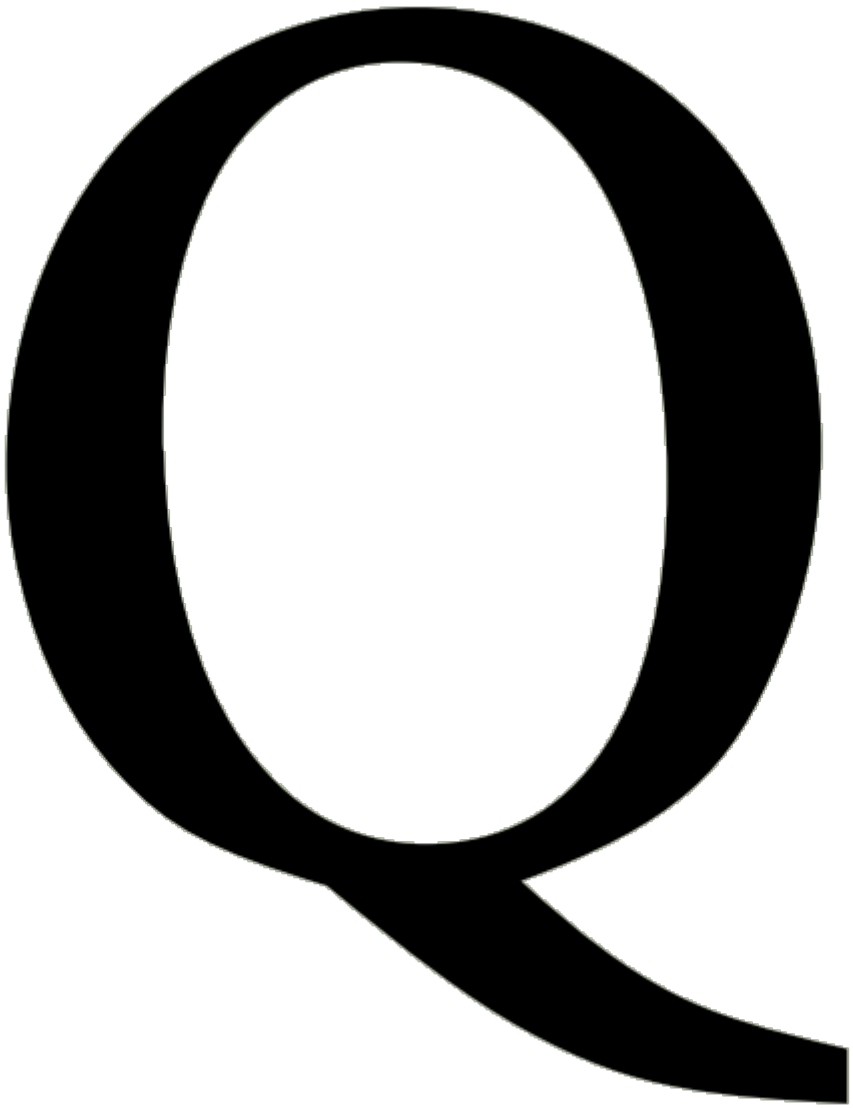
CARTEL DAMAGES QUARTERLY



We are pleased to present the second quarterly report on cartel damages litigation of 2018

We are confident that you will find this edition replete with interesting developments and case law, even though it may have taken us a bit longer than usual to go to press.

Whether you approach it from a European or local perspective, it is hard to deny that many developments take place in the three jurisdictions.

With regard to the Dutch jurisdiction we discuss an abuse of dominant market position follow on case (Macedonian Thrace Brewery/Heineken. Since it the District Court of Amsterdam ruled with regard to the question of whether Heineken, as the parent company of a Greek subsidiary that had abused its dominant market position, qualified as an anchor defendant, it may also be interesting for cartel follow on cases.

In addition, we report on many other interesting developments in England, Germany, and the Netherlands.

