GCR INSIGHT

PRIVATE LITIGATION GUIDE

Editors
Nicholas Heaton and Benjamin Holt

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Contents

Part II: Comparison Across Jurisdictions

PART I
KEY ISSUES AND OVERVIEWS

08

Collective or Class Actions and Claims Aggregation in Germany

Borbála Dux-Wenzel, Anne Wegner and Florian Schulz[1]

Germany has a civilian legal system that is alien to collective or class actions and, in principle, any form of punitive or lump-sum damages compensation. Collective interests are traditionally defended by qualified associations, which can bring actions for injunction or the skimming of profits resulting from an infringement against commercial parties in specific areas of law, without, however, resulting in any individual compensation.

Regarding damages litigation, the German procedural landscape is characterised by a predominance of individual claims for compensation of individually incurred damages, which have to be substantiated and proven by the claimant in every single case. Nevertheless, in the past two decades, several major cases attracting the attention of the press and the claimant bar have developed into 'mass litigation', sometimes involving several tens of thousands of individual claims pending in all regional courts in Germany. This tendency began after the bursting of the 'dotcom bubble' and continued in the aftermath of the financial crisis of 2008–2009, with a focus on investor, mis-selling and capital market disputes. Currently, several tens of thousands of individual claims filed against Volkswagen AG in the 'diesel' context are pending in German courts. Both phenomena, capital market and mass consumer 'diesel litigation', have incentivised the German legislator to develop special instruments of aggregated or model actions. The model action developed for consumer claims covers all areas of law and would therefore theoretically also apply to follow-on competition litigation by consumers, a business field not yet explored by the German claimant bar. This chapter will analyse whether that instrument effectively responds to the specific requirements of consumer follow-on litigation.

In parallel, starting around the year 2005, a culture of business-to-business (b2b) follow-on competition litigation has steadily developed in Germany. These follow-on claims were mainly brought before the German courts in the form of individual lawsuits (filed against cartel

1 Dr Borbála Dux-Wenzel, Anne Wegner and Dr Florian Schulz are partners at Luther Rechtsanwaltsgesellschaft mbH.

members by companies at downstream market levels). In the absence of pressure or concrete initiatives from the EU legislator, the German procedural system does not provide special procedural instruments for these b2b claims. Nevertheless, with CDC Cartel Damage Claims as a pioneer claimant, follow-on claimants have developed some ingeniousness in aggregating several individual claims in one single lawsuit. Currently, individual and aggregated b2b claims are pending at the specialised antitrust chambers and senates of German courts against, among others, participants of the cement, sugar, railroad track and the truck cartels. In this chapter, we will provide an overview of the existing procedural possibilities and hurdles involved with the different forms of aggregation of follow-on competition claims and provide an insight in the tendency to combine aggregated claims with litigation funding in this area.

German tradition of association claims in specific areas of law

Even though German civil procedural rules do not provide for US-style class actions or the collective proceedings that have been implemented in the procedural rules of England and Wales or even some continental European jurisdictions, there is a rather long tradition of association or interest group complaints in specific areas of law (association claims).

Association claims in enumerated areas of consumer protection law can be initiated under the Act on Applications for an Injunction. Further, the Unfair Competition Act (UWG) allows professional associations, as well as consumer associations, to bring claims to restrain unfair competitive behaviour. Professional associations have a long-standing right to bring claims for injunction against antitrust violations under the Act against Restraint of Competition (GWB), a right that has been extended to consumer associations in 2013. In 2004 and 2005 respectively, the German legislator introduced an association claim for the skimming of profits resulting from the violation of competition rules (as set out in the UWG and the GWB).

Association claims can only be initiated by organisations with legal capacity that meet specific criteria. Such claims do not provide for an opt-in or an opt-out for the consumers or professionals concerned. They do not halt the running of limitation periods that apply to individual damages claims resulting from the same violation. The judgments have no legally binding effect on such individual claims, but they will set a factual precedent in most cases. Even if successful, these claims do not lead to a monetary compensation of damages. They can achieve injunctions for the removal of abusive general contract terms or the termination of unlawful acts under all aspects of competition law.

