was possible and appropriate even without econometric analysis. Even a court-appointed expert would not have been able to quantify the damage satisfactorily, despite the considerable costs involved.

Ultimately, however, the court awarded the plaintiff only EUR 200,000 in damages. With this estimated cartel overcharge of just 0.5%, the court remained well below the cartel-related price increase usually claimed in cartel damages actions. In view of the original claim of at least EUR 16.6 million and the order to pay 95% of the costs, the judgment can hardly be considered a victory for the plaintiff.

3. Assignment of Antitrust Damages Claims

The assertion of assigned antitrust damages claims continues to occupy the courts. While there are still no decisions from the FCJ, particularly on collective debt collection, the Higher Regional Courts are increasingly tending to accept such assignment models.

By contrast, the Regional Court of Dortmund recently dismissed an action against the pesticide cartel on the grounds that the plaintiff lacked legal standing. The plaintiff, a company incorporated under Luxembourg law with a share capital of only EUR 12,000, had asserted claims assigned to it by its parent company, a US company based in the Cayman Islands specializing in the purchase of receivables. The parent company had acquired these claims from numerous customers of the cartel members.

The Regional Court of Dortmund considered the assignment of the claims to be contrary to public policy and therefore void pursuant to Section 138 of the German Civil Code (BGB). In the court's view, the assignments were evidently intended primarily to shift the risk of litigation costs to the defendants. In particular, it was not apparent how the plaintiff could have satisfied the defendants' potential claims for procedural costs, which were substantial given the amount in dispute of around EUR 17 million, from its own resources at the time of the assignments.

4. Soccer 2: No Damages for Unlawful Forced Relegation

The FCJ had to decide on a case that was rather atypical for antitrust damages proceedings, concerning the forced relegation of the soccer club SV Wilhelmshaven e.V. in 2014. This was not the first time the FCJ dealt with this dispute, which was originally brought before the Court of Arbitration for Sport (CAS) and has been pending before the ordinary courts since 2013. After FIFA ordered the relegation of SV Wilhelmshaven e.V. from the Regionalliga (fourth division) for the 2013/2014 season and the North German Football Association (NFV) implemented this order, the FCJ declared the relegation invalid in 2016 due to insufficient statutory provisions of the NFV. After the club had unsuccessfully sought reinstatement in the Regionalliga before the FCJ, it subsequently asserted claims for damages arising from the unlawful forced relegation, also invoking a violation of Article 101 TFEU.

The claim for damages was now also finally dismissed. It remained unresolved whether the forced relegation actually violated Article 101 TFEU, as SV Wilhelmshaven was unable to demonstrate any causally attributable damage. Since the club would have been relegated for sporting reasons in the relevant season, the lower courts denied a causal link between the relegation and the alleged damage. The appeal against this decision was unsuccessful. The FCJ confirmed the assessment that the claimant had failed to prove the alleged causally attributable damage. The claimant could only claim damages if it could prove that, absent the forced relegation, it would have remained in the league. The FCJ also did not consider that the burden of proof should be eased in this respect under EU law.

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:

Hans-Joachim Hellmann
Partner
Mannheim
Antitrust & Competition Law

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

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

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

Dr. Michael Holzhäuser
Partner
Frankfurt
Antitrust & Competition Law

T +49 69 97696010
E Michael.Holzhaeuser@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

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