Kind regards,

In behalf of the team **Louis Berger**

With contributions from **Hans Bousie, Louis Berger, Hans Bousie, Sophie van Everdingen, Nathan van der Raaij** and **Evelyn Niitväli**

Index

Amsterdam, April 2019

1

Private enforcement in cartel damages claims – case law

The Netherlands

- On 9 May 2018, the District Court of Amsterdam declined jurisdiction with respect to the follow-on claims against the Greek (grand)subsidiary of Heineken N.V., Athenian Brewery S.A., in a civil case brought by Macedonian Thrace Brewery S.A. (MTB).[1] Previously, in 2014, the Greek competition authority had fined Athenian Brewery for abusing its dominant position on the Greek beer market.

The Court had to assess whether it had jurisdiction to hear the claims brought against Heineken and Athenian Brewery. The jurisdiction determination with respect to Heineken was both clear and brief: Heineken is domiciled in the Netherlands; the court thus had jurisdiction under the main rule of Article 4 Brussels I Regulation Recast. In the case of Athenian Brewery, the situation was different because it is domiciled in Greece. MTB argued that the Dutch court had jurisdiction by virtue of Article 8(1) Brussels I Regulation Recast, referring to Heineken as the 'anchor defendant'. That article provides that if there is more than one defendant in the same proceedings, the defendants may be sued in the courts for the place where any one of them is domiciled, provided that the actions against the defendants are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

According to the Court, MTB had not sufficiently substantiated that the actions were sufficiently closely connected. The facts and circumstances it put forward were insufficient to allow the determination that the anchor defendant, Heineken, had cooperated or participated in the abuse of a dominant position by the Greek brewery. In addition, Athenian Brewery could not have foreseen that it would be summoned to a court other than the Greek court since the alleged abuse of dominant position had taken place in Greece. A parent company cannot be obliged to pay damages until its involvement in the infringement has been established.

- On 29 May 2018, the appellate court of Arnhem-Leeuwarden in the Netherlands[2] ordered that an expert be appointed to determine the scope of the damage suffered by TenneT TSO B.V. (TenneT) in its case against ABB Ltd. (ABB) in the gas-insulated switchgear (GIS) cartel. TenneT claimed that the overcharge it had paid when it bought the GIS amounted to EUR 23 million. ABB disagreed with the calculation of the overcharge in the amount of EUR 23 million

[1] District Court of Amsterdam, 9 May 2018, ECLI:NL:RBAMS:2018:3203.

[2] Appellate Court Arnhem-Leeuwarden, 29 May 2018, ECLI:NL:GHARL:2018:4876.

and claimed that the damages suffered by TenneT had been passed on.
ABB requested that the case be heard behind closed doors. Because of the age of the data involved, the Court of Appeal saw no reason to deviate from the principle that hearings be held and that decisions be delivered in public.

The Court considered the calculation of damages by TenneT to be plausible. ABB argued that the calculation of the overcharge was not correct, stating that an expert with an accounting background should be appointed to calculate the overcharge, whereas TenneT argued that the expert should have a background in economics. As a result, the Court appointed both an expert with a background in economics and an expert with a background in accounting to calculate the overcharge and the extent to which the damages had been passed on.

- On 27 June 2018, the District Court of Oost-Brabant ruled on the alleged expiration of the limitation period in the case of 11 companies in the Vestel Group against Koninklijke Philips N.V., Samsung SDI Co. Ltd., LG Electronics Inc. and others in the cathode ray tube (CRT) cartel.[3] In December 2012, the European Commission (EC) imposed fines on a group of companies including Philips, Samsung, and LG for participating in the two CRT cartels in 1996-2006. Vestel, a purchaser of CRT products, claimed compensation for its damage before the Dutch court.

The Court had to decide on the question of whether the limitation period under Turkish law had expired. The Turkish Code of Obligation (TCO) provides for two different limitations periods. The first is a subjective period of one or two years, depending on which version of the TCO is applicable.

