

Fast and precise: Dutch courts in cartel damages proceedings

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Regardless of whether you are a cartel victim or a cartel member, the Netherlands appears to be an attractive jurisdiction for cartel damages proceedings. In two recent cartel damages rulings, Dutch courts have proven to keep up the pace.

The first [ruling](#), by the Amsterdam Court of Appeal in the air-cargo cartel damages case, shows that Dutch courts intend to keep up the pace in proceedings. The Amsterdam District Court had ruled that the private damages proceedings had to be suspended pending the airlines' appeal against the European Commission's cartel decision before the EU Court (on the basis of [Masterfoods](#)). According to the District Court, the judgment of the EU Court regarding the nature, duration and scope of the airlines' participation in the infringement might affect the question of whether the airlines acted unlawfully in respect of the claimants, since not only is the airlines' participation in the infringement relevant in this respect, but the periods, locations and manner in which the airlines participated are also relevant, and whether their participation concerned services/shipments delivered to the claimants. The Court of Appeal did not agree and held that suspending proceedings pending an appeal before the EU Courts was only necessary if there is reasonable doubt about the validity of the Commission decision. Consequently, the airlines will first need to specify which arguments they wish to put forward in order for the national court to decide on whether these relate to the validity of the Commission decision and thus necessitate the delay of the proceedings pending the EU Court's ruling.

That proceedings should be fast but not too expeditious is illustrated by the second [ruling](#), by the Arnhem-Leeuwarden Court of Appeal. The Court of Appeal in this case found that the District Court got ahead of things when dismissing the passing-on defence without a proper debate between the parties. Instead, it should have limited itself to establishing liability for the damage caused. The District Court in first instance had ruled that ABB should compensate TenneT, the operator of the Dutch electricity grid, for the damages it suffered as a result of the Gas Insulated Switchgear (GIS) cartel. Although the exact amount of damages still needs to be established in follow-up proceedings, the District Court indicated that a comparison between offers made by ABB during and after the cartel – resulting in a 54% price overcharge according to a report submitted by TenneT – would make a suitable calculation method. ABB's argument that TenneT did not suffer any loss because it passed on the overcharge to its customers was rejected. Potential "benefits" gained by a cartel victim may only be offset against the damage sustained, if (i) there is a sufficient causal link between the benefits and the harmful event, and (ii) it is reasonable to deduct these benefits from the damages to be paid by the cartel participant. The Court of Appeal considered the District Court's ruling on the passing-on defence a bit too expeditious and ruled that ABB's interest to put the follow-

up proceedings on hold to fully argue the passing-on defence outweighed TenneT's interest in a speedy outcome, particularly now that ABB promised to proceed swiftly.