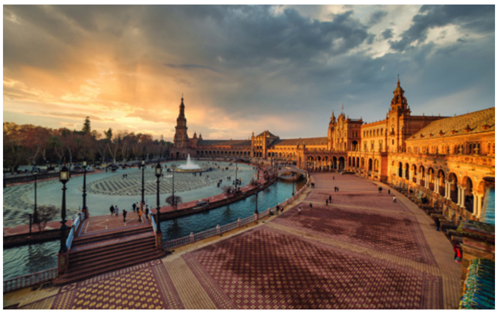
CARTEL INTEL:
UPDATES FROM OUR GLOBAL NETWORK

In this issue



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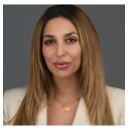
Key Contacts

Marcel Nuys
Partner, Düsseldorf and Brussels
T +49 211 975 59065
marcel.nuys@hsfkramer.com



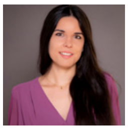
Souzanna Omran
Associate, Brussels
T +32 2 518 1853
souzanna.omran@hsfkramer.com

Kyriakos Fountoukakos
Partner, Brussels
T +44 7920 455 155
kyriakos.fountoukakos@hsfkramer.com

Florian Huerkamp
Counsel, Germany
T +49 211 975 59063
florian.huerkamp@hsfkramer.com

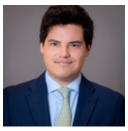
Francesca Morra
Partner, Milan
T +39 02 3602 1371
francesca.morra@hsfkramer.com

Luigi Caccamo
Associate, Milan
T +39 02 3602 1395
luigi.caccamo@hsfkramer.com



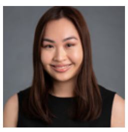
Pilar Carrasco
Senior Associate, Madrid
T +34 91 423 4138
pilar.carrasco@hsfkramer.com

Henar Gonzalez
Partner, Madrid
T +34 91 423 4016
henar.gonzalez@hsfkramer.com



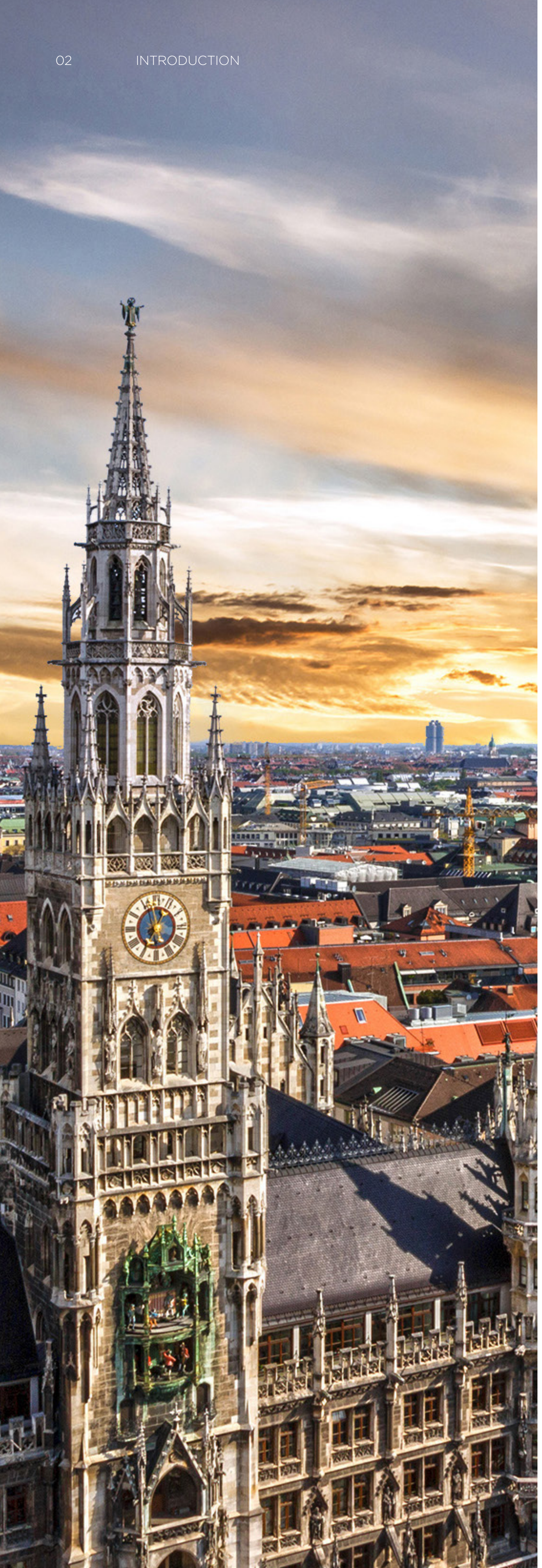
Gonzalo Sanz-Magallón
Associate, Madrid
T +34 91 423 4234
gonzalo.sanz-magallon@hsfkramer.com

Adelaide Luke
Partner, Head of Competition, Asia, Hong Kong
T +852 21014135
adelaide.luke@hsfkramer.com



Nicole Chow
Associate, Hong Kong
T +852 2101 4299
nicole.chow@hsfkramer.com

Veronica Roberts
Partner, London
T +44 20 7466 2009
veronica.roberts@hsfkramer.com

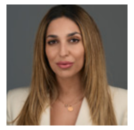


Introduction

Welcome to the 17th edition of Cartel Intel!