While association claims for injunctions have a rather long tradition in Germany, the more recently introduced possibility of association claims for the skimming of profits resulting from the violation of competition rules remains negligible. This is understandable considering the different hurdles an association has to clear for such claims and the lack of financial incentives. The action for skimming of profits requires the proof of an intentional violation of unfair competition or antitrust laws, establishing that the defendant was positively aware of the illegality of its actions and not simply negligently in breach of the competition rules, which is very difficult to establish. The association also has to establish a causal link between the legal violation and the generated profits. Further, even though 'skimming of profits' might sound like an action for compensation, the profits will not be distributed to the claimant organisation (or even less to the stakeholders behind such organisation) but will be transferred to the German public treasury. Hence, while the association bears the burden of proof and the procedural risks of

such a claim (including court costs and the defendants' legal fees in case of loss), it has no financial incentive to initiate such claims. Against this background, it does not come as a surprise that no claims for skimming of profits resulting from antitrust violations have been brought.

Cooperating with a litigation funder is not going to solve the dilemma of the consumer associations. The Federal Supreme Court has recently ruled that a funded claim of a consumer association was abusive and inadmissible because the funder was to receive a percentage of the skimmed-off profits in the event of success. This was despite prior consent having been given by the German Ministry of Justice that part of the profits could be distributed to the litigation funder instead of the public treasury.

Prominent cases of mass litigation triggering legislative reaction

As we have seen, Germany has a tradition of filing individual claims for damages (potentially amounting to mass litigation) and association claims for injunction that will not lead to a financial compensation of potential damages incurred. The German legislator's reluctance to provide for class or collective actions for monetary compensation has to be seen in the context of one of the fundamental principles of German delict law, namely the prohibition on enriching oneself in consequence of a damage incurred, meaning that a claimant cannot claim compensation that is higher than the individual damage he or she has suffered. This principle, leaving the burden of calculation and proof of damages with each single claimant, does not allow for any lump-sum or standard compensation of damages across a class of individuals or entities. Therefore, even if model actions or aggregations of claims are, under some circumstances, acknowledged in German procedural law, they will in most cases only lead to a judgment on preliminary legal questions or to a declaration of responsibility for a damage still to be calculated.

In the past two decades, prominent cases of mass litigation have lead the German legislator to add two new instruments to the claimant's procedural arsenal. In 2005, as a reaction to 17,000 pending claims by shareholders against Deutsche Telekom AG all pending at the Regional Court of Frankfurt, the German legislator temporarily instituted a regime of master proceedings.[2] In 2018, as a reaction to several tens of thousands of pending individual claims against Volkswagen AG in the 'diesel' context, the German legislator enabled associations to initiate a declaratory model action to which individual consumers can opt in.[3] However, due to the principle that any damage has to be calculated individually, neither of these instruments result in monetary compensation to the individuals concerned.

Act on Model Proceedings in Disputes under Capital Markets Law

The Act on Model Proceedings in Disputes under Capital Markets Law (KapMuG) was introduced in 2005 as a merely temporary measure, which – due to two extensions – will end on 1 November 2020. It is uncertain whether the German legislator will opt for a further extension. Prominent KapMuG proceedings are Deutsche Telecom AG (prospectus liability), Volkswagen AG (delayed ad hoc announcement) and various prospectus liability cases regarding closed-end

2 See the discussion below on the Act on Model Proceedings in Disputes under Capital Markets Law.

3 See the discussion below on the declaratory model action.

funds. The KapMuG is limited to capital market litigation and cannot be used in areas of consumer protection, competition or antitrust law. However, it has been as a role model for certain aspects of the Act on Declaratory Model Actions (see below).

