

# German Antitrust Actions against EU Cartels

In the US, private enforcement of antitrust laws against cartels has always played an important role in establishing a fair and prosperous marketplace. Europe, on the other hand, has primarily relied on the power of antitrust authorities, mainly the EU Commission, to do the same job. The hesitation to commence private lawsuits against cartels in EU countries has largely derived from the plaintiff's obligation to prove all facts, in particular the cartel violations, beyond a reasonable doubt without obtaining the court's assistance. This contrasts with the situation in the US.

## Recent changes

Current legal developments in the EU, particularly in Germany, have significantly changed this frustrating situation to the benefit of the infringed plaintiff:

- The plaintiff no longer needs to prove that a cartel violation actually was committed by the defendant if a final decision of the EU Commission or a Ger-

man antitrust agency says so. Such a decision is strictly binding on all follow-on damage proceedings before German antitrust courts. The only requirements

left are proving causation, intent or negligence by the defendant and the amount of damages to be awarded.

- In 2005, the German Antitrust Code had also explicitly excluded the passing-on defense, which had been often used in the past. This defense consisted of the defendant's argument that the plaintiff had allegedly suffered no damage as the plaintiff had passed on the price overcharge of the price-fixing cartel to the purchaser by raising his or her own price. Since the reform, German antitrust courts have considered the price overcharge to be equal to the amount of damages incurred by the plaintiff.

## German-style class actions

Even though German civil proceedings do not allow for class actions as commonly practiced in the US, German

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law does allow damage claims to be bundled with one company that leads the particular lawsuit. Several such German-style antitrust class actions have recently been successfully fought in court, and their numbers are rising in Germany. They are also being encouraged by the EU Commission, which offers assistance to plaintiffs. Considering the high quality of the specialized and internationally recognized German antitrust courts, follow-on actions for damages in Germany against EU cartels will continue to be a powerful tool to compensate cartel victims in the future. ■



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