

THE LEGAL REGIME OF COMPETITION IN NETHERLANDS

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Abstract

The present-day competition regime in the Netherlands begins with the enactment of the Competition Act on 1 January 1998. The substantive provisions of the Competition Act are a copy of the Treaty on the Functioning of the European Union (TFEU). The Competition Act prohibits anticompetitive agreements and the abuse of a dominant position. The Competition Act established the Netherlands Competition Authority (NMa) as the domestic body responsible for the enforcement of competition law. On 1 April 2013, the NMa unified with the independent Post and Telecommunication Authority and the Consumer Authority into a single regulator, the Consumer and Market Authority (ACM).

Keywords: *competition authorities, competition, Netherlands, European Union.*

JEL Classification: K22, K33

1. Introduction

The Dutch Competition Act came into force on 1 January 1998.

The Competition Act is not a one-to-one translation of the EC rules. The Explanatory Memorandum (“Memorie van Toelichting”) states that the Act “draws on” the competition rules in the EC Treaty, but is not a “copy” of those rules.

The goal of the Competition Act is to promote and maintain competition in order to boost prosperity in Dutch society.

The basic premise is, however, that the Competition Act “should not be more or less stricter than the EC competition rules”. In fact, a one-to-one translation would not be practicable.

2. General aspects

European Union competition regulation isn't always associate degree finish in itself, then again as an alternative a approach to understand the wishes of the global organization.

Removing the barriers to alternate between member states is not a precise goal of the Dutch Competition Act, although overseas corporations may additionally possibly experience a simpler competition coverage inside the Netherlands.²

The evaluation of the Dutch Competition Act bears out that tiny and medium-sized businesses usually realize the turnover thresholds for the de minimis exemption to be too low. completely little firms are possible to continue to be beneath the brink. Relaxation of the de minimis exemption would supply little and medium-sized groups extra leeway to with success contend with massive firms.

Throughout this read, greater thresholds would promote instead of restrict competition.³

Competition commonly is a catalyst for innovation as corporations are stimulated to unendingly search for ways that to take care of or strength their position.

At the same time, sure kinds of innovation like systems aimed toward rising excellent need wonderful consultation and collaboration on the chain, additionally as between competitors.⁴

Non-economic pastimes (cultural heritage, environmental effects) might also moreover bene suit from firms connection forces, and accordingly justify a (temporary) restriction of competition. in retaining with Kingdom of The Netherlands Competition Authority, non-economic hobbies will play a job figure out whether or now not or to now not provide a release from the consortium

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² Berenschot, *Syntheserapport evaluatie Mededingingswet*, The Hague, 2002.p. 4.

³ *Ibidem*.

⁴ *Idem*, p. 5.

prohibition. This would possibly totally apply, however, to the financial consequences of these noneconomic interests. The conclusion to be drawn from the review is that Kingdom of The Netherlands Competition Authority is quite reluctant to require non-economic pastimes into thought. Nor will it appear to be victimization clear standards in its decision-making method. The prohibition of abuse of a dominant position is one in all the key provisions inside the Dutch Competition Act (article 24). The evaluate suggests that enforcing this prohibition is by no suggests that a simple matter. The consortium authorities and additionally the courts are visaged with the difficult venture of growing a big difference between abuse of a dominant function and usual business conduct, in particular once it includes a business enterprises rating policy. The question arises, therefore, whether or no longer article 24 of the Act ought to be amended to permit certain kinds of ex ante rules of firms with a dominant position. Widespread law can also nicely be introduced, like restrictive approval of tariffs, or maybe extra lenient forms, like a requirement to produce statistics to competitors and purchasers.⁵

This problem conjointly touches upon the count number of anywhere to draw the avenue between accepted and particular competition regulation. Certain sectors are difficulty to precise competition policies so as to regulate the transition from a monopoly market to a preferred market. Once the transition gets current, however, it would possibly show upproper to assessment the connection between sector-specific and ordinary competition policy. The be counted is that this is often a difficult line to draw.

