The Cartels and Leniency Review

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I ENFORCEMENT POLICIES AND GUIDANCE

The Dutch Competition Act

The statutory framework in the Netherlands consists of the Dutch Competition Act (the Act), which entered into force on 1 January 1998. The Act is modelled closely on European Union competition law, which is reflected in the wording of the cartel prohibition (Article 6 of the Act) and the interpretation of this provision by the Dutch Authority for Consumers and Markets (ACM).

According to Article 6 of the Act (which mirrors Article 101 of the Treaty on the Functioning of the European Union (TFEU), excluding the effect on interstate trade criterion), agreements, decisions and concerted practices are prohibited if they have as their object or effect the prevention, restriction or distortion of competition on the whole or a part of the Dutch market. The prohibition covers all types of bilateral or multilateral behaviours, horizontal or vertical, irrespective of whether they are based on formal or informal agreements, understandings or concerted practices.

Article 6 does not provide specific examples of restrictive clauses. In practice, any agreement that fixes prices, limits output or allocates markets, customers or sources of supply will almost inevitably be considered to infringe Article 6. Far-reaching horizontal agreements are regarded by the ACM as very serious infringements of the competition rules. This includes practices such as horizontal price-fixing, market partitioning and quota schemes. Other anticompetitive practices may be regarded as serious or less serious infringements.

As in EU competition law, agreements restricting competition are only prohibited if they affect competition to an appreciable extent. Article 7 of the Act provides for a de minimis exemption for restrictive agreements, including hard-core cartels.

1 Jolling de Pree and Stefan Molin are partners at De Brauw Blackstone Westbroek.
2 An English-language translation of the Act is available on the ACM’s website at www.acm.nl/en.
As noted above, Article 101 TFEU also forms part of the substantive law on cartels in the jurisdiction of the Netherlands, having direct effect in relation to agreements and concerted practices affecting competition in the Netherlands where there is also an effect on interstate trade.

ii The ACM
On 1 April 2013, the Dutch Competition Authority merged with the Independent Post and Telecommunications Authority and the Consumer Authority into one single regulator, the ACM. The ACM is tasked with applying and enforcing the Act and Article 101 TFEU in relation to agreements and concerted practices affecting competition in the Netherlands.

The Authority has far-reaching powers, such as the power to request the inspection of documents, enter business premises, interview employees and former employees and, when authorised by the examining judge, enter and search private homes. Failure to cooperate with the Authority can result in significant fines. The maximum fine is the higher of €900,000 or, in the case of an undertaking, 1 per cent of the undertaking’s turnover.

iii Key policies and guidance
Two sets of implementing regulations are of importance. In the case of an application for leniency, the Authority applies the Policy Rules of the Minister of Economic Affairs on reduction of cartel fines (the Leniency Guidelines), in which the Minister sets out the Authority’s leniency policy. For the calculation of fines, the Authority applies the Policy rule of the Minister of Economic Affairs on the imposition of administrative fines (the Fining Guidelines).

II COOPERATION WITH OTHER JURISDICTIONS
Information about undertakings retrieved by the Authority under the Act may only be used for the performance of the tasks assigned to it. The Authority can freely exchange information with other European competition authorities under Regulation (EC) No. 1/2003. The Authority can also share information with other competition authorities, but only under strict conditions that the confidentiality of the information must be sufficiently protected, and that the foreign competition authority should give adequate assurances that the information will not be used for purposes other than the enforcement of (foreign) competition law.

The Authority regularly cooperates with foreign authorities. In an investigation of a public bid-rigging cartel in the painting business, the Authority cooperated with the Belgian competition authority. The Authority requested the Belgian authority to search the home of an employee (a manager) of the company who resided in Belgium. Another example can be found in a case in late 2010, in which the Authority imposed fines on Dutch, Belgian and German flour producers because of their participation in a cartel. This case was triggered by foreign investigations, and the Authority cooperated with other competition authorities in its

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3 This can be found on the Authority’s website at www.acm.nl.
4 Cases Nos. 6492 and 6430 (21 August 2009).
5 Case No. 6303 (16 December 2010).
investigation. In January 2013, this resulted in a coordination of fines between the Authority and the German competition authority with regard to a German flour mill that had claimed its inability to pay fines imposed by the competition authorities in both countries.

