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**SANCTIONS IN ANTITRUST CASES**

**Contribution by the Netherlands**

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## SANCTIONS IN ANTITRUST CASES

### -- Netherlands --

1. In the early years of competition law enforcement in the Netherlands, the Competition authority dealt mainly with applications for exemptions. Fines were regarded as the only appropriate response to cartel infringements. Today, as in the past, we do not hesitate to impose high fines when infringements have taken place. However, over the years, our approach to market problems has evolved. This development has been stimulated by the merger of the Netherlands Competition Authority (NMa), with the Consumer Authority (CA), and the Independent Post and Telecommunications Regulator (OPTA), in 2013 to create the Netherlands Authority for Consumers and Markets (ACM). The law establishing ACM also resulted in new tools for the authority.

2. ACM is a multifunctional authority, charged with competition oversight, sector-specific regulation in several sectors and the enforcement of consumer protection laws. ACM's goal is to promote well-functioning markets, and orderly and transparent market processes, that serve consumers well. ACM aims to increase consumer welfare, both in the short term and in the long term. In short, ACM promotes opportunities and options for businesses and consumers.

3. All of ACM's enforcement activities take place within the Dutch administrative law system and decisions of ACM may be challenged before the administrative courts. There have been discussions in the past to empower ACM with criminal enforcement powers.<sup>1</sup> It is our view that the administrative system has resulted in more room for specialization, both at the level of the authority and the courts. Also in terms of enforcement tools, we feel that administrative law allows for more diversity than a criminal law system.

4. Fines are a very important instrument mainly because of their deterrent effect. However, ACM is faced not only with 'classic' hardcore cartels in its enforcement. Like many national authorities, ACM also deals with agreements which, while they show the same characteristics as classic cartels, often exist in very specific national settings. In these cases the authority is concerned not so much with an interpretation of competition law principles, but rather with the relationship with specific national regulatory rules or the market structure, for example healthcare rules. That context can be very important to the method of case resolution.

5. Our interventions can have a significant impact, also on the companies concerned. Generally speaking, we are fining smaller and medium sized companies, also because large cross border cartels are often dealt with by the European Commission. However, relatively speaking, the fines are considerable. We have serious discussions about deterrence and about the impact of the sanctions we impose. In this paper we set out the details of the legal framework applicable to ACM's fining decisions. We give examples of some of the challenges facing us in imposing fines. In conclusion we refer to some of the other tools at ACM's disposal.

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<sup>1</sup> Proceedings of the Dutch Parliament [Kamerstukken] II 2007/08, 31 2002, nr. 76, p. 1.

## 1. Fining: Legal Framework

6. Antitrust proceedings at ACM are ruled, as stated above, by administrative law. Decisions of the authority may be appealed before the administrative courts. The Dutch Competition Act of 1998 was amended in 2007 to allow for the sanctioning of individuals for competition law infringements, such as issuing instructions or exercising de facto leadership with regard to antitrust violations. As a result of the 2007 amendment, ACM may impose administrative fines on specific (groups of) companies, associations and on specific individuals who participated in the infringement. In 2015, we imposed fines on individuals varying from EUR 22,500 to EUR 135,000 per person. ACM may also impose sanctions on groups of companies, that is on the company which directly participated in the infringement and on its parent companies.

7. In April 2013, the fining guidelines of ACM's three predecessors (NMa, CA and OPTA) were integrated in the 2013 ACM Fining Guidelines.<sup>2</sup> New updated Fining Guidelines were adopted in August 2014.<sup>3</sup> The 2014 ACM Fining Guidelines did not specifically refer to the fining of individuals, and so the 2013 Guidelines are officially still applicable in that regard.<sup>4</sup> The material content of the guidelines is the same.

## 2. Maximum amount of the fine

8. The *method* of fine calculation has remained the same over the last 15 years. There have only been some minor changes in the definition of relevant turnover. In December 2015, the Dutch parliament approved a proposal to increase the maximum fines ACM can impose. This new legislation entered into force on the 1st of July 2016 and applies to violations taking place after this date. Until the 1st of July 2016, the fines for companies could reach €450.000, or 10% of the annual turnover. The highest amount of either option counted as the maximum fine.