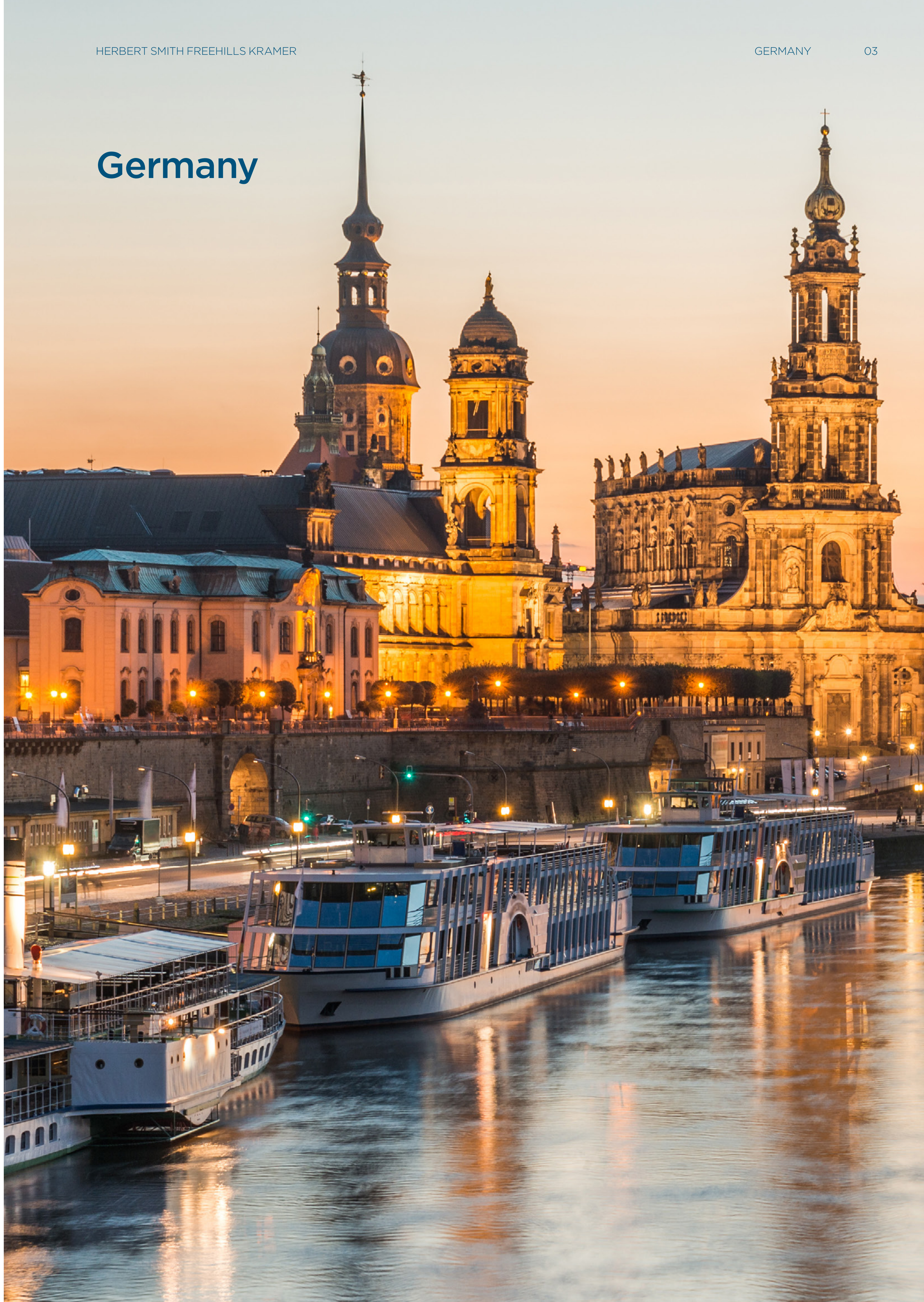
In this issue, we explore a range of notable competition law developments across Europe and Asia, including a German Court's ruling confirming that managing directors may face personal liability for failing to prevent cartel conduct, and highlighting the importance of effective supervision and compliance measures. We also discuss the Italian Competition Authority's decision in the *TIM/FiberCop* case, which illustrates how exclusivity clauses, discount schemes, and long-term access rights in the telecom sector can restrict competition, and how targeted commitments can address these concerns. Further, we report on the Spanish Supreme Court's ruling that Competition Authorities can impose and define public procurement bans; this ruling is expected to significantly strengthen enforcement beyond financial penalties. At EU level, the General Court's judgment in *Lantmännen* reaffirms the legality of hybrid cartel procedures and sets a high threshold for companies' claims of bias or breach of the presumption of innocence by the European Commission. Last, in Hong Kong, the Competition Tribunal clarified that facilitator liability must be pursued under a specific statutory regime, underscoring both procedural precision and the challenges of establishing intermediary involvement in cartel conduct.

Marcel Nuys
Partner, Düsseldorf and Brussels
T +49 211 975 59065
marcel.nuys@hsfkramer.com



Souzanna Omran
Associate, Brussels
T +32 2 518 1853
souzanna.omran@hsfkramer.com

Germany



Düsseldorf Court confirms supervisory liability of managing directors in cartel cases

Under German law, fines for violations of antitrust law can be imposed not only on undertakings but also on the individuals involved. The Federal Cartel Office (**FCO**) regularly fines managing directors, authorized signatories, or other executives of a company, who have participated in prohibited conduct, e.g. exchange of competitively sensitive information. The amount of the fine is determined by the severity of the offense and the individual's income. The law provides for fines of up to EUR 1 million.

Moreover, members of the management of an undertaking, who have not actively participated in a cartel can also be fined, if the management fails to implement appropriate supervisory and compliance measures to prevent executives' conduct that violates antitrust law.

In this regard the Higher Regional Court of Düsseldorf has recently published a decision from 2025 refining and confirming its position on fines for a breach of the duty to supervise.[1] In our previous edition (available here) we discussed the Court's significant reductions in the amount of fines imposed on the companies participating in the cartel. In this edition, we focus on the Court's findings with regard to the supervisory liability.

Factual background

By way of background the case concerns alleged violations of antitrust law through the exchange of competitively sensitive information. In December 2020, the FCO imposed fines on five aluminium forging companies and ten employees responsible for engaging in anti-competitive agreements.[2]

The FCO found that in the period between April 2006 and April 2018, representatives of the companies concerned attended 23 meetings in total, where according to the FCO, competitively sensitive information was exchanged.

It also found that one of the managing directors (who had not himself participated in any meetings) had failed to execute his supervisory duty.

The Higher Regional Court's decision

The Higher Regional Court upheld the fine imposed on the managing director. According to the Court the managing director failed to take reasonable supervisory measures to prevent or significantly impede antitrust violations by other employees of his company.

The Court clarified that the supervisory measures required to prevent antitrust violations depend on the circumstances of the individual case.

- For example, antitrust (and other regulatory) violations that have become known in the relevant industry, or violations that have occurred within the company itself, may be relevant.
- The more likely the risk of violations is, the more intensive the supervisory measures must be and the more effective supervision must be exercised.

As regards the relevant degree of supervision required from the management the Court established the following basic principles:

- In any event, the supervisor must inform his employees that the company must refrain from participating in prohibited agreements, even if there is no specific reason to do so, and even if the employees in question are long-serving, qualified staff who should already be aware of the prohibitions.
- The person responsible for supervision may delegate supervision to third parties. In that case, however, the supervisor needs to appoint a suitable and reliable person, to ensure that operational duties are fulfilled. An organizational deficiency also exists if the person responsible for supervision has defined responsibilities in an unclear manner, resulting in a risk of a breach of operational duties, because either no one or only an unsuitable person is considered responsible.
- If the person under a duty of supervision is not sufficiently qualified, they must seek expert advice.
- However, the person responsible for supervision only needs to take reasonable measures. These are not expected to be so drastic to prevent intentional cartel violations.
- Compliance with the duty of supervision shall ensure the smooth functioning of an effective and efficient compliance system.

Based on these principles the Court concluded that it would have been possible for the managing director to take the necessary supervisory measures to prevent antitrust violations: The managing director was in frequent contact with the executives of the undertaking concerned and met with them regularly at management meetings, which he chaired. Even without implementing a full-fledged compliance system, it would have been easy for him to raise the requirements of antitrust law quickly and efficiently, during these meetings and, for example, to inquire about contacts with competitors among the executives.

In the Court's view, the violations committed by the executives would have been prevented or at least impeded if the appropriate supervisory measures had been in place. The Court found no indications that the executives in question would have initiated or continued the contacts with competitors that violated antitrust law had the managing director properly fulfilled his supervisory duties.

