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Germany

COMPETITION LITIGATION

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This country-specific Q&A provides an overview of competition litigation laws and regulations applicable in Germany.

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GERMANY
COMPETITION LITIGATION

1. What types of conduct and causes of action can be relied upon as the basis of a competition damages claim?

Any infringement of EU or German competition law can be relied upon as a basis of a competition damage claim. Thus, horizontal infringements (including cartels), vertical infringements, abuse cases of a dominant position, or bid rigging.

The (primary) provision for competition damage claims is now Section 33a of the German Act against Restraints of Competition (GWB).

2. What is required (e.g. in terms of procedural formalities and standard of pleading) in order to commence a competition damages claim?

In principle, the procedural formalities that apply for ordinary tort claims also apply to damages claims. The minimum requirements are laid on in Section 253 of the German Code of Civil Procedure (ZPO). In a written pleading the claimant must designate the parties and the court of the proceedings and provide exact information on the subject matter and the ground for the proceedings. In particular, the claimant must explain that the defendant was at fault, that the claimant incurred a damage, and that the defendant's fault caused the damage incurred. While the statement of claim does not need to be exhaustive as additional details can be added at a later stage (subject to conditions), an initial competition damage claim typically contains already all major factual and legal contentions so that a first statement will easily exceed 100 pages without annexes.

As virtually all competition damage claims in Germany are follow-on actions, claimants usually cite extensively from the conclusions by the competition authority, particularly regarding their factual determinations.

3. What remedies are available to claimants in competition damages claims?

The most relevant remedy in practice is financial restitution in the form of monetary compensation for the damage incurred and any lost profit, plus interest, is available.

To the extent, an infringement is on-going, for example a refusal to supply by a presumably dominant defendant, cease-and-desist and removal orders may be obtained. Subject to conditions, these remedies may also be enforced by way of interim court measures.

To the extent a contractual provision had been found to infringe competition law, the contract will be declared void, partially or entirely. The latter applies to "hardcore restraints" (e.g., price fixing, market sharing) and where the anti-competitive clauses cannot be separated in a meaningful fashion from the rest of the contract.

4. What is the measure of damages? To what extent is joint and several liability recognised in competition damages claims? Are there any exceptions (e.g. for leniency applicants)?

The measure of damages is full compensation of any causal damages incurred by the defendant. This can include a wide array of positions, in particular lost profits, as long as there is a causal link between the defendant's fault and the damage incurred. The claimant shall, financially, be placed in a position as if the defendant's fault had not occurred. There are no punitive damages in Germany.

Joint and several liability is recognized in competition damage claims. It is common that claimants file a competition damage claim against several, if not all, parties to the competition law infringement. If a claim is filed only against one or some, these defendants usually notify the other defendants via court order so that they join the proceeding. This notification is aimed to ensure

that any potential internal redress that a defendant may seek from the other defendants is time-barred.

There are now exceptions available to the concept of joint and several liability for two groups: Immunity recipients and small and medium-sized enterprises (SMEs).

- The immunity recipient's liability is limited to the damage caused to its own direct or indirect buyers or suppliers. Claimants can only seek recourse from the immunity recipient if they have been unable to obtain full compensation from the other infringers (cf. Section 33e GWB).
- SMEs are similarly privileged in that they are, subject to conditions, only liable to their direct or indirect customers or suppliers (cf. Section 33d GWB).

The provisions are only applicable to claims that have arisen after 26 December 2016.

5. What are the relevant limitation periods for competition damages claims? How can they be suspended or interrupted?

For claims originating after 26 December 2016 there are two relevant limitation periods:

- First, a knowledge-dependent limitation period of 5 years (cf. Section 33h paras. 1 and 2 GWB). The limitation period commences at the end of the year in which the claim arose, the infringement ended, and the claimant gained awareness (or should have with reasonable diligence) of the events leading to the claim, the nature as a competition law infringement, and the identity of the infringer.
- Second, a knowledge-independent limitation period of 10 years (cf. Section 33h para. 3 GWB). Claims become time-barred, regardless of awareness or negligence, 10 years after the claim arose and the infringement ceased.

These limitation rules generally also apply to claims preceding this date but not already time-barred before the new provisions took effect (cf. Section 186 para. 3 of the GWB).