[3] District Court Oost-Brabant, 27 June 2018, ECLI:NL:RBOBR:2018:3170.

The second is an objective period of ten years. The parties disagreed on the interpretation of the date of commencement of both limitations periods.

On 26 November 2014, Vestel issued a summons in this case. According to the Court, participation in the cartel was a 'continuous tortious act', and the objective limitations period had only started to run on the date in 2006 that the cartels had ceased to operate. In 2014, therefore, the objective limitations period had not yet expired.

According to the Court, the subjective limitations period only starts to run if there is actual, subjective knowledge. This knowledge was present upon publication of the press release of the European Commission on 5 December 2012. According to the cartel participants, Vestel already had the required knowledge at an earlier date, but according to the Court, they were unable to make a reasonable case for that assertion. Therefore, on 26 November 2014, the subjective limitations period had not yet expired.

United Kingdom

- On the 18th of May 2018, UK Trucks Claim Limited (UKTC) applied to the UK's Competition Appeal Tribunal to commence collective proceedings against truck manufacturers Fiat Chrysler Automobiles N.V., CNH Industrial N.V., Iveco S.P.A., Iveco Magirus AG, and Daimler AG.

UK Trucks Claim Limited, a special purpose vehicle for truck purchasers, requested the specialist court's permission to act as the class representative. If the UKTC is awarded the collective proceedings order, it will attempt to claim follow-on damages subsequent to the European Commission's decision on the truck cartel. In its application, the UKTC requested that the court bring the collective proceedings on an opt-out basis, or alternatively, on an opt-in basis.

Germany

- In follow-on proceedings in the Grey Cement cartel II decision, the German Supreme Court rendered judgment on 12 June 2018 in the case of Kemmler Beton GmbH against HeidelbergCement AG and other cement manufacturers.[4] The (predecessor of the) plaintiff in this case deals in building materials and components and bought from the defendants, in the years 1993-2002, cement valued at approximately € 11 million. During that period, Heidelberg had entered into territorial and quota agreements with other cement manufacturers. Those cement producers were subsequently fined for collusive behaviour, initially in April 2003 by the Federal Cartel Office ('*Bundeskartellamt*'); this was rendered final and conclusive in 2013 by a decision of the Federal Court of Justice.

The topic of discussion was *inter alia* the defendants' defence that the claim was time-barred pursuant to German law in effect during 1993-2002 and 2003. Only since 2005 has German law provided for the suspension of the statute of limitations for follow-on cartel damages pending investigations carried out by the competition authorities. The defendants stated that the law in question was not applicable to the claimants claim, as the collusive conduct had occurred prior to 2005.

In this landmark judgment, the German Supreme Court rejected the defendants' position. The German Supreme Court ruled that the claimants could invoke the 2005 law and that their claims were thus not time-barred. Pursuant to this ruling, the plaintiffs in this case and plaintiffs in other cases can now bring claims to court that might otherwise have been time-barred.

[4] Bundesgerichtshof, 12 June 2018, case KZR 56/16.

2

Public law aspects of cartel damages

European Union

- On 12 June 2018, the European Court of Justice rejected an appeal brought by Nexans France SAS against a General Court decision in which its application for interim measures relating to the confidential treatment of certain information on its involvement in the power cables cartel[5] had been rejected.[6]