Consequences

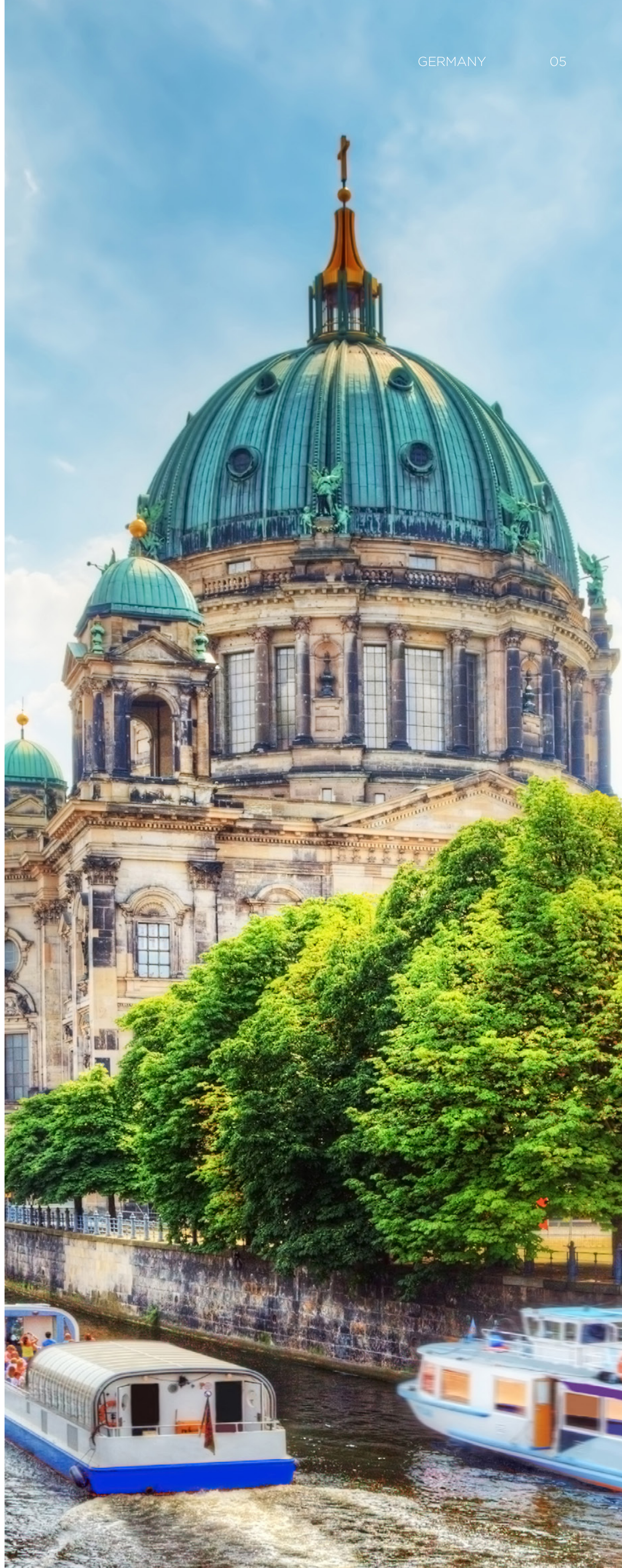
The case underscores the importance of management ensuring that sufficient antitrust compliance systems are in place. This is necessary in every industry, and especially in industries where cartels have been identified in the past.

The decision also illustrates that supervisory compliance may start with relatively simple measures: The Court explicitly mentioned that raising awareness of antitrust risks among employees/ executives during joint meetings can be an appropriate measure, depending of course on the facts of the case. However, undertakings and management should not rely excessively on such "quick fixes". Sufficient protection against violations of supervisory duties will in most cases require a more sophisticated compliance system (including regular trainings and updates).

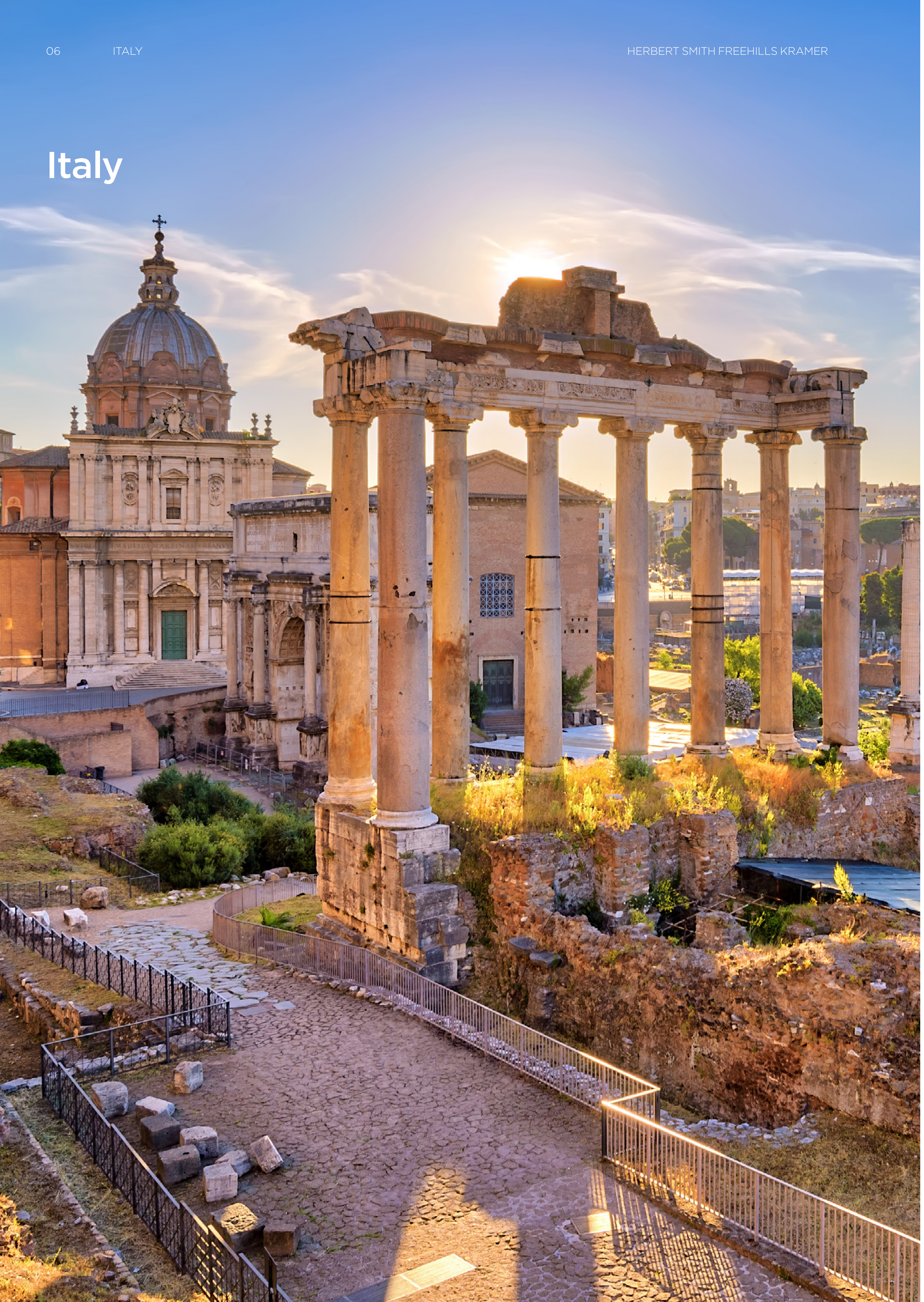
1. Higher Regional Court of Düsseldorf, Case 6 Kart 2/21 (OWi), judgment available only in German, here
2. Press release available here

Snapshot: Other German developments

- The FCO's investigations initiated in July 2025 found that the price comparison service Check24 had contractual provisions in place to prevent energy suppliers from offering lower gas and electricity prices on other comparison websites or through their own sales channels. In February 2026, Check24 proposed commitments to end the use of such price parity clauses, which the FCO declared binding.
- In February 2026, the FCO completed its competition law assessment of the plans presented by the 'Fit-For-Future' working group (**FFF**) for reforming the press distribution system (press wholesale) in Germany. FFF has significantly changed its original plans during the proceedings. The FCO will therefore not take any further action for now, and discontinues its administrative proceedings.
- In March 2026, it has been reported by German legal sources that the FCO has dropped its extensive investigation into 20 cable wholesalers without a fine. The parallel proceedings against cable manufacturers are however unlikely to conclude without fines (see relevant article here, only in German, no full version of the article publicly available).