9. Under the new legislation the duration of a violation is relevant when deciding the maximum cartel fine. In this aspect, the legislation differs from the legislation in other EU member states, where the maximum fine is still 10% of annual turnover. The maximum cartel fine in the Netherlands has been increased to €900.000, or, if that is a higher amount, 10% of annual turnover, taken from the year before the year of the decision. That figure is then multiplied by the number of years the offence has lasted, with a maximum of 4 years. Furthermore, the maximum fine has been doubled for repeat offenders. However, ACM has the discretion not to apply this rule if in a concrete situation it would be unreasonable to do so.<sup>5</sup>

10. Parliament and government wished to increase the fining maximum in order to prevent cartelists from profiting from illicit gains through cartel activity. The new fining maximum affects the level of ACM's fines, but not how the fine is determined. As is explained below, ACM's fines are determined on the basis of turnover.

<sup>2</sup> See 2013 ACM Fining Guidelines (Dutch version only): <<https://www.acm.nl/nl/download/publicatie/?id=11888>>.

<sup>3</sup> See 2014 ACM Fining Guidelines : <<https://www.acm.nl/en/publications/publication/13315/Policy-rules-regarding-fines-and-leniency/><.

<sup>4</sup> As the 2013 Fining Guidelines were no more than a compilation of the policy rules that were applicable in the three separate former market authorities, this means that the former NMa rules regarding fining of individuals still apply.

<sup>5</sup> Article 2.9:2 of the 2014 ACM Fining Guidelines.

### **3. Determining the amount of the fine**

#### **3.1 Companies**

11. ACM takes the relevant turnover as a basis in determining the fine. In ACM's Fining Guidelines 2013 the relevant turnover is defined as the value of all transactions, obtained by the offender through the sale of goods and/or the delivery of services to which the infringement relates, in the final year of the infringement. This amount can then be multiplied depending on the duration of the infringement. Our rules are identical to those of the European Commission in this regard.

12. By using the 'relevant turnover', the starting point for the fine will increase in accordance with the duration and the scope of the economic activities involved in the violation. In addition, the greater the relevant turnover, the greater the potential effect of the violation on the economy in general. The term 'effect on the economy' must be interpreted in the widest sense: this term comprises the loss of consumer surplus and other economic damage resulting from the violation, such as consequential damage in the industry value chain, loss of efficiency, restriction of (a stimulus for) innovation, less economic growth or even effects going beyond the sector that is directly involved. Furthermore, if the violation was committed by several offenders, the share of the individual offenders will be expressed in this (potential) effect on the economy. All of these considerations help to determine a proportionate fine with a deterrent effect.

13. The theoretical concepts underlying fining in the Netherlands are punishment and deterrence. The goal is to arrive at an administrative fine that has a sufficiently deterrent effect for the purposes of both general and specific prevention. The Fining Guidelines provide the possibility for adjustment of the basic fine in situations where extra deterrence is needed - where the relevant turnover was disproportionately low in relation to the gravity of the offence and the turnover of the undertakings concerned in the cartel.

14. The highest fine imposed on a single company is a fine of €22.8 million for Dossche NV in the Flour producers case. In this case, ACM fined fourteen flour producers, who were guilty of agreements and concerted practices that violated the prohibition of cartels.<sup>6</sup> The ultimate total fines, following appeals in the Flour case, amounted to 55 million euros.

15. In a case concerning the anticompetitive conduct of six Dutch silverskin onion growers and processors, ACM took the total turnover generated from the sales of silverskin onions in the entire EU into account when it calculated the fine. This was done because, while the cartel activity took place in the Netherlands, the undertakings involved exported a considerable share of their silverskin onions.

16. In the event of a prohibited tendering agreement, ACM may consider the relevant turnover for each participant to be the turnover – or a proportionate part thereof – that may be realised on the basis of the bid for which the contract was awarded.

17. ACM fined several natural persons in their capacity as an undertaking (real estate traders) for cartel behaviour in December 2011 and again in 2013. Most of these cases have been upheld on appeal.

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<sup>6</sup> See <https://www.acm.nl/en/publications/publication/5827/NMa-imposes-fines-totaling-more-than-EUR-80-million-for-cartel-agreements-in-flour-industry/>  
<https://www.acm.nl/en/publications/publication/3975/Fine-cartels-flour-producers/>.

### 3.2 *Individuals*

18. Individuals may be held liable for cartel activity under Dutch law; for example, executives who have issued instructions to cartels or have exercised de facto leadership of a cartel can be fined. The level of fines for natural persons depends on the seriousness of the violation, the level of involvement of the director in the infringement, that person's taxable income, and his assets.

