GERMAN
ARBITRATION
DIGEST

GAD No.:	GAD 2026, 14	Decision date:	06 March 2026	Res judicata: Yes
Court:	Higher Regional Court of Frankfurt am Main (Oberlandesgericht Frankfurt am Main, OLG Frankfurt)			
Case No. :	32 Sch 3/25			
Keywords:	Set-aside of arbitral awards, partial awards, unrestricted judicial review, competition law, Article 101 of the Treaty on the Functioning of the European Union (TFEU), non-competition undertakings, ordre public, remand to the arbitral tribunal			
Key legal provisions:	Section 1059 German Code of Civil Procedure (ZPO) Section 1062 ZPO Article 101 TFEU Article 102 TFEU			

OLG Frankfurt am Main sets aside partial award for perpetuating an Article 101 TFEU infringement and confirms unrestricted judicial review of competition law in setting-aside proceedings

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On 6 March 2026, the Higher Regional Court of Frankfurt am Main (OLG Frankfurt) set aside a partial arbitral award rendered in DIS proceedings after finding that the tribunal's interpretation of a merger exception to a post-M&A non-compete undertaking perpetuated an infringement of Article 101(1) TFEU. The OLG Frankfurt held that state courts exercise unrestricted review, in fact and law, of an award's compliance with mandatory competition law, extending the German Federal Court of Justice's (BGH) approach under Sections 19 to 21 of the German Act against Restraints of Competition (GWB) to Articles 101 and 102 TFEU.

Facts

The applicant (a bank) and the respondent (a Spanish bank) are parties to a share purchase agreement ("SPA") under which the respondent acquired the applicant's Spanish wealth management business. The SPA imposed a 24-month non-compete from the closing date of 5 September 2022 (the "Non-Compete Undertaking"), subject to exceptions including one for mergers with a competing Spanish business representing less than 5 % of consolidated revenues, or otherwise divested within six months (the "Merger Exception").

In 2023/2024, the applicant's group parent and grandparent companies merged with a financial institution whose Spanish wealth management business represented less than 1 % of consolidated revenue. The respondent commenced DIS arbitration alleging breach of the Non-Compete Undertaking, arguing that the Merger Exception required both the revenue threshold and divestment within six months. The applicant contended the two limbs applied alternatively, so that meeting the revenue threshold alone sufficed.

The tribunal bifurcated the proceedings and, in a partial award (the "Partial Award"), held that the conditions applied cumulatively and found the applicant in breach.

The applicant sought to set aside the Partial Award on grounds including excess of jurisdiction, breach of the right to be heard and equality of arms, and an interpretation of the Merger Exception that contradicted its purpose and infringed mandatory competition law. The respondent contested admissibility of the application and the merits, and alternatively requested remand to the tribunal.

Key findings

The OLG Frankfurt first confirmed its jurisdiction under Section 1062(1) No. 4 German Code of Civil Proceedings (ZPO), holding that the ordinary civil senate retains jurisdiction even where competition law questions arise, since neither Section 87 nor Section 91(2) GWB applies directly or by analogy to such proceedings.

Second, it held that the Partial Award was independently open to challenge, since the tribunal intended finally to decide part of the claims – distinguishing it from a mere interim award that the tribunal may still revisit.

Third, and centrally, the court held that state courts exercise unrestricted review of an award's compliance with Articles 101 and 102 TFEU, extending the BGH's approach for Sections 19 to 21 GWB (BGH, 27 September 2022, KZB 75/21, BGHZ 234, 288) to EU competition law. The decisive question is not whether the tribunal reasonably addressed competition law concerns, but whether the award's outcome is objectively compatible with those provisions.

Applying that standard, the OLG Frankfurt held that the Non-Compete Undertaking, as construed by the tribunal, was an ancillary restraint exceeding what was objectively necessary and proportionate (see ECJ, 19 September 2024, C-264/23, "Booking", para. 51). On the tribunal's cumulative reading, the Merger Exception left the applicant's group unable throughout the entire 24-month period to hold even a modest, non-management stake in an unlisted competing business – going beyond the flexibility the Commission's Notice on ancillary restraints (OJ, C 56/24, 5 March 2005) affords for pure financial investments. The Undertaking was accordingly void under Article 101(2) TFEU, and the Partial Award violated the ordre public under Section 1059(2) No 2(b) ZPO.

Finally, the OLG Frankfurt remitted the matter to the same tribunal under Section 1059(4) ZPO rather than terminating the arbitration, noting that a remission allows a faster and less costly resolution, that the tribunal's evidentiary findings remain unaffected, and that nothing indicated the tribunal would be unable to reconsider impartially (see BGH, 18 December 2025, I ZB 42/25).

Comment

The decision provides the first detailed guidance from a German court on how state courts review arbitral awards implicating EU competition law beyond Sections 19 to 21 GWB. It underscores the need for arbitral tribunals to take competition law into account as part of the ordre public and, where necessary, to address difficult questions of competition law interpretation.