Italy



The Italian Competition Authority accepts commitments from TIM and FiberCop to address competition concerns in the wholesale fixed network access market

Background

Following a number of reports received from competing companies, on 17 December 2024, the Italian Competition Authority (*Autorità Garante della Concorrenza e del Mercato* (**AGCM**)) started proceedings against FiberCop S.p.A. (**FC**) and Telecom Italia S.p.A. (**TIM**) for a potential infringement of Article 101 of the Treaty on the Functioning of the European Union (**TFEU**). Following the investigation on 17 February 2026, the AGCM adopted a decision accepting the commitments submitted by FC and TIM, considering them suitable to address the competition concerns identified during the proceedings.[3]

Facts of the Case – Alleged Infringement

FC, previously controlled by TIM, was carved out from the latter and sold to Optics HoldCo S.r.l., owned by the investment fund KKR & Co. FC operates in the wholesale fixed network access market. Following the carve out, TIM procured wholesale access services from different operators to provide retail telecom services.

The AGCM investigated several clauses included in the Master Service Agreement (**MSA**) concluded between FC and TIM to govern their post carve out relationship. The AGCM focused on whether these contractual provisions could restrict competition. The clauses raising concerns included:

1. **Exclusive supply obligation between FC and TIM:** the MSA provided for a nationwide exclusivity mechanism. If TIM wished to migrate, even partially, from copper to fibre line and FC did not directly offer that service, TIM would not be allowed to turn to another operator immediately. Instead, FC had: (**i**) 30 days to submit a feasible fibre deployment plan; or (**ii**) three months to enter into an agreement with another operator to ensure TIM's access to the fibre network. **Combined with the 30 year duration of the exclusivity obligation, this clause risked producing foreclosure effects, depriving FC's competitors of potential demand from TIM and reducing FC's incentives to expand its fibre network.**
2. **Discount mechanism under the MSA:** the MSA provided for a discount structure which appeared to only favour TIM at least originally, as **only TIM was realistically able to meet the volume thresholds required to benefit from the highest discount tier**, despite the mechanism later being extended to all operators.
3. **IRU rights granted to TIM:** the MSA granted TIM long-term Indefeasible Rights of Use (**IRU**) of between 20 and 30 years, over dedicated fibre links for business customers. This clause risked providing TIM with a competitive advantage in the business segment, as other operators could be effectively prevented from accessing the same dedicated links.

Commitments

In response to the AGCM's concerns, FC and TIM submitted a first set of commitments, which were subsequently amended following observations from market participants. The final commitments accepted by AGCM include:

1. **Revised exclusivity periods:** instead of applying nationwide exclusivity, the MSA was restructured around three geographic clusters (i.e., Cluster 1: areas covered by publicly funded fibre projects; *Cluster 2*: areas within 330 municipalities selected through market analysis; *Cluster 3*: all remaining areas). The commitments provide for the following:
   - In *Cluster 1*, the exclusivity period was reduced to 10 years (or 15 years in specific cases).
   - In *Cluster 2*, the parties committed to: an initial exclusivity of 3 years to allow FC to develop its fibre network; an additional 10-year period where exclusivity will apply only to units actually served by the fibre network that FC developed in the aforementioned 3-year period; and a final 6-year period during which TIM commits to maintain a minimum number of active fibre customers on FC's network.
   - *Cluster 3* mirrors *Cluster 2* commitments with two differences: (i) a 4-year initial exclusivity period; (ii) FC must meet annual fibre coverage milestones. If FC fails to meet such targets, TIM may source access from other competitors.

   The AGCM considered the geographic differentiation pro competitive, as it supports competition both in areas already hosting fibre networks and in those where infrastructure competition is weaker and investment needs to be stimulated.
2. **Modification of the discount mechanism:** FC committed to adjust the MSA discount mechanism so that, if an operator falls below the threshold for a higher discount tier, that operator will continue to benefit from that discount for an 18 month transitional period, subject to certain conditions.

   The AGCM considered that this mitigates lock-in risks for operators and reduces their costs to switch away from FC.
3. **Amendments to IRU rights:** TIM committed to give rights over the fibre link back to FC if: (i) the contractual relationship between TIM and the relevant business customer served by the line is terminated; (ii) a third operator requests an IRU over the same fibre link; and (iii) FC lacks alternative capacity to satisfy the third operator's request.

   The AGCM viewed this positively. Moreover, the outcome of the proceedings confirmed that FC generally has surplus fibre for each end user site, which means that the risk of service disruption is low and other operators can be efficiently served.

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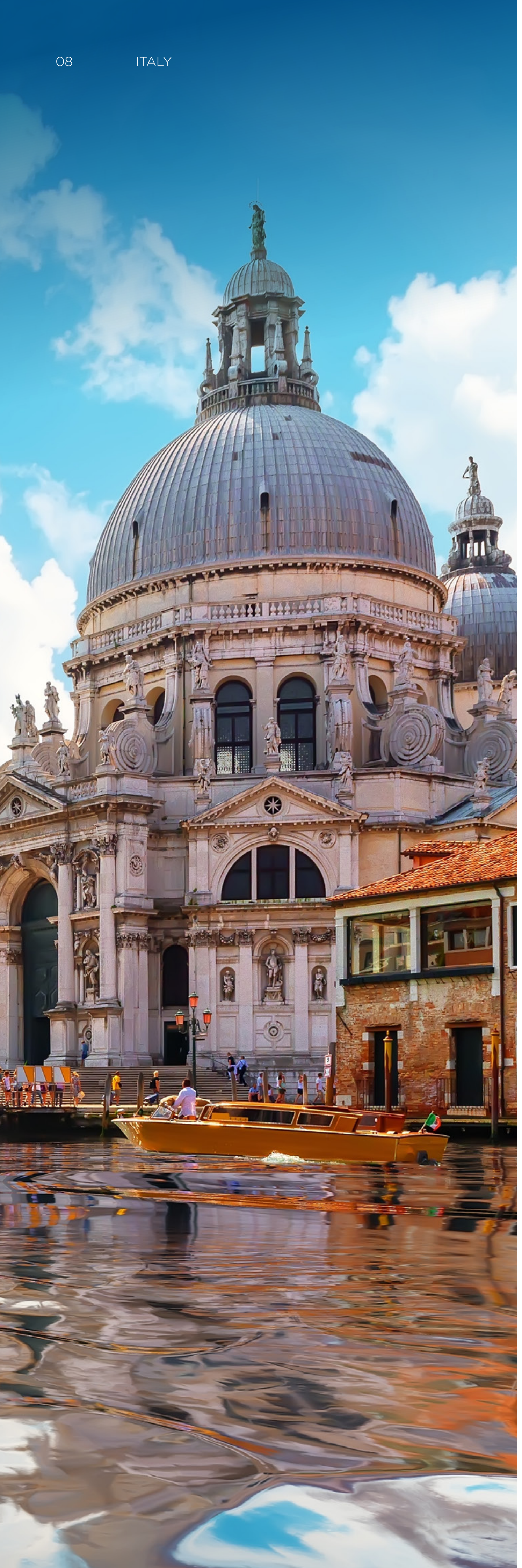
3. Press release available here.