The limitation periods can be suspended through commonly available methods in German civil law, the most notable options being the initiation of court proceedings (cf. Section 204 para. 1 no. 1 of the German Civil Code (BGB)) and the commencement of negotiations aimed at a friendly resolution of the claims (cf. Section 203 BGB).

In addition, there are specific provisions on suspension applicable to competition damage claims. Section 33h para. 6 GWB enables the suspension of limitation periods, whether knowledge-dependent or knowledge-independent, during the progression of national or European competition authority proceedings concerning the subject matter. This suspension begins when the competent authority initiates investigative measures. It concludes one year after the finalisation of the infringement decision or when the proceedings are otherwise terminated.

6. Which local courts and/or tribunals deal with competition damages claims?

Lower Regional Courts (Landgerichte) deal with competition damage claims in any first instance, regardless of the amount in dispute (cf. Section 87 and 95 GWB). While there are no specific competition courts or tribunals, Lower Regional Courts frequently establish dedicated divisions with functional expertise in adjudicating cartel damage claims. Judges appointed to these divisions have specialized experience in commercial affairs and are well-versed in handling litigation related to cartel damages. There are 115 Lower Regional Courts in Germany.

7. How does the court determine whether it has jurisdiction over a competition damages claim?

When the defendant resides in an EU Member State, international jurisdiction is determined by the Brussels I (recast) Regulation (Regulation (EU) No 1215/2012 of 12 December 2012). In such instances, three venues are most important in practice for competition damages litigation proceedings:

- The primary jurisdiction at the defendant's domicile (Article 4 para. 1 of the Brussels I Regulation (recast)).
- The jurisdiction for tort cases (Article 7 no. 2 of the Brussels I Regulation (recast)), which includes the location of the harmful event – encompassing where the harmful act occurred and where its detrimental consequences unfolded.
- The jurisdiction where any one of the defendants is based (Article 8 no. 1 of the Brussels I Regulation (recast)).

8. How does the court determine what law will apply to the competition damages claim? What is the applicable standard of proof?

Art. 101 and 102 TFEU apply directly in all EU Member States, including Germany. In addition, in instances involving cross-border anticompetitive practices falling under national competition law, the matter of which laws are relevant is addressed by Regulation (EC) No. 864/2007 dated 11 July 2007 (commonly known as Rome II), applicable since 11 January 2009. According to Article 6 of this Regulation:

- the law applicable to a non-contractual obligation arising out of a restriction of competition shall be the law of the country where the market is, or is likely to be, affected; and
- when the market is or is likely to be affected in more than one country, a claimant who sues in the court of the defendant's domicile may choose the law of that country, provided that the market in that Member State is or has been directly and substantially affected by the restriction of competition; where the claimant sues more than one defendant in that court, the claimant can only choose the law of that court if the restriction of competition by each of the defendants also directly and substantially affects the market of that Member State.

It is important to note that the aforementioned rules regarding the applicable law are mandatory and cannot be overridden through mutual agreement between the involved parties.

The applicable principles for the standard of proof are contained in Sections 286 and 287 of the German Code on Civil Procedure (ZPO):

- Section 286 ZPO grants courts discretionary authority for evidence evaluation. This involves full proof, requiring a level of certainty practical for real-life situations, diminishing doubts while not entirely excluding them. This section applies universally to claim-inducing scenarios, except when law or competition authority findings dictate factual acceptance, or unchallenged facts under section 138 para. 3 ZPO.
- Section 287 ZPO reduces proof standards for damage occurrence and extent. The injured party needs to present facts indicating the court's evaluation, with a substantial probability based on a secure foundation to shape conviction. It also pertains to cases where claim amounts are disputed, and clarification is challenging relative to the contested portion's importance. Section 287 ZPO is arguably the most relevant provision in any competition damage litigation.

There are now statutory provisions mitigating the burden of proof available in Germany's competition law (GWB), applicable to claims arising post 26 December 2016:

- Section 33a para. 2 sentence 1 GWB establishes a rebuttable presumption that a cartel results in damage.
- Section 33a para. 2 sentence 4 GWB establishes a rebuttable presumption that cartel-impacted transactions fall within its scope, encompassing indirect customers per section 33c para. 3 sentence 2.
- Section 33b GWB enforces the binding effect of the competent competition authority's infringement decision.
- Section 33c para. 2 GWB establishes the presumption in favor of an indirect customer that price overcharge has affected them if certain conditions are met.
- Section 33g GWB provides the right for information and disclosure requests, aiding parties in acquiring necessary data for cartel damage claims. To exercise these rights, the requesting party needs to credibly demonstrate their damage claim to the court's satisfaction.