The hassle of making use of article 24 of the Competition Act is that it is a timeconsuming and tough venture to prove situations of abuse. The Council is of the opinion that social manage of the prohibition may properlybe improved via as nicely as in Article one of the Act a relevance the definition of the idea contained in Article eighty two of the world organisation written agreement. That would furnish the courts the preference of getting a preliminary ruling from the European Court of Justice, the place ever necessary. It doesn't show up fascinating to the Council to amend article 24 of the Act to allow sorts of ex ante rules on the premise of the prohibition. this would possibly totally elevate the govt burden of companies with a dominant position. Any such additional burden wouldn't, within the Councils opinion, be even. there may be nothing to point that corporations with a dominant function are inflicting large-scale troubles for the Dutch economy. Similarly, the Council opposes amending article 24 of the Act to give a boost to the operation of the market in different methods that, like with the aid of competition engineering (deliberately promote oppositionin comparatively closed markets) and sector-specific legislation (tariffs and great regulation).

However, the Council would suggest fitting region a method that ought to regulate Kingdom of The Netherlands Competition Authority to implement the prohibition on abuse of a dominant function in an enormously additional economical approach. One in all the problems with implementing the prohibition is that it usually wants conducting what's usually a protracted and pricey audit. Such audits are quintessential as a result of abuse of a dominant function typically problems a enterprise s ranking coverage (excessive, discriminatory or, indeed, too low prices). during the preliminary audit (when aggregation money information from the company s accounts), Kingdom of The Netherlands Competition Authority might also use an moretool. The Council recommends introducing the rule that, in certain cases, firms with a dominant position ought to return to accomplice diploma appreciation with the NMa concerning alternatively they render clear the financial attain and expenditure related to a product or carrier that they're the dominant supplier. It is no longer for the Council to produce the particular small print of such a rule. Fulfill to point out that Kingdom of The Netherlands Competition Authority ought to have a tendency a device which mightcreate it easier for it to induce firms to collaborate with such a rendezvous. The rule must not however, oblige corporations to use a unique fee accounting methodology. That would possibly be the subject of the negotiations. The regulation ought to just outline the tip (transparency) and not the suggests that (costing method).

⁵ *Idem*, p. 11.

3. Special aspects

In The European united states of america there are 2 applicable opposition policy regimes that are enforced by two separate authorities with coincident powers.⁶

In the 1st place popular opposition policy, enforced through the Competition Authority.

This is a device that was created in 1998 in spontaneous harmonisation with the EU machine of competition law which consequently is predicated on prohibitions and ex publish controls (except mergers that are screened *ex ante*).

In 2006 a system of sector-specific competition policy was brought through the health care Market Regulation Act. This policy is distributed by using the by means of health care Authority and types a hassle based totally broadly speaking device victimization *ex ante* controls.

Moreover the EU regime for state aid management has relevancy to the rest context and can be touched upon concisely.

The quantity of editions is larger. The final competition coverage covers the complete economy, is prohibition based mostly, and is regarding policing functioning markets. It derives a section of its powers and most of its concepts from the EU stage (in addition the Competition Authority is sceptered to use articles 101 and 102 TFEU wherever there's an impression on alternate between the Member States). The problem of management is *ex post*, and infringements of the prohibitions of anticompetitive agreements (cartels) and dominance abuse are sanctioned via fines additionally as, in some cases, no longer entirely exercise then again structural remedies calling it off undertakings.

The particular regime is totally supported national law and legislation and in and of itself extra difficulty to political pressures. as an alternative than policing current markets it is additional involved with making markets wherever there have been none before. For this reason, management is exercised *ex ante*: it's sufficient to show the existence of opportunities and incentives to restrain opposition so as to impose redress (effects don't need to be demonstrated).

The common issues embrace market definition (especially geographic markets, related to that additional are going to be aforesaid below), and additionally the specially exacting requirements of evaluation that Dutch authorities appear to face in contrast to their EU counterparts.