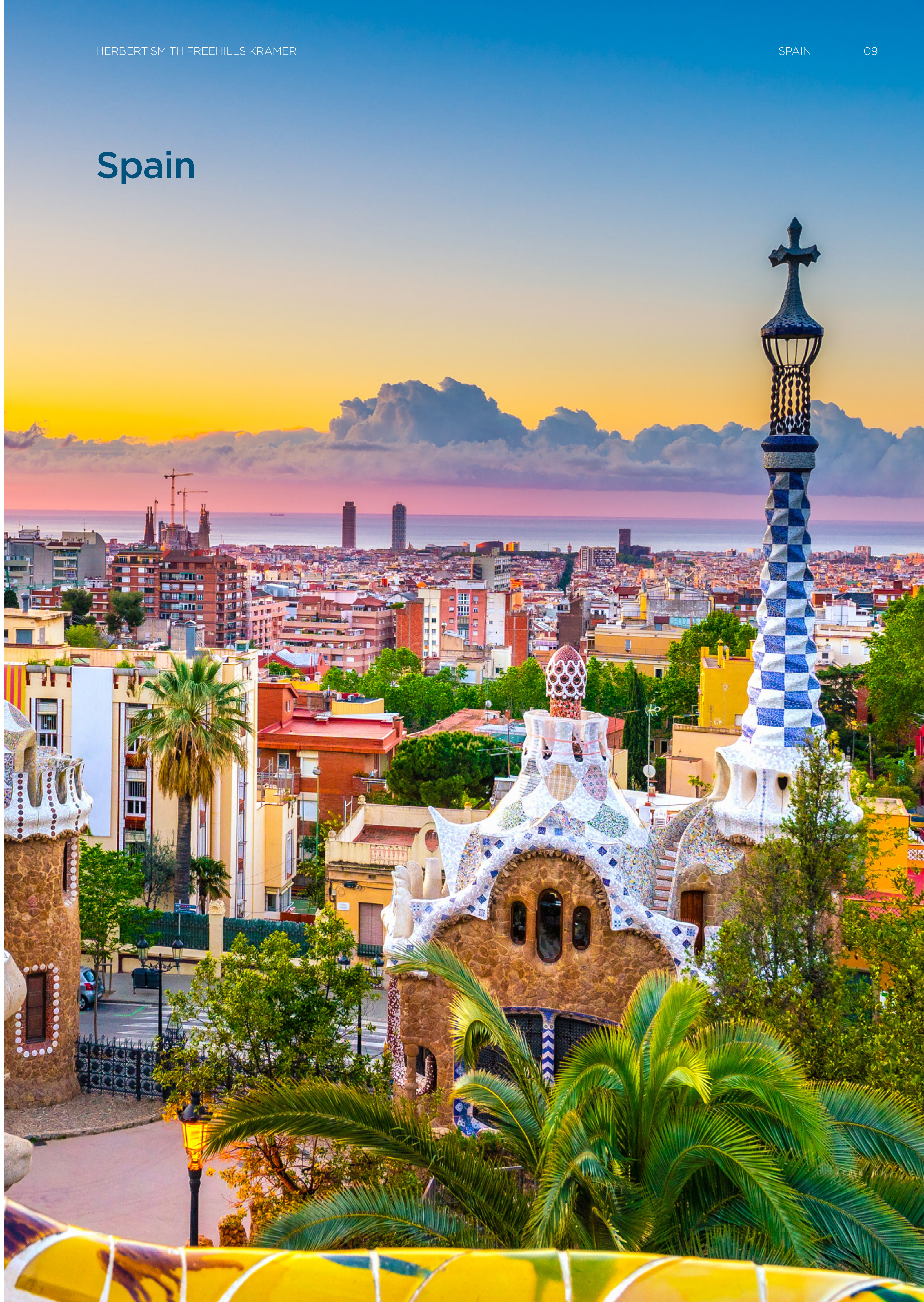
Key takeaways

The decision provides useful guidance on how complex contractual arrangements between vertically related operators can be structured in a manner that balances the need for long-term investment stability and predictability with the imperative of preserving effective competition. Striking this balance is essential to ensure that such arrangements do not lead to undue foreclosure effects or restrict access of competing market participants.

Other Italian developments

- In December 2025, The AGCM imposed fines on several Italian foundries and the industry association Assofond for a long-running cartel involving coordinated pricing strategies in the market for cast-iron products. The Authority found that the parties engaged in a secret, continuous price-fixing arrangement through the joint use of Assofond's pricing indicators. The total fines exceed EUR 60 million, while the relevant fines on each of the companies concerned range from under EUR 1 million to over EUR 15 million depending on each company's role and the duration of their participation in the cartel.
- In December 2025, the AGCM re-determined the duration of the infringement and the fines in the *TIM-DAZN* case: the Authority revisited its earlier decision on the TIM–DAZN exclusive distribution agreement linked to the broadcasting of Italy's top football league, Serie A, for the 2021–24 cycle, confirming the anticompetitive nature of the clauses contained in the agreement, reducing DAZN's fine to EUR 3.67 million, and upholding TIM's original fine. This revisit follows an order by the administrative Court to re-assess the basis of the fines without taking into account DAZN's direct sales of Serie A streaming subscriptions to end users (decision available only in Italian, here).

Spain



The Spanish Supreme Court confirms Competition Authorities' power to set the scope and duration of public procurement bans

The Spanish Supreme Court has delivered a landmark judgment[4] confirming that Competition Authorities have the power to impose public procurement bans directly in the context of their sanctioning decisions and to determine both their scope and their duration. The ruling further clarifies that these bans may be imposed for serious or very serious infringements of competition law, thereby expanding their scope and reinforcing the preventive function of competition enforcement in the field of public procurement.

Background: the ACCO's decision and subsequent appeals

The case arose from a sanction imposed by the Catalan Competition Authority (**ACCO**) on MCV, S.A. for a single and continuous infringement of Article 1 of the Spanish Competition Act. The infringement consisted in bid-rigging arrangements in public tenders organised by the Meteorological Service of Catalonia. In addition to a monetary fine, the ACCO banned the company from participating in certain public tenders for 18 months. MCV challenged the decision before the High Court of Justice of Catalonia (**TSJ**), arguing that the ACCO lacked jurisdiction to impose a public procurement ban. While the TSJ confirmed the infringement and upheld the ban, MCV subsequently lodged a cassation appeal before the Spanish Supreme Court.

The appellant's arguments before the Supreme Court

In its cassation appeal, MCV asserted that Competition Authorities lack the legal power to impose public procurement bans, arguing that the Spanish Competition Act only provides for monetary sanctions and does not contemplate ancillary measures of this nature. According to MCV, the Public Sector Contracts Act assigns decisions regarding the existence, scope and duration of public procurement bans to Contracting Authorities or, where applicable, to the Ministry of Finance, but not to Competition Authorities. In addition, the company argued that public procurement bans are only applicable to serious infringements, not to very serious ones. Last, it maintained that the measure had been applied retroactively as the conduct sanctioned predated the entry into force of the legal provision governing such bans.

The ACCO's response

The ACCO countered that a public procurement ban is not an ancillary sanction imposed at the Competition Authority's discretion, but rather a legal consequence triggered automatically once a final decision establishing a competition infringement has been adopted, as established by the Public Sector Contracts Act. The ACCO emphasised that legislation clearly provides two mechanisms for determining the scope and duration of a ban: As a general rule, these elements should be set out in the sanctioning decision itself; only where the decision is silent should the matter be addressed in a subsequent procedure conducted by the Ministry of Finance. From the ACCO's perspective, Competition Authorities are best placed to carry out this task, given their detailed knowledge of the facts, the relevant market and the gravity and duration of the infringement. The ACCO also argued that the statutory reference to serious infringements sets a minimum threshold and does not exclude very serious infringements. Finally, it rejected the allegation of retroactivity on the grounds that the ban applies only prospectively to future participation in public tenders.