19. To date, most of the cases where individuals have been sanctioned by ACM and its predecessor, NMa, for cartel infringements, have been appealed to the court. For example, 2 individuals were fined EUR 250,000 and EUR 100,000 respectively in the Janssen de Jong case for directing cartel behaviour of a construction undertaking consisting of bid-rigging and cover pricing in the construction sector. At first instance, the fines were reduced to EUR 100,000 and EUR 70,000. The cases are still under appeal.

20. In the Reading Folders-case in 2013, ACM imposed higher fines on the company Leesland and its de facto executive as a result of their crucial role in organizing and maintaining the infringement. Also in 2015, fines have been imposed on individuals in the Vinegar cartel and the Cold Storage cartel, and some of these are being appealed.

## 4. **Fines for parents and subsidiaries**

21. ACM follows European case law with regard to economic and legal succession. The main premise is that each undertaking is responsible for its own actions. Therefore, as long as it still exists at the time of fining, it will be held (potentially jointly and severally) liable for its actions. If a subsidiary is bought by another parent company, then both former and current parents will be held liable for the period of the infringement in which they were the parent company. The subsidiary will be held responsible for the entire period of the infringement.

22. ACM has discretionary powers as to whether it will fine the subsidiary and/or the parent undertaking. It generally applies the fine as broadly as possible. There are no specific principles, other than that if the subsidiary is non-full function the parent may be held liable (to a degree; and that within the same case, all undertakings will be fined following the same practice).

23. The rationale behind the calculation of the fine is in line with European case law and depends on the definition of the term undertaking. The reality is that subsidiaries are generally a part of a larger economic structure, and that they will therefore not have carried out, or benefitted from, the infringement on their own. As a result, ACM not only fines the subsidiary, but also the parent company(ies).

24. On the one hand, generally it is wise to fine the parent company to ensure deterrence at the right level.

1. the turnover of the parent will generally be much higher than that of the subsidiary
2. by fining the parent company, it is easier to establish recidivism of any other subsidiaries at a later date
3. the fining maximum is also likely to be higher if one considers the parent undertaking
4. the parent will not be able to escape liability by selling the subsidiary

25. On the other hand, by fining multiple entities with the same concern, ACM has to utilize more resources (there are inevitably more disputes with the parties and more confidentiality issues).

## 5. Aggravating and mitigating factors

26. In its determination of fines, ACM takes into account possible aggravating and mitigating circumstances. For instance, recidivism leads to a standard doubling of the fine. The role played in the infringement (e.g. being the instigator, leader or organizer of the conduct), obstruction of the investigation or the rank or seniority of the personnel involved (for fines on individuals) are other aggravating factors in setting the fine.

27. The set of circumstances listed in the Fining Guidelines 2013 (as amended) is of an enumerative character. Other circumstances may also be taken into account in ACM's fining practice. After the basic fine is determined, the amount of the fine can be further adjusted for the above mentioned circumstances.

28. The types of aggravating circumstances which ACM (and previously the NMa) has applied are:

- Previous infringements: in the Limburg Construction case, the fine was increased because the undertaking concerned had previously been convicted of cartel conduct.<sup>7</sup> All that is needed for application of this aggravating circumstance is that the same legal provision has been violated; the behaviour itself does not need to be (exactly) the same. This is in conformity with the Fining Guidelines.
- Offender instigated or had leading role: in the Flour case the competition authority increased the fine of the largest Dutch producer of Flour due to its central role in the infringements. This producer was usually the one to instigate meetings to discuss market partitioning, and held a leading role in conduct meant to ensure the continuation of that partitioning. The largest German manufacturer was given an increase of 20% of its fine, because the competition authority found that it had a coordinating function within the infringements. Its behaviour was mostly focused on the German Flour producers who (along with Belgian producers) conspired with the Dutch ones to stay within their own national markets.<sup>8</sup>

29. During the last decade the cartels in the construction sector caused a great deal of social and political unrest in the Netherlands. Due to this publicity, the competition authority is of the opinion that companies cannot claim to be ignorant of the fact that their behaviour is considered illegal. However, this aggravating circumstance was overturned by the Appeals Tribunal in the Maastricht Landscaping case.<sup>9</sup> The court held that, although the authority is free to decide on aggravating and mitigating circumstances, this freedom is not unlimited. Such circumstances should pertain to the behaviour of the infringer, not to other types of circumstances.

30. ACM also takes into account multiple mitigating circumstances. For example, restitution to victims, admission of the infringement and state action defence are such mitigating factors, as well as effective co-operation with a competition authority during the investigation. Fines are usually reduced by a percentage in these situations, with percentages ranging from 0% to 30%.