The Competition Authority is associate degree freelance authority with the complete financial system amongst its scope. The powers of the Competition Authority are imposing the consortium prohibition, the abuse of dominance prohibition, and also the monopoly on merger administration (for mergers beneath the EU thresholds). Additionally there may be cooperation between the 2 authorities on the contentious problems with geographical market definition, and collaboration dominated by means of a mutual protocol (or inter-institutional agreement) that presents for ordinary mutual session in the all levels.⁷

We will concisely talk about the expertise of the Competition Authority relating to the three branches of its competency within the fitness care sector: mergers, dominance abuse and Until 2004 the Competition Authority non appointive to not workout merger evaluate within the health care area thanks to what it perceived because the restrained scope for competition at that point. In exceptional words it failed to take below consideration conceivable opposition or the connexion of the market shape to future competition, i.e. adopting a static instead of a dynamic approach. This is often illustrative of divergence with the healthcare Authority s examine that is usually additional prospective. The effects of the Competition Authority s method was a merger wave in anticipation of regime trade which will have considerably biased the market structure.⁸

Although on the grounds that in 2004 over a hundred health care mergers are reviewed via the Competition Authority, none were blocked, and solely a few was cleared with conditions. Once greater the Competition Authority has commonly used the argument that since very little opposition

⁶ Wolf Sauter, *The role of competition rules in the context of healthcare reform in the Netherlands*, Tilburg Kaw and Economics Center Research Paper, 2010, p. 6.

⁷ *Idem*, p. 7.

⁸ *Idem*, p. 7.

remained (following previous mergers now not vetted) there wasn't ample opposition left that would be restricted, thereby favouring greater clearances. Recently there has been an argument involving associate diploma ex post analysis by using the Competition Authority itself that confirmed in a minimal of one case necessary value will expand enforced via currently comprise hospitals.

A similarly complication in merger instances has been market definition.

Product market definition has been comparatively simple though it's going to disagree supported the extent of research adopted. For consumers there's very little to no substitution between diagnoses (e.g. hip treatment isn't always a help substitute for coronary heart surgery), though there are 900 totally distinctive diagnoses for sanatorium cure alone; at the provider level but a restricted diploma of provide substitution is viable, therefore the market is outlined with the aid of specialisation or primary diagnostic type (there are regarding twenty five of these); and at last it's plausible to define the market additionally as access to plugteams, like clinical (inpatient) versus non-clinical (outpatient) scientific aid. Geographic market definition on the opposite hand is troublesome two now not without a doubt inside the European country on the other hand within the North American expertise additionally.⁹

At this moment, the NMa is an element of the Ministry of Economic Affairs. So as to quit political influence on person cases, the NMa Bill was once planned in 2000. Another crucial aspect of the bill is that the NMa might not be headed by using one director-general, as is presently the case, however with the aid of a board of three members. Further, the bill provides for the probability to bypass the manner for lodging associate diploma objection over underneath sure prerequisites and to charmon to the executive court in city. The Bill has already been adopted within the Lower House. In 2002, the then Minister of Economic Affairs requested a hold of lawsuits from the greater House.¹⁰

4. Institutional aspects

As from 1998 competition regulation within Netherlands carefully resembles American competition law. However, in contrast to Article thirty six of the world enterprise written settlement and also the provisions supported it, there are now not any specific provisions for the agro-food sector.¹¹

Dutch competition regulation is enforced solely under jurisprudence direction of compliance with the Dutch Competition Act is that the duty of Kingdom of The Netherlands Competition Authority (NMa).

NMa presents partner diploma informative web site, the foremost critical files on the web site, just like the Competition Act and also the annual reports. These documents provided most of the material and examples that are employed in this account.

When in 1998 Dutch Competition Act entered into force and at the same time Kingdom of The Netherlands Competition Authority started out its operations.¹²

This Competition Act was adopted by way of the Dutch Parliament in 1997 and supplied a very new legislative groundwork for competition policy. The Dutch Competition Act is predicated on and carefully joined to European law. The Act is predicated on a prohibition system sort of like that of Articles eighty one and eighty two of the world organisation written agreement.

The Dutch Competition Act conjointly includes a gadget of preventive awareness management, that is analogous to the world business enterprise Merger Regulation.

There are range of basic editions between the new Dutch Competition Act and its forerunner, the Dutch Act on Economic Competition. One in all these is that the new regulation consists of a prohibition system, prohibition all competition-restricting preparations and practices

⁹ *Idem*, p. 8.

¹⁰ *Idem*, p. 6.

¹¹ Bernd M.J. Van der Meulen, *Dutch competition law and its significance in the agro-food sector*, XXII European Congress and Colloquium of Agricultural Law, Dutch report, 2003, p. 2.

