



Stibbe

Antitrust Litigation Group



Stibbe in association with  
Herbert Smith and Gleiss Lutz

# “In the Netherlands, we are seeing an increasing number of claimants who seek antitrust damages”

## **Antitrust infringements: from public to private enforcement**

European and national antitrust authorities have become increasingly vigilant in the enforcement of competition laws. Under the leadership of Commissioner Neelie Kroes, the European Commission has focused its attention on the fight against 'hardcore cartels'.

In the meantime, the European Commission has launched a political campaign to facilitate antitrust damage claims. In the Commission's view, 'private enforcement' should help deter anti-competitive conduct. In a 2008 White Paper, the Commission proposed a framework of measures to remedy perceived 'obstacles to effective antitrust damages actions'.

## **Increased activity in the area of antitrust litigation**

The European Commission's efforts appear to have increased awareness of antitrust damage claims in the market. In the Netherlands, we are seeing an increasing volume of antitrust litigation. Similar developments have been reported in other European Member States:

- In Germany in 2004 alone, 240 court decisions were reported that addressed claims of competition law violations;
- In a 2007 Impact Study conducted for the European Commission, the authors identified 96 European antitrust damage suits between 2004 and 2007. This represents a significant increase from the findings in the 2004 study, which identified 60 cases since 1962;

- Leading by example, in 2008 the Commission itself launched a multi-million euro lawsuit against the largest producers of elevators, based on the allegation that it paid too much for the elevators installed in its office buildings.

These observations paint only a partial picture of the actual developments in the area. In practice, it is our experience that most antitrust damage disputes are resolved confidentially.

## **The ‘hidden story’: antitrust settlements**

Almost all cartels identified by the Commission concern sectors of the economy where the direct customer base consists of businesses with long-term commercial relationships. Such business-to-business disputes tend to be resolved confidentially, often with the aid of alternative methods of dispute resolution such as mediation or arbitration. A 2008 survey by Professor Rodger of antitrust settlements in the United Kingdom, found a ‘fairly dramatic increase’ of approximately 100% between 2000 and 2005. This finding corresponds to our own experience in the Netherlands.

## **Stibbe’s Antitrust Litigation Group**

In antitrust damage disputes, we regularly encounter parties who are represented by competition law attorneys alone. At Stibbe, we are convinced that antitrust litigation cannot be handled properly without expertise in both competition law and civil litigation (and, where appropriate, labor law, criminal law and corporate law). To ensure the highest level of service to our clients, expert attorneys from our litigation and competition law practices have teamed up to form one, integrated group that specializes in defending clients against antitrust damage claims.

## **Our Antitrust Litigation Group’s unrivaled experience**

The combined experience of the members of Stibbe’s Antitrust Litigation Group is unrivaled by any of our competitors in the Dutch market. Members of our

Group have been involved in all major antitrust damage cases in the past decade. The dispute that attracted most media attention concerned the Dutch road construction industry, which was accused of illegal market allocation and price fixing throughout the 1990s. Our attorneys played a leading role in negotiating a multi-million euro settlement in the summer of 2005. Currently, members of our Antitrust Litigation Group are representing companies in antitrust damage disputes concerning the pharmaceutical, chemical, electro-technical and elevator industries.

## **Managing international disputes**

Competition law infringements often have cross-border effects. From a defendant's perspective, it is likely to make a substantial difference whether one is sued in one country or another. Our Antitrust Litigation Group has represented clients in disputes connected with almost all Western and Northern European jurisdictions. Furthermore, our Group has extensive experience with the implications of litigation in the USA. Through our alliance with Herbert Smith and Gleiss Lutz and our broader international network, we can advise at very short notice on appropriate strategies to minimize the risks of being subjected to lawsuits in less favourable jurisdictions.

## **Some 'lessons learnt'**

- Many companies do not prepare for disputes unless they have actually received claims. Unfortunately, this reactive posture puts plaintiffs, who by the time they present their claims have already been gathering data and preparing analyses for many months, at a considerable advantage. We have learnt from experience that a well prepared defendant is much more likely to reach a swift and favourable resolution;
- Since the law relating to antitrust damage claims is in many respects uncharted territory, European courts are more likely to rely on independent expert opinions. Members of our Antitrust Litigation Group have established close ties with leading economic and legal experts.

## Contact



Christof Swaak heads Stibbe's Competition Law & Regulation practice. Christof's extensive experience in dealing with allegations of worldwide cartel infringements in both the EU and the US, led Chambers Global 2007 to refer to him as a 'master of cartel work'.

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Jeroen Kortmann is a partner in Stibbe's Commercial Litigation department. Together with Christof Swaak, he heads Stibbe's integrated Antitrust Litigation Group. Jeroen is also a professor at the University of Amsterdam, where he teaches European tort law.

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Fons Leijten is one of the country's leading individuals in the area of dispute resolution. His extensive experience with corporate litigation, including arbitration and mediation, is an invaluable asset in resolving antitrust damage disputes on behalf of our clients.

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Rein Wesseling, partner in Stibbe's Competition Law & Regulation practice, represents various clients in their appeals against multi-million euro fines, before the European and Dutch administrative law courts.

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Toni van Hees heads Stibbe's Commercial Litigation department. With Jeroen Kortmann, Toni played a leading role in the negotiation of a multi-million euro settlement, resolving 1000+ antitrust damage claims against road construction companies.

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Gertjan Boekraad is a partner in Stibbe's Commercial Litigation department. Together with Toni van Hees, Gertjan is lead defence attorney on one of the first major antitrust damage cases in the Netherlands, which commenced in the spring of 1999.

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