NEWSLETTER
ANTITRUST

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MAJOR DEVELOPMENTS IN GERMAN COMPETITION LAW IN THE FIRST HALF OF 2021

The effects of the 10th Amendment to the Act Against Restraints of Competition, which has been in force since mid-January 2021, are already becoming apparent. In contrast, the Corona pandemic no longer seems to be slowing down the FCO's and the German courts' drive for activity in the field of antitrust law. We report on the most important developments.

I. Merger Control

In its Annual Report 2020/21, the German Federal Cartel Office (FCO) provided a positive summary of the year 2020, which was shaped by the COVID-19 pandemic. With approximately 1,230 examined transactions, the FCO's activities in the area of merger control were only slightly below the level of 1,400 notifications in 2019.

The latest amendment to the ARC, which has been in force since the beginning of 2021, is widely expected to significantly reduce the number of cases and thus the workload of the Office in the area of merger control and the bureaucratic burden on companies due to higher thresholds (see our special Newsletter on the 10th Amendment to the ARC, February 2021). However, the number of roughly 500 filings in the first half of 2021, which continues to be affected by the COVID-19 pandemic, does not reflect this too noticeably so far.

1. Federal Court of Justice on CTS Eventim

In the **CTS Eventim/Four Artists** case, the Federal Court of Justice had to rule on the requirements for strengthening an existing dominant position in a vertical constellation. The Cartel Senate stated that a merger which is expected to strengthen a dominant position due to even more unfavorable conditions for downstream competition constitutes a significant impediment to effective competition. In fact, the companies' areas of activity overlapped only marginally with a possible increase in market share of about 1% (provider of ticket sales services/concert and event

agency). However, in view of CTS Eventim's prominent market position, even a minor impairment of the remaining or potential competition was sufficient for a strengthening effect leading to a prohibition. For the Federal Court of Justice, the decisive factor was the expected greater foreclosure of the market for competitors of CTS Eventim as a result of the vertical integration of a large buyer of ticket sales services. As a result, the FCO's prohibition decision from 2017 was confirmed.

The Federal Court of Justice has thereby also clarified the issue of whether the **significance of the strengthening of a dominant position** within the meaning of Section 36 (1) sentence 1 ARC must be determined separately as a criterion for prohibition. This additional test requirement had been controversial since the adoption of the SIEC test in the course of the 8th Amendment to the ARC in 2013 and was advocated by parts of the antitrust literature. The Federal Court of Justice now decided, in agreement with the Düsseldorf Higher Regional Court and the FCO, that the strengthening of a dominant position as a presumptive example always constitutes a significant impediment to effective competition and that no further separate determination of significance is required.

2. FCO Proceedings

The FCO approved several transactions in the media sector. **C.H. Beck**, a well known specialist publisher of legal works, is allowed to acquire a stake in **RA-Micro**, a provider of law firm management software. Although the two companies are not direct competitors, they are active in neighboring markets with partly overlapping customer groups. In the digital sector, C.H. Beck has a strong market position with its Beck Online database service, and the target company is also strongly positioned with its digital offering. The case was nevertheless cleared without conditions, as the FCO was ultimately unable to identify any impediment of competitors. It was not envisaged that, post-transaction, C.H. Beck would grant RA-Micro privileged access to its digital infrastructure or exclude competitors from new functions. The FCO was unable to identify tangible evidence of an obstruction strategy to this effect. It is likely that the project was ultimately approved without any problems since only a minority shareholding had been acquired. A future acquisition of a majority shareholding or an acquisition of control would again be subject to merger control.

Following the acquisitions of Mayersche Buchhandlung in 2019 and Osiander at the end of 2020, the acquisition of **Lehmanns** by **Thalia** was also cleared in April 2021. What is now by far Germany's largest book retail chain is thus also positioning itself more strongly in the area of the sale of specialist information to professional end customers. In its competitive assessment, the FCO took into account the growing importance of direct sales by major publishers and the increase in open access publications, and also included online bookselling in the assessment.

The complete takeover of RTL Disney Fernsehen (**SuperRTL**) by Bertelsmann (**RTL Group**) was recently cleared in the first phase. The latter already held a 50% stake in the children's channel SuperRTL. The transaction primarily affects the nationwide television advertising market, which the FCO continues to treat as a product market of its own and separate from online video advertising. However, the competitive pressure that online advertising exerts on the television advertising market was taken into account.