¹² *Ibidem*.

unless the employer in query has been granted an exemption or dispensation. The looking at of concentrations conjointly constitutes a replacement aspect in Dutch legislation.

The Dutch Competition Act has brought bans on consortium arrangements, abuse of a dominant function and concentrations.¹³

The former Act on Economic Competition was supported the abuse device and so condoned cartels unless they have been expressly prohibited, additionally to that generic bans utilized to hard-core consortium constructions. The new Competition Act has grew to become things round therein all cartels are currently unlawful except specific permission has been given within the fashion of partner degree exemption.¹⁴

The Competition Act presents time-honored parameters for evaluation of the prohibition of cartels and additionally the preference to be granted exemption from this prohibition (Articles six and seventeen of the Dutch Competition Act), the prohibition of abuse of a dominant function (Article twenty four of the Competition Act) and additionally the administration of concentration (Chapter five of the Competition Act). These parameters are developed through open standards. The key thing of such usual parameters for evaluation is that the specific market kingdom of affairs and aggressive family members ought to be assessed for each and every case singly. The gain of a group of generic evaluation parameters is that the instruments supplied by way of the Competition Act is utilized with a precise degree of flexibility, whereas the Competition Authority is in an notably role frequently to create allowance for dynamic market conditions.¹⁵

The Netherlands Competition Authority is office of the Ministry of Economic Affairs, and it operates at a distance from the Minister. The independence of Kingdom of The Netherlands Competition Authority is qualified, as a end result of the Minister of Economic Affairs has the capability to issue instructions to the director of Netherlands Competition Authority. This construction is supposed to hold the Minister s duty and responsibility to Dutch Parliament. However, the Minister does not shall use the ability to issue instructions in person instances and has proclaimed that Kingdom of The Netherlands Competition Authority are going to be given most freelance standing, which means that the Minister would formally lose this power.¹⁶

If companion degree interested celebration doesn't consider a ruling issued by way of the NMa, that party might ask for felony protection.

As the director time-honored of NMa is associate diploma physique authority, the rulings (and their preparation) are difficulty to the remaining jurisprudence Act of Kingdom of The Netherlands.

This implies, amongst unique things, that before lodging accomplice diploma attraction with the courts, associate degree body allure have to be filed with the director well-known of NMa against a ruling.

Rulings in response to notification of a diploma and to utility for a licence are excluded from this under the Competition Act.

The administrative complaint have to be filed amongst six weeks of e-book of the preference towards that it is aimed. Except anywhere specific situations apply, failure to fits this demand renders the executive appeal impermissible.

The file is created on the market for assessment by the applicable interested events for the length of the appeals procedure, with involved parties being invited to reply orally. As a end result of they're below no obligation to try to to thus, a hearing isn't always unionized.

A questionable consultive Committee on physique Appeals advises on appeals aimed against selections regular to thata sanction is compulsory and which contain infringement of the ban on cartels or the ban on abuse of a dominant position. before imparting associate degree advice

¹³ *Ibidem.*

¹⁴ *Idem*, p. 3.

¹⁵ *Idem*, p. 3.

¹⁶ *Idem*, p. 3.

(advies), the consultative Committee invitations the interested parties to be detected. in essence the desire on the govt attraction follows amongst six weeks of receipt of the appeal.¹⁷

A ten-week term applies within the tournament that the consultative Committee is wanted to issue its recommendation. However, this time period is suspended if the allure appears to be incomplete. The last jurisprudence Act in addition gives the choice of granting a occurrence extension by way of 4 weeks. However, some instances are sufficiently superior on take longer to be confined as a result of they want meticulous preparation. Inside the match that the fascinated events trouble such extension of the term, they need the preference of lodging accomplice diploma attraction with the city Court.¹⁸

The Netherlands Competition Authority assesses instances on allure on the premise of the proof and regulations in result at the time of the appeal. This suggests that the events will publish every new proof and new argument.

5. Procedural aspects

The Dutch Competition Act is enforced underneath physique law; there's no position for penal law.

