

Case Review

Bathroom Fittings Cartel

Review of Stuttgart Higher Regional Court, judgment from 20
November 2025

OLG Stuttgart, Urt. v. 20.11.2025 – 2 U 263/21

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A. Facts of the Case

The court decision concerns the so-called bathroom fittings cartel¹ (*Badarmaturen-Kartell*). Prior to the judgment, manufacturers of bathroom fittings had formed a cartel between 1992 and 2004. In 2010, the European Commission imposed fines on the cartel members. In the present case, the claimant is the insolvency administrator of *Praktiker Deutschland GmbH* and its subsidiaries. The claimant alleges that between 1999 and 2005 it purchased cartel-affected bathroom fittings from various wholesalers and thereby suffered damages. According to the claimant, the prices paid were excessively high as a result of the cartel.

B. Key Aspects of the Judgment

In determining the damages, the court did not rely on expert opinions but instead estimated the damage itself. It is particularly noteworthy that the court regarded the expert report submitted by the claimant as unsuitable for determining cartel damages. The court also did not believe that taking evidence would improve the situation. Rather, it considered the calculation of damages through econometric expert reports in adversarial cartel proceedings to be generally unsuitable. According to the court, such reports can only approximate the hypothetical amount of damage and are not capable of replacing or concretizing the court's overall assessment. Furthermore, the data underlying the claimant's expert report was considered insufficient. Correcting the datasets during the taking of evidence would also require excessive costs and effort.

Based on its experience in other proceedings, the Senate noted that evidentiary

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¹ OLG Stuttgart, 20 November 2025, 2 U 263/21, juris.

proceedings generally involve significant time and financial expense, while the results are often of limited value due to differing methodological approaches and therefore differing outcomes. The Senate assumed that no method exists that could make the determination of damages both more realistic and more efficient from a procedural standpoint. It therefore adopted its own independent estimation approach, making use of the discretion granted to it under section 287 of the German Code of Civil Procedure (*ZPO*).²

The Senate held that a court may estimate damages if the circumstances of the case provide a sufficiently reliable basis for doing so. For this independent assessment, the Senate developed a five-step estimation model.³

In the first step, the court determined whether the cartel had actually affected prices by establishing a cartel-induced price effect. It had to be shown with predominant probability that the cartel led to a price increase. In principle, there is a presumption that a cartel causes damage; only in exceptional cases would this not apply. Such exceptions would require specific indications, which were not present in this case.⁴

In the second step, the damage suffered was assigned to an estimation corridor. These values were based on the findings of various large-scale meta-studies. The court also examined whether this corridor could be further narrowed in light of the specific circumstances of the case. Studies focusing exclusively on the European market indicated values of approximately 15–18%. Ultimately, the court adopted an estimation corridor of 5–25% in the present case.⁵

Subsequently, the estimate within the identified corridor was further refined on the basis of the specific circumstances of the case. This was done using an assessment model divided into four categories: collusion, organization, market conditions, and customer response.⁶

The court then examined whether the damage had been passed on to the claimant and whether it had subsequently been passed further down the supply, distribution, and acquisition chain.⁷

In the final step, the court considered whether the claimant itself had been able to pass on part of the damages to customers, such that corresponding benefits would need to be taken into account.⁸

² *ibid* paras 89 f.

³ *ibid* paras 97 f.

⁴ *ibid* paras 103, 108 f.

⁵ *ibid* paras 104, 113 f.

⁶ *ibid* paras 105, 130 f.

⁷ *ibid* paras 106, 225 f.

⁸ *ibid* paras 107, 265 f.

C. Classification of the Judgment

This new estimation model was based on the findings of large-scale meta-studies. The court intended to save time, costs, and effort that would otherwise arise from obtaining expert opinions.⁹

Recently, several courts have already determined the amount of damages through their own estimations rather than relying on expert reports.¹⁰ One criticism has been that party-appointed expert opinions are often not objective. While studies generally conclude that cartels almost always cause harm, expert reports submitted by defendants frequently arrive at a finding of zero damage. In addition, their conclusions often contradict judicial experience and common sense.¹¹

D. Assessment

The estimation model conserves resources, and expert reports often produce inconsistent results. This is true even where the same facts and datasets are used.¹² Consequently, such reports are often of limited usefulness while simultaneously requiring considerable effort and expense. The court's independent estimation therefore represents a helpful solution.¹³

In addition to independent estimation, courts could also consider other approaches in the future. For example, under section 144 paragraph 1 sentence 1 ZPO, courts may consult experts outside formal evidentiary proceedings. Furthermore, party-appointed experts could be encouraged to identify common positions through joint expert statements or be heard together during oral hearings.¹⁴

In any event, a departure from the previous practice of obtaining extensive court-appointed expert reports appears sensible.

⁹ *ibid* paras 96 f.

¹⁰ Gerhard Klumpe, 'Zur prozessualen Behandlung wettbewerbsökonomischer Gutachten im Kartellschadensersatz' (2024) WUW 12, 12 f.

¹¹ OLG Stuttgart (n 1) paras 95 f.

¹² Klumpe (n 10) 13.

¹³ OLG Stuttgart (n 1) paras 96 f.

¹⁴ Klumpe (n 10) 16 f.