The Authority is a member of the European Competition Network (ECN), in which the Member States of the European Union and the European Commission cooperate.

The Authority is also an active member of the International Competition Network, and the Netherlands is a member of the Organisation for Economic Co-operation and Development. Cooperation within these organisations is limited to general policy matters. Cooperation in individual cases is only possible with due observance of the limitations of the Act.

Under the Act, violations of the competition rules are not regarded as criminal acts. This means that it is not possible to extradite individuals to countries with criminal sanctions for violations of the competition rules, such as the United States.

### III JURISDICTIONAL LIMITATIONS, AFFIRMATIVE DEFENCES AND EXEMPTIONS

#### i Jurisdictional limitations

The Act applies to all sectors of the economy and to all conduct that affects competition on a part or the whole of the Dutch market. The place of establishment of the undertakings is not relevant. With respect to restrictive practices, the decisive factor is the place where the agreement, decision or concerted practice is implemented, not where or by whom it is made. The Authority has previously applied the cartel prohibition to parties to an anticompetitive agreement that covered several EU Member States including the Netherlands, even though not all of the undertakings to that agreement had turnover in the Netherlands. It follows that the Authority does not necessarily require an undertaking to have direct sales in the Netherlands for its agreements to be subject to the cartel prohibition. However, there have been no decisions (yet) in which the Authority has based its jurisdiction on indirect sales in the sense of cartelised intermediate products that were sold outside the Netherlands and incorporated into (final) products before being sold to customers in the Netherlands. In March 2016, the Trade and Industry Appeals Tribunal upheld the way in which the Authority calculated the fines imposed on a number of companies for participating in a silverskin onion cartel. For the first time, the Authority based the imposed fines on the cartel participants’ EU-wide turnover instead of national turnover. The Tribunal held that the Authority was right to do so, since Regulation (EC) No. 1/2003 authorises the Authority to apply EU competition rules and impose fines.6

#### ii Liability of parent companies for actions of subsidiaries

Infringements by an undertaking can be attributed to any entities directly participating in the infringement as well as to the entity’s parent company with which the participating entity constitutes a single economic unit and, therefore, a single undertaking in the sense of Article 6 of the Act and Article 101 TFEU. In principle, the Authority applies the same rules on attribution of liability to parent companies as developed by the Court of Justice of the European Union.

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Regarding joint ventures, the Authority has not yet followed the approach adopted by the European Commission to attribute liability for infringements committed by a joint venture to any parent company that exercised decisive influence over the joint venture. In a case in which a joint venture committed an infringement that was not attributed by the Authority to the joint venture’s shareholders, the District Court of Rotterdam decided that the Authority had not erred in law by not attributing liability to the shareholders for their joint venture’s infringement; the Court referred to the Authority’s discretion in respect of attributing liability to parent companies, and it distinguished the position of shareholders that have joint control (50–50) over an infringing entity from the position of a parent company that has sole control over an infringing subsidiary.

iii Affirmative defences

According to the de minimis exception of Article 7, Paragraph 1 of the Act, the cartel prohibition does not apply to agreements, decisions and concerted practices if:

a. no more than eight undertakings are involved in the agreement or concerted practice in question, or if no more than eight undertakings are involved in the respective association of undertakings; and

b. the combined turnover of the undertakings that are parties to the respective agreement or the concerted practices in the preceding calendar year, or the combined turnover of the undertakings that are members of the respective association of undertakings does not exceed €5.5 million if the agreement, concerted practice or association involves only undertakings the core activity of which is the supply of goods; or €1.1 million in all other cases.

Article 7, Paragraph 2 states that the cartel prohibition will furthermore not apply to agreements, decisions and concerted practices between competitors if their combined market share does not exceed 10 per cent of any of the affected markets. This exception is only applicable to arrangements that cannot have an effect on trade between EU Member States.