The Supreme Court's ruling

In a judgment with significant implications for case law, the Spanish Supreme Court confirmed that Competition Authorities may indeed determine the scope and duration of public procurement bans directly in the context of their sanctioning decisions. The Public Sector Contracts Act explicitly allows a sanctioning decision to establish the parameters of the ban. Only where a decision is silent must the matter be referred to the Ministry of Finance. The Court cautioned that any alternative interpretation would undermine the coherence of the legal system, render the secondary procedure mandatory in all cases, and artificially sever the link between the administrative sanction and its legal consequences.

The Court also clarified that the legal basis of the public procurement ban does not lie in the Spanish Competition Act, but in the Public Sector Contracts Act. The ban does not therefore constitute a standalone administrative sanction and does not need to be expressly provided for in competition legislation. Rather, the ban is triggered automatically by the operation of law once a final decision establishes the existence of a competition law infringement. The Competition Authority does not create the public procurement ban as such – it simply specifies its duration and scope. The Supreme Court also confirmed that the ban applies to both serious and very serious infringements. It reasoned that excluding very serious infringements would be illogical, given that very serious infringements are by definition more harmful and more deserving of restrictions on access to public procurement. The reference to serious infringements was therefore interpreted as a minimum threshold.

Last, the Supreme Court dismissed the retroactivity argument, explaining that the measure affects only future procurement opportunities and does not interfere with completed legal situations. It also concluded that the interpretation is consistent with EU law, noting that Contracting Authorities make the final decision as to whether to exclude a specific tenderer from a public procurement procedure, even where a general public procurement ban has been imposed by another Administrative Authority.

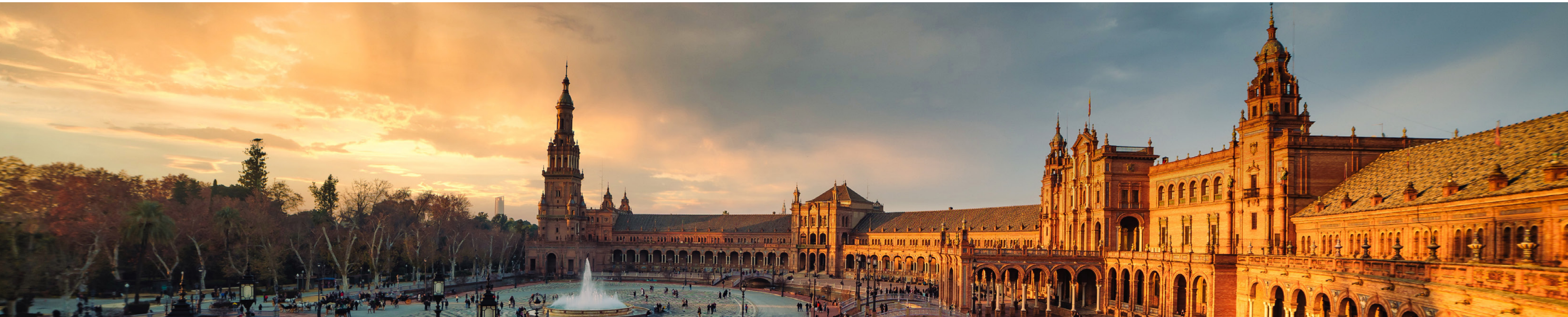
Commentary

This judgment marks a significant development for companies operating in markets where public procurement plays a critical role. It confirms that Competition Authorities can formalise procurement bans directly in their decisions without the need for a subsequent administrative procedure, thereby increasing the direct effect and practical impact of sanctions for anticompetitive conduct. Businesses under investigation must therefore consider not only their potential exposure to fines but also the risk of exclusion from future public tenders. The judgment further clarifies that both serious and very serious infringements may give rise to such bans, expanding their scope and enhancing their deterrent effect. Moreover, by confirming that public procurement bans are neither independent sanctions nor retroactive measures, but rather statutory consequences designed to safeguard integrity in public procurement, the decision enhances legal certainty and coherence. Overall, the judgment consolidates a more robust and preventive approach to competition enforcement in the context of public procurement in Spain.

Snapshot: Other Spanish developments

- The Spanish National Court has annulled the fines imposed by the Spanish Competition Authority (**CNMC**) in the *Navarra school transport* cartel case, finding that the CNMC's post-decision "error-correction" agreement substantively altered essential elements of the sanctions after the procedural deadline had expired. According to the Court, the CNMC's rectification did not merely correct clerical inaccuracies but instead modified core parameters,such as the affected turnover, the duration of the infringement and the sanctioning tables,thereby reshaping the legal and factual basis of the fines (Judgments of the Sixth Section of the Contentious-Administrative Chamber of the Spanish National Court, delivered on 18 and 19 December 2025 and 21 January 2026, in the *Navarra school transport* cartel case).
- In March 2026, the CNMC announced that it has updated its Guidance on calculating fines for companies that breach competition law, and—crucially—adds, for the first time, a dedicated section on fines for executives, aligned with recent case law. The CNMC also clarified that the Guidance is applied as a general rule but allows reasoned departures where appropriate (press release available only in Spanish, here).

4. Judgment of the Supreme Court, Contentious-Administrative Chamber, Section 3, no. 1655/2025.



EU

The EU General Court rejects Lantmännen's appeal in the ethanol cartel case and clarifies aspects of the hybrid procedure

On 21 January 2026 the EU General Court (**GC**) dismissed in its entirety the appeal of Lantmännen Biorefineries AB, a producer and supplier of ethanol, and its parent company Lantmännen ek för (together "**Lantmännen**") against a fine of EUR 47.7 million, which the European Commission (**Commission**) imposed in 2023 for the companies' participation in a cartel linked to ethanol benchmarks.[5] Contrary to Lantmännen's claims, the GC found that there was no evidence of the Commission's alleged *"lack of objective impartiality"* in this hybrid cartel case.

Background

In 2015, the Commission initiated an investigation to determine whether Lantmännen, together with Alcogroup S.A. and Alcodis S.A. (together "**Alcogroup**") and Abengoa, had coordinated to manipulate the wholesale price formation mechanism on the EU ethanol market.

The Commission followed a staggered "hybrid" procedure: As a first step, in 2021 it adopted a settlement decision with regard to Abengoa for its participation in the ethanol cartel during the period from September 2011 to May 2014 ("**the settlement decision**"). As a second step, further to the completion of the ordinary procedure, in 2023, the Commission: **i)** found that there was not sufficient evidence to hold Alcogroup liable for the cartel for the entire infringement period and therefore closed the procedure as regards Alcogroup; and **ii)** adopted an infringement decision against Lantmännen for engaging into anticompetitive agreements and information exchange with the aim of artificially increasing, maintaining or preventing from decreasing the level of ethanol benchmarks for the period from September 2011 to May 2014 ("**the contested decision**"). The Commission imposed on Lantmännen a fine of EUR 47.7 million on that basis.

Lantmännen brought an action for annulment against the contested decision before the GC, alleging, that the Commission had failed to respect the principle of the presumption of innocence and the duty of impartiality.

