
Private Enforcement of Abuse-of-Dominance Damages in the EU and Germany

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Executive Summary. Across the EU, follow-on cartel damage claims have become increasingly common, while abuse-of-dominance damages actions remain comparatively rare—but that is changing. Recent developments—particularly a landmark Court of Justice of the European Union (CJEU) limitation ruling (Heureka, April 2024), evolving collective redress mechanisms, and heightened public enforcement in digital markets—are clearing procedural and factual barriers. Germany, with its active Bundeskartellamt (FCO) and favorable legal infrastructure, is among the jurisdictions expected to play a leading role as abuse damages litigation gains traction. Because abuse-of-dominance claims often require constructing complex counterfactual competitive scenarios, they will hinge on economic analysis. Courts will therefore need to carefully assess and balance competing expert evidence.

Why Abuse-Based Damage Claims Have Been Rare in the EU—Until Now. Across the EU, and particularly in Germany, damages claims for *abuse of dominance* have historically been far less common than *cartel follow-on* actions, despite the fact that the harm from the former can be at least as significant as that from the latter.¹ This disparity reflects a longer-standing enforcement focus on cartels over abuses. Public enforcement

efforts—especially by the European Commission and national competition authorities like Germany’s FCO—historically concentrated on cartels, meaning fewer formal abuse findings existed to serve as a factual basis for follow-on damages actions.² Consequently, abuse damages have remained the exception rather than the norm. However, recent developments—including the CJEU’s *Heureka* judgment (C-605/21, April 2024),³ clarifying limitation periods, and Germany’s expanded digital enforcement powers under *Section 19a ARC* (see below) are beginning to reverse this historical trend.⁴ Although these developments benefit competition damages claims generally, they are particularly significant for abuse-of-dominance cases, where persistent structural and procedural obstacles have kept litigation volumes low.

EU-Level Developments Lowering Procedural Barriers. The picture has begun to change thanks to several recent developments at the EU and national levels. The first is the CJEU’s *Heureka* ruling, which clarified the rules on limitation periods in competition damages actions. The Court held that limitation cannot begin before both the infringement has ended and the claimant has the necessary knowledge of the conduct, the harm, and the identity of the infringer.⁵ By preventing national law from starting the clock too early, the judgment strengthens claimants’ rights to pursue damages for both cartels and abuses of dominance. In practice, it reduces the risk that potential abuse claims—often difficult to identify until a public authority concludes its investigation—are struck out as time-barred.

A second important development relates to *collective redress mechanisms*. In early 2025, the CJEU confirmed that the assignment model—under which claimants can transfer their rights to a litigation vehicle or funder—is compatible with EU law where individual enforcement would otherwise be impossible or excessively difficult.⁶ This is relevant in abuse cases, where harm may be widely dispersed across many smaller rivals or trading partners, making aggregation essential to viable litigation.

Finally, Germany’s *digital enforcement regime under Section 19a Act against Restraints of Competition (ARC)* adds momentum. The FCO has been at the forefront of abuse investigations in digital markets, applying its new Section 19a ARC powers to platforms such as Amazon, Apple, and Microsoft.⁷ In September 2024, for example, Microsoft was formally designated under Section 19a, giving the FCO enhanced powers to tackle abusive practices. Similarly, the German Federal Court of Justice (BGH) confirmed in 2024 that Amazon falls under Section 19a scrutiny.⁸ These decisions supply the kind of factual and legal foundation that plaintiffs need for follow-on damages actions.

Challenges of Abuse Claims. When it comes to proving and quantifying harm, abuse-of-dominance damages claims will likely be at least as, if not more, complex as cartel follow-ons. Whereas cartel damages claims often turn on estimating price overcharges based on well-accepted and broadly used methods, abuse-of-dominance cases often

hinge on defining a counterfactual competitive world that never materialized. The complexity of this task makes economic expert evidence indispensable in virtually every case.

- **First, counterfactual reconstruction can be complex.** In foreclosure or exclusion cases (e.g., refusal to supply, margin squeeze, tying, or self-preferencing), the claimant typically must show how their sales, market share, or profits would have evolved had the dominant firm not engaged in the abusive practice. Abuse cases often require modelling of lost opportunities and foregone growth trajectories, frequently using econometric simulation or structural modelling techniques.
- **Second, exploitative abuses pose their own difficulties.** In excessive pricing or unfair trading terms cases, the damages question is what the “fair” or competitive terms would have been. There rarely is a clean benchmark for these terms. Experts may need to build *comparator analyses* across jurisdictions, products, or contract structures, each with contested assumptions.
- **Third, causation is heavily contested.** Defendants in abuse cases typically argue that rivals failed due to factors unrelated to the alleged abuse—such as weak product quality, poor business strategy, or broader demand shocks. Distinguishing the effect of the abuse from these alternative explanations requires sophisticated empirical work. Methods such as *difference-in-differences*, *structural modeling*, and *multivariate regression analysis* can become central to showing causality, and courts will have to weigh competing expert interpretations.
- **Fourth, litigation strategy will hinge on expert evidence.** For plaintiffs, a persuasive and transparent damages model will likely be crucial to success. For defendants, challenging assumptions and highlighting uncertainties in the plaintiff’s economic model will likely be an important defense. In practice, abuse-of-dominance damages cases are likely to be highly dependent on economic analysis, with judges needing to weigh and interpret competing expert perspectives.
- **Finally, the German judiciary is alert to these challenges.** The BGH has recently emphasized that trial courts must rigorously examine expert evidence in damages cases and may have to appoint their own independent experts if party reports diverge sharply. This standard, already relevant in cartel claims, may be even more critical in abuse cases, where modeling economic counterfactuals can be complex.⁹

