

Kluwer Competition Law Blog

Towage services cartel: a new chapter in the collaboration between competition authorities?

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Introduction

On December 18 2017, the Authority for Consumers and Markets (the **ACM**) [announced](#) that it had halted its investigation into cartel agreements between Dutch and German towage companies in various ports in Germany and the Netherlands. Stek represented one of the German towage companies in this investigation. The ACM's decision to stop the investigation originated from collaboration with the German competition authority, the Bundeskartellamt (the **BKa**), which reached a settlement with several towage companies and is continuing its own investigation (see also [this press release](#) from the BKa).

The ACM has collaborated closely with the BKa during the investigation into the towage services cartel and both competition authorities have, in that context, frequently exchanged information and coordinated their investigative activities. Eventually the BKa was in a better position to take action against the cartel and the ACM withdrew by mutual agreement.

The close collaboration between ACM and BKa and their decision to leave the final enforcement to the best-positioned competition authority is a positive development. If the developments in the towage services case constitute the announcement of more intensive collaboration between competition authorities, with – as a possible outcome – enforcement by the the most appropriate competition authority, that will certainly benefit the quality of competition supervision.

Collaboration a necessity

Cartels follow the commercial activities of the companies that participate in them and are therefore frequently cross-border in nature. The open borders in the European common market mean that companies from different Member States meet each other more often and thus contribute to the internationalisation of cartels.

This means that the territorial allocation of the infringing conduct is sometimes difficult. Cartel violations often have to be reconstructed by the investigating competition authorities on the basis of fragmented pieces of evidence and declarations by individuals, which frequently relate to events that have taken place years earlier. Therefore, there is a risk that events in different Member States mentioned in declarations concerning cross-border cartels get mixed up. A good example of this are the discussions that took place in the procedures relating to the [flour cartel](#), in which we also

represented one of the companies involved. The flour cartel, just like the towing services case, had a Dutch and a German component. Both the ACM and the BKA imposed [fines](#) on the participating companies. During the Dutch procedures, there was much discussion between the ACM and the companies concerned as to whether certain leniency declarations – on which the ACM had mainly based these cases – related to the Dutch or the German conduct. The companies contended more than once that some of the declarations – which were of vital importance – made by applicants for clemency in respect of the Dutch violation in fact described the German activities.

For good and effective supervision of international cartels it is therefore very important that it is clearly identified which conduct is interconnected and how each of the relevant Member States are affected by the cartel. To achieve this, collaboration between the relevant competition authorities is essential. In addition, in order to collect information across national borders competition authorities need to be able to make use of each other's investigative powers.

Possibilities for collaboration under EU law

Collaboration between the various European competition authorities is actively encouraged and facilitated by Brussels. The national competition authorities of the Member States and the European Commission are united in [the European Competition Network \(ECN\)](#). Within the ECN, the competition authorities discuss proposed decisions, and experiences and *best practices* are exchanged.

Also [Regulation \(EC\) 1/2003](#), which provides the procedural framework for the application of the European competition rules, prescribes collaboration and the exchange of information between the European competition authorities, in order to bring about a consistent and effective enforcement of European competition law (see in particular Articles 11, 12 and 22 concerning respectively cooperation, exchange of information and the use of each other's investigative powers).

The important role of the national competition authorities in enforcing European competition law and the importance of good collaboration between the various competition authorities are once more underlined by [the proposal from the European Commission of 22nd March 2017 for a new European directive](#). This directive would oblige the European Member States to allocate to their national competition authorities a certain minimum of powers and instruments so that they can effectively and independently monitor competition law in their jurisdictions. When the powers and the possibilities for imposing sanctions of the various competition authorities in the European Union are more harmonised, this will further expand the possibilities for collaboration with respect to investigating and, if necessary, sanctioning international cartels.

Towage services case: a new chapter?

It is of course difficult to make predictions or even to speak of a new development only on the basis of the towage services case. However, the coordinated action between the ACM and the BKA is reason to be optimistic about the way the European competition authorities will exercise their duty of monitoring cross-border cartels. In this context we should also mention the ACM's recent [position paper on the dominant position of certain tech companies](#), which it released on 31 January 2018. In this report the ACM notes that it actively looks to collaborate with other European competition authorities to monitor the conduct of large tech companies.

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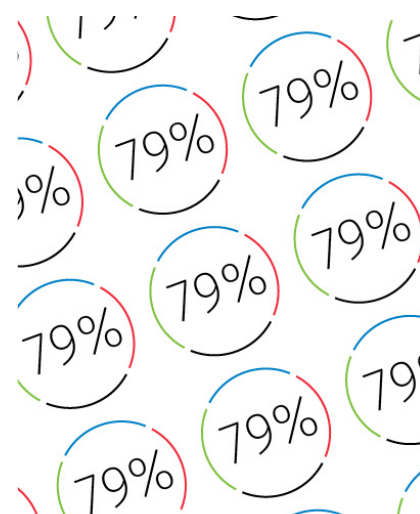
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