The GC's findings

The Court started by referring to well-established EU case law to confirm that hybrid cartel procedures are lawful in principle, *"provided that the Commission ensures, when adopting the settlement decision, that the principle of the presumption of innocence with regard to non-settling parties is observed."*[6]

The GC rejected Lantmännen's claim that the settlement decision indirectly implied their guilt, in so far as it contained clear references to their participation in the infringement. The Court held that the Commission did not definitively determine Lantmännen's liability in the settlement decision. According to the Court *"the adoption of the settlement decision did not determine the outcome of the ordinary procedure, as evidenced by the decision adopted in respect of Alcogroup,"* where the Commission reached the conclusion that the evidence in the file was not sufficiently conclusive to support that Alcogroup had participated in the infringement after March 2013, with the result that the Commission was time-barred from imposing a fine on it.[7] The Court also clarified that, it may be *objectively necessary* for the Commission to address, in a settlement decision certain facts and conduct concerning participants in the alleged cartel which are the subject of the ordinary procedure, but these references do not definitively prejudge the participation of those parties in the conduct in question.[8]

In addition, in the settlement decision, the Commission took sufficient drafting precautions in order to avoid a premature judgment as to Lantmännen's participation in the cartel.[9] After having established the defined term *"other parties to the investigation"* in order to refer in the settlement decision to Lantmännen and Alcogroup jointly, the Commission clarified on a number of occasions that the *"other parties to the investigation"* were not the addressees of the settlement decision and that that decision neither established nor sought to establish, even on a preliminary basis, any liability of those other parties for any participation in any infringement.[10] The

5. Judgment of the GC of 21 January 2026 in Case T-93/24, *Lantmännen and Lantmännen Biorefineries v Commission*, available here
6. Ibid. paras. 50-51 and the case law cited
7. Ibid. para. 60
8. Ibid. para. 89
9. Ibid. para. 96
10. Ibid. para. 94

Court acknowledged that some of the statements disputed by Lantmännen could be regarded as lacking precision as to whether the legal classification made therein extends also to the conduct of the "*other parties to the investigation*". However, contrary to Lantmännen's allegations, even those references should be assessed in the light of their reasoning and context, and constituted "*at most, drafting errors, which do not, in themselves, entail any clear, explicit or implicit assessment of the guilt of the non-settling parties.*"[11]

The GC then assessed whether the Commission had breached its duty of objective impartiality. The Court first recalled that the right to good administration, enshrined in Article 41 of the Charter of fundamental rights of the EU provides that every person has the right, to have his or her affairs handled impartially by the institutions of the EU. This requirement encompasses objective impartiality, in so far as there must be "*sufficient guarantees to exclude any legitimate doubt as to bias on the part of the EU institution concerned*".[12] The GC rejected Lantmännen's argument that the fact that the settlement decision was addressed exclusively to only one company necessarily prejudged the Commission's conclusion that at least one of the "*other parties to the investigation*" had also participated in the infringement, in order to safeguard the legal logic and legal basis underlying the settlement decision. The GC found no objective bias in the Commission's conduct in the case at hand. In addition, as it had already been demonstrated, the adoption of a settlement decision did not affect the outcome of the ordinary procedure, as evidenced by the decision adopted in respect of Alcogroup, which was not held liable in the end.[13]

Last, the Court also rejected Lantmännen's argument that a number of passages of the contested decision illustrated the Commission's lack of impartiality. According to the Court, neither Lantmännen's arguments concerning the content of the contested decision nor any of the documents in the file demonstrated that the Commission's analysis was biased by relying on Lantmännen's guilt as a starting point.[14]

Practical implications

In line with its previous judgments in cases *Pometon v Commission*[15] (concerning the steel abrasives cartel) and *HSBC Holdings and Others v Commission*[16] (concerning the Euro Interbank Offered Rate (**Euribor**)) cartel, the GC confirmed the legality of the Commission's hybrid cartel procedures, subject to necessary safeguards. The Court's approach reinforces that the threshold for companies' proving lack of impartiality or breach of the presumption of innocence by the Commission remains particularly high. The Court clarified that references to non-settling parties in a settlement decision do not, in themselves, breach the presumption of innocence unless they contain clear and prejudicial wording suggesting liability. As long as the Commission refrains from explicit prejudgment and maintains sufficient drafting precautions and procedural safeguards, the EU Courts will most likely uphold its approach.

Therefore, when designing their defence strategy companies should not rely solely on procedural objections or assume that opting out of settlement will necessarily create a strategic advantage in subsequent litigation. Instead, it is vital that companies carefully consider the benefits of settlement, including reduced fines, against the limited prospects of overturning a Commission infringement decision through procedural challenges.

Other EU developments

- On 12 and 26 March, Advocate General Biondi issued non-binding Opinions in Cases C-845/24 P and C-855/24 P, currently pending before the CJEU. The cases concern metal packaging companies', Silgan's and Crown's appeals against the GC's judgments upholding the reallocation of the metal packaging cartel case from the German Cartel Office to the Commission. In both Opinions, the Advocate General sided with the GC confirming that the Commission was entitled to take over the cases even after the initial allocation period and stressed that the Commission Notice on cooperation within the Network of Competition Authorities (**Cooperation Notice**) does not create binding allocation deadlines or rights for companies.
- In its judgments in Cases T-310/21 and T-313/21 released on 25 March, the GC found that the Commission is obliged to pay approximately EUR 4.26 million to Air Canada and EUR 14.44 million to Scandinavian Airlines System (**SAS**) covering unpaid interest related to fines from a 2010 air cargo price-fixing cartel decision that was later annulled. The Court ruled that returning only the "interest yielded" on the original fines was insufficient; the Commission is obliged to pay the "default" interest of 3.5 percent above the EU Central Bank's main rate.
- On 13 April, the Commission announced that is carrying out unannounced inspections in two Member States at the premises of a company active in the chocolate confectionery sector. The Commission is investigating whether the raided company has breached antitrust rules on cartels and abuse of dominance by segmenting the EU internal market through restrictions on the trade of goods between Member States.

11. Ibid. paras. 117, 118
12. Ibid. para. 141
13. Ibid. paras. 60, 149, 152
14. Ibid. paras. 159, 164
15. Judgment of the GC of 28 March 2019 in Case T-433/16, *Pometon v Commission*, available here
16. Judgment of the GC of 24 September 2019 in Case T-105/17, HSBC Holdings and Others v Commission, available here, upheld by the Court of Justice of the EU (CJEU) in its judgment of 12 January 2023, in case C-883/19 P, available here

HONG KONG

Hong Kong's Competition Tribunal dismisses Competition Commission's first "facilitator liability" case

In March 2026, Hong Kong's Competition Tribunal (**Tribunal**) dismissed the Hong Kong Competition Commission (**HKCC**)'s first case seeking to establish facilitator liability under section 6 of the Competition Ordinance (Cap. 619) (**Ordinance**), which is the provision analogous to Article 101 TFEU.[17].

From a procedural perspective, the Tribunal held that the Ordinance establishes a specific statutory regime for facilitator-type conduct under section 91, a provision with no equivalent in the TFEU. As a result, claims against alleged facilitators of cartel conduct must be pursued under section 91, rather than under section 6 of the Ordinance.

However, on the substance, the Tribunal noted in *obiter* that had section 6 been capable of covering facilitative conduct, the evidence would have been sufficient to establish that there was facilitative conduct beyond reasonable doubt (under Hong Kong's current criminal standard of proof).

Background

Gray Line Tours of Hong Kong Limited (**Gray Line**) and Tink Labs Limited (**Tink Labs**) were competitors in the sale of tickets for tourist attractions and transportation services to hotel guests. Gray Line sold tickets through tour counters located in various hotels, whereas Tink Labs offered tickets via "handy devices" installed in hotel rooms.