31. In principal, the financial position of the offender is not taken into account in setting the level of the fine, provided that the imposition of a fine shall not cause the likelihood of the offender's bankruptcy.

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<sup>7</sup> See <https://www.acm.nl/nl/publicaties/publicatie/14655/Besluit-op-bezwaar-boete-Janssen-de-Jong-manipulatie-aanbestedingen-Limburg/>.

<sup>8</sup> See <<https://www.acm.nl/en/download/attachment/?id=6518>>.

<sup>9</sup> See <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:CBB:2012:BW3671>.

Proportionality is a general principle of administrative law, and as such, applies to all fines. As a result, ACM is not obliged to impose fines on the undertakings involved in infringements.<sup>10</sup>

32. Ending an infringement of one's own accord can only be considered a mitigating circumstance in exceptional cases, because it comes down to companies complying with the law (which they should have done in the first place). Only in exceptional circumstances, a deduction of the fine will be given in cases where companies end the infringement after the start of the investigation, but before a report has been drawn up. Neither a lack of aggravating circumstances nor the fact that a company has suffered negative publicity due to being involved with an infringement is viewed by ACM as a mitigating circumstance.

## 6. Leniency programs

33. ACM has a leniency programme.<sup>11</sup> Reductions of fines under ACM's Leniency Guidelines are applied at the end of the fining process. The fact that such a reduction will be applied, does not imply that other reductions are ruled out. As is laid down in the Leniency Guidelines, ACM grants full immunity (reduction of fine of 100%) from fines to a leniency applicant, if some conditions are met. First, the applicant has to be the first to submit a request for immunity. Second, the application concerns a cartel into which ACM has not yet launched an investigation. Also, with his application, the applicant provides ACM with information that enables ACM to perform a targeted inspection. Finally, the applicant has not coerced another undertaking into participating in the cartel and the applicant complies with the obligation to cooperate.

34. Under certain conditions immunity can also be granted to applicants, when ACM has already launched an investigation.<sup>12</sup> A first prerequisite is that ACM has not yet sent out a statement of objections. Also, the applicant should be the first to submit a leniency request, and he or she has to comply with the obligation to cooperate. Furthermore, immunity will not be granted if the applicant had a coercive role towards other undertakings with regard to participating in the cartel. Moreover, the applicant should be able to provide documents, which give ACM evidence of an infringement in a period for which ACM did not yet have evidence.

35. Furthermore, where immunity from fines is not possible because not all conditions for immunity are met, ACM may grant reductions of fines ranging from 30% to 50% to first applicants, who submit applications containing information with significant added value. For second applicants who submit information with significant added value, the reduction of fines ranges from 30% to 50%, for third applicants, the range is from 20% to 30%, while subsequent applicants can have a reduction of 20% at most.<sup>13</sup>

## 7. Appeals

36. ACM decisions applying Community and national competition law are subject to a three-stage appeals process.

37. Both questions of law and questions of fact can be grounds for appeal and breaches of procedural requirements can also be appealed. The courts review the case with a fresh pair of eyes, and consider the factual situation at the moment when ACM takes the initial decision, or – where relevant, at the moment ACM hands down the decision following the internal administrative appeal.

<sup>10</sup> Proceedings of the Dutch Parliament [Kamerstukken] II 1995/96, 24 707, nr. 3, p. 88.

<sup>11</sup> See ACM Leniency Guidelines 2014: <https://www.acm.nl/en/download/attachment/?id=12267>.

<sup>12</sup> Article 4.2 of the 2014 ACM Leniency Guidelines.

<sup>13</sup> Articles 5 to 7 of the 2014 ACM Leniency Guidelines.

38. The appellate bodies are:

- Administrative Appeal: ACM
- Appeal: District Court of Rotterdam
- Higher Appeal: Trade and Industry Appeals Tribunal (College van Beroep voor het Bedrijfsleven)

39. Initially, addressees of decisions (persons/undertakings) may lodge an internal administrative appeal with ACM within six weeks. This administrative appeal allows the parties to request ACM to review its decision. A complete review of the case will then be carried out by ACM, on the basis of the grounds of review submitted by the parties, whereby a different outcome of the case is possible.

