

PRESS RELEASE, 1/2019

Commeo successfully defends Westfalen AG in the liquefied petroleum gas cartel proceedings before the German Federal Court of Justice

Frankfurt am Main – Commeo has successfully defended the internationally active energy company Westfalen AG, headquartered in Münster, in the legal appeal before the Federal Court of Justice in the liquefied petroleum gas (LPG) cartel proceedings. With its decision published in early 2019, the Federal Court of Justice has referred the matter back to the Dusseldorf Higher Regional Court for a new hearing and decision.

The cartel investigation initially started in 2005 when the German Federal Cartel Office dawn-raided various liquefied petroleum gas suppliers in Germany. The subsequent court proceedings before the Dusseldorf Higher Regional Court, in which the competent 4th Cartel Senate took evidence over a period of more than 130 hearing days, became the most extensive cartel proceedings before German courts so far.

The Federal Court of Justice has now confirmed that the Dusseldorf Higher Regional Court erred in law on several accounts by applying the estimation method to determine the fines. In the instant case, the fine has to be determined pursuant to the so-called surplus method that was applicable in German cartel proceedings until amendments to the law in July 2005. The surplus method requires the court to estimate on a reliable basis the excess sales generated by the cartel members as a result of the cartel infringement.

Dr. Dominique Wagener (lead counsel), Isabel Oest und Josefa Billinger acted for Westfalen AG.

Commeo LLP is a specialized law firm in Frankfurt am Main focusing exclusively on competition law. An established team of experienced lawyers advises national and international clients on all aspects of German and European competition law.