Common Ownership Structures in Asset Management Industry Under Closer Inspection by German Competition Authorities

The European competition authorities are currently taking a closer look at the asset management industry, notably also in Germany.

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In the UK, the Financial Conduct Authority is currently conducting a market study on investment platforms used by asset managers and already published an interim report on 16 July 2018. There is also an ongoing investigation relating to the conduct of several asset management firms with regard to coordinated investments, which already lead to a fine against a portfolio fund manager who had disclosed information on the firms intended offers in advance of an IPO.

The European Commission has also displayed a greater interest in the financial services market lately, however, the German competition authorities on the other hand are even scrutinizing the general practices and workings within the industry and their implications for the economy, with additional future regulation already on the horizon.

The latest Biennial Report of the German Monopolies Commission (Competition 2018) featured a section on the impact of common ownership among institutional investors on the economy and how competition in the market could be affected by it. In its report the Monopolies Commission pointed out that there were multiple incentives and means by which asset management firms could affect markets with widespread common ownership structures. Accordingly, the Monopolies Commission saw serious competition risks in the asset management industry and recommended to make amendments to the competition law to be better able to regulate the possible harm to competition which could be caused by minority shareholders.

On 8 February 2019 the German Federal Cartel Office (FCO) likewise held the third meeting of its working group on competition economics that also addressed the application of the competition law in case of minority share holdings. During the meeting the interrelations of competitors due to the common ownership among various institutional investors were specifically addressed. The FCO also discussed whether the regulatory scope needed to be extended to be better able to handle such constellations.

It should be noted that in the past the results of such discussions of the working groups of the FCO often also lead to amendments of the German competition law. With another amendment to the German Act against Restraints of Competition already being drafted, asset management firms and institutional investors should therefore keep themselves up to date on the further developments.

Please contact Jens Steger and Sven Klüppel in Frankfurt or your regular contact at Simmons & Simmons for any further information.