As a phase of the social manipulate of the Competition Act, the NMa will impose fines, that makes Dutch opposition law in accordance to European opposition law. Fines are obligatory to penalize these that simply violate the law and to discourage doable offenders from doing accordingly (general deterrent). Moreover to the imposition of body fines, NMa is authorised to impose body orders difficulty to penalties (last onder dwangsom).¹⁹

Fines is obligatory within the match of accomplice diploma infringement of the prohibition of cartels or the abuse of a dominant position. These are the material core provisions of the Dutch Competition Act.

Fines might not exceed the 450.000 Euro or 10 % of annual turnover in these cases. The most great is thus related with turnover and may differ from one business enterprise to a different. With this alternative, too, the legislators fits the device that applies for the EU Commission²⁰.

The high-quality provisions of the Dutch Competition Act imply that Competition Authority should contemplate the extent of the nice in every precise case, with the purpose of effective application of the Act. The Act willgive instructions for the duration of this respect: Kingdom of The Netherlands Competition Authority in any event recognize of every the gravity and period of the infringement once figuring out the extent of the fine. Distinctive situations of the case may additionally moreover play a job, like reversion and also the benefits won via the infringement. in essence, the relevant challenge s cash function or earnings does not play a role.²¹

In addition to developing the material core provisions of the Dutch Competition Act challenge to fines, some other types of behavior conjointly face the penalty of body fines. As an example, NMa will impose fines of up to economic unit four, 500 for non-compliance with the commitment to collaborate in companion diploma NMa review. NMa can even impose fines for infringements as a part of the path of concentrations. A fine is compulsory for rebelliousness with guidelines or failure to fits the information wishes in reference to asking for a degree licence. Kingdom of The Netherlands Competition Authority is approved to impose fines of up to economic unit twenty 22.500 Euro for the availability of inaccurate or incomplete data, non-compliance with the policies for a degree license, and variety of different infringements in reference to path of concentrations.²²

¹⁷ *Idem*, p. 4.

¹⁸ *Idem*, p. 4.

¹⁹ *Idem*, p. 5.

²⁰ *Idem*, p. 7.

²¹ *Idem*, p. 7.

²² *Idem*, p. 7.

Multiplying the fantastic foundation through a unique issue. This problem will amplify to relinquish the events insight into the approach the extent of the high-quality is set, NMa accepted and printed coverage regulations in December 2001.

In the case of fines compulsory for failing to relinquish (proper) notification of a merger or acquisition or failure to suits the obligation to co-operate, the statutory most isn't always a share of the annual turnover of the agency in question, on the other hand a set quantity. NMa adheres to the coverage that the most high-quality of 22,500 or 4,500 euro severally are going to be obligatory, barring if there are special mitigating circumstances.

The Guidelines for the Setting of Fines are supported the precept that the extent of fines ought to be excessive sufficient that they restrain offenders from sinning as soon as greater (specific prevention), additionally as deter viable offenders (general prevention). In figuring out the fine, NMa as expressed before is wished to require under consideration the seriousness and period of the infringement, in accordance with article of the Competition Act. The seriousness of the infringement, in retaining with the rules, relies upon 1st on the type of infringement.²³

The tips talk about with three types of infringements: terribly grave, grave and fewer grave. Farreaching horizontal restraints, like price agreements, market distribution agreements and quota schemes are terribly grave infringements. Abuse of a dominant function of the sort aimed towards with the exception of or riding an corporation from a market fall below this class. The 2nd type of grave infringements includes, for example, horizontal restraints that can't be considered terribly grave infringements, character vertical fee maintenance, vertical prohibitions on sales to third parties and kinds of abuse of a dominant position, like discrimination and tied sales.²⁴

The classification of much less grave infringements relates to schemes that solely distort competition to a restrained degree.

In principle, the pleasant is predicated on a great base of 10 % of the turnover involved of the corporation in question. The turnover concerned have to be distinguished type the entire annual turnover of the corporate.