The smooth approval of **Vonovia's** plan to acquire all shares in **Deutsche Wohnen** by means of a public takeover bid caused quite a stir, even though the deal might now be off due to business reasons. Numerous local and regional markets for the rental of residential properties throughout Germany were affected. However, the combined market shares of these heavyweights in the German residential market did not exceed 20% in any of the geographic

markets examined and were mostly below 10%, which is due to the very fragmented provider structure for rental apartments. The project was therefore approved within the first phase.

The FCO also dealt with several projects in the field of agricultural trade. The merger of agricultural wholesaler **Beiselen** with retailer **ATR** was cleared in the first phase after a brief review. Various product markets were affected (collection of grain and oilseeds, trade in seeds, crop protection products and fertilizers). Despite high market shares in individual regions, the transaction had to be cleared because, according to the FCO's findings, there was intense competition from two other similarly strong competitors, which are themselves already vertically integrated or intertwined with wholesalers.

By contrast, the notification of the proposed merger between the agricultural wholesalers **RWZ** and **Raiwa** was initially withdrawn by the parties during the in-depth investigation phase – a clear indication that the FCO would otherwise have prohibited the transaction. In a modified form, the newly notified transaction was approved subject to conditions after a further in-depth investigation. This time, the companies tried a complex structure of alternately solely controlled joint ventures, flanking distribution and purchase agreements and several divestment commitments. The case shows once again that companies have to be flexible and creative in designing their transaction structure and potential commitments to be offered during an in-depth investigation in order to eliminate significant competition concerns.

It is also worth reporting on further concentration in the semiconductor industry. The acquisition of Munich-based **Siltronic AG** by the Taiwanese company **Global Wafers** was cleared within the first phase. The transaction involved the rather rare constellation of a global market. The FCO was thus required to conduct a worldwide market investigation, which alone could have been reason enough to open an in-depth investigation. The FCO held that the market was already concentrated. Ultimately, however, sufficient current and potential alternative suppliers, high market volatility and multi-sourcing strategies of customers with significantly higher sales and financial strength militated against any far-reaching competitive concerns.

Also cleared was the acquisition of UK-based **Dialog Semiconductor** by Japan's **Renesas Electronics**, which involved, among other things, semiconductor products and microcontrollers for the automotive industry. In both cases, the FCO was obviously only competent to assess merger control aspects and not German foreign direct investment considerations.

3. International Cooperation

In April 2021, the FCO, the UK Competition and Markets Authority (CMA) and the Australian Competition and Consumer Commission (ACCC) agreed on a joint statement on merger control. Besides their expressed will to intensify cooperation in the period after the COVID-19 pandemic, they reaffirmed, among other things, the common understanding to counteract high market concentration and to strengthen consumer protection. More precisely, the declaration promises a particularly critical look at efficiencies claimed by companies and, in the case of remedies, to prefer structural requirements to ongoing behavioral control.

II. Abuse of Dominance

1. Proceedings against the GAFA Companies

The FCO has made rapid and comprehensive use of the **new instrument in Section 19a ARC**, which allows precautionary interventions against certain conduct by companies with "paramount significance for competition across markets". Within less than five months of the 10th Amendment to the ARC coming into force in January 2021 (see our special Newsletter on

the 10th Amendment to the ARC, February 2021), the FCO initiated proceedings against **Facebook** (January), **Amazon** (May), **Google** (May) and **Apple** (June). The proceedings against Amazon and Apple have so far been limited to establishing their status as norm addressees whereas in the case of Facebook and Google the investigation of possibly unlawful conduct has already begun in parallel. The Facebook case concerns the potentially abusive tying of the use of Oculus' virtual reality headsets to the ownership of a Facebook account, while the Google proceedings focus on the use of user data and the design of Google's proprietary news offering Google News Showcase. At least in the case of Apple, the initiation of a conduct-related investigation also seems to be only a matter of time as the FCO already received several complaints concerning, *inter alia*, the pre-installation of the group's own apps on Apple devices and the requirement to use Apple's own system for in-app purchases.

For the time being, the proceedings pursuant to Section 19a ARC do not affect the "conventional" abuse proceedings currently pending before the FCO against **Facebook (Oculus)** and **Amazon's Marketplace** (undue monitoring of retailers' pricing and restriction of their activities in favor of brand manufacturers). The FCO has not yet commented on whether these proceedings will be continued separately even once a "paramount cross-market significance" has been affirmed or whether they will be joined (which would relieve the authority of the need to establish the existence of a dominant market position).