Conclusion and outlook. For many years, private enforcement of damages claims for abuse of dominance has been the “missing piece” of EU competition litigation, overshadowed by the flood of cartel damages actions. That is beginning to change. The CJEU’s clarification of limitation rules in *Heureka*, its endorsement of *collective enforcement through assignment models*, and increasing public enforcement in digital markets—particularly under Germany’s Section 19a ARC—are steadily lowering the barriers that have historically discouraged plaintiffs. These cases will demand complex

counterfactual analysis, potentially sophisticated econometric modelling, and careful expert evidence. In this sense, abuse damages litigation will test the capacity of courts, experts, and parties alike to translate economic theory and evidence into credible legal outcomes.

About the author

[Dr. Tillmann](#) specializes in the application of microeconomics, econometrics, and statistical methods to litigation matters, government investigations, and strategy assignments. He has managed case teams and conducted analyses in antitrust and health care litigation matters across a range of industries, including pharmaceuticals, health care providers and payers, social media, cable television, consumer electronics, automobiles, airlines, and chemical products. These analyses have included damages analysis, merger simulation, and quantitative modeling. In merger investigations, he has supported experts for the US Department of Justice (DOJ), the Federal Trade Commission (FTC), state attorneys general, and merging parties related to horizontal and vertical transactions. Dr. Tillmann's research has appeared in the *Journal of Competition Law & Economics* and the *American Journal of Political Science*. He has taught economics to undergraduate and graduate students at The University of Chicago and the University of Rochester.

Endnotes

1. Hausfeld, "Damages claims for abuse of dominance – A German perspective on effective private enforcement," June 26, 2025, available at <https://www.hausfeld.com/de-de/was-wir-denken/competition-bulletin/damages-claims-for-abuse-of-dominance-a-german-perspective-on-effective-private-enforcement>.
2. Hausfeld, "Damages claims for abuse of dominance – A German perspective on effective private enforcement," June 26, 2025, available at <https://www.hausfeld.com/de-de/was-wir-denken/competition-bulletin/damages-claims-for-abuse-of-dominance-a-german-perspective-on-effective-private-enforcement>.
3. Judgment of the Court (Grand Chamber) of 18 April 2024, Heureka Group a.s. v. Google LLC, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021CJ0605>.
4. Kluwer Competition Law Blog, "Main Developments in Competition Law and Policy 2024 – Germany," February 13, 2025, available at <https://legalblogs.wolterskluwer.com/competition-blog/main-developments-in-competition-law-and-policy-2024-germany/>; Hausfeld, "Damages claims for abuse of dominance – A German perspective on effective private enforcement," June 26, 2025, available at <https://www.hausfeld.com/de-de/was-wir-denken/competition-bulletin/damages-claims-for-abuse-of-dominance-a-german-perspective-on-effective-private-enforcement>.

5. Judgment of the Court (Grand Chamber) of 18 April 2024, Heureka Group a.s. v. Google LLC, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021CJ0605>; Taylor Wessing, "After Heureka (ECJ, C-605/21) – on the knowledge-independent limitation period for cartel damages claims under German law," September 11, 2024, available at <https://www.taylorwessing.com/en/insights-and-events/insights/2024/09/after-heureka>.
6. Jones Day, "Germany to Facilitate the Collective Pursuit of Antitrust Damages Claims," March 20, 2025, available at <https://www.jonesday.com/en/insights/2025/03/germany-to-facilitate-the-collective-pursuit-of-antitrust-damages-claims>.
7. Kluwer Competition Law Blog, "Main Developments in Competition Law and Policy 2024 – Germany," February 13, 2025, available at <https://legalblogs.wolterskluwer.com/competition-blog/main-developments-in-competition-law-and-policy-2024-germany>; Bundeskartellamt, "Verfahren gegen große Digitalkonzerne – auf der Basis von §19a GWB – Stand August 2025," available at https://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Downloads/Liste_Verfahren_Digitalkonzerne.pdf?__blob=publicationFile&v=14.
8. Kluwer Competition Law Blog, "Main Developments in Competition Law and Policy 2024 – Germany," February 13, 2025, available at <https://legalblogs.wolterskluwer.com/competition-blog/main-developments-in-competition-law-and-policy-2024-germany>; Bundeskartellamt, "Verfahren gegen große Digitalkonzerne – auf der Basis von §19a GWB – Stand August 2025," available at https://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Downloads/Liste_Verfahren_Digitalkonzerne.pdf?__blob=publicationFile&v=14.
9. Noerr, "Further boost to private enforcement of antitrust law," January 29, 2025, available at <https://www.noerr.com/en/insights/competition-outlook-2025-antitrust-damages-further-boost-to-private-enforcement-of-antitrust-law>.

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