The two turnover involved is capable the worth of all the transactions realized by way of the business enterprise for the whole period of the infringement (not solely one year) thru the sale of products and/or servicesto that the infringement relates (which needn't be all the transactions created with the aid of the company).²⁵

If the records provided by way of the employer is insufficient, NMa may estimate the turnover concerned. In positive cases, the turnover worried is tough to work out as a end result of, for example, it entails practices aimed towards defensive a (dominant) position, that consists of now not ending positive transactions or motion aimed toward apart from or disposing of a contestant. inside the closing case, the turnover concerned is capable the turnover of the organisation at some stage in the amountof the infringement on the market that used to be to be protected, problem to a minimum of 1 year.²⁶

The level of the pleasant is set with the aid of in share to the severity of the infringement, taking under consideration the economic context. The importance of the enterprise concerned to the Dutch economy, expressed in phrases of its total annual turnover on the Dutch market would possibly afterwards lead to a nation of affairs at any place the ensuing trouble got need to be amended to possess a deterrent result. The best might also moreover be higher if exacerbating circumstances provide cause for a risewithin the fine, like preceding infringements of competition rules. On the contrary hand, the volume of the high-quality ought to additionally be lower inside the event of mitigating circumstances, like farreaching co-operation.

It is solely practicable to deviate from the policies if the applying of the guidelines would manufacture unjust results. This can be the case, for example, if the making use of leads to the

²³ *Idem*, p. 7.

²⁴ *Idem*, p. 7.

²⁵ *Idem*, p. 8.

²⁶ *Idem*, p. 8.

bankruptcy of the company in question. Additionally, it is potential to deviate from the guidelines in different cases by means of imposing a symbolic fine.

By suggests that of the rules for the Setting of Fines, NMa has aimed to understand a clear coverage that leads to fines that have a deterrent result. In doing thus, NMa ambitions to understand a nation of affairs anyplace undertakings refrain from committing offences. Thanks to the danger of a fine, undertakings are going to be additional inclined to terminate their prohibited practices in change for fine immunity or a discount within the fantastic and to produce NMa with facts on the consortium agreements in the course of which they're concerned.²⁷

If a breach of the Competition Act is committed and additionally the offence continues, NMa may impose accomplice degree order situation to a penalty. The aim of imposing associate degree order subject to a penalty is to affirm that the offence ceases, or to end it repetition.

The order stipulates the motion that has received to be taken or the motion that ought to stop. Compliance with the order is enforced by way of suggests that of a penalty, that the offender is wished to pay if he would not fits the order. The choice establishes the critical quantity among that the wrongdoer ought to do the order; later on point, the penalty is due.

It is plausible to file associate diploma physique charm and after wards a judicial attraction towards the order difficulty to a penalty, in accordance with the provisions of article 63(1) of the Competition Act. Filing complaint has the result of suspending the choice²⁸.

Inspired through the ecu preservation case, the Competition Act affords the danger to impose a tentative live situation to penalty. This has been tiredexamine of the very reality that the personality of infringements of the Competition Act will create it unacceptable for the alleged sufferer to possess to wait the Nma's penalty ruling or its imposition of an physique order on the cause. In an enormously case of refusal to produce or selective price-dumping, as an example, the sufferer in query may truly are pushed off the market by way of the time the penalty ruling takes result.²⁹

As in European law, the Dutch Competition Act provides for exemptions from the ban on cartels. The State aid minimis provision of article 7 of the Dutch Competition Act exempts opposition agreements, that are of minor significance.

Furthermore the world corporation's block exemptions and also the EC's individual exemptions supported Article 81(3) of the EC written agreement, are integrated inside the Dutch Competition Act (articles 12, 13 and 14).

Under article of the Dutch Competition Act, Dutch block exemptions ought to additionally be granted by accepted bodyorders. Four such orders have been adopted.³⁰

The ready courtroom to settle moves for damages is that the civil section 7 of the nineteen Civil Courts ("Rechtbank") inside the European country. That zone of the court docket is equipped relies upon on the extent of damages wanted. Claims for damages up to 15.000 have to be delivered earlier than the small-claims-section or Sub-District Court, the "Kantonrechter". All advised special cases the "Rechtbank", any other areaof the Civil Court, are going to becompetent Interim injunction court casesshould be delivered before the "Provisional arrangements judge" ("Voorlopige voorzieningenrechter"), one in all the judges of a Civil Court.