9. To what extent are local courts bound by the infringement decisions of (domestic or foreign) competition authorities?

German Courts are bound by the determination of the infringement as established in a final (i.e. legally binding and not appealable) decision of a German competition authority, the European Commission, or the competition authority, or a court acting as such, in another member state of the EU (cf. Section 33b GWB).

Courts are not bound by a decision of a competition authority outside the EU. However, these non-EU determinations may well have indicative effect and be considered as persuasive authority in a trial before a German court.

10. To what extent can a private damages

action proceed while related public enforcement action is pending? Is there a procedure permitting enforcers to stay a private action while the public enforcement action is pending?

In Germany, it would be unusual to start private competition damages litigation while public enforcement action is pending. This is because the binding effect of the competition law infringement on the civil court only arises when the decision by the competition authority in Germany, the EU or another Member State is final.

However, it is not unusual that – after public enforcement action as such has come to an end – a decision by one of the competition authorities becomes legally binding only to some parties involved in a competition law infringement (effect inter partes). For example, a leniency applicant or others who have collaborated with the competition authority may accept their decision, while others appeal. In such circumstances, the defendants would file a request that the procedure is stayed until the related proceedings are pending. It is at the court's discretion to grant the stay.

There is no procedure permitting enforcers to stay a private action while a public enforcement action is ongoing.

11. What, if any, mechanisms are available to aggregate competition damages claims (e.g. class actions, assignment/claims vehicles, or consolidation)? What, if any, threshold criteria have to be met?

There is no clear mechanism in German law that would allow to aggregate (competition) damage claims. In particular, there are no class actions or similar mechanisms available by virtue of which one claimant could file a claim on behalf of other claimants of the same class.

What is common in practice in Germany, as in other Member States, is to emulate the same outcome through the assignment of claims to special purpose vehicles who then litigate these claims. However, it is required that the potential claim is indeed assigned without reservation. It should also be noted that some German Courts have voiced concerns as to the legality of such a structure with the consequence that the entire set-up has been declared null and void. Against the backdrop of Germany's case law, a key requirement is that the claim vehicle is sufficiently funded. This is to ensure that the defendant is able to recover his litigation costs from the claims vehicle if it loses. Even when the funding is ensured as is nowadays the case, courts carefully consider whether there are conflicts of interest among the assigning claimants or between a third-party financing entity and the assignors.

Registered trade associations or consumer organizations in Germany are entitled by statute to bring collective claims when there is a competition law infringement, but the redress that may be sought is the elimination of the impairment, not financial compensation.

12. Are there any defences (e.g. pass on) which are unique to competition damages cases? Which party bears the burden of proof?

Yes, the pass on defence is typical in competition damage cases and has seen the approval of Germany's highest civil court, the BGH, for more than ten years now (BGH, judgement of 28 June 2011, case ref. KZR 75/10 – ORWI).

Section 33c para. 2 GWB the German competition law now also contains a provision on the pass-on defense. The law is applicable to all claims that have arisen after 26 December 2026. According to Section 33c para. 2 GWB it is presumed that the overcharge was passed on to the next level, the indirect consumer, if there is,

- a competition law infringement;
- the infringement has resulted in an overcharge for the direct customer of the infringer, and
- the indirect customer has purchased goods or service that were affected by the cartel infringement (either directly or as products made from or containing affected goods or services).

However, the presumption can be rebutted where it can be credibly demonstrated that the overcharge was not, or not entirely passed on to the indirect purchasers.

Thus, if the claimant is an indirect purchaser, the presumption is in its favour, and the defendant must prove that – contrary to normal circumstances and the legal presumption – damages have not been passed on but absorbed by the direct purchaser.

If the claimant is a direct purchaser, the defendant bears the burden of proof to show that the claimant passed the damages through to his customers. The presumption is not available to the defendant.

A practical challenge for the pass on defense is that it

regularly requires information, e.g. on cost and price, that is not readily available to the defendant and only to the direct purchaser.

13. Is expert evidence permitted in competition litigation, and, if so, how is it used? Is the expert appointed by the court or the parties and what duties do they owe?