The Dutch de minimis clause also applies to hard-core restrictions (such as price-fixing and market sharing). Moreover, the exception is a statutory exception and not merely a matter of enforcement policy. Some Dutch civil courts are of the opinion that the Dutch de minimis clause is in lieu of the European de minimis exception, and have therefore refused to apply the European de minimis exception to national cases.

iv Exemptions

Agreements benefiting from an EU block exemption are also exempted from the cartel prohibition under the Act. In line with Article 29(2) of Regulation (EC) No. 1/2003, the Authority has the power, however, to declare an EU block exemption non-applicable in the Netherlands.

In addition, the Dutch legislature has enacted a few national block exemptions that are only applicable to arrangements with no effect on interstate trade. National block exemptions have been issued for agreements offering temporary protection from competition to undertakings in new shopping centres and certain types of cooperation agreements in the retail trade.

7 District Court of Rotterdam, 2 February 2010, LJN: BL2968.
The Authority does not grant individual exemptions (as of 1 August 2004). Companies should self-assess agreements in light of Article 6(3) of the Act (which mirrors Article 101(3) TFEU). Companies can use various guidelines for the self-assessment. Interpretative guidelines are for instance available on the application of Article 6(3), on vertical agreements, on consortia arrangements and on the application of the competition rules to sustainability initiatives.

The Authority does provide informal guidance to companies in ‘novel’ cases.

IV LENIENCY PROGRAMMES

i Guidelines
The Authority has a leniency policy. Companies and individuals may contact the Authority’s Leniency Office to obtain immunity or a reduction in their fine for a cartel offence. The policy guidelines on the reduction of cartel fines of July 2014 set out the leniency policy to be applied by the Authority.

ii Leniency applicants and applications
A duty to cooperate applies to all leniency applicants. From the moment a company is considering an application for leniency, it should refrain from any practice that may hinder the Authority’s investigation (such as destroying evidence or any action that would result in the (future) leniency application becoming public knowledge). From the moment a company has applied for leniency, its duty to cooperate also includes the obligation to provide the Authority with all documents in its possession as soon as it obtains those documents or can obtain them; to immediately terminate its involvement in the cartel, unless otherwise agreed with the Leniency Office; and to keep its employees and – insofar as is possible – former employees available for statements.

There are four leniency categories:

- full immunity;
- a reduction in the fine of between 30 and 50 per cent;
- a reduction in the fine of between 20 and 30 per cent; and
- a fine reduction of up to 20 per cent.

Full immunity may be granted to a company if the following, cumulative conditions are met:

- the company is the first to submit a request for immunity from fines with regard to a cartel;
- the company’s leniency application concerns a cartel into which the Authority has not yet launched an investigation;
- the company provides the Authority with information that enables the Authority to perform a targeted inspection;
- the company has not coerced another undertaking into participating in the cartel; and
- the company continues to comply with its duty to cooperate (as stated above).
Full immunity is also available if conditions (a), (d) and (e) as mentioned above have been met, and:

1. The company's leniency application concerns a cartel into which the Authority has already launched an investigation, but the Authority has not yet sent a statement of objections to any of the parties involved; and

2. The leniency application provides the Authority with documents that stem from the period of the cartel in question, that were not yet in the Authority's possession and on the basis of which the Authority is able to prove the existence of the cartel.

A reduction in the fine of between 30 and 50 per cent may be granted to a company applying for leniency, provided that:

1. Immunity from fines is not available;
2. The Authority has not sent a statement of objections to any of the parties involved in the cartel;
3. The company is the first to submit a leniency application that contains information with significant added value; and
4. The company continues to comply with its duty to cooperate (as stated above).

The Authority grants a leniency applicant a reduction in the fine of between 20 and 30 per cent, provided that:

1. Immunity from fines is not available;
2. The Authority has not sent a statement of objections to any of the parties involved in the cartel;
3. The company is the second company to submit a leniency application that contains information with significant added value; and
4. The company continues to comply with its duty to cooperate (as stated above).