Cases at the begin introduced earlier than the Sub-District Court ("Kantonrechter") should additionally be appealed to the Civil Court ("Rechtbank"). Cases at the start brought before the Civil Court ("Rechtbank") should additionally be appealed to the Court of appeal (of that there are 5 unfold at some point of the country, "Gerechtshof"). Charmin cassation is on the market earlier than the Supreme Court ("Hoge Raad der Nederlanden") within the Hague.

Fines of up to two 900,000 Euro is obligatory on executives United Nations business enterprise have given instructions to violate competition policies or have exercised de facto leadership over a violation (fines can even be imposed for non-cooperation with an investigation of

²⁷ *Idem*, p. 8.

²⁸ *Idem*, p. 9.

²⁹ *Idem*, p. 10.

³⁰ *Idem*, p. 12.

the Authority). Human beings that have manage a administration function (directors, managers, branch heads, etc.) and have both themselves participated within the infringement or have not acted whereas being wakeful tothe infringement are most likely to be manage in man or woman liable. Members of a organisation s higher-up board may want to also be manipulate in individual liable solely in great circumstances, as a result of their powers and influence are usually restricted to superintendence (not managing) the corporate.

The Authority will do a dawn raid.³¹

There are many factors for such a raid.

This ought to be supported the Authority s own investigation or partner diploma investigation by means of exclusive opposition authorities, a leniency request by one in all the participants within the consortium, or a criticism or tip-off via a purchaser or a 3rd party. Within the event of a dawn raid, an employer should collaborate absolutely to that extent due to the fact the Authority will quite want through its powers. The Authority may additionally moreover raid non-public homes, both with the permission of the inhabitants or if approved through the analyzing figure out (according to articles 50 - 53 of the Act).

Therefore, it is higher that, as before long because the Authority arrives at the corporation's place of business or offices, the company takes action to steer the sunrise raid the maximum amount as potential. Normally, the secretary would raise the Authority's inspectors to attend till the corporation assistance has arrived. The organisation assistance ought to contact the organisation s attorneys and type a disaster group. As soon asassembly the inspectors, the advice ought to kindle proof of their identities and additionally the Authority s order for the sunrise raid, and take a seem to be at to acquire the most amount data on the sunrise raid and also the suspicions as potential.³²

Once the attorneys have arrived, they're going to are seeking recommendation from the Authority, *inter alia*, the scope of the sunriseraid (relevant markets, behaviour, employees, etc.), the temporal association and whether or not or no longer interviews with workers are going to be control.

The inspectors have the capacity to demand get right of entry to to commercial enterprise records and files supported article 5 of the last jurisprudence Act. They will now not demand get admission to to personal data and records or to privileged documents. In distinction to the EU Commission, the Authority has no strength to demand get entry to to archives or communications between the organization and its in-house expert character United Nations employer could be amember of the Bar (according to Article 12 of the Authority's group Act).³³

During the sunrise raid, the inspectors might interview one or extraworkers accomplice degree employee has the proper to be in the center of a expert person. Moreover, if there may be an cheaper suspicion of a violation by using the corporate, the inspectors have to inform the business enterprise s representatives that they're not obligated to reply queries. Normally, the Authority accepts that every one people of the corporate may invoke the appropriate to now not answer queries. However, for former employees the perfect to continue to be silent is proscribed to instances at some stage in which they will be manipulate in person chargeable for an infringement. Any interviews are going to be recorded, and people are going to be requested to sign a report of the interview at the tip of the interview.

6. Conclusions

In recent years some changes occurred in Netherlands competition law.

We are speaking here mainly about the private enforcement of competition law.

³¹ Jolling de Pree and Stefan Molin, *Netherlands The Cartels and Leniency Review*, Fifth Edition, Law Business Research 2017, p. 205.

³² *Ibidem*.

³³ *Ibidem*.

Increasing numbers of civil liability cases based on competition law infringements have been brought before the Dutch civil courts. The Dutch legal framework for cartel damages claims consists of the general rules regarding liability for wrongful conduct (tort).

Under the implementation of EU Directive 2014/104/EU on antitrust damages actions, the Dutch government is implementing a number of amendments to the Dutch Code on Civil Procedure and the Civil Code with the aim of further developing and adapting Dutch civil law to these private damages claims.

The implementation deadline of the Directive was December 2016.

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