Under the KapMuG, on the application of 10 claimants to a regional court (or courts) to allow master proceedings, the competent higher regional court as a court of first instance will rule on specific factual and legal questions regarding the prerequisites of the underlying claims, with an appeal to the Federal Court of Justice. In the KapMuG master proceedings, the higher regional court chooses a lead claimant to argue the case on his or her own behalf and on behalf of all other claimants who have also applied for such proceedings, who then become intervening parties in the master proceedings. All pending cases before the regional courts brought by the lead claimant, the intervening parties and by any additional claimants who have filed similar claims in the period before the ruling in the master proceeding becomes final are suspended, and the limitation periods of their claims are halted.

The competent higher regional court's decision to allow master proceedings and the different procedural events are published online in a federal claim register: they are public and transparent. Up to six months after publication, further potential individual claims can be notified to the federal claim register with little cost and no procedural risk, with the result that the limitation period for that particular party is halted, without that party bringing an actual claim. Except for the halt, such a simple notification does not have any other effect for the applicant (being no claimant at this stage).

The final decision on the factual and legal questions in the master proceedings will be binding on all claimants who have filed a similar claim before the ruling became final. Following the final decision, the respective regional courts will now apply the answers given in the master proceedings to all similar pending individual cases. Hence, the master proceedings will not result in damages or specific performance, which will be decided in the resumed regional court proceedings.

The model claimant and the defendant may settle the case in the course of the master proceedings after approval of the competent higher regional court. The intervening parties may opt out of the settlement within one month. If 30 per cent or more of the intervening parties have opted out of the settlement, it will not become binding at all.

Past experience has shown that the threat of publicity of the master proceedings and the possibility of halting the limitation period by simple notification for a vast number of potential claimants motivates some defendants to settle the case with the original applicants for a master proceeding at a very early stage. Thus, even though the KapMuG itself does not provide for monetary compensation, it might generate enough pressure on the defendant to make it enter an early settlement agreement.

However, not every defendant is willing to settle and the KapMuG procedure may take extremely long to be completed. In the master proceedings against Deutsche Telekom AG, which was the *raison d'être* of the KapMuG, the first master proceedings were filed in 2006, but no final and binding decision as to damages has been given yet, several years after the death of the model claimant.

Declaratory model action

The second legal instrument that could be considered a type of collective redress procedure is the declaratory model action (DMA), which, in November 2018, was introduced into the German Civil Code. By introducing this new instrument, which is limited to consumer claims but without any restriction as to the areas of law, the legislator explicitly wanted to help consumers overcome their rational indifference regarding the pursuit of claims that are not considered financially viable if balanced against the financial and factual burdens involved with litigation. The DMA was introduced when tens of thousands of 'diesel claims' related to the alleged employment of 'defeat devices' in diesel vehicles were already pending in all regional courts in Germany, and was driven by the circumstance that the prescription of such claims was imminent. However, the high number of individual 'diesel claims' showed that the 'rational indifference' against bringing a claim that motivated the legislator was not really an issue in this context. In the area of consumer follow-on cartel damages claims, however, a rational indifference of consumers might very well be established. Resulting from anticompetitive behaviour, consumers might suffer indirect damages. These damages, however, are – when looked at individually – very often highly dispersed and of low value. The German beer cartel is a good example of such dispersed low value damages. It has lead – according to the German Federal Cartel Office – to an overcharge of €1 per 20 bottles at consumer level.