It will be interesting to observe how the FCO will handle its new powers. If it were to go beyond selective, targeted interventions and preventively prohibit a wide variety of practices, this could quickly get close to a constitutionally questionable general suspicion against the large internet companies.

2. Facebook

On 24 March 2021, the eagerly awaited oral hearing in the main proceedings against Facebook before the **Düsseldorf Higher Regional Court** took place. As is well known, the FCO had objected to Facebook linking the data of Facebook users with data from other sources without first obtaining the users' consent. In the eyes of the authority, this amounts to a violation of the General Data Protection Regulation (GDPR), which is to be qualified as abusive in view of Facebook's dominant position on the German market for social networks. The Federal Court of Justice (in injunctive relief proceedings) concurred with the FCO's result but relied primarily on the more conventional abuse category of an "imposed service extension".

After initially expressing considerable doubts about the FCO's line of argument, the Higher Regional Court took a somewhat different approach at the oral hearing. It now maintained that the question of whether an (alleged) infringement of the GDPR constitutes an abuse requires the interpretation of the relevant EU law and thus recourse to the European Court of Justice (ECJ). The judges therefore suspended the proceedings and submitted seven **detailed questions to the ECJ**, which concern, in particular, the allocation of responsibilities between the national competition and data protection authorities.

In addition, the judges were highly critical of the Federal Court of Justice. They see strong indications that the allegation of an "imposed service extension" is of a completely different nature than the FCO's reasoning and therefore, pursuant to the Federal Court of Justice's own case law, cannot be taken into account in subsequent appeal proceedings against the FCO's decision. These smug remarks appear as a continuation of the feud between the two courts, which in the recent past has been ignited by questions concerning the legal framework for cartel damage claims.

Given that the ECJ's decision is not expected before 2022, the Facebook proceedings will continue to stay with us for quite some time.

3. First Ruling on the New "Tipping" Provision

At the beginning of June 2021, the Regional Court of Berlin relied for the first time on Section 20 (3a) ARC, which was introduced with the 10th Amendment to the ARC and is intended to prevent a digital market from irrevocably "tipping" because a platform provider uses network effects to marginalize its competitors. The court granted a preliminary injunction against "list-first discounts" offered by the real estate platform **Immoscout**, which brokers could only benefit from if they offered at least 95% of their properties during the first seven days exclusively on Immoscout or on their own websites. The judges upheld a **complaint by competitor Immowelt** because the discounts led to *de facto* exclusivity – according to studies, 56% of all contacts take place in the first week after publication, and 30% of the advertisements are removed from the internet within that time period. The discounts also had a measurable impact: After their introduction, the advertisements on Immoscout's site had increased significantly while Immowelt had recorded a considerable decline. However, the court emphasized that the new provision is applicable even if an anti-competitive effect has not yet materialized. Amazon, Apple & Co. certainly will have taken note of this ruling.

4. Judgment on Top Position Dependency

In a judgment of 14 April 2021 – won by SZA – the Düsseldorf Higher Regional Court rejected supply claims against one of the leading **sporting goods manufacturers**. The plaintiff had argued that the defendant was a "supplier with relative or superior market power" within the meaning of Section 20(1) sentence 1 ARC due to a **top position dependency** (*Spitzenstellungsabhängigkeit*). Such a dependency exists if a retailer's portfolio needs to comprise certain "must-have" products in order for him to be considered as a competitive supplier by its customers.

The court first referred to established case law, pursuant to which at least outside of selective distribution systems a high distribution rate is a clear indication of top position dependency (*i.e.*, if all or at least the vast majority of retailers in the relevant geographic area carry the products in question). However, the judges clarified that this is only a necessary but not a sufficient condition. In addition, it must always be examined whether under the specific circumstances of the case at hand the competitiveness of the retailer in question actually depends on the availability of certain products. This condition was not met in the present case.

5. Deutsche Post

In February 2021, the FCO closed **proceedings** opened in 2016 against Deutsche Post after the company had submitted a binding set of commitments. The proceedings concerned the admissibility of certain contract clauses regarding the **mail delivery of newspapers and magazines**. The FCO quickly came to the conclusion that different types of exclusivity provisions were abusive. The evaluation of a complex system of loyalty discounts, which provided an incentive for the customers to place all or at least the vast majority of their orders with Deutsche Post, proved to be more complicated. In this respect, the FCO focused on the staggered discount amounts, the billing periods and the contract duration, as well as on Deutsche Post's considerable lead over competitors and the company's advantages due to its nationwide delivery network. In the end, the authority concluded that the discounts had a "pull effect", which could not be reconciled with the concept of competition on the merits.