Nexans based its appeal on two grounds: first, that the General Court had refused to proceed from the premise that the information at issue was covered by professional secrecy, and second, that it had failed to accurately assess Nexans' right to seek an effective judicial remedy. The first grounds for appeal was rejected because the ECJ agreed with the General Court that when a grant of interim measures is sought to prevent the disclosure of alleged confidential information, the examination can only proceed from the premise that the information at issue is covered by professional secrecy if the applicant alleges that the information is covered by professional secrecy and that the conditions for a prima facie case have been met. According to the ECJ, the General Court had indeed assessed the merits of Nexans' claim to professional secrecy and was thus fully entitled to find that the present case failed to satisfy the conditions required for a prima facie case. As to the second grounds for appeal, Nexans argued that it was necessary to order the suspension of publication of the power cables decision until the lawfulness of the seizure of the information at issue had been verified pending the appeal. Nexans, however, failed to establish that the harm specifically resulting from the alleged infringement of its right to an effective remedy was separate from the harm it claims existed from being exposed to damage to its reputation and to actions for damages. Nor had Nexans provided sufficient evidence to prove the serious nature of the alleged harm. The second grounds for appeal was therefore also dismissed.

The Netherlands

- On 8 May 2018, the Trade and Industry Appeals Tribunal of the Netherlands ruled on an appeal lodged by construction company Janssen de Jong Infra B.V. against a fine of EUR 3 million imposed by the Netherlands Authority for Consumers & Markets (ACM) for violation of the cartel ban.

The appeal contested only the amount of the imposed fine, and not its basis. Janssen de Jong stated that because the fine had been set at ten times the amount of the basic fine, it was excessive. ACM argued that it had increased the basic fine to achieve the desired deterrent effect, noting that Janssen de Jong had already been fined a total of EUR 1.5 million previously and that those fines had apparently not prevented Janssen de Jong from continuing to violate the cartel ban. The ACM also considered that the interest of general prevention was best served by discouraging other companies from engaging in behaviour

[5] Case COMP/AT.39610 – Power cables.
[6] European Court of Justice, 12 June 2018, Case C-65/18P(R) (*Nexans France and Nexans v Commission*).

like that of Janssen de Jong. Although the court agreed with ACM that the fact that Janssen de Jong was a repeat offender could be a reason to increase the basic fine, ACM had not, according to the Tribunal, made a reasonable case for its assertion that circumstances forced it to set the fine at EUR 3 million. The Tribunal annulled the decision insofar as the court of first instance had determined the amount of the fine, setting a new amount for the fine itself. The Tribunal, seeking to comply with the Fining Code ("*Boetecode*"), deemed a fine of EUR 463,000 to be appropriate and proportionate in this case, thus reducing the fine imposed by the ACM by 85%.[7]

United Kingdom

- In Q1 2018, we reported that the Gallaher Group and Somerfield Stores, two parties active in the tobacco industry, had claimed that they too were entitled to reimbursement of fines paid after a decision of the Office of Fair Trading (OFT) had been overturned by the Competition Appeal Tribunal.

Earlier, RM Retail, another member of the alleged tobacco-pricing cartel, had mistakenly been reimbursed 2.7 million pounds by the OFT as part of a settlement deal; the OFT had given RM Retail an assurance that in the event of a successful appeal by other parties, it would be reimbursed an amount equal to the penalties it had paid. On 12 December 2011, six other parties that had not concluded deals with the OFT successfully challenged the penalties.[8]

Gallaher Group and Somerfield Stores decided to forego appeal of their own accord and neither was given the same assurances as RM Retail. The two companies argued they were entitled the same benefit RM Retail had been accorded due to public law requirements of fairness and equal treatment.
The Supreme Court, however, did not agree. In its judgment of 16 May 2018, the Supreme Court found that the Competition and Markets Authority (OFT's successor) had been justified in not reimbursing Gallaher Group and Somerfield Stores.[9]

Pondering whether it was irrational to reimburse the penalty paid by RM Retail, Lord Sumption found that "*it was not, because although the decision to repay TMR also was discriminatory, the discrimination was objectively justified.*"

The OFT had made a 'rational choice' in not replicating a mistake to the detriment of the public purse. Lord Biggs stated that "*[t]he OFT's decision to honour the assurance given to TMR, but not to replicate it in favour of the respondents, was both objectively justified and a rational response to the predicament which it faced*". According to Biggs, the OFT had to make a choice between unpalatable alternatives, with which the court should not interfere.