The DMA combines elements of the classic German association claims with elements of the KapMuG master proceedings. In fact, a DMA can only be brought by large consumer associations with a legally defined minimum number of members. These associations must have been listed for at least four years in the list of associations qualified to bring an association claim under German law. This legal criterion is designed to prevent associations being created for the sole purpose of filing a DMA and exemplifies how careful the German legislator has been to prevent the evolution of a US-style claims industry in Germany. The DMA has to be filed directly with the higher regional court (thus giving the parties a forum experienced in the solution of difficult legal issues at first instance). Following the publication of the DMA in the claims register, at least 50 individual consumers must opt-in to allow the DMA to proceed. Once a DMA is initiated, additional DMAs regarding the same facts will be inadmissible. Hence, in contrast to the KapMuG, under which the higher regional court chooses the appropriate model claimant at its discretion, the DMA operates under the 'first come, first served' basis. However, there is no guarantee that the law firm that is the fastest in filing the first DMA on a certain subject will have best prepared the facts or will use the best legal arguments. This aspect of the DMA has been subject to some criticism.

Consumers can register online and cost-free to the DMA. Registry is possible until the day preceding the first hearing of the DMA and allows the individual consumers to halt the limitation period applicable to their potential claims against the defendant of the DMA (provided that the DMA has been duly filed in time before expiry of this limitation period). Once a consumer has registered to the DMA, he is legally prevented from filing an individual claim against the same defendant. Also, if a consumer with an already pending claim against the same defendant subsequently registers to the DMA (a potential scenario with the current volume of individual diesel claims), the individual pending case is suspended until the final and binding decision in the DMA (or until the claimant has opted out from the DMA). A consumer is free to choose not to register to the DMA but to file and pursue his or her claim individually and remains – in principle – unaffected by the outcome of the DMA. This might lead to the situation that individual

proceedings – initiated years before the DMA – reach the Federal Court of Justice and create legal authority for the DMA even before the higher regional court has had time to render its judgment or even to hear the case.

Just like the model procedure under the KapMuG, the DMA, even if successful from the consumers' point of view, does not result in monetary compensation. The sole purpose of the DMA is the binding decision of preliminary legal or factual questions that are prerequisites of a consumer claim. Therefore, in principle, every single consumer who has registered to the DMA will have to file a follow-on lawsuit in which the individual prerequisites of his or her claim (such as the individual damage incurred, the lapsing of the individual knowledge based limitation-period, etc.) will be at issue. Interestingly, it is the legislator's expectation that merely the decision of the preliminary questions will incentivise the defendant to enter into a settlement with the consumers that have registered to the DMA. This hope might be too optimistic, however, in particular, in areas of law, such as follow-on competition litigation, where the calculation and proof of individual damage by claimants is particularly challenging and involves a major investment of time and money on the claimants' side. In any event, the DMA rules provide for the possibility of aggregate settlement with binding effect for the registered consumers. The settlement has to be presented to and accepted by the court in order to be valid. Further, the validity of the settlement requires that less than 30 per cent of the registered consumers opt-out of the settlement after they have been notified of its terms.

The DMA in the 'diesel litigation', to which several hundred thousand consumers have registered, was filed by the Federal Association of Consumer Centres on 1 November 2018 and will be heard in September 2019. Currently, four further DMAs are pending in German courts in the areas of consumer credit, tenancy and investment law. As set out above, due to the high relevance of dispersed low-value damages, a rational disinterest in litigation is particularly present in the area of follow-on consumer competition litigation. However, no antitrust follow-on claims were or are pending in form of a DMA (or in other forms) in Germany and it does not seem that such DMAs are in preparation by the relevant claimant bar.

If one considers the hurdles that a consumer follow-on damages claim has to clear, the insufficiencies of the DMA for the final solution of such consumer claims are evident. Nevertheless, a DMA might be helpful to solve some of the preliminary questions of consumer damages claims, in particular in stand-alone damages claims where there is no binding decision of an antitrust authority on the antitrust infringement (e.g., in a commitment decision). It may also be helpful in halting prescription and thereby building up a certain pressure to settle.