The Authority grants a company applying for leniency a reduction in the fine of up to 20 per cent, provided that:

1. Immunity from fines is not available;
2. The Authority has not sent a statement of objections to any of the parties involved in the cartel;
3. The company is the third or subsequent company to submit a leniency application that contains information with significant added value; and
4. The company continues to comply with its duty to cooperate (as stated above).

The Guidelines define 'information with significant added value' as 'evidence that, given its nature or level of detail, enhances the ability of the Authority to prove the existence of the alleged cartel, taking into consideration the information that the Authority has on that cartel at the time when such evidence is submitted'.

According to the Guidelines, not only companies can apply for leniency, but also individuals. An individual (see Section V.ii, infra) can apply for leniency independently or jointly with other individuals on the condition that these individuals at the time the leniency application is made are all employees of the same company involved in the cartel. Individuals may also be granted leniency if a company applies for leniency. If a company does so, current employees can benefit from the same leniency if they declare to the Authority that they want to be considered as the company’s leniency co-applicants and they individually comply.
with the leniency requirements. Former employees can benefit from a company’s leniency application in the same manner, but only if the Authority determines that there is no conflict with the interest of the investigation.

The Authority has imposed fines on cartel facilitators, similar to the European Commission in Treuhand, even where they were not direct producers or distributors of the cartelised product or service. Companies that facilitated and contributed to the functioning of a cartel can apply for leniency. This has been confirmed by the Authority following the June 2008 decision of the General Court in Treuhand.

iii Timing of the leniency application
There are no deadlines for applying for leniency, but once the decision to apply for leniency has been made, it is advisable to present the information as soon as possible to the Authority. Whether a company should apply for leniency, and if so, when, depends on the specific circumstances of the situation.

As in most jurisdictions, timing is of the essence. It may, however, prove time-consuming and burdensome to gather all the evidence on the cartel agreement. In these cases a leniency applicant can apply for a marker, which secures the applicant’s position in relation to other possible applicants during a time period that is determined by the Leniency Office on a case-by-case basis. A request for a marker will be granted if the information provided by the leniency applicant offers a concrete basis for a reasonable assumption of the applicant’s involvement in a cartel.

Prior to making a leniency application or requesting a marker, a potential applicant can, through its lawyer, ask the Leniency Office whether immunity is still available. If the answer is affirmative, the application or request for a marker must be made forthwith.

iv Order of ranking
It is best to be the first applicant to apply for leniency. A subsequent applicant can only be granted a maximum fine reduction of 50 per cent.

The percentage reduction for companies other than the first to apply for leniency and provide information about a cartel depends on the moment that the information is provided and the additional value that this information has for the Authority in its investigation. An applicant’s cooperating beyond the (standard) legal requirements can help in receiving a higher reduction. However, in practice, the later in time and the greater the number of companies that have already applied for leniency, the less likely it is that the information presented by another company to the Authority will have significant added value. This means that it is not only important to be ranked as the first applicant; even after the first company has applied for leniency, a company should still try to apply as soon as possible (once it has decided to apply).

v Discovery of leniency materials
The Authority aims to protect the disclosure of leniency material by only providing inter partes access to leniency statements in its offices under the condition that the party who is provided access (i) does not make any copies of the statements and (ii) only uses the information in aid of their defence in the administrative proceedings. The Trade and Industry Appeals Tribunal recently ruled on disclosure of leniency statements in appeal proceedings.
against a cartel decision. The Authority had argued that disclosure of copies of the transcripts of oral leniency statements would harm the effectiveness of its leniency programme, because if the transcripts were provided to the other cartel participants, third parties could easily get hold of the transcripts and rely on them in cartel damages claims against the leniency applicants. The Tribunal considered that a balance should be struck between the interests of the cartel participants in having access to all relevant evidence for a proper defence against their cartel fine and, on the other hand, the interest of the leniency applicants not to be disproportionately harmed by disclosure and the importance of effective enforcement by the Authority. The Tribunal ruled that the interests of a proper defence outweighed the success rate of the Authority’s leniency programme. The content of the leniency statements was known to the other cartel participants and the involvement of the leniency applicants in the cartel could also be derived from other, non-confidential documents.

