

## The Netherlands' competition bar

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Henry Vane

*The Netherlands has a vibrant follow-on damages scene and civil litigation culture, writes **Henry Vane**.*

Alongside the UK and Germany, the Netherlands is one of the destinations of choice for injured parties to seek redress for harm sustained as a result of cartels. With Europe's new damages directive opening the door to even more private, follow-on litigation, that stream of work shows every sign of increasing, and the Dutch firms in this survey are well placed to exploit this bonanza at home and abroad.

The bar fits neatly into three categories. There are the well-established big four – two Dutch, two international – with Houthoff Buruma not far behind. Below them is a scattering of smaller, specialist firms, each good in their own way. Brussels is nearby so there is plenty of cross over of work and people between Amsterdam and the EU capital. The Netherlands is a practical, successful, no-nonsense kind of place and its competition bar reflects this.

### Elite

In 2000, **Allen & Overy** merged with Dutch and Belgian firm Loeff Claey's Verbeke. This means it enjoys both local connections and a global network, says partner [Kees Schillemans](#). Schillemans joined from Freshfields five years ago, but the other senior figures in the practice – [Paul Glazener](#), Peter Eij'svoogel and [Tom Ottervanger](#) – have all been with the firm since before the merger. Eij'svoogel is a regulation specialist, while state-aid guru Ottervanger, now of counsel, is one of the titans of competition law in the Netherlands. Though less active than he used to be, Ottervanger is still on some interesting cases alongside his academic work. For instance, he advised Sara Lee in the French competition authority's huge consumer goods cartel fine before Christmas.

The firm is particularly strong in telecoms and media mergers. Schillemans is counsel to telecoms incumbent KPN. Last year, he managed the sale of its German subsidiary, E-Plus, to Telefónica, which the European Commission approved in July with groundbreaking commitments. He also represented it in the Authority for Consumers and Markets' controversial price-signalling investigation, settled with commitments in November 2013. Eij'svoogel meanwhile advises KPN on regulatory matters.

Glazener was counsel to cable company Liberty Global on its takeover of Ziggo, approved by the commission in Phase II last October, and currently acts for Cargill in the commission's review of its takeover by ADM, another Phase II probe that opened in January. In the Netherlands, he acted for De Persgroep in its acquisition of various regional newspapers, approved with conditions by the ACM in February. In follow-on damages, meanwhile, Schillemans is defending Samsung SDI against a claim arising from the Cathode Ray Tubes cartel.

**De Brauw Blackstone Westbroek** represents many of the Netherlands' major corporations both domestically and

internationally. It counts Philips, AkzoNobel, Ahold, Rabobank and Schiphol airport among its clients. Co-practice head Jolling de Pree says that in response to a quiet enforcer, the firm's focus has shifted to European work over the last few years. He reckons the ratio is now 60:40. De Brauw is fully integrated with the Brussels office where it works physically and metaphorically alongside its "Best Friends" – an association of top national law firms.

De Pree represents lorry company DAF in the commission's cartel investigation. The parties received a statement of objections before Christmas. He is leading Philips' appeals against the recent Smart Card Chips cartel decision (issued September 2014) and the Cathode Ray Tube cartel decision (issued December 2013). Erik Pijnacker Hordijk, meanwhile, represented AstraZeneca in an abuse of dominance case before the Dutch authority, resolved with commitments in December, and successfully defended the port of Rotterdam against a €1 billion civil abuse of dominance claim by the incumbent terminal operator.

Between them, the De Brauw partners have an impressive range of experience outside the practice. Pijnacker Hordijk is a substitute judge at the Netherlands court of appeal, de Pree is a non-governmental adviser to the ACM on international matters, Jaap de Keijzer worked at the authority between 2009 and 2011, and Martijn Snoep is the firm's managing partner. De Keijzer specialises in state aid and merger work, with a particular focus on the energy, financial services and transport sectors.

Onno Brouwer and Winnfred Knibbeler set up **Freshfields Bruckhaus Deringer's** Netherlands competition practice in 2000. Both divide their time between Dutch and EU matters. Brouwer says his work is 50/50 while Knibbeler estimates that 65 per cent of his time is on Dutch matters. Knibbeler acted for broadcaster Ziggo in its €10 billion takeover by Liberty Global, approved in Phase II with commitments by the commission last October. In 2013, he was also counsel to UPS in its blocked merger with TNT. He is now leading the appeal against the commission's prohibition before the EU General Court.