Expert evidence is permitted in competition litigation. It is common that that both, claimant and defendant use competition economists to substantiate their position. Such expert advice, for example an economist report, however, forms part of a party's submission. The courts will not consider it as expert evidence but they must still carefully consider it as what it is: A party's economic substantiation of its arguments.

Expert evidence, i.e. third-party expertise, is introduced by the court itself by appointment of an expert after consultation with the parties (cf. Section 402 et seqq. ZPO). The court-appointed expert must be unbiased and independent from the parties, performing its duties diligently and without being influenced by party-appointed experts. Germany's civil procedural laws treat the expert's report as standard evidence, subject to general rules. Both parties can challenge the expert's findings through submissions or during evidence presentation. The court ultimately evaluates the evidence. In practice, it usually follows the independent expert's opinion unless significant flaws are evident in their report.

14. Describe the trial process. Who is the decision-maker at trial? How is evidence dealt with? Is it written or oral, and what are the rules on cross-examination?

The competition litigation trial process is marked by written exchange and documentary evidence. The statement of claim is followed by defendant's statement of defense, then there is the claimant's reply and the defendant's rejoinder, etc. Weeks or months usually lie between each of these written statements.

In addition to documentary evidence, evidence by the parties' or court-appointed experts is the most common form of evidence. Witness testimony, while possible, is much rarer in practice for competition litigation. There is also no form of compulsory document production by one party to another.

Evidence (except for opinions by court-appointed experts) is introduced by the parties. The court subsequently determines whether to accept the evidence, considering its relevance to the case's outcome.

There is no cross-examination of witnesses in German proceedings. If there are witnesses, the questions will be asked by the court. The parties may request that additional questions be asked and ask directly if the court should grant so.

15. How long does it typically take from commencing proceedings to get to trial? Is there an appeal process? How many levels of appeal are possible?

There are many factors that impact the duration of a damage litigation case, chief among which are the number of defendants, whether evidence will be taken, and whether the court decides first on merits only, leaving the damage calculation and award for a separate judgment. Competition damage cases are virtually always complex as they require the determination of a (price) situation that never existed, the counterfactual. Two years should now be considered the minimum duration for a decision in the first instance. Often, they may take significantly longer.

There is an appeal process available, with two additional levels. Any case will start before a Lower Regional Court as the first instance. The judgment by the Lower Regional Court may be appealed to the Higher Regional Court (OLG), which reviews on law and fact. Decisions by the Higher Regional Court may be appealed to the highest civil court, the Federal Court of Justice (BGH).

Appeals from the OLGs can be taken to the BGH. At this ultimate stage, the BGH reviews the proceedings solely concerning material or procedural law aspects. The BGH ensures correct legal application by the appeals court. For a final appeal to the BGH, either the second-instance court allows it, or the BGH grants it through a complaint against denial of leave to appeal. The latter approach succeeds only in a limited number of cases.

16. Do leniency recipients receive any benefit in the damages litigation context?

Yes, leniency recipients benefit from privileged legal position in the damages litigation context. They are restricted to the damage caused to its own direct or indirect buyers or suppliers. Apart from this, the victims of the infringements can only seek recourse from the leniency recipients if they have been unable to obtain

complete compensation from the other infringers (cf. Section 33e GWB).

This benefit is only available for claims that have arisen after 26 December 2016.

17. How does the court approach the assessment of loss in competition damages cases? Are “umbrella effects” recognised? Is any particular economic methodology favoured by the court? How is interest calculated?

The court approaches the assessment of a loss in competition damages cases just as in any other civil law case in line with the general civil law standards. In a cartel case, the court would compare the actual price level with the hypothetical level absent the cartel. The delta between the actual price and the counterfactual represents the loss.

Umbrella effects are recognized by German courts, as was confirmed by Germany’s Federal Court of Justice, BGH, in 2018 (cf. BGH, judgement of 12 June 2018, case ref KZR 56/16 – Grey Cement II). The courts, however, stipulated that hat assuming the umbrella pricing effect or establishing it on initial evidence is insufficient. Instead, a comprehensive and meticulous presentation of evidence is necessary for each specific instance. This is because umbrella pricing effects resulting from cartels do not adhere to universal economic principles; rather, they hinge on various factors unique to each case. To the court, the pertinent factors to assess whether there is an umbrella effect are, inter alia, the degree of market coverage, the duration of the infringement, and the homogeneity of the products. The courts also ruled that merely having purchased a product from a cartel member at an inflated price does not suffice as sole justification for an umbrella pricing effect.

