

MANDAT

21.12.2018

ANTITRUST DAMAGES ACTION IN THE RAIL CARTEL – GLEISS LUTZ WINS LANDMARK CASE FOR VOESTALPINE BEFORE THE FEDERAL COURT OF JUSTICE

In proceedings against the so-called “Schienenfreunde” cartel, the Federal Court of Justice (FCJ) has dealt with prima facie evidence for the first time in private antitrust litigation. The action was based on claims for damages asserted by local public transport company VBK against rail manufacturer Schreck-Mieves. voestalpine was involved in the proceedings as a third party intervener on behalf of the defendant. Based on extensive prima facie evidence the first instance court had awarded VBK claims for damages on the merits; the court of appeal subsequently upheld the lower court ruling. The FCJ has now reversed the judgment of the Karlsruhe Higher Regional Court and referred the case back to the court of appeal to be heard again.

In its landmark decision the FCJ found that the prerequisites for prima facie evidence were not met for quota-fixing and customer protection cartels, both regarding the occurrence of harm and whether individual purchases were affected by the cartel, reversing long-established practice of the lower instance courts. The FCJ thus confirmed the view of Gleiss Lutz and the other legal representatives of the defendants. According to the Court there was no typical course of events according to which cartel arrangements led to higher prices being achieved. It could not be established with the requisite likelihood, so the Court, that cartel arrangements were successfully implemented in every case. The incorrect application of the principles of prima facie evidence meant that the court called upon to adjudicate the matter had failed to comprehensively examine the facts of the case as required by law.

The FCJ's long-awaited ruling marks an important partial victory for the defendant rail manufacturers. On account of its fundamental significance the FCJ's ruling will have far-reaching effects for private antitrust litigation beyond the rail cartel case.

voestalpine is being advised by the following team of Gleiss Lutz lawyers headed by Dr. Ulrich Denzel (lead, partner) and Dr. Carsten Klöppner (counsel): Dr. Jennifer Hattab, Dr. Miriam Schmidt, Andrea Preuße and Dr. Sarah Seiz (all competition/antitrust, Stuttgart). Dr. Reiner Hall represented voestalpine before the Federal Court of Justice.

PRESSEKONTAKT

Melina Merz

Lautenschlagerstraße 21

70173 Stuttgart

T +49 711 8997-366

E melina.merz@gleisslutz.com

EXPERTISE

Competition / Antitrust

LAWYERS

Dr. Ulrich Denzel

Dr. Carsten Klöppner

Dr. Jennifer Hattaß

Andrea Preuße

Dr. Sarah Espenschied