Before the Dutch trade and industry appeals tribunal (the court of last instance) Brouwer represents Ceres and Silos Soufflet in an appeal against the authority's 2012 Flour cartel decision. He also acts for the Dutch association of real estate brokers (NVM) against an abuse of dominance complaint brought by rival VBO. The claim relates to NVM's Funda website.

In addition, Brouwer is also deeply involved in follow-on litigation. He defends Shell against claims arising from the Bitumen cartel decision, Thyssen Krupp against follow-on claims from the Elevators cartel decision, Hanson & Rosenthal from the Paraffin Wax cartel and Bavaria brewery from the Dutch Beer cartel. Perhaps Brouwer's most interesting case, however, is his defence of ABB in the Gas Insulated Switchgear cartel damages action, now before the Netherlands Supreme Court. It is deciding on the important principle of whether there should be a passing-on defence.

Over the past decade, **stibbe** has built on its expertise in behavioural work to become a leader in follow-on damage cases. "We were the first firm in the Netherlands that realised you needed litigation specialists," says practice head Christof Swaak. With Rein Wesseling, he has been representing chemical company AkzoNobel before the European Court of Justice in a case regarding the publication of a second version of the Hydrogen Peroxide cartel decision. Though – to Swaak's consternation – Akzo was unsuccessful and the European Commission is set to release another version, the case is undoubtedly at the cutting edge of the debate about how Europe's emerging follow-on damage landscape should take shape.

The firm also defends Schindler, KLM, Credit Suisse and Exxon Mobil against damage claims. Litigator Jeroen Kortmann works extensively in this area, whereas Rein Wesseling concentrates more on traditional

competition matters. He was counsel to pharmaceutical company Mylan in its purchase of Abbot's generics division, approved with conditions by the commission in January, and represented musical rights company Buma, which agreed conditions with the Dutch authority to end an abuse of dominance investigation in April 2014.

Stibbe stands out because it litigates cases on key matters of legal principle. It represents clients in a case on whether the authority can fine individuals, whether former employees have the right to remain silent in cartel investigations, whether Vodafone was guilty of the nebulous offence of price-signalling and whether the authority could use evidence acquired using a wiretap in a cartel investigation. Commercial litigator Matthijs Kuijpers and Brussels based Hendrik Viaene also work closely with the Amsterdam competition team.

#### Highly recommended

Jaap Doleman retired from the partnership at Houthoff Buruma this summer; however, the firm promoted Brussels-based counsel and former Belgian authority official Laura Parret to partner at the start of the year. Parret is a state-aid specialist and a visiting professor at the College of Europe. Meanwhile, counsel Gerrit Oosterhuis has relocated from Brussels to Amsterdam.

In abuse of dominance, Houthoff successfully represented software company HPC in a civil case against NVM, the largest association of real estate companies. The firm is now bringing another complaint against NVM on behalf of a rival association, VBO. Houthoff's follow-on damages practice is another strength, says van Themaat. It acts separately for both Cargolux and Singapore Airlines in the Air Cargo case and Chemira in the Sodium Chloride case. In mergers, the firm is acting on the tie-up between two hospitals and in 2013 convinced the competition authority for the first time to retract a remedy, in Nordic Capital's takeover of Handicare.

#### Recommended

Christiaan van der Meer now leads Baker & McKenzie's Dutch competition team with litigation partner Frank Kroes. Misha Lutje Beerenbroek left for HVG last summer. Brussels-based Dutch counsel Joost Haans is also often in Amsterdam. The team works closely with the firm's Brussels office, supporting it in the Abbott/Mylan merger and also in a consumer electronics product investigation. Baker & McKenzie represented a "major financial institution" in the Libor/Euribor investigation. Kroes is active before the Dutch courts, defending Shell and Mitsubishi against claims arising from the Paraffin Wax and Elevator cartel decisions respectively.