After lengthy discussions, Deutsche Post agreed to abandon its discount system and to replace it with customer-specific fixed unit

prices. In addition, the company undertook not to set its prices below the average annual unit costs (again on a customer-specific basis) and to make the parameters influencing its pricing policy transparent. In return, Deutsche Post avoided not only the imposition of a fine, but also final determinations by the FCO regarding the existence of a dominant market position and the inadmissibility of the discounts, which could have had an adverse effect in future proceedings.

6. Nokia/Daimler

In June 2021, Daimler and Nokia ended their long-standing dispute over **FRAND licensing** of standard-essential patents by concluding a royalty-bearing license agreement. As a consequence, they declared an end to all legal disputes pending between them in this respect. This means, in particular, that the European Court of Justice (ECJ) will not have the opportunity to rule on the detailed questions submitted to it by the Düsseldorf Regional Court in November 2020 (see our Newsletter 2/2020). From a neutral point of view, this is to be regretted as the ECJ's clarification of fundamental questions regarding FRAND licensing in multi-level supplier relationships was highly anticipated.

The big losers in this surprising development are the automotive suppliers who, like Daimler, had argued that the patent holder was obliged to conclude a licensing agreement with them (and not with the car manufacturers) as a matter of priority. Continental has already announced that it will continue to press the European Commission to initiate formal abuse proceedings against Nokia's licensing policy.

III. Prohibition of Cartels

1. Best-Price Clauses - Booking.com

In its decision dated 18 May 2021, **the Federal Court of Justice** took a strict position on best-price clauses and significantly restricted their applicability. The decision is the culmination of a series of decisions on best-price clauses regarding hotel booking portals.

In respect to ***wide* best-price clauses**, which restrict the hotels to offer more favorable conditions on third-party sales channels, the FCO already decided in 2013 in the HRS case that these clauses infringe competition law – a decision that was subsequently confirmed by the Düsseldorf Higher Regional Court. In the aftermath of this decision, Booking refrained from using wide best-price clauses and switched to the use of narrow best-price clauses, which only prevent the hotels to set more favorable conditions for their own direct sales channel. At the end of 2015, the FCO ruled that ***narrow* best-price clauses** were not permissible under competition law. In June 2019, however, the Düsseldorf Higher Regional Court held that narrow best-price clause were in line with competition law as they were **necessary ancillary restraints** to the platform agreement (see our Newsletter 1/2019).

The Federal Court of Justice did not follow this line of argument. Dogmatically, the weighting of the pro-competitive aspects asserted for the narrow best-price clauses against the anti-competitive aspects could only be taken into account when examining an exemption from the prohibition of cartels. An exemption from the prohibition of cartels as a necessary ancillary restraint to the platform agreement could only be considered if the narrow best-price clause **was objectively necessary** for its implementation. In the opinion of the Federal Court of Justice, this was not the case.

Likewise, **no individual exemption** pursuant to Article 101 (3) TFEU was possible. Ultimately, in the view of the Federal Court of Justice, the narrow best-price clause did not cause an improvement in the production or distribution of goods or the promotion of technological or economic progress.

A block exemption under the Vertical Block Exemption Regulation was not considered in view of the high market shares of Booking.

However, the Commission's draft for a **revised Vertical Block Exemption Regulation**, which was published in July, may lead to changes in the assessment of best-price clauses. According to the published draft, narrow best-price clauses shall be block exempted (which corresponds to the Commission's current legal interpretation) and only wide best-price clauses should not benefit from the block exemption.

2. Fines

The FCO has imposed fines of around EUR 35 million on three **steel forging companies** and two employees. According to the FCO's findings, there was a common understanding between the companies to pass on their manufacturing costs and cost changes to customers (mainly suppliers and OEMs from the automotive sector). At numerous meetings between 2002 and 2016, representatives of the companies exchanged views on the cost situation, pricing and specific negotiations with customers and suppliers.

A complex case against manufacturers of dry mortar resulted in an interesting decision by the Düsseldorf Higher Regional Court in September 2020, which has not yet been published. In the FCO proceedings, fines in the mid-double-digit millions had already been imposed in 2009 against dry mortar manufacturers and trade associations because they had allegedly agreed on a uniform **silo storage fee** for dry mortar. With regard to one of the objecting companies, the Düsseldorf Higher Regional Court remained well below the upper end of a range for the fine previously agreed by settlement and, contrary to its previous approach, also emphasized that the setting of the fine should not be based schematically on the statutory range for fines. When calculating the fine, the proceeds from the silo storage fee, among other things, should also be taken into account, a criterion that has so far been largely disregarded. With regard to the infringer's **behavior post infringement**, the Düsseldorf Higher Regional Court took into account the fact that two of the companies had developed and implemented extensive **compliance programs**, thus lowering the fine. However, mere training of the sales force is not considered to be an effective compliance program.

