

Enforcement of Cartel Damages in a New Dimension – The CJEU Opens the Door to More Effective Corporate Damage Claims

The judgment of the Court of Justice of the European Union in Case C-253/23 ASG2 constitutes a milestone in the enforcement of damages claims arising from infringements of competition law. The ruling is of direct relevance to any undertaking that has suffered economic harm as a result of a cartel or other antitrust violation and is considering seeking compensation through judicial proceedings.

The case originated from a timber harvesting and marketing practice in Germany, in relation to which several sawmills took the view that they had suffered damage due to a competition law infringement. Rather than initiating individual proceedings, the injured undertakings assigned their claims to a legal services provider, which sought to consolidate and enforce them in a single action. The defendant in the proceedings was the Land Nordrhein-Westfalen. The national court was required to consider whether German law permitted such aggregation and assignment of claims, particularly where such arrangements are made specifically for the purpose of litigation.

The dispute thus went beyond a merely technical issue. The central question was whether national law may restrict the assignment and collective enforcement of claims in a manner that, in practice, renders the recovery of competition law damages impossible or excessively difficult. Damages arising from competition law infringements are often complex, require extensive expert evidence, and may not individually justify protracted and costly litigation. However, when multiple injured parties combine their claims, enforcement may become both economically viable and procedurally efficient.

The core message of the Court’s judgment is that EU law—particularly the principle of effectiveness of competition law and the requirement of effective judicial protection—does not tolerate national rules that effectively deprive the right to damages of its substance. EU competition law is not limited to the imposition of fines by public authorities; a fundamental pillar of the system is private enforcement, ensuring that injured undertakings receive actual compensation for the harm suffered. Where national rules restrict claim assignment or collective action to such an extent that damages actions become impracticable, such rules may be incompatible with EU law.

While respecting the procedural autonomy of Member States, the Court of Justice of the European Union made it clear that national rules must not render the exercise of rights conferred by EU law “practically impossible or excessively difficult.” Where individual litigation is not a reasonable option due to costs, evidentiary burdens, or the complexity of the case, the aggregation and assignment of claims may constitute a necessary mechanism that must be accommodated within national legal systems.

From a corporate perspective, the implications of the judgment are significant in several respects. First, it confirms that structured and professional claim enforcement mechanisms—such as the assignment and consolidation of claims—may represent a viable avenue for victims of cartel conduct and other competition law infringements. Second, it increases the likelihood that, in cases involving large-scale or systemic market distortions, injured undertakings will obtain actual compensation rather than merely



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retaining a theoretical right to damages. Third, the judgment sends a clear signal to national legislators and courts: private enforcement of competition law cannot be curtailed by formalistic restrictions where this would undermine the objectives of EU law.

The ruling may also have strategic implications for litigation risk management among large corporations. Market participants subject to competition law investigations must now anticipate that injured parties may act in a more organized, concentrated, and financially robust manner. At the same time, for potential claimants, the judgment provides reassurance: they are not required to bear the full burden of litigation individually where alternative structures exist that render enforcement more efficient and economically rational.

In sum, the ASG2 judgment does not merely resolve a procedural issue arising in Germany but provides clear principled guidance for market participants across the European Union. Competition law rules can only fulfil their function if infringements result not only in regulatory sanctions but also in effective compensation for injured parties. The Court has now made it clear that, where this requires the aggregation of claims and the use of professional enforcement structures, national law must not impose unjustified obstacles.