

Court dismisses EUR 1 billion abuse of dominance claim

November 10, 2014

A district court in the Netherlands dismissed a EUR 1 billion claim for damages by container transshipment company ECT against the Rotterdam Port Authority. According to the claimant, the Port Authority abused its dominant position by building two new harbour sites, thereby creating disproportionate overcapacity. But the court found the dominance claim insufficiently substantiated, particularly since the Dutch Authority for Consumers & Markets came to a different conclusion on the Port Authority's market position in a 2005 report. The court also held that the claimant contradicted itself by alleging that the Port Authority could behave independently towards ECT. This ruling confirms that damages claims based on abuse of dominance must be thoroughly substantiated, also in regard to establishing a dominant position.

Europe Container Terminals (ECT) claimed that the Port Authority demonstrated its dominant position on the market for the leasing of harbour plots by "locking" ECT into the harbour: ECT's substantial investments and long-term lease contract prevented it from switching to a competing port. ECT alleged that this proved that the Port Authority could act independently from ECT, indicating a dominant position as laid down in [European case law](#). The [court](#) disagreed and referred to a 2005 [report](#) in which the Authority for Consumers & Markets (ACM) concluded that the Port Authority did not have a dominant position. According to the report, the long-term lease contracts protected existing tenants from price increases as well as from the risk of contract termination before investments could be recouped. The Port Authority also had to compete with other harbours in order to obtain new tenants. Furthermore, the Port Authority faced sufficient countervailing power by large international market players, such as ECT, in its negotiations with existing and new tenants. Based on these factors, the court ruled that ECT had failed to prove that the Port Authority had a dominant position on the market for the leasing of harbour plots. The court added that the facts as presented by ECT did not show that the Port Authority had the ability to act independently in its dealings with ECT.

This ruling underlines the need for claimants to make thorough market analyses and well-substantiated arguments in damages claims with regard to abuse of dominance claims.