- Pfizer Inc and Flynn Pharma have successfully appealed fines imposed by Britain's Competition and Markets Authority (CMA) for charging the NHS unfair prices for an anti-epilepsy drug.[10] In a 2016 decision, the CMA found that Pfizer and Flynn had abused their dominant market position, ordering them to reduce their prices whilst imposing a fine of 90 million pounds.

Despite (partially) overturning the CMA's decision, the Competition Appeal Tribunal (CAT) nonetheless found much to agree with, confirming that CMA had been correct in

[7] Trade and Industry Appeals Tribunal (*College van Beroep voor het bedrijfsleven*), 8 May 2018, ECLI:NL:CBB:2018:141.

[8] Competition Appeal Tribunal 12 December 2011, [2011] CAT 41.
[9] UK Supreme Court, 16 May 2018, UKSC 2016/0185.
[10] Competition Appeal Tribunal, judgment of 7 June 2018, [2018] CAT 11.

finding that Flynn and Pfizer had each held a dominant position over the relevant period in their respective (narrowly defined) markets. The CAT did, however, set aside the part of CMA's decision relating to its finding of abuse, including the penalties imposed.

Nevertheless, the CAT also expressly stated that this was not meant to imply that no finding of abuse could be made in this case. Even though the CMA had misapplied the test for finding that prices were unfair, as laid down in the *United Brands* case, the CAT found that "*[t]he correct application of the United Brands test, involving the establishment of a benchmark price, a careful assessment of whether the prices charged were excessive, followed by an assessment of unfairness that took appropriate account of the various factors we have mentioned, including an overall judgment on price and economic value*" could still lead to a finding of abuse, particularly given the size of the price increase that had occurred.

According to the CAT, the CMA had not appropriately considered the right economic value for the anti-epilepsy drug and had also not sufficiently taken the situation of other, comparable products, into account. Therefore, the court found that CMA's overall findings of abuse of dominance were not well founded as a matter of law.

Although the CAT found that CMA had misapplied the test for unfair pricing, it refrained from taking a new decision on the alleged abuse. This would have required detailed consideration of further information, something the court was, in this case, not properly positioned to do. The CAT subsequently invited written submissions from the parties on whether to remit the matter to the CMA.

3

Fines and procedural regulations by the Commission and European Court of Justice

European Commission

- On 10 April 2018, the European Commission confirmed that its officials had carried out unannounced inspections that day in several Member States at the premises of companies active in the distribution of media rights and related rights pertaining to various sports events and/or the broadcasting thereof. The companies raided include Ziggo Sport and Fox. The Commission was concerned that those companies were participating in a cartel in violation of Article 101 TFEU.[11]

- On 24 April 2018, the European Commission published non-confidential versions of two separate decisions dated 21 February 2018. The first involved the sale of braking systems and the second the sale of spark plugs.[12] We elaborated on both cartels in Q1 2018.

- On 3 May 2018, the European Commission confirmed that its officials had carried out unannounced inspections in several Member States at the premises of companies active in the metal packaging sector on 24 April 2018. The European Commission had taken over the investigation from the German Competition Authority, the Bundeskartellamt, which had initially investigated the conduct of a number of those companies, finding that their suspected anticompetitive behaviour may have extended to markets in several other Member States besides Germany. The European Commission was concerned that the companies involved may have violated Article 101 TFEU.[13]

- On 3 May 2018, the European Commission published a non-confidential version of its decision of 26 June 2015 on cartels in the retail food packaging industry. The decision concerned five separate cartels involving foam trays; one of the cartels also involved rigid trays used for the retail packaging of fresh food such as meat and fish. The entities involved were found to have infringed Article 101 TFEU.[14]

[11] European Commission press release: Antitrust: Commission confirms unannounced inspections concerning distribution of sports media rights and other related rights, Brussels, 10 April 2018.
[12] European Commission, Competition case AT.39920 Braking systems, 21 February 2018; European Commission, Competition case At.401113 Spark Plugs, 21 February 2018.
[13] European Commission press release, Antitrust: Commission confirms unannounced inspections in the metal packaging sector, Brussels, 3 May 2018.
[14] European Commission, Competition case AT.39563 Retail Food Packaging, 24 June 2015.

