

## SodaStream fined by the German FCO for Abusive Practices-- Federal Cartel Offices

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On 22 January 2015, the **German Federal Cartel Office (FCO)** fined **SodaStream** € 225,000 for foreclosing its competitors' access to the market for refilling of gas cylinders for carbonated drinks machines.

In 2006 the FCO found that SodaStream (formerly Soda Club), as a dominant company, could not foreclose its competitors from refilling the CO2 cartridges for the soda makers it sold. This decision was confirmed in 2008 by the Federal Court of Justice. Although SodaStream subsequently modified its marketing, its warnings and safety instructions, disclaimers and warranties still conveyed the message that only SodaStream or its authorised dealers were entitled to refill CO2 cartridges for SodaStream soda makers.

Consequently, in 2012, the FCO initiated a new investigation against SodaStream for failing to comply with the 2006 decision and for abusing its dominant market position. In addition to the fine, the company was also required to provide a binding commitment that it would correct the texts to which the FCO had objections, and, for the next three years, label its CO2 cartridges, stating that they can also be refilled by other companies.

The decision reiterates a number of basic principles of competition law:

1. An entity in a dominant position has a special responsibility to ensure that its conduct does not impair genuine and undistorted competition on the market.
2. An entity that is the subject of a competition authority's decision should comply with it. If there is doubt as to how obligations imposed by an authority should be implemented, the onus rests of the entity that is the subject of the decision to take advice.
3. It is for public authorities, not dominant entities, to set and enforce health and safety standards.

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