BarentKrans is bringing claims against many participants in the major cartels but Joost Fanoy – practice head since last summer – emphasises the firm is moving beyond its traditional plaintiff heartland. For instance, it represents Mylan in a sector inquiry before the ACM and TUI in a dispute with other hotels over the termination of contracts on the Dutch Caribbean island of Curacao. Nevertheless, damage claims remain its bread and butter. Together with Claims Funding Europe, it represents more than 190 claimants in the air cargo damages case and is also bringing suits arising from the Sodium Chloride, Elevators and Paraffin Wax conspiracies.

Frederieke Leeflang, in charge at **Boekeel De Nerée**, is one of the top competition lawyers in the Netherlands for health-care matters, particularly hospital mergers. Senior associate and litigation specialist Marc Kuijper will become partner on 1 April. He acts for both claimants and defendants in many major follow-on cases, including Air Cargo, Elevators and Cathode Ray Tubes. Perhaps the most intriguing recent case was Kuijper's work for ferry company EVT, which argued the government unfairly excluded it after it awarded a contract to run services to islands off the north coast to the incumbent, Doeksen. After a referral to the European Court of Justice and a letter from the competition authority telling the ministry it was abusing its dominance, the government paid EVT €9 million in April last year to settle the dispute.

Steven Verschuur, head of the **Clifford Chance** competition team in the Netherlands, is a top state-aid lawyer, while fellow counsel Frances Dethmers has experience at the commission and the Dutch authority. Both split their time between Amsterdam and Brussels. In addition to some confidential matters, Clifford Chance is defending Kone in follow-on damages arising from the elevators cartel.

**CMS Derks Star Busmann** promoted Edmon Oude Elferink from local partner to full partner last December. He joined the firm in 2011 after spending three years as a law clerk at the EU General Court. Both he and practice head Robert Bosman are based in Brussels but spend two days each week, on average, in Amsterdam and Utrecht. The firm is particularly strong in cartels and Elferink is involved in the ACM's Building Materials investigation while Bosman is appealing against a 2012 decision against taxi company Bios. In Luxembourg, Elferink acted for Dutch construction company Ballast Nedam in its appeal against the Bitumen Cartel decision, successfully gaining a fine reduction before the European Court of Justice last March.

**Maverick Advocaten** is the Netherlands' first boutique focusing on pure competition. Established in September 2013, it's still early days but the firm has made a promising start, adding four associates to the three founding partners. It already has some interesting cases, particularly in telecoms and health care. It successfully defended T-Mobile against an abuse of dominance claim by Liberty Global subsidiary UPC. The Court of Appeal in The Hague rejected UPC's arguments and the case is now going before the European Court of Justice. Maverick also convinced the ACM to allow a joint venture between three health-care companies that will create the country's largest forensic mental health-care business.

Herman Speyart, head of **NautaDutilh's** competition practice, joined from the commission's legal service in 2003 while counsel Barbara Nijs has previously worked for the Dutch authority, the commission and Clifford Chance. The firm is appealing a Flour cartel decision imposed last year on private equity firm Bencis. The case is important because it is the first time the ACM has held private equity firms liable for the violations of the companies they own. Nauta also represented HIG capital on its acquisition of Estro, the largest childcare provider in the country. Bart Gerretsen is a specialist cartel damages litigator, while Speyart divides his time between Brussels and Amsterdam.

**Pels Rijcken & Droogleeveer Fortuijn** is traditionally the go-to firm for the Dutch state, but practice head Berend Jan Drijber – who spent 12 years in the commission's legal service – says the firm is working for industry clients as well. It defends clients in cartel follow-on claims, including ArcelorMittal in the Pre-stressing Steel case and Scandinavian Airlines in Air Cargo. On the merger front, it coordinated the filing in the Netherlands,

Germany and France of a tie-up between two companies in the tyre sector to create the largest wholesaler in that market in Europe. But it is still government matters where the firm excels. Among much else, Pels Rijcken represents the Dutch Central Bank before the European Court about insurance licensing and the ACM in an appeal by Brink's, a cash-handling service and transporter of valuable items.

stek describes itself as a "behavioural practice with strong regulated market niches". Practice head Jan Erik Janssen, previously partner at Allen & Overy, is a top energy lawyer while counsel Ruben Elkerbout leads the antitrust part of the practice. Much of Stek's work is confidential, it says, but the firm acted in the Grain-Milling cartel for Gebr Engelke and on various energy regulation matters.