- On 16 May 2018, the European Commission published a provisional non-confidential version of its decision of 21 October 2015 on the Optical Disk Drives cartel.[15] The European Commission had started an investigation in 2009, issuing a statement of objections in July 2012. In 2015, the eight cartel members, including Sony and Toshiba, were fined an amount of EUR 116 million.

- On 8 June 2018, the European Commission confirmed that its officials had carried out unannounced inspections in several Member States at the premises of companies active in the styrene monomer purchasing sector. Styrene monomer is a chemical product used as a base material in a number of chemical products such as plastics and rubbers. The European Commission launched the inquiry because it was concerned that those companies had violated antitrust rules, specifically the prohibition on cartels and restrictive business practices as laid down in Article 101 TFEU.[16]

European Court of Justice

- On 12 April 2018, Advocate General Melchior Wathelet delivered an Opinion in the appeal of Infineon Technologies against a decision of the General Court concerning its participation in the smart card chip cartel.[17] In the Opinion, Wathelet advises the European Court of Justice to set aside the decision of the General Court to uphold the €82.8 million fine imposed on Infineon Technologies and to send the case back to the lower court so that it can consider further evidence. Wathelet's Opinion addresses only one of the grounds put forward by Infineon - the lawfulness of the bilateral contracts concluded between Infineon and the other participants in the cartel. The fact that the General Court limited its examination to 5 of the 11 bilateral contracts challenged by Infineon gets called into question. According to Wathelet, whereas the General Court had been allowed to examine only five of those contracts for the purpose of establishing the existence of the cartel, the Court should have carried out an exhaustive review of all the contracts to determine whether the amount of the fine was commensurate with the gravity of Infineon's participation in the cartel. Examination of all 11 contracts might have led the General Court to determine that Infineon had not participated in all aspects of the cartel and thus that the amount of the fine imposed should be reduced.

- On 7 June 2018, the European Court of Justice (ECJ) rejected a claim for damages it had received from ORI Martin.[18] The claim stemmed from an appeal against a 2010 decision of the European Commission (EC) to impose fines on several companies for participating in a high-tensile steel wire cartel, including a subsidiary company of ORI Martin. As the parent company, ORI Martin was found jointly liable for the actions of its subsidiary and thus responsible for paying (part of) the fine. Both companies challenged that decision at the General Court of the EU, subsequently appealing the General Court's decision at the ECJ. After the ECJ had rejected both appeals, ORI Martin decided to sue the ECJ for EUR 13.3 million in damages for rejecting its appeal, arguing that the ECJ had distorted the substance of the claims in appeal concerning the application of the presumption that ORI Martin had exercised decisive influence on its subsidiary; the ECJ had failed to state its

[15] European Commission, Competition case AT.39639 Optical Disc Drives, 21 October 2015.
[16] European Commission press release, Antitrust: Commission confirms unannounced inspections in the styrene monomer purchasing sector, Brussels, 8 June 2018.
[17] Opinion of Advocate General Wathelet, 12 April 2018, Case-99/17P (*Infineon Technologies AG v European Commission*).
[18] European Court of Justice 7 June 2018, C-463/17P (*ORI Martin v European Court of Justice*).

reasons for rejecting that argument. The ECJ dismissed the appeal, finding that "the EU Judicature is not required to provide an account which follows exhaustively and one by one all the arguments put forward by the parties and that the reasoning may therefore be implicit on condition that it enables the persons concerned to know why the EU judicature has not upheld their arguments."