However, consumers will mostly be at the final market level and can only claim that they have incurred damages that have been passed on to them by the upstream market levels (which could be highly individual and numerous, involving one or more wholesale dealer and dealers at retail level). Regarding those follow-on damages that have been incurred before 26 December 2016 (the major part if not all of the currently pending follow-on claims in Germany), consumers cannot invoke the legal presumption of damage and pass-on instituted under the EU cartel damages directive. Even though some German courts tend to apply a prima facie presumption that the acquisition of products affected by the cartel results in a damage, this presumption is not applied by all courts in cases of alleged damages that result from a pass-on to downstream market levels. Therefore, in many cases, consumers will have to prove that they have incurred a damage caused by the anticompetitive behaviour since the overcharge was passed-on to them through all market levels. They will have to calculate and

prove the exact amount of this damage. Since a pass-on of overcharges to the last market level depends on several individual factors that will in most cases be highly diverse depending on the distribution chain leading to the individual consumer, neither the existence nor the calculation of the individual damage will be a model question that could be easily dealt with once and for all for the entire group of consumers in a DMA. Since the potential defendants of a DMA will be aware of these difficulties, their willingness to settle in the course of a pending DMA might be limited. There may be, however, a certain room for uniform damages in cases of cartels on the retail level, abuse of dominance on the retail level or possibly retail price maintenance. This might, for example, also be the case for standard overcharges on credit card or electronic cash services.

However, even if an econometric market analysis shows that consumers might have suffered uniform damages, the fact that the DMA itself will not result in the monetary compensation of consumers but only in an answer to preliminary legal questions could be a serious hurdle when looking for a litigation funder that would back the investment into the expensive econometric analysis required. In fact, some litigation funders have stated their reluctance to finance DMAs for the reason that they would mean a long-term investment without any immediate or even medium-term monetary return. However, all of this depends on the individual factors of the specific antitrust infringement and the relevant market. If defendants are willing to settle fast due to the volume of aggregated claimants and the good chances of success of the claim, litigation investment may bring fast returns.

Claim aggregation under the existing rules in Germany

Regardless of the limited possibilities to aggregate claims in Germany via specifically created legal instruments, the claimant bar has shown a certain ingeniousness in using the traditional instruments provided by German law to aggregate claims. So far in the field of antitrust litigation this has, however, been in b2b claims, rather than on the consumer level.

Particularly in the area of follow-on competition litigation, an aggregation of several claimants is often important for the claim to be successful: regardless of the prima facie evidence of a damage applied by German courts in some cases, claimants will have to substantiate and prove the exact amount of damage incurred. Therefore, they will have to gather a sufficient amount of data for the econometric market analysis required to produce such an analysis. Large market players might have had enough transactions in the relevant period to produce their own market analysis, but smaller enterprises, and more so consumers, will depend on data gathered from an entire group of potential claimants.

Traditional possibilities to aggregate claims are the grouping of several claimants in one case or the assignment of claims of several claimants to a special purpose vehicle that will file the claim.

Joinder of several individual claimants in one case

From a procedural point of view, the least controversial possibility to file aggregated claims is the joinder of several claimants with similar or almost identical claims in one single claim. This occurs if several claimants file their individual claims jointly in one single court proceeding or if the court orders the joinder of different actions that have been brought separately. Evidently, the joinder of individual claimants in one proceeding will find its limits if the number of claimants is too extensive, since all claimants will have the same procedural rights in the pending

litigation (e.g., the right to file individual briefs and to participate at the hearing). Since all claimants can freely decide to withdraw or change their claim, to settle their individual claim or to change counsel, aggregated action by a simple joinder of individual claimants requires a contract between the involved claimants that will guarantee and sanction some discipline in the joint and efficient pursuit of their claims.

In follow-on antitrust litigation, major customers that form a purchasing cooperative frequently file a single claim against cartel members, profiting from the possibilities an aggregated data pool gives them for the calculation and proof of their cartel damage. However, given the problems of claimant discipline set out above, the joinder of several individual claimants in one claim will only prove to be successful if the parties are acquainted with each other, have a history of professional cooperation or at least a bullet-proof agreement regulating the terms of their cooperation as joint claimants.

