



Public and private enforcement: a new balance

The Netherlands: what is going on?

- Many *follow-on* actions
- Implementation of Damages Directive (2014/104/EU)
- Interaction between private and public enforcement since the Damages Directive

Striking a new balance

Two main issues from a NCA-perspective:

- Access to the file of ACM: can it be locked?
- Editing the non confidential version of an infringement decision: stimulate private enforcement or protect business secrets and/or leniency program?

Striking a new balance

1. Access to the file of the NCA?

Damages Directive: a new step

- Facilitates disclosure of evidence (article 5 DD)
- protects public enforcement by limiting access to file of NCA
- System of black, grey and white list (article 6 DD)

Striking a new balance

So the new system foresees:

- Disclosure of evidence by civil courts
- Nevertheless, victims seek access to the file of NCA:
 - as a party or complainant in infringement proceedings
 - by public transparency rules

How “to route” victims via the system of the DD? Quite a challenge!

2.Editing the non-confidential decision

ACM has a strict publication regime: a duty to inform the public, unless court-order to block

- Victims/consumers: need narrative and (more) details > stimulate private enforcement?
- Defendants: claim (Pergan) protection > causes (undue) delay of publication?
- NCA: needs to protect its leniency program > how to strike the balance?

Follow-on claims

- The Netherlands are the second most popular forum for follow-on claims after the UK
- All claims are based on EC decisions
- Most important judgements: Air Cargo (procedure) and Tennet (substance)
- First compensation of damages



Pavement Bitumen
ECLI:NL:RBROT:2011:BP7518

First claim, no longer pending



Gas Isolated Switchgear
ECLI:NL:RBGEL:2015:3713

First case with substantive judgements and damages awarded
ECLI:NL:GHARL:2014:6766



Air Cargo
ECLI:NL:RBAMS:2015:1778

Large complicated case with numerous proceedings, claimants and defendants
Twelve judgements in the Netherlands, all concerning procedural matters



Elevators & Escalators
ECLI:NL:RBMNE:2013:CA1922

ECLI:NL:RBMNE:2013:5978

ECLI:NL:RBROT:2013:5504



Hydrogen Peroxide
ECLI:NL:GHAMS:2015:3006

Case brought by claim vehicle Cartel Damage Claims against Akzo



Candle Waxes
ECLI:NL:RBDHA:2014:15722

Case brought by claim vehicle Cartel Damage Claims against Shell
ECLI:NL:RBDH:2016:11305



Prestressed Steel
ECLI:NL:RBLIM:2015:1791