- On 20 June 2018, the EU General Court ruled on the appeals of Czech railway company České dráhy concerning a series of dawn raids carried out by the European Commission at its premises in April and June of 2016.[19] The General Court partially annulled the grounds for the search, finding that the inspection warrant cast too wide a net. The contested decision expanded the scope of inspection to include - in addition to potential infringements for which the Commission had reasonable grounds of suspicion entailing the abuse of a dominant market position by virtue of having engaged in predatory pricing practices on one particular route starting in 2011 - other forms of infringement of Article 102 TFEU on routes other than the one specified and prior to 2011. The General Court ruled that since the Commission lacked reasonable grounds to suspect the railway company of any form of abuse of its dominant position other than the alleged predatory pricing practices on the route specified, there were no grounds to expand the scope of the inspection warrant to include anything else. The railway company furthermore contested the substance of the decision on several grounds, asserting that the decision was arbitrary and disproportionate and that the inspection had amounted to an infringement of the right to respect for private life and the rights of defence; these pleas were, however, all rejected by the General Court. The remainder of the action was therefore dismissed.

[19] General Court, 20 June 2018, Case T-325/16 (*Ceske drahy v. European Commission*).

4

Fines and procedural regulations by national competition authorities

The Netherlands

- On 26 April 2018, the Netherlands Authority for Consumers & Markets (ACM) announced that it would end its investigation into the bunker industry. The bunker industry is active in the production, storage, and transportation of gas oil and fuel oil.[20] The oil is used as fuel by seagoing vessels.

In 2017, the ACM received notification of a possible bunker cartel comprising companies located in the delta formed by Amsterdam, Rotterdam and Antwerp. The ACM started an investigation that enabled it to observe the companies engaging in conversations about the desirability of price fixing agreements. Since not all the companies had been party to those conversations, it could not be determined that there was a cartel. The ACM has, however, made it very clear that such behaviour risks "crossing a line".

- In Q (2017-2) and Q (2017-3), we discussed the fine of EUR 583,000 imposed by the ACM in connection with the traction battery cartel. Midac, an importer of batteries, objected to the decision to impose a fine. On 4 May 2018, the ACM rejected Midac's objections.[21]

[20] ACM stops investigation into bunker cartel, 26 April 2018.
[21] ACM Decision, Rejection of objection against fine for importers of forklift truck batteries for price agreements, 4 May 2018.

- In Q (2017-2) and Q (2017-3), we discussed the fine of EUR 583,000 imposed by the ACM in connection with the traction battery cartel. Midac, an importer of batteries, objected to the decision to impose a fine. On 4 May 2018, the ACM rejected Midac's objections.[22]

Germany

- On 19 June 2018, the French and the German competition authorities (*Autorité de la concurrence* and *Bundeskartellamt)* launched a joint project on algorithms and their implications for competition.[23] According to the press release, the increasing use of algorithms by companies is an issue of considerable debate with regard to their effect on the competitive functioning of markets and, to a wider extent, on society. In light of that debate, the authorities decided to launch a project to "*analyze the challenges raised by algorithms and to identify conceptual approaches to meet them*". The authorities plan to publish a joint working paper upon completion of the project.

- On 30 April 2018, the Bundeskartellamt imposed fines totalling EUR 13.2 million on two companies engaged in a potato and onion packaging cartel for fixing prices charged to the Metro group, a German

[22] ACM Decision, Rejection of objection against fine for importers of forklift truck batteries for price agreements, 4 May 2018.

retailer active in the wholesale and retail sector.[24]

The companies concerned are Hans-Willi Böhmer Verpackung und Vertrieb GmbH & Co. KG (Böhmer) and Kartoffel-Kuhn GmbH (Kuhn). The activities of those packaging companies include purchasing the raw product, washing, sorting, packaging, and to some extent cold-storing the goods, culminating in selling the packaged potatoes and onions, primarily to the retail food sector.