Finally, the FCO also imposed fines amounting to EUR 6 million on two manufacturers of road manhole castings. The FCO concluded that the two manufacturers regularly agreed on net prices for manhole covers and the amount of discounts to be granted. The companies were also accused of splitting two large project offers placed with them at the same time.

3. Liebherr Distribution

At the beginning of the year, Liebherr introduced a new **Liebherr-Performance-Rebate** as part of its selective distribution system, which stipulated significantly stricter criteria for online sales compared to stationary sales. In the FCO's view, these regulations disadvantaged both, online-only dealers and hybrid dealers who had to meet the rebate criteria not only online but also offline. In order to avoid a weakening of intra-brand competition and to dispel the FCO's competition concerns, Liebherr adjusted the performance criteria for both sales channels. In the course of the **revision of the Vertical Block Exemption Regulation**, new assessment standards are also envisaged with regard to such dual pricing strategies.

4. 50+1 Rule

In May, the FCO published its preliminary decision on the **50+1 rule** for the German professional football leagues. The 50+1 rule was introduced in 1999 and intends to safeguard the club-based character of professional football. Therefore, the club must continue to hold the majority of voting rights in the professional football department in the event of a spin-off. A so-called sponsorship exception applies if an investor has continuously and substantially sponsored the

club's activities for more than 20 years. The FCO raised antitrust concerns with regard to this sponsorship exception, as such non-uniform application of the 50+1 rule thwarts the DFL's own sport-policy objectives - which can in principle justify an exception to the prohibition of cartels. The DFL, the involved football clubs and investors have the opportunity to comment on this assessment.

IV. Cartel Damages

1. Federal Court of Justice - Rail Cartel VI

The law on cartel damages continues to be influenced significantly by the case law of the Federal Court of Justice in the rail cartel complex. In the ***Rail Cartel VI*** ruling of 10 February 2021, the Federal Court of Justice had to deal, *inter alia*, with the conditions under which liquidated damage clauses are permissible. In the opinion of the Court, such clauses do not constitute an unreasonable disadvantage to the contractual partner if they stipulate an amount which makes undercompensation and overcompensation of the damage appear equally likely in light of the hypothetical market price typically to be expected. The reference to the market price "typically to be expected" admittedly offers considerable uncertainties. According to the Federal Court of Justice, 'general findings of empirical economics' available at the time of the agreement can be used to determine this typical damage. By contrast, the proof of an average damage typical *for the industry* shall be dispensable, at least as long as empirical findings on such typical industry-specific damages are not availabe. In the absence of such findings, the Federal Court of Justice in the specific case approved a clause in the amount of 5% and *obiter dictum* also approved clauses of up to 15%.

Up to now, the Federal Court of Justice took the view that liquidated damage clauses covering different types of infringements must be based on the least harmful infringement conceivable. The Court's Cartel Senate now appears to deviate from this approach by interpreting the clause at issue very narrowly, in a manner that only covers collusive tendering and comparably serious infringements. In addition, the Court is of the opinion that the user of the clause should in principle be allowed to make a certain range of essentially similar infringements subject of a liquidated damage clause. According to the Court, it should be possible to assign the risk of proving a lesser damage to the cartel member.

2. Düsseldorf Higher Regional Court on the particleboard cartel

In a ruling on the particleboard cartel of 10 February 2021, the Düsseldorf Higher Regional Court expressly opposed to the case law of the Federal Court of Justice in the Rail Cartel V case in various respects (see our Newsletter 2/2020). In the Rail Cartel V judgment, the Federal Court of Justice took the view that courts should directly rule on the **quantum of the damage** rather than first issuing preliminary judgments on the **merits of the claim**. The Düsseldorf Higher Regional Court takes the opposite view. It considers the question of the amount of damage separable from the question of the occurrence of a damage as such. A preliminary judgment on the merits of the case shall therefore already be permissible if the judge is convinced that the cartel has caused any damage at all. Whereas the Federal Court of Justice also examines the question of the damage on the merits separately for each purchase and considers them to give rise to independent claims, the Higher Regional Court assumes a "factual unity" of all purchases and thus a uniform damage. According to the Higher Regional Court, it is therefore sufficient for the issuance of a preliminary judgment on all purchases that the price for only one purchase was excessive due to the cartel.

