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Competition Law and Economics

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## DEVELOPMENTS IN NATIONAL COMPETITION LAWS

Sonderdruck



The Council of State confirmed the ruling of the Regional Administrative Tribunal of Lazio („TAR Lazio”) which upheld the ICA’s infringement decision against four undertakings active in the *sludge disposal* sector. However, due to decreases in prices and market shares, the Council of State reduced the imposed fines. The TAR Lazio confirmed the ICA decision from March 2015 concerning two cartels in the *concrete* industry. The TAR Lazio decision is of particular significance because the undertakings challenged the ICA’s first application of the new guidelines on the method of setting antitrust fines relying, *inter alia*, on their nature of single-product companies. The TAR Lazio upheld the ICA’s decision, stating that antitrust fines should be graduated keeping in mind the deterrence goal of antitrust law and irrespective of the single-product nature of the undertakings involved. Pursuing deterrence of the most serious and secret antitrust violations though fines calculated using the 15-30% range is appropriate.

*Patrick Marco Ferrari, Matteo Giangaspero, Alessandra Guerrieri, Rome*

### IX. The Netherlands

#### *ACM increased maximum cartel infringement fines*

As of July 1, 2016, new maximum fine levels for competition law infringements are applicable. All maximum absolute fines have been doubled from € 450,000 to € 900,000. Maximum fines for cartel infringements may be even higher, as the fine cap will be multiplied by the duration of the cartel in years. Longer participation in a cartel will therefore result in a higher maximum fine. The multiplier is capped at four years. In the worst case scenario of an undertaking participating in a cartel for more than four years, the maximum fine would be 40% of the company’s annual turnover. That is a significantly higher amount than the previous 10% cap on annual turnover, which is also applied by the European Commission and national competition authorities in the U.K., Germany and France.

The ACM cleared the acquisition of Mediq Apotheken Nederland and Mediq Pharma Logistics (together „Mediq”) by Brocacef Groep N.V. („Brocacef”). Both companies run *pharmacies* and *wholesale operations with pharmaceutical products* such as prescription drugs. The ACM identified two main concerns which were eliminated by the proposed commitments.

The ACM declared commitments in *ready-mix concrete* case binding. In 2012, the ACM launched an investigation into the Dutch *building materials* sector, including *ready-mix concrete*. While the ACM did not find an infringement, it did identify serious risks of unfair competition due to the collaboration structures within the ready-mix concrete sector. In order to eliminate the ACM’s concerns, the seven largest ready-mix concrete companies offered extensive commitments which the ACM declared those commitments binding.

In a series of judgments, the Rotterdam District Court („District Court”) lowered ACM fines imposed on companies and individuals showing its commitment to closely review fines. The District Court lowered the 2013 fines of three *auctions dealers* by 10%, acknowledging their severe financial impact and taking particular account of announced terminations of banking relationships by the dealers’ banks. The District Court annulled one participant’s fine of € 159,000 in the *industrial laundries cartel* as the ACM had not taken into account

that that participant’s cartel involvement had ended in 2003 leading to an expiration of the limitation period. The District Court also reduced the fine of one member of the construction cartel to € 2.5 million as the ACM had erroneously applied a gravity multiplier for bid-rigging. In the same manner, the District Court also lowered the fines imposed on two individuals for their involvement as *de facto* managers from € 100,000 to € 70,000 and from € 250,000 to € 175,000 respectively.

The District Court ruled that documents exchanged during pre-notification cannot be regarded as „relevant documents pertaining to the case” which the ACM must submit in appeal proceedings to the District Court and to which parties to the proceeding may obtain access.

*Romi Lepetska, Brussels*

### X. Poland

#### *Prime Minister appointed new president of the Polish Competition Authority*

Mr. Marek Niechcial was appointed by the Prime Minister as a new President of the Office of Competition and Consumer Protection („OCCP”), following an open competition. Mr. Niechcial, an economist, was the President of the OCCP already in the years 2007-2008.

The OCCP issued the statement of objections against the acquisition of the Golden Terraces, a *shopping mall* in the centre of Warsaw, by Unibail-Rodamco, an owner of two other Warsaw’s shopping malls. The OCCP considered the notified transaction as leading to a significant limitation of competition. Unibail-Rodamco decided to withdraw the notification and to abandon the deal.

The OCCP presented its position concerning the activities in Poland of Uber, an online *transportation platform*, which links drivers with passengers. The OCCP was receiving complaints from taxi companies claiming that Uber activities are anticompetitive. The OCCP decided not to intervene against Uber, assessing its activities as pro-competitive in the longer perspective and offering new solutions for passengers.

The Court of Appeals confirmed the OCCP’s decision declaring as anticompetitive a consortium of the two largest *waste management* firms in the city of Bialystok. The consortium was set up for the purpose of participation in the tender for collection and transportation of communal waste.

*Jaroslawn Sroczyński, Warsaw*

### XI. Portugal

#### *„Banking Process” suspended*

The statement 9/2016 of the Portuguese Competition Authority (hereinafter, „PCA”) announced the decision of the Competition, Regulation and Supervision Court (hereinafter „TCRS”), concerning the suspension of the so called „Banking Process”, a process in which it investigated an alleged concerted practice of exchange of information, restrictive of the competition, in the *banking sector* in Portugal. The process began on May 29, 2015, when the PCA adopted a statement of objections against fifteen banks, for the suspicion of a concerted practice, in the form of exchange of sensitive business information regarding the offer of credit products in retail banking, such as consumer credit, business loans, and mortgages. Because of the decision of the TCRS, the PCA had to suspend the investigation until the TCRS takes a final decision on all eleven interim appeals.

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