V PENALTIES

i Civil sanctions
Agreements that contravene the cartel prohibition as laid down in Article 6 of the Act are void. The consequences of the nullity of the anticompetitive stipulations are governed by civil law. This means that the consequences of thenullity of the restrictive arrangements for the other stipulations between the parties need to be established. The Civil Code’s statutory conversion provision converts invalid clauses into valid clauses that correspond as much as possible to the original clause. The Supreme Court ruled in December 2009 that the cartel prohibition’s absolute nullity sanction prevents the statutory conversion provision from applying to clauses with an anticompetitive object. In a ruling of December 2013, the Supreme Court made clear that the same applies for clauses with an anticompetitive effect. Whether it is possible to convert a clause on the basis of a contractual conversion clause has not yet been decided.

ii Administrative sanctions
The Authority has the power to impose fines on both undertakings and individuals (mainly directors) for infringements of the cartel prohibition in the Act and Article 101 TFEU.

Undertakings
When determining the fine, the Authority will apply the 2014 policy guidelines on the setting of fines (as amended on 1 July 2016). The policy guidelines, which were adopted by the Minister of Economic Affairs and are binding on the Authority, state that the fine for entities other than individuals is determined by setting a basic fine between zero and 50 per cent of the offender’s ‘relevant turnover’, taking account of the seriousness of the violation, the circumstances in which the violation was committed and the duration of the violation. The offender’s relevant turnover includes the value of all the transactions realised by the undertaking throughout the duration of the infringement from the sale of goods or the provision of services to which the infringement relates. The resulting amount may be further adjusted in cases of mitigating or aggravating circumstances. In the case of repeated infringement, the maximum fine level will double.

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As of 1 July 2016, the Act increasing the maximum fine that the Authority can impose for competition law infringements entered into force. Instead of keeping pace with the European Commission’s 10 per cent cap of a company’s total turnover in the preceding business year, the maximum fine is determined by multiplying the cap of 10 per cent of an undertaking’s turnover by the number of years of the cartel infringement, subject to a maximum duration of four years. As a result, the maximum fine for infringement of the cartel prohibition is the higher of €3.6 million or 40 per cent of the total annual turnover of the undertaking in the financial year preceding the decision by which the fine is imposed. If the infringement is committed by an association of undertakings, the relevant turnover to which the statutory maximum should be applied is the joint turnover of the undertakings that are members of the association. Any leniency discount is applied to the fine after the statutory maximum has been applied.

**Personal fines**
Fines of up to €900,000 can be imposed on executives who have given instructions to violate competition rules or have exercised de facto leadership over a violation (fines can also be imposed for non-cooperation with an investigation of the Authority). Individuals that have held a management position (directors, managers, department heads, etc.) and have either themselves participated in the infringement or have not acted while being aware of the infringement are most likely to be held personally liable. Members of a company’s supervisory board may be held personally liable only in exceptional circumstances, because their powers and influence are generally limited to supervising (not managing) the company. The policy guidelines set out a number of ranges of the basic fine for individuals that is based on the offending undertaking’s annual turnover. In addition, any aggravating and mitigating circumstances will be taken into account when determining the fine.

**Other sanctions or measures**
In addition to the imposition of administrative fines, the Authority can impose an order under threat of periodic penalty payments. Such an order is designed to lead to the quick termination of an infringement and, therefore, serves a different purpose from a fine. Both a fine and an order under threat of periodic penalty payments can be imposed for the same offence. The order cannot apply for more than two years.

Other sanctions the Authority can apply include imposing a binding order to comply with the Act on the undertaking or an individual acting in violation of the cartel prohibition, and imposing structural remedies (similar to Article 7 of Regulation (EC) No. 1/2003).