Assignment of claims to a claims vehicle backed by a litigation funder

A more controversial method of aggregating claims in German civil procedure is the assignment of a multitude of claims to a special purpose vehicle. The first vehicle of this kind was CDC Cartel Damage Claims (CDC), which, in 2005, filed a damages claim for an aggregated amount of €130 million against six members of the cement cartel. Several companies from the construction materials industry had assigned their follow-on damages claims to CDC. However, after 10 years of litigation, in 2015 the Higher Regional Court Düsseldorf ruled that the assignment of claims to CDC was null and void because it unethically disadvantaged the defendants. In fact, the Court found that CDC, a Belgian company with limited liability and limited funds, substituted itself for the financially more powerful assignors, jeopardising the defendants' claim for reimbursement of procedural costs (in particular the defendants' legal and expert fees). However, the Court did not provide any details as to how CDC – or any other claims vehicle of this kind – could substantiate and prove that it has funding sufficient enough to bear the financial risk of losing in litigation. In a second attempt and based on a regional (i.e., different) infringement – now backed by a litigation funder – CDC filed a new lawsuit against the cement cartel with newly assigned claims, a lawsuit that was settled in August 2019 after the Federal Court of Justice had decided some controversially disputed questions regarding the limitation of follow-on claims in June 2018.

Claims aggregation consisting of a vehicle assignee of claims and a litigation funder responsible for the financials has since then been copied by others. For example, the affiliated companies MyRight and Financialright have aggregated more than 45,000 claims in the diesel litigation context, and have filed two aggregated claims involving a total of more than 7,000 claimants and 149,000 trucks against the truck cartel (with a third claim in preparation). In all proceedings, MyRight and Financialright are represented by the German office of the US law firm Hausfeld and are financially backed by the litigation funder Burford Capital, which – according to public information – invested €15 million into the diesel claim.

However, as indicated above, the admissibility of such vehicle claims are disputed. Even if the vehicles are backed by a litigation funder, there is no ruling or precedent on how the vehicle can prove that it has sufficient resources to bear the risks and costs of litigation. Measures might range from a simple affidavit that they have sufficient funding, to a complete disclosure of the agreement with the litigation funder. Further, there are also unresolved questions on the vehicles' right to pursue claims in light of the German laws regulating the legal profession.

In the diesel lawsuit pending between MyRight and Volkswagen AG, the question of whether such an assignment of claims for the purpose of litigation is in compliance with ethical rules is highly disputed and will have to be decided by the courts.

Conclusion

Regardless of the absence of class or collective actions in Germany, and notwithstanding the strict substantive requirements on the proof and calculation of follow-on damages, on a European level Germany still is, together with England and Wales, the Netherlands, Austria and Finland, one of the preferred fora for bringing private antitrust follow-on claims. The advantages of German proceedings are their relative rapidity (in comparison with other European domestic courts) and the significant experience the specialised competition chambers and senates of German courts have gathered in follow-on litigation in the past decade. The nationality of the persons joining the model actions or the claim aggregation does not play a role. Whether a foreign national can join, depends on whether it could individually bring the claim against the specific defendant, based on the normal rules of determining whether there is a forum for that specific claim in Germany. This must be verified on a case-by-case basis. As a rule of thumb, this should in particular be the case, if either the infringing action took place in Germany or the potential defendant is seated in Germany, or if Germany is a forum for a jointly liable defendant. Since the importance of the competition courts of England and Wales will potentially decrease after Brexit, it is likely that Germany will maintain and even strengthen its position as a preferred forum (provided that German courts also improve their IT to enable them to deal in a more efficient way with the aggregated claims and econometric data of several tens of thousands of claimants).

