

AFM sees six fines reversed on appeal

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Six market abuse fines imposed by the Dutch Financial Markets Authority (AFM) were recently reversed by the Trade and Industry Appeals Tribunal (CBb). Two fines had been imposed on individuals for communicating and misusing insider information. The other four fines were imposed on companies, including Ageas SA/NV and Ageas N.V. (the former Dutch and Belgian Fortis companies), for failing to publish price-sensitive information on time. The recent rulings suggest that the CBb is taking a different approach from the AFM with these types of cases on appeal related to price-sensitive information.

Two cases involved the former CEO of Schuitema B.V. (now C1000 B.V.), and another individual. The AFM fined them both for communicating and misusing insider information. The CBb, however, ruled that the former CEO's statements were insufficiently concrete to justify the conclusion that he passed on information about proposed takeover plans. Though according to the AFM's press release, no unambiguous statement had been made to that effect, the CBb considered it relevant that the former CEO's statements could be interpreted in different ways. As this meant that no insider information had been passed on, the other person fined could not have made unlawful use of insider information.

The CBb also reversed four other AFM fines on appeal. In the first two cases, the CBb ruled that the AFM had failed to demonstrate that certain activities would lead to a public offer and would create an obligation to publish price-sensitive information.

The other two cases involved Ageas SA/NV and Ageas N.V. (Ageas, formerly Fortis Belgium and Fortis Netherlands). Ageas launched a EUR 13 billion claims issue in 2007 to finance the ABN AMRO takeover. The AFM fined Ageas for failing to publish information in a pre-issue prospectus and trading update. The CBb ruled that Fortis's risk calculation was not unreasonable at the time, and that Ageas therefore did not violate its obligation to publish price-sensitive information.

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