40. Should appellants be dissatisfied with the result of this administrative appeal procedure, they may - within six weeks - appeal the decision to the administrative law chamber of the District Court of Rotterdam. The decision of the District Court may be appealed to the Trade and Industry appeal tribunal (Tribunal). These courts are exclusively authorised to rule in appeals against ACM decisions. Both specialised administrative courts review the legality of the decision, by fully reviewing the facts, the legal qualification of the facts and the level of the fine. These courts may annul a decision (in whole or partially) and decide that ACM must take a new decision or rule on the case themselves.<sup>14</sup>

41. The courts may impose a lower fine but may not impose a higher fine or find an infringement which ACM has not found in its decision. There is a general rule of law which entails that the appealing party may not end up in a worse position than before the appeal (legal prohibition of *reformatio in peius*). Besides the power to review the merits of the case, the Rotterdam District Court and the Tribunal also review the lawfulness and proportionality of the exercise of public law powers by ACM in the case being appealed.

42. Since 1 January 2010, these courts may - by interlocutory judgment - grant ACM the opportunity to correct a failure in its decision. By using such a judgment, a 'formal' annulment of ACM's decisions and a 'repeat decision' of ACM may be prevented, thereby achieving a (substantial) reduction in the time involved in the entire (administrative) appeal procedure. It is important to note that an interlocutory judgement cannot be utilized if third parties will be disadvantaged as a result.

43. An ACM decision in which a fine is imposed will be 'suspended' until the time limit for filing an administrative appeal against the decision has expired. In the event of such appeal, payment is suspended for a further 24 weeks following publication of the decision.

44. The power to impose fines is subject to conditions (duration, gravity, statutory maximum of the fine), general principles of administrative law, line equity, proportionality and duty to provide reasoned decisions, and other general principles of law, such as those contained in Article 6 of the European Charter of Human Rights.

45. ACM's legal process must fully comply with the ECHR rules. The Dutch legislator has provided for specific rules in article 12q of the ACM Establishment Act to prevent biased decisions. Persons involved in the investigation of a case may not be involved in the decision making and sanction process.

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<sup>14</sup> Article 8:72 of the General Administrative Law Act.

46. Article 6 of the European Convention on Human Rights applies to sanctioning procedures regarding a violation of the Netherlands' prohibition of cartels or an abuse of a dominant position. This means, among other things, that the decision in these kinds of cases must be given within a reasonable time frame.

47. According to case law, the starting moment of the reasonable time frame is, in principle, the moment when a Statement of Objections has been handed to the parties by ACM; from this moment on, an undertaking may reasonably expect a fine to be imposed for a violation of competition rules. The Tribunal additionally ruled that the maximum duration of the reasonable time frame depends upon the factual and legal complexity of the case and of ACM's 'behaviour' as well as of the parties.

48. As a 'basic rule', the Tribunal has pointed out that a combined duration of two years of the sanctioning phase and the administrative appeal phase thereafter, cannot be regarded as unreasonably long. The Tribunal in addition pointed out that a time frame of 1,5 year for the procedure in appeal at the District Court, and two years for the procedure at the Tribunal, can be regarded as reasonable.<sup>15</sup> Proportionality is also considered at the end of the fining process. The courts, to whom parties may appeal following an administrative procedure, must naturally fully comply with the ECHR rules.

49. Dutch courts tend to pay a lot of attention to the gravity of the alleged offence when conducting a judicial review, and assessing the level of fine imposed. Because of this judicial trend, the economic context is very important in our investigations. Intention alone is often insufficient to prove a violation of competition law.

50. In the *T-Mobile* case, having received the answers from the EU Court to prejudicial questions, on the issue of the possible existence of a concerted practice in that case, the Dutch court referred the case back to the competition authority to reassess the gravity of the infringement, in the economic context of the case.<sup>16</sup> In more recent competition appeal cases, where the economic context of the alleged infringement was clear to the Court, the competition authority has been successful before the Court.<sup>17</sup>

## 8. Other sanctions

51. In addition to the imposition of fines, ACM can also issue companies with a cease and desist order to bring an infringement to an end. ACM may impose a structural, or other type of remedy, depending on which is more burdensome for the undertakings concerned. Such a remedy can be imposed at the same time as a fine.

52. ACM can also adopt commitment decisions. ACM can also declare commitments by infringers to be binding upon those undertakings, according to Article 49a of the Competition Act. This is done at the request of the infringers, if ACM is convinced that this will be more opportune than the imposition of fines. This already shows that the request to bind undertakings to their own commitments can usually only be granted during the investigative stage, not when imposing a fine. Commitment decisions will only be used where ACM considers prevention of a potential infringement in this way to be more effective than waiting for an infringement to occur and imposing a fine.