In March 2016, the Authority used a procedure similar to the European Commission’s cartel settlement regime to lower the fine imposed on an undertaking by 10 per cent in return for an acknowledgement of its involvement in and its liability for a cartel infringement. The undertaking’s executives made use of the same procedure to have their personal fines reduced.9

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9 See the Authority’s press release ACM imposed fines of €12.5 million on cold-storage firms, of 23 March 2016.
VI  ‘DAY ONE’ RESPONSE

i  Introduction

The Authority can carry out a dawn raid. There are several motives for such a raid. This could be based on the Authority’s own investigation or an investigation by other competition authorities, a leniency request by one of the participants in the cartel, or a complaint or tip-off by a customer or a third party. In the event of a dawn raid, a company must cooperate fully insofar as the Authority can reasonably require by its powers. The Authority may also raid private homes, either with the permission of the inhabitants or if authorised by the examining judge (according to Articles 50 to 53 of the Act).

ii  Dawn raids

Obstructing a dawn raid exposes the company and its employees to significant risks. However, it is also important to ensure that the Authority stays within the limits of its powers, for instance, by limiting itself to the scope of its investigation and refraining from taking copies or reading documents falling under the attorney-client privilege. Therefore, it is advisable that, as soon as the Authority arrives at the company’s office or offices, the company takes action to steer the dawn raid as much as possible. Normally, the receptionist would ask the Authority’s inspectors to wait until the corporate counsel has arrived. The corporate counsel should contact the company’s lawyers and form a ‘crisis team’. When meeting the inspectors, the counsel should ask for proof of their identities and the Authority’s order for the dawn raid, and try to receive as much information on the dawn raid and the suspicions as possible. Once the lawyers have arrived, they will discuss with the Authority, inter alia, the scope of the dawn raid (relevant markets, behaviour, employees, etc.), the timing and whether interviews with employees will be held.

The inspectors have the power to demand access to business data and records based on Article 5:17 and 5:20 of the General Administrative Law Act. They may not demand access to personal data and records or to privileged documents. Unlike the European Commission, the Authority has no power to demand access to documents or communications between the undertaking and its in-house lawyer who is a member of the Bar (according to Article 12g of the Authority’s Establishment Act).

During the dawn raid, the inspectors may interview one or more employees. An employee has the right to be accompanied by a lawyer. Moreover, if there is a reasonable suspicion of a violation by the company, the inspectors must inform the company’s representatives that they are not obliged to answer questions. Normally, the Authority accepts that all employees of the company may invoke the right not to answer questions. However, for former employees the right to remain silent is limited to cases in which they can be held personally liable for an infringement. Any interviews will be recorded, and employees will be asked to sign a report of the interview at the end of the interview.

A company is obliged to cooperate in the investigation by the Authority. If the company does not cooperate (e.g., by not providing documents, denying access to rooms or buildings, refusing to answer questions of fact, destroying or hiding evidence), the Authority can impose a fine on the company of up to the higher of €900,000 or 1 per cent of the turnover, or on an individual, up to €900,000.
VII PRIVATE ENFORCEMENT

Private enforcement of competition rules is not a new phenomenon in the Netherlands. Private parties have invoked the rules of the Civil Procedure Code and the Civil Code on numerous occasions to obtain injunctive relief if they allegedly suffered as a result of anticompetitive arrangements. Private damage claims are now becoming increasingly popular. Participants in a cartel commit a tort and can be sued for actual (but not punitive) damages. The burden of proof for the cartel rests with the claimants, but they can base their case on a decision from the European Commission or the Authority (follow-on litigation). In the latter case, claimants still have to prove their damages, unless the requirement for reasonableness and fairness prescribes otherwise. In that case, the court can reverse the burden of proof.

Dutch courts seem to assume jurisdiction in international cartel cases quite easily. Moreover, the losing party will have to pay only a limited part of the legal costs of the other party. Apparently, this has made the Netherlands an attractive jurisdiction for cartel claims in the perception of claimants that perceive they have suffered damages from international cartels. Claims are, for instance, pending before Dutch courts in the following international cartel cases: Airfreight, Elevators, Gas Insulated Switchgears, Sodium Chlorate and Candle Waxes.