The methodology applied by the courts in Germany is similar to those used by the European Commission, and presumably other courts in Member States in the EU: A comparison of the market impacted by the infringement with another, unrelated, competitive geographic market or the same market before or after the infringement took place.

18. How is interest calculated in competition damages cases?

Interest is available from the commencement of the infringement until the judgment date, followed by statutory interest applied to the awarded amounts until full payment is made.

Interest is computed in accordance with Section 33a para. 4 GWB, in conjunction with Sections 288 and 289 of Germany’s Civil Code (BGB), according to which interest is calculated using a simple interest method, without compounding. Competition damage claims are usually subject to an interest rate of five percentage points above the base rate. The base rate used for interest calculations is established by the German Bundesbank, guided by the formula specified in section 247 BGB, which itself relies on the interest rates determined by the European Central Bank.

19. Can a defendant seek contribution or indemnity from other defendants? On what basis is liability allocated between defendants?

Yes, a defendant can seek contribution or indemnity from other defendants in line with general principles of civil law on joint and several liability and internal redress (cf. Sections 830, 840, 426 BGB).

According to this provision, the parties jointly share obligations equally with respect to each other. However, this general rule on equal share obligation only applies unless it is “otherwise determined” and courts consider all circumstances of the specific case that suggest such alternative determination, particularly the degree and extent of involvement in the unlawful activity, the level of responsibility regarding the unlawful activity, the profits and other advantages gained from the cartel agreements, the financial capability of the involved companies, and the extent of sales influenced by the infringement. Thus, the actual share may deviate substantially from a pro rata allocation.

There are exceptions available to the aforementioned liability allocation principles for two groups: Immunity recipients and SMEs.

- The immunity recipient’s liability is limited to the damage caused to its own direct or indirect buyers or suppliers. Apart from this, victims of the infringement can only seek recourse from the immunity recipient if they have been unable to obtain full compensation from the other infringers (cf. Section 33e GWB).
- SMEs are similarly privileged in that they are, subject to conditions, only liable to their direct or indirect customers or suppliers. As a consequence, their internal liability to other defendants is limited to that amount as well

(cf. Section 33d GWB).

The exceptions mentioned in Section 33 d and e GWB are only applicable to claims that have arisen after 26 December 2016.

20. In what circumstances, if any, can a competition damages claim be disposed of (in whole or in part) without a full trial?

A full competition damages trial can be avoided by a settlement agreement. Courts promote settlement agreements (cf. Section 278 para. 1 ZPO).

A trial competition damages trial can also be disposed of if the claim is rejected on the basis of 'procedural grounds' (such as lack of jurisdiction, the claims being barred by statutes of limitations, the establishment of a litigation entity being inadmissible), or if the claimant withdraws their claim (which he does when there is settlement agreement).

21. What, if any, mechanism is available for the collective settlement of competition damages claims? Can such settlements include parties outside of the jurisdiction?

There is no specific mechanism available for the collective settlement of competition damage claims. While a joint settlement is possible, it is rare in practice. Far more common are multiple separate settlements agreed individually between the claimant and each defendant in relation to their share of supply. The terms of a settlement, and even the settlement as such, are usually subject to strict confidentiality.

22. What procedures, if any, are available to protect confidential or proprietary information disclosed during the court process? What are the rules for disclosure of documents (including documents from the competition authority file or from other third parties)? Are there any exceptions (e.g. on grounds of privilege or confidentiality, or in respect of leniency or settlement materials)?

Unlike common law regimes, parties are generally not obliged to disclose information or documentation to the opposite party and each party must provide and substantiate the facts that supports its respective position and offer sufficient evidence. However, there is now a specific provision that does allow for some disclosure, subject to conditions (cf. Section 33g GWB). Each party in competition damage litigation proceedings may request the disclosure of evidence or information from other the other party or a third party.

For a successful information claim, several conditions must be met:

- The evidence must exist, be appropriate to serve as necessary proof for the damage claim, and be relevant to the claim;
- The requested evidence or information must be specified with reasonable precision based on the available facts, and it should be within the possession of the other party.
- The claimant must convincingly demonstrate to the court's satisfaction that a valid damage claim exists.