Gray Line and Tink Labs did not dispute that their conduct constituted price fixing in breach of section 6 of the Ordinance. Tink Labs applied for leniency, and Gray Line admitted liability.[18]

The proceedings also marked the first occasion on which the HKCC sought to pursue hotels as alleged facilitators of cartel conduct. The HKCC alleged that certain hotels acted as intermediaries by relaying price information between Gray Line and Tink Labs, thereby facilitating Tink Labs' price increases to align with those of Gray Line. Most hotels resolved the HKCC's concerns via Infringement Notices or commitments. As Harbour Plaza 8 Degrees Limited and Harbour Plaza Hotel Management Limited (together, **Harbour Hotel**) did not admit to liability, the HKCC brought proceedings in the Tribunal against it under section 6 of the Ordinance, alleging that Harbour Hotel's staff acted as intermediaries in facilitating the price fixing arrangement between Gray Line and Tink Labs.

The Tribunal's decision: "facilitation" must be pursued under section 91

The central issue in the proceedings against Harbour Hotel concerned a question of statutory construction: whether section 6 of the Ordinance covers conduct amounting to "facilitation" of a contravention of a competition rule (namely, aiding or abetting anti-competitive conduct by an undertaking), or whether such facilitative conduct must instead be pursued under section 91 of the Ordinance.

Section 91 of the Ordinance,[19] which has no equivalent under EU or UK competition law, expressly defines the circumstances in which a person is regarded as being "involved in" a contravention of a competition rule:

A reference in this Part to a person being involved in a contravention of a competition rule means a person who:

a. attempts to contravene the rule;

b. aids, abets, counsels or procures any other person to contravene the rule;

c. induces or attempts to induce any other person, whether by threats or promises or otherwise, to contravene the rule;

d. is in any way, directly or indirectly, knowingly concerned in or a party to the contravention of the rule; or

e. conspires with any other person to contravene the rule.

Instead of pursuing Harbour Hotel under section 91 of the Ordinance (for instance, section 91(b)), the HKCC framed its case as a primary contravention of section 6, alleging that Harbour Hotel itself facilitated the price fixing arrangement between Gray Line and Tink Labs.

Harbour Hotel, however, contended that the Ordinance establishes a specific statutory regime governing "involvement" in a contravention, including facilitation, under section 91. As a result, any conduct amounting to facilitation must be pursued under that provision rather than being interpreted as falling within section 6.

The HKCC did not plead section 91 in the alternative.

The Tribunal accepted Harbour Hotel's submissions, and its findings are summarised as follows: :

- **Limited relevance of EU facilitator case law**. Established EU jurisprudence on facilitator liability (including Case *AC Treuhand*[20]) is of limited assistance when interpreting Hong Kong's statutory regime. Unlike EU law, which lacks a provision equivalent to section 91 of the Ordinance, Hong Kong law expressly regulates involvement in a contravention. As such, EU case law developed to address a gap which does not arise under Hong Kong law.
- **Application of settled principles of statutory interpretation.** As a matter of statutory construction, where legislation contains a general provision alongside a specific provision dealing with the same subject matter, it is presumed that the legislature intended the specific provision to govern that situation. Section 91 (as opposed to section 6) therefore constitutes the intended and exclusive route for pursuing facilitative conduct.
- **Nature and consequences of section 91.** Section 91 is drafted in language characteristic of criminal law. The Tribunal therefore accepted that liability under section 91 requires proof of mental elements, such as knowledge and intent. It rejected the HKCC's attempt to circumvent these requirements by characterising facilitation as a primary contravention of section 6, observing that such an approach would be "*anomalous*".

Based on the above, HKCC's claim was dismissed.

17. Judgment of the Hong Kong's Competition Tribunal in Case *Commission v Gray Line Tours of Hong Kong Ltd & Ors* [2026] HKCT 1, available here
18. Press release available here
19. Section 91 of the Ordinance, available here
20. Judgment of the CJEU of 22 October 2015 in Case C-194/14 P, *AC-Treuhand v European Commission*, available here

Standard of proof (criminal standard)/Obiter

A notable feature of Hong Kong's competition enforcement regime is that the HKCC bears the criminal proof of *beyond reasonable doubt* in proceedings before the Competition Tribunal.

The Tribunal considered the CJEU's judgment in *Gazdasági Versenyhivatal v Budapest Bank Nyrt*[21], where the Court emphasised that the concept of a restriction of competition "by object" must be interpreted strictly. The Tribunal observed that, when applying the criminal standard of proof in Hong Kong, findings of anti competitive conduct must be grounded in established primary facts, and any inference drawn from those facts must be the sole reasonable inference available. The Court therefore clarified that the agreement between Gray Line and Tink Labs was an agreement which had an anti-competitive *object*.

Further, although the Tribunal dismissed the claim that Harbour Hotel had contravened section 6 on the basis of the statutory route pursued, it made clear in *obiter* that had section 6 been capable of covering facilitative conduct, the evidence would have been sufficient to establish beyond reasonable doubt that Harbour Hotel played a central intermediary role in implementing the price fixing arrangement between Gray Line and Tink Labs.

- The Tribunal identified three cumulative elements to establish contravention by facilitation:
  1. The person should be aware of the agreement or concerted practice which the other participants intented to implement.
  2. The person's conduct contributes to the objective of the agreement or the concerted practice; the contribution must be more than peripheral services that are unconnected to the obligations assumed by the principal participants and the restrictions on competition.
  3. The person intends to contribute by its conduct to the objective of the agreement or the concerted practice.
- Applying these principles, the Tribunal observed that the evidence clearly demonstrated beyond all reasonable doubt that:
  1. Harbour Hotel was aware of the agreement between Gray Line and Tink Labs;
  2. Harbour Hotel's conduct directly contributed to the implementation of that agreement; and
  3. Harbour Hotel's actions were deliberate and intentional, rather than inadvertent.

Practical implications

1. **Possibility of appeal**
   - Pending any appellate clarification, the *Gray Line* judgment signals that future "facilitator" cases should be pleaded under section 91 of the Ordinance, with outcomes depending on whether the HKCC can satisfy the elements of the particular limb of section 91 relied upon.
   - This does not suggest that facilitators may avoid liability altogether. Rather, it means that the HKCC will face an additional evidentiary burden, including the need to establish knowledge and intent on the part of the alleged facilitatorto the applicable, current criminal standard of proof.
2. **Compliance awareness**
   - The underlying anti competitive arrangement between Gray Line and Tink Labs was implemented without direct contact between the competitors, but rather with communications through hotel staff. This underscores the importance of competition law compliance awareness, particularly for intermediaries operating between competitors.
3. **Interpretation of Hong Kong competition law**
   - Given the relative nascency of the Competition Ordinance (having been in force for only a decade), the HKCC and the Tribunal have traditionally looked to EU and UK jurisprudence for interpretative guidance. This decision, however, marks a departure, emphasising the need to take account of the Ordinance's distinct statutory architecture. In particular, the Tribunal's reasoning highlights that EU competition law concepts cannot be transposed into Hong Kong law where the Ordinance contains bespoke provisions (such as section 91) designed to address specific forms of conduct.

Snapshot: Other Hong Kong developments

- On 12 November 2025, the HKCC signed a Memorandum of Understanding with the Cambodia Competition Commission establishing a framework for cooperation (including exchange of views and information on competition policy developments and enforcement experience, and technical collaboration/capacity building).
- The HKCC continues to prioritise enforcement against bid-rigging and related cartel conduct in the building maintenance sector: On 28 and 29 January, the HKCC conducted an operation including executing search warrants at multiple companies' premises and residencies of individuals involved. The companies were suspected of engaging in bid-rigging arrangements in the tendering processes of building maintenance projects for 17 housing estates and buildings across Hong Kong. The HKCC also noted that it has carried out multiple search operations in the sector over the past two years, including joint operations with the anti-corruption agency.

21. Judgment of the CJEU of 2 April 2020 in Case C-228/18, *Budapest Bank and Others*, available here

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