The bill to implement the EU Damages Directive 2014/104 is currently pending in the Upper House and should enter into force in the near future. The government intends to publish a separate bill dealing with civil damages actions in respect of purely national competition law infringements.

i Class actions

Class actions in the Netherlands are allowed under Article 3:305a of the Civil Code. The practical relevance in a competition context is fairly limited, as it is not possible to institute a class lawsuit to obtain damages. In November 2016, the Minister of Justice sent a bill to the Lower House to amend the Civil Code and the Code on Civil Procedure to facilitate collective damages actions.

ii Collective Settlements Act

Under the Collective Settlements Act (WCAM), the collective settlement of mass damages concluded between one or more representative organisations and one or more allegedly liable parties can be declared binding upon an entire group of affected persons to which damage was allegedly caused. On the joint request of the parties, the Court of Appeal in Amsterdam may declare such a settlement binding. The latter means that the agreement concluded will bind all persons that are covered by its terms and represented by the representative organisation. Only a person that has expressly elected to opt out within a specific period can be excluded. If excluded, such person preserves his or her rights to bring a claim against the defendant. If other proceedings concerning claims covered by the agreement are pending, the alleged liable party may request to suspend such other proceedings during the period the WCAM proceedings are pending.

VIII CURRENT DEVELOPMENTS

In July 2016, the maximum fine levels that can be imposed by the Authority for cartel infringements were increased. Instead of keeping pace with the European Commission’s cap of 10 per cent of a company’s total turnover in the preceding business year, the maximum
fine is determined by multiplying the cap of 10 per cent of an undertaking’s turnover by the number of years of the cartel infringement, subject to a maximum duration of four years. In addition, in case of a repeated infringement, the maximum fine level will double. This means that the maximum fine for a cartel infringement is the higher of €3.6 million or 40 per cent – and even 80 per cent in case of repeat offenders – of the total annual turnover of the undertaking. A fine of up to €900,000 can be imposed on individuals.
Appendix 1

ABOUT THE AUTHORS

JOLLING DE PREE
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Jolling de Pree graduated cum laude in civil law and tax law from Groningen University. In 1992, he joined De Brauw and started to work in the field of mergers and acquisitions (M&A). Since 1997, he has specialised in competition law. In 2001, he became a partner in the competition and regulation practice of De Brauw.

Mr de Pree advises major Dutch and international companies on their domestic and international competition issues. He has wide experience in conducting internal investigations, coordinating the defence in international cartel cases and handling multi-jurisdictional filings. He is also a litigator regularly appearing before the Court of Justice of the European Union and national courts. He acts for defendants and corporate clients in civil cartel damage cases.

Through his involvement in international cartel investigations and cross-border M&A transactions, he has established a network of contacts with experts working for first-tier law firms in all major jurisdictions outside the Netherlands.

Mr de Pree is chair of the Dutch Competition Law Association and has been appointed as a non-governmental adviser to the International Competition Network. He is editor-in-chief of the treatise on competition law, Tekst en Commentaar Mededingingswet. He is also a member of the Dutch Bar Association’s advisory committee on competition law.

STEFAN MOLIN
De Brauw Blackstone Westbroek

Stefan Molin specialises in EU and competition law. In 2016, he became a partner in the competition and regulation practice of De Brauw. Mr Molin has been involved in a large number of cartel enforcement investigations by the European Commission and the Dutch Authority for Consumers and Markets (ACM), and has significant experience with multi-jurisdictional leniency applications. He has also successfully defended corporates against unfounded allegations of competition law infringements. Mr Molin has particular experience in abuse of dominance cases. He successfully litigated before the EU General Court and in civil courts in follow-on and stand-alone damage claims relating to discrimination, market
foreclosure and excessive pricing. He has also assisted manufacturers as well as retailers in distribution disputes relating to exclusivity and resale restrictions. His expertise in merger control includes obtaining merger clearance at the national and EU level, coordinating multi-jurisdictional filings for mergers with global impact, and representing corporates in in-depth second phase proceedings in the Netherlands.

Mr Molin regularly publishes in leading international competition law journals and practitioner guides and lectures on EU and Dutch competition law at the Dutch Company Lawyers Association.