

The ACM can base its cartel fine on EU-wide turnover instead of Dutch turnover

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The District Court of Rotterdam upheld how the Authority for Consumers and Markets (ACM) calculated the fines imposed on a number of companies for participating in a silver skin onion cartel. The cartel participants generated 60% of their combined turnover within the European Union. For the first time, the ACM based the fines imposed on the cartel participants' EU-wide turnover instead of national turnover. The Court held that the ACM was right to do so, since Regulation 1/2003 authorises the ACM to apply EU competition rules and impose fines. The ACM will probably use this extraterritorial sanctioning power more often from now on. Companies should thus be aware that the amounts of fines for participating in a Dutch cartel affecting interstate trade may increase significantly.

On appeal, the companies argued that the ACM should have stuck to its approach in an earlier cartel affecting interstate trade in which only national turnover was used to calculate the amount of the fine. In this earlier [Shrimps cartel case](#), the ACM had explicitly limited the fines for the companies involved to the effect that their behaviour had on the Dutch part of the market.

The [Court reiterated](#) that since the entry into force of [Regulation 1/2003](#), the ACM is authorised to apply EU competition rules to individual cases and impose fines for infringements. Furthermore, the ACM could deviate from its earlier approach because different circumstances applied. *Shrimps* dates back to the early days of Regulation 1/2003 when there was no experience yet with the allocation of cases between the national competition authorities within the European Competition Network. In addition, the German Competition Authority was also conducting an investigation into the Shrimps cartel and the ACM limited the fine only to the Dutch part of the market to prevent the German Competition Authority from being faced with a potential double jeopardy. The Court therefore concluded that the ACM could take the EU-wide turnover into account in its calculation of the fines.