The disclosure could be excluded or rejected:

- If the request for information is deemed disproportionate, meaning it exceeds reasonable bounds.
- If the requested documentation includes details about leniency statements or settlement submissions.
- If the documents pertain to proceedings conducted by the competition authority, until such proceedings conclude definitively for all parties involved.

Only a limited number of documented rulings exist where the applicant was granted the right to information under Section 33g GWB (see, for example: Regional Court of Hannover, decision of 17 December 2020, case ref 13 O 265/20 – Altbatterien).

Claimants may apply to the court that it requests information from the authority's file to be disclosed (cf. Section 89c GWB). The final decision of the national competition authority can be requested by provisional injunction (cf. Section 89b para. 5 GWB).

There are no specific confidentiality protection procedures available under German civil law. For competition damage claims initiated after 26 December 2016 courts secure confidential data flexibly, e.g., via the so-called Düsseldorf procedure, according to which only opposing counsels – not their clients – receive confidential proprietary data (cf. Section 89 para 7 GWB). In cases initiated before, confidentiality protection relies on courts balancing conflicting party interests or on the proportionality of an information claim

23. Can litigation costs (e.g. legal, expert and court fees) be recovered from the other party? If so, how are costs calculated, and are there any circumstances in which costs recovery can be limited?

n principle, yes: Litigation costs can be recovered from the other party after the proceedings (cf. Section 91 para. 1 ZPO). This includes the statutory court fees and the attorney's fees. However, costs for the attorney's fees are determined by Germany's Act on the Remuneration of Lawyers (Rechtsanwaltsvergütungsgesetz – RVG) and calculated in such a way that there is usually a delta between the costs that can be recovered and the actual costs for lawyers that usually exceed the amount. The difference must be borne by the party, even if it prevails.

If no party prevails in full, the court will split the costs proportionately.

In settlement agreements, the parties usually include an arrangement on the distribution of the litigation costs.

24. Are third parties permitted to fund competition litigation? If so, are there any restrictions on this, and can third party funders be made liable for the other party's costs? Are lawyers permitted to act on a contingency or conditional fee basis?

Yes, third parties may fund competition litigation, subject to conditions. There are no specific legal provisions on this. Additional conditions for financial institutions apply if banks or insurers should act as third-party funders.

Third party funders are obligated to compensate the opposing party in case the funded party is unsuccessful in court. However, funding agreements commonly stipulate that the third-party funder must cover the litigation expenses of the party as directed by the court.

Lawyers are not permitted to act on a contingency fee basis. They are also not allowed to act on a conditional fee basis. There are only few very limited and specific exceptions to this rule which are not relevant for competition litigation matters.

25. What, in your opinion, are the main obstacles to litigating competition damages claims?

Cost, time and – to a lesser degree – legal uncertainty are the main obstacles, although it should be noted that there is now a substantial number of competition damage claims (certainly more than 100) pending before German courts.

Litigation is costly as it is usually necessary to provide substantial data, process the data and retain economic expert to substantiate and calculate the damage incurred.

Courts usually need (at least) two years to come to a decision, which is due to the complexity of virtually all competition damage litigation matters. Sophisticated economic understanding is required, expert expertise thus often retained.

The development of cartel damage litigation as an area of legal practice is still in flux with interpretations of provisions and legal principles (such as the allocation of burden of proof) prone to change. In particular, on new provisions, implemented following the EU Damages Directive and only applicable to claims that have arisen after 26 December 2016 jurisprudence is scarce.

26. What, in your opinion, are likely to be the most significant developments affecting competition litigation in the next five years?

Competition damage litigation is likely to continue to expand in the next years. The BGH and many lower courts have been increasingly favorable to claimants.

The most significant development will come from the jurisprudence. The BGH has recently encouraged lower courts to make use of their power to estimate a cartel damage, once the claimant has proved sufficient facts (cf. Section 278 ZPO). Lower courts should thus become readier and more daring to determine a fictious, counter-factual price level and thus the damage incurred. At least, there should be further clarifying judgments on the basic conditions as of when the court will be allowed to estimate the damage. This in turn will further attract claimants as the required effort and potential outcome of competition damage litigation will be easier to predict. One can also anticipate some significant developments in case law regarding disclosure of evidence (cf. Section 33g GWB).

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