Finally, regarding consumer litigation, the different European regimes of collective, class and aggregate actions will be more aligned once the 'new deal for consumers package', promoted by the EU Commission and containing a proposal on representative actions for the protection of the collective interests of consumers, becomes a reality. This EU initiative provides for consumer representative actions that can result in monetary or other compensation of damages. Due to their experience with and expertise in b2b follow-on litigation, we believe that German courts will be a preferred forum for these EU consumer claims in the future.

Appendix 1

About the Authors

Borbála Dux-Wenzel
Luther Rechtsanwaltsgesellschaft mbH

Dr Borbála Dux-Wenzel joined Luther as a partner in 2018, where she is a member of the complex disputes team. She has substantial professional experience in the areas of mass investor and consumer litigation as well as follow-on competition claims. In the past seven years, she has gained professional expertise in strategic litigation management in German-style mass litigation involving several thousand claimants.

Before joining Luther, Borbála was a lawyer at Freshfields Bruckhaus Deringer in the area of dispute resolution from 2012 to 2018. From April 2014, she worked for a year as a legal secretary at the European Court of Justice, in the cabinet of Professor Dr Thomas von Danwitz, before resuming her work as a lawyer at Freshfields.

Borbála studied law at the universities of Cologne (Germany) and Paris 1 (France). Having finished her German legal studies in 2011, she was admitted to the German bar in 2012.

Anne Wegner
Luther Rechtsanwaltsgesellschaft mbH

Anne has been a partner at Luther in Düsseldorf since 2010, heading Luther's antitrust department since 2016. Before joining Luther, she worked for nine years in antitrust and distribution law at Freshfields Bruckhaus Deringer in Cologne and Brussels.

Anne specialises in antitrust and distribution law as well as litigation in these areas. She is a member of the firm's complex disputes group. She is experienced in, inter alia, follow-on damages litigation and refusal to supply claims, defending brand owners against collective dealer action and association claims, as well as antitrust-related post M&A claims.

She studied in Marburg, Strasbourg (France), Cologne and at the European University Institute in Florence, where she obtained an LLM in 1998. She is a member of the renowned Studienvereinigung Kartellrecht (co-coordinator for Rhineland until 2016), and the German arbitration association DIS.

Florian Schulz
Luther Rechtsanwaltsgesellschaft mbH

Dr Florian Schulz is a partner at Luther, and is the co-head of complex disputes practice group and the head of the Hamburg office. He joined Luther in 2002 after working for a litigation boutique for four years. He is a certified specialist in commercial and corporate law as well as banking and capital markets law.

Florian has broad experience in the areas of post-M&A proceedings, disputes among shareholders, and proceedings in relation to banking and capital markets law, including mass litigation both in the form of individual (bundled) claims and class actions under the German Act on Model Proceedings in Disputes under Capital Markets Law as well as developing dispute resolution strategies for clients. Among his clients are investors, issuing houses, banks, investment companies and funds.

Dr Florian Schulz was born in 1969. He studied law at the University of Hamburg, Germany, following which he earned his MBA. He was admitted to the German Bar in 1998.

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Private competition litigation has spread across the globe, raising specific, complex questions in each jurisdiction. The implementation of the EU Damages Directive in the Member States has furthered the ability of victims of anticompetitive conduct to seek compensation, even as US courts tighten the standards for forming a class action.

The *Private Litigation Guide* – published by Global Competition Review – includes a section exploring in depth the key themes such as territoriality, causation and proof of damages, that are common to competition litigation around the world. Part 2 contains invaluable summaries of how competition litigation operates in individual jurisdictions, in an accessible question-and-answer manner. Beyond the established sites such as the US, Canada, Germany, the Netherlands and the UK, experts lay out the scene for competition litigation in countries such as China, Mexico and Israel.

As the editors of this publication note, 'litigating antitrust or competition claims has become a global matter, requiring coordination among jurisdictions, and requiring counsel and clients to understand the rules and procedures in many different countries and how the approaches of courts differ as to key issues.'

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