The cartel was in operation from at least the beginning of 2005 until May 2013, at which point proceedings were initiated. Böhmer and Kuhn kept in regular contact by telephone, especially in the run-up to the weekly offer of packaged potatoes and onions (standard purchase) to the Metro group. During their telephone calls, the companies shared information regarding potato and onion purchase prices (so-called "raw product prices"), agreeing to use identical raw product prices for both potatoes and onions as the basis for the internal calculation of prices they would propose to Metro.

- On 27 April 2018, the Bundeskartellamt announced that it had referred its ongoing cartel proceedings concerning metal packaging to the European Commission.[25] The Bundeskartellamt has decided to discontinue the national investigation proceedings it initiated in Spring 2015 against several metal packaging manufacturers since the European Commission has initiated its own formal cartel proceedings. See footnote 14.

[23] Press statement of 19 June 2018 at the website of the Bundeskartellambt.
[24] Bundeskartellamt, 30 April 2018, B11-21/15.
[25] Bundeskartellamt, press release 27 April 2018, Cartel proceeding against metal packaging manufacturers: Bundeskartellamt refers case to the European Commission.

The Bundeskartellamt initiated competition law investigation proceedings against a number of metal packaging manufacturers on the basis of an anonymous tip. Starting in March 2015, the Bundeskartellamt conducted a number of dawn raids at the production sites of various metal packaging manufacturers; it emerged that the infringements were not limited to the German market but also affected other EU member states.

The legal basis for the referral of investigation proceedings to the European Commission is regulated by European competition law, Regulation 1/2003 in particular, and the rules applying to the European Network of Competition Authorities.

The Bundeskartellamt noted in its press release that certain legal restrictions in place in German law until mid-2017 might have made it impossible for the German enforcement authorities to prosecute the offences.

United Kingdom

- On 12 April 2018, the British Competition and Markets Authority (CMA) published a Guidance entitled *Joint Ventures and Competition Law: dos and don'ts*. This short guide sets out clear dos en don'ts to help businesses stay on the right side of competition law when part of a joint venture.[26]

- On 25 May 2018, the CMA announced that it had imposed fines on CPL and Fuell Express, two major suppliers of bagged household fuel to large national supermarkets and petrol stations. They violated competition law by rigging competitive tenders to supply the retailers Tesco and Sainsbury's. For each tender, either CPL and Fuell Express would agree to submit a bid so high that it was certain to be rejected; the other supplier would thus get to keep that customer. A fine of 3.4

[26] Press statement of 12 April 2018 at the website of the Competition and Market Authority.

million pounds was imposed for taking part in this market sharing cartel.[27]

[27] Press statement of 25 May 2018 at the website of the Competition and Market Authority.

5

Team

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Louis Berger is a founding partner of bureau Brandeis. He is an expert in corporate and commercial litigation with more than 20 years of extensive experience in this field. He is recognized for his legal strategy and his ability to think beyond the law itself. Louis is experienced in (international) litigation and advising in (potentially) litigious situations. He has extensive experience as local counsel in multi-jurisdiction litigation. This part of the practice involves complex and cross-border disputes that are brought to court in multiple jurisdictions. Before joining bureau Brandeis, Louis was a partner at Spigt Litigators, a prominent firm renowned in the Netherlands for its outstanding litigation practice.

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bureau Brandeis is a Dutch law firm which specializes in complex litigation. bureau Brandeis is a boutique firm, but at the same time also one of the largest firms in the Netherlands with a 100% focus on litigation. We litigate amongst others corporate, commercial, and competition disputes. We represent our clients during all stages of proceedings, before all courts and tribunals. From courts of first instance to the Dutch Supreme Court and the European Court of Justice.

We are a genuinely independent law firm. We are outspoken about the causes we represent. In order to avoid conflict of interest, we choose not to represent banks, big accountant firms, governmental bodies and supervising authorities.

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