The Higher Regional Court also deals with the requirements for the parties to **demonstrate or rebut a cartel damage**. It holds that the plaintiff could permissibly deduce from the findings in

the fining decision that there was a price overcharge due to the cartel. It further states that the defendant did not counter this claim in a procedurally admissible manner because it did not explain whether and to what extent the collusion in question was used by the cartel participants to raise prices. In particular, the Higher Regional Court criticized the fact that a party sued for cartel damages may not "hide" behind an economist's expert opinion and remain silent on the true price effects of the cartel.

The fact that the Düsseldorf Higher Regional Court requires the defendants to state whether the cartel had a price-increasing effect is in fact very close to a reversal of the burden of proof with regard to the occurrence of damage. However, according to the case law of the Federal Court of Justice, in particular in the truck cartel decision, the defendant cannot be required to prove that no damage has occurred.

3. The Dortmund Regional Court's One-of-a-Kind Approach to Estimate Damages

Following the judgments of 30 September 2020 and 4 November 2020, the Dortmund Regional Court (see our Newsletter 2/2020) also demonstrated "courage to estimate" a damage in a third judgment of 3 February 2021 and estimated the amount of damages on the basis of Section 287 of the German Code of Civil Procedure (ZPO) without obtaining an economic expert opinion. Appeals to the Düsseldorf Higher Regional Court have been lodged against all of these judgments, *inter alia* by one of our clients. The 1st Cartel Senate will decide on these appeals without its former chairman Prof. Kühnen, who will retire from the chair on 1 August 2021 and who had advocated a free estimation of damages in a much-noticed publication that was expressly relied on by the Dortmund Regional Court.

As far as apparent, no other courts have adopted the Dortmund Regional Court's approach to date. To the contrary, in a case filed by Spanish companies against members of the **truck cartel**, the Munich Regional Court expressly rejected the free estimation method of the Dortmund Regional Court (ruling of 19 February 2021). In contrast to the Dortmund Regional Court, it holds that it is essential to obtain an expert opinion as a sound basis for the judicial estimate of damages in view of the complexity of the economic interrelationships and developments.

4. Rulings on Disclosure Claims

The courts are increasingly confronted with disclosure claims under Sections 33g and 89b (5) ARC. In this context, a decision of the Hanover Regional Court of 17 December 2020 on the **car battery recycling cartel** deserves particular mention. The Regional Court ordered – for what seems to be the first time – the handover of a complete, i.e. unredacted copy of the fining decision to the applicant.

In doing so, it took the view that, pursuant to Section 89b (5) of the ARC, the applicant did not have to demonstrate a particular objective urgency for the request. However, the Hanover Regional Court placed considerable restrictions on the use of the fining decision obtained in this way. In particular, the decision may not be passed on to third parties, even within the same group of companies.

In the aforementioned decision on the **truck cartel** of 19 February 2021, the Munich Regional Court also dealt with claims under sections 33g, 89b (5) GWB. The plaintiff wanted to use this instrument to gain access to purchasing documents from the defendants. In this regard, however, the Munich Regional Court clarifies that the information claims introduced by the 9th Amendment to the ARC serve to balance an asymmetry of information between cartel participants and cartel victims, and not to provide the plaintiff with documents that had already been available to him before.

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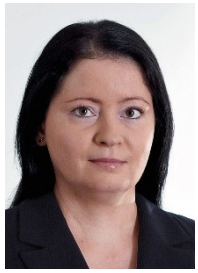
This client information contains only a non-binding overview of recent developments in German competition law and is not meant to replace legal advice. In case of comments or questions, please contact:

SILVIO CAPPELLARI, LL.M.
PARTNER
phone +32 2 8935 120
fax +32 2 8935 102
Silvio.Cappellari@sza.de
www.sza.de

HANS-JOACHIM HELLMANN, LL.M.
PARTNER
phone +49 621 4257-212
fax +49 69 621 4257-297
Hans-Joachim.Hellmann@sza.de
www.sza.de

DR. STEPHANIE BIRMANNS
COUNSEL
phone +32 2 8935 121
fax +32 2 8935 102
Stephanie.Birmanns@sza.de
www.sza.de



DR. CHRISTINA MALZ, LL.M.
COUNSEL
phone +49 621 4257-212
fax +49 621 4257-297
Christina.Malz@sza.de
www.sza.de