<sup>15</sup> Judgment of the Netherlands Trade and Industry Appeals Tribunal, 3 July 2008: AWB 06/526 and AWB 06/532, *AUV Dierenartsencoöperatie U.A. and Aesculaap B.V.*, para. 7.18 en 7.20.

<sup>16</sup> See judgment of the CBb of 12 August 2010, and the judgment of the EU Court in Case C-8/08, *T-Mobile and others/NMa*, 4 June 2009.

<sup>17</sup> See for example, press release on ACM's foreclosure auction cases upheld by the Rotterdam District Court, 18 December 2014. <<http://www.rechtspraak.nl/Organisatie/Rechtbanken/Rotterdam/Nieuws/Pages/Uitspraak-in-beroepen-in-zaak-'Executieveilingen'.aspx>> accessed 13February 2015.

53. Another important element of our enforcement practice is our communications policy. ACM is an open organization; we publish all our decisions. As regards fining decisions, we are under a legal obligation to publish unless parties obtain an injunction to prevent publication. We also expend a lot of energy on drafting informal guidance opinions and engaging in norm-transmitting dialogue with market participants. We do so in concrete cases where we consider guidance necessary and expect it to produce the desired effect. In the field of competition, we may use these tools in non-hardcore situations, where there is a new development or where we see the possibility of competitive restrictions developing.

54. Finally, ACM can decide to close a case without measures.

55. Fining decisions clearly have a deterrent effect. They aim to punish the violator, to force the violator to stop the infringement and prevent others from committing a similar violation. Fining procedures, however, take up much of ACM's time and resources. Investigations and analyzing the evidence may take months or even longer. The same holds true for drafting the decision and for the subsequent legal proceedings. It is important that we respect the rights of defense of the parties involved. The more time we spend on each case, the fewer cases we can deal with. In view of this, we have developed a 'settlement solution' in several cases: companies that are willing to cooperate and do not dispute the facts of the case amounting to the competition law violation (and hence that they will not challenge our fining decision in court) have received a reduction of the fine.

56. In 2015, we issued decisions in the Vinegar case and Cold Storage case in which fines were reduced by 10% because the parties did not dispute the facts of the case amounting to the competition law violation. In other decisions we awarded larger fine reductions because the company involved had compensated their consumers for the damage suffered.<sup>18</sup> Reductions granted as a result of settlements are granted in addition to other reductions, such as reductions for leniency. This is a key element of our settlement practice. ACM has not yet published settlement policy guidelines. We have chosen to first develop a practice and discuss the conditions for settlement at the start of the procedure with the parties involved. Transparency, respect for the rights of defense of the parties and respect for the interests of third parties are important elements of our considerations.

## **9. Conclusion**

57. ACM's oversight style is focused on the effects of the authority's interventions. Imposing sanctions is not an end in itself. Rather, the authority aims to tackle the underlying causes of the market problem at hand. Depending on our analysis of the market problem, it may be more appropriate to approach a case on the basis of competition law, consumer law or regulation. Depending on the analysis we determine our case specific mix of responses

58. Markets are transforming due to globalization and digitalisation. These developments bring considerable benefits to consumers, for example, in terms of increased product variety and flexibility. However, they also lead to new issues, for example, trying to enforce our fining decisions against firms established in other EU member states. The business models and concepts we have to deal with when it comes to platformisation, the sharing economy and big data are very different from those we know from the past. In addition, we are faced with an increasingly empowered economic society.

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<sup>18</sup> See: <https://www.acm.nl/en/publications/publication/14615/ACM-fines-natural-vinegar-manufacturers-for-cartel-agreements/>.

59. However, new business models also create new uncertainties. In the sharing economy and with the use of big data, it may not always be clear who the producer is and who the consumer. Consumers are paying for products and services with their data rather than with their pockets. We have to assess our laws and tools to check if they are appropriate for detecting and addressing possibly harmful new developments. Our tools need to be flexible enough to deliver timely solutions for today's market problems. It may be that traditional procedures are simply too slow to provide legal certainty in view of the dynamics of this new digitalized world.

60. Competition law has evolved considerably over the years. In the Netherlands, the establishment of ACM has contributed to a further development. As a multifunctional agency we can assess market problems from different angles. By focusing on which instrument is most effective to solve the problem at hand, we aim to contribute to consumer welfare. An important part of this development is to remain open to discussion of our activities, and to have due respect for the rights of all parties involved.