FIRM	HEAD(S) OF COMPETITION	SIZE	WHO'S WHO LEGAL NOMINEES	CLIENTS
<b>ELITE</b>				
Allen & Overy	<a href="#">Paul Glazener</a>	3 partners 3 counsel 11 associates	<a href="#">Paul Glazener</a> <a href="#">Tom Ottervanger</a>	Heineken, KPN, Jumbo, TNT, Post NL, KLM, De Persgroep, Samsung, LeasePlan, Liberty Global
De Brauw Blackstone Westbroek	Erik Pijnacker Hordijk Jolling de Pree	4 partners 20 associates	Erik Pijnacker Hordijk Jolling de Pree Martijn Snoep	AkzoNobel, AstraZeneca, DSM, FrieslandCampina, NXP, Philips, Rabobank, Rotterdam Port Authority, Schiphol airport, UTC/Otis
Freshfields Bruckhaus Deringer	<a href="#">Onno Brouwer</a> <a href="#">Winfred Knibbeler</a>	2 partners 14 associates	<a href="#">Onno Brouwer</a> <a href="#">Winfred Knibbeler</a>	Ceres/Silos Soufflet, NVM, Thyssen Krupp, Hansen & Rosenthal, Bavaria, ING, ABN Amro, RTL, Telegraaf Media, UPS, Ziggo
Stibbe	Christof Swaak	3 partners 4 senior associates 16 associates	Christof Swaak Rein Wesseling	Credit Suisse, BumaStemra, Pilkington, Mylan, Geberit, Pilkington, Vodafone, KLM, AkzoNobel, ExxonMobil, voestalpine, Ballast Nedam
<b>HIGHLY RECOMMENDED</b>				
Houthoff	Weyer VerLoren van Themaat	3 partners	Weyer VerLoren van Themaat	Singapore Airlines,

Buruma		1 counsel 2 senior associates 10 associates		Cargolux, T-Mobile, Allianz, Colgate Palmolive, Total, BP, Nordic Capital, Dutch Ministry of Finance, Boskalis, Telegraaf Media
<b>RECOMMENDED</b>				
Baker & McKenzie	Frank Kroes Christiaan van der Meer	1 partner 1 senior associate 3 associates		Abbott, Daimler, Accenture, Shell, Mitsubishi, Archer Daniels Midland, Warner Bros, Allianz, Unilever, Lukoil
BarentsKrans	Joost Fanoy	2 partners 4 associates		Canon, IBM, Cartel Damage Claims, PwC Legal Services, Heutink Onderwijs, NRC Media, Horticoop
Boekel De Nerée	Frederieke Leeftang	1 partner 1 senior associate		Academisch Medisch Centrum, Japan Airlines, European Merchant Services, Superunie, Royal Dutch Hotel & Restaurant Association, Eni, Klaas Puul, Deutsche Bahn, Samskip, Chep Aerospace
Clifford Chance	Steven Verschuur	2 counsel 3 associates		América Móvil, PGGM, CVC, Pfizer, Dutch Central Bank, Riverstone, KKR, Sanoma, Kone, Shell
CMS Derks Star Busmann	Robert Bosman	2 partners 4 associates		NYK, Canon, Syngenta, Telefónica, Eli Lilly, easyJet, Altran, Jacobs, Abellio, Unit4
Maverick Advocaten	Bas Braeken Diederik Schrijvershof Martijn van de Hel	3 partners 4 associates		Bosch-Siemens Household Appliances, Stern, Walgreens Boots Alliance, Tech

				Data, Parnassia Groep, Vaillant Group, Radboud UMC, T-Mobile, Eneco, BENU & Brocacef
NautaDutilh	Herman Speyart	2 partners 1 counsel 8 associates		TOTAL, Siemens, Dutch Central Bank, Iglo, Otis, Vodafone, NPO, Lego, Europe Container Terminals, Johnson & Johnson
Pels Rijcken & Droogleever Fortuijn	Berend Jan Drijber	2 partners 8 associates		Gazprom Germania/Wingas, Dutch Ministry of Finance, Dutch Ministry of Transport, Dutch Ministry of Justice, Exide Technologies, DAS Insurance
Steck	Jan Erik Janssen	1 partner 2 counsel 1 senior associate		Gebr Engelke, Delta