

Europe

## Dutch authority slashes fine over slow progress

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The Netherlands Authority for Consumers and Markets (ACM) has reduced the €18 million fine it imposed on four laundry companies by 30 per cent after its own advisory committee found the authority took too long to close the case.

In a press release published last week, the authority says despite reducing the fine by €5 million it maintains the view that the four companies operated a cartel in the market for supplying laundry services to hospitals.

In its review, the committee said a reasonable case would have been concluded within three years.

Wasserij CLF will still pay the lion's share with a €9.4 million penalty. Rentex Floron will now pay €1.6 million while Rentex Awé and Rentex Dieben will pay €1.5 million and €315,000 respectively.

In 2011 the ACM's predecessor, the Netherlands' Competition Authority, fined the four companies €18 million for dividing the market by region and for agreeing not to compete outside their allocated area between 1998 and 2009.

After the ACM reached its decision, however, the companies filed an objection at the ACM's advisory committee, taking issue with evidence the authority relied upon during the proceedings including an economic study and an additional report that added items to the case file.

The ACM rejected the objections regarding the evidence but admitted additional procedural steps slowed down the handling of the case.

Diederik Schrijvershof at Maverick Advocaten in Amsterdam says it is rare for the authority to reduce fines because of delays in such a way.

“It is interesting that the ACM while reducing the fines also explicitly takes into account that the laundry companies had asked it several times to speed up the process,” he says. “In general the parties involved in a cartel case such as this do not show very much interest in swift proceedings as they tend to benefit from slow proceedings, which discourage follow-on claims.”

Marco Slotboom at VVGB Law in Brussels says that, while decisions to reduce fines are rare, it is even rarer for the authority to reduce a fine for unreasonable delay on its own motion, as opposed to being asked to do so by the District Court of Rotterdam.

He adds the fine reduction applied by the ACM in this case is considerably higher than normally applied by the courts, which may indicate the ACM followed the committee's advice that the infringement was not “very serious” but merely “serious”.

Following the authority's reassessment, the companies can now file an appeal at the District Court of Rotterdam.

Recently the court overturned a €17.7 million fine against two glass companies accused of operating a cartel after finding that the ACM's predecessor had insufficient evidence to prove the existence of the cartel. The court also ruled the authority has used leading questions when interviewing witnesses and failed to properly investigate the reliability of leniency statements.

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