

Court limits naming and shaming by Dutch competition authority

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Denial appears to be the best strategy in preventing the Dutch competition authority, the ACM, from publishing a decision to impose a fine and thus branding a company a cartel infringer. The District Court recently granted only one request to prohibit publication of a decision on a fine. The successful applicant had explicitly denied its involvement in the alleged cartel.

The ACM's decisions on fines are related to the manipulation of foreclosure auctions by real estate traders. In preliminary relief proceedings and in order for it to decide on whether the decisions should indeed be published, the court found that the general interest served upon publication of these decisions needed to be weighed against the applicants' interest to not suffer disproportionate harm. Disproportionate harm would be suffered if decisions for the fines were quashed in court, since it would result in an unjust mention of the applicants as cartel infringers. A provisional review of the lawfulness of the decision on the fines was thus required.

In [six](#) of the seven cases at hand, the court ruled that the applicant would not be disproportionately harmed by publishing the decisions for the fines. The applicants in these cases had not explicitly denied their involvement in the alleged cartel, but had only argued that the ACM had wrongly qualified the system of foreclosure auctions as a cartel. The court found these arguments insufficient to conclude anything other than that they had participated in the cartel infringement. The [seventh](#) applicant, on the other hand, not only denied the illegality of the auction system, but also that it had participated in the system. The court in this case ruled that the decision for the fine could not be published before the ACM investigates the applicant's claim regarding its cartel involvement in the objection procedure. Therefore, denial seems to be the best strategy.