

## Greenberg Traurig January 2022 Competition Currents: Netherlands, Poland and Italy

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### The Netherlands

#### **Dutch Competition Authority (ACM) decisions, policies, and market studies.**

*ACM prohibits proposed acquisition by Mediq of Eurocept Homecare.*

On Dec. 23, the Dutch Competition Authority (ACM) [blocked](#) (link in Dutch) the proposed acquisition by Mediq of Eurocept Homecare after an in-depth review. Mediq is an international supplier of medical products and health care solutions. Eurocept Homecare provides medical-specialty care in patient homes in consultation with health care professionals. The ACM concluded that the acquisition would give Mediq a very strong position in the field of ambulatory electronic infusion pumps for patients at home and that the acquisition would lead to higher prices and lower quality services. Therefore, the ACM decided not to grant a license (clearance) for this acquisition.

*ACM prohibits proposed acquisition by Bergman Clinics of Mauritskliniek.*

On Dec. 24, the ACM [announced](#) (link in Dutch) that after an in-depth review, the Bergman Clinics may not acquire Mauritskliniek. Bergman Clinics and Mauritskliniek are independent treatment centers that provide scheduled medical-specialist care. The ACM concluded that Bergman Clinics already has a particularly strong position with respect to health insurance companies, which would become even stronger if the acquisition were permitted, potentially leading to further price increases. The ACM reiterated that while independent growth is possible, when a dominant party takes over other smaller health care providers, the growth could be limited.

*ACM announces draft guidance on health care information technology.*

On Dec. 20, the ACM [announced](#) (link in Dutch) that in 2022 it would publish draft guidance relating to IT in healthcare, clarifying the framework and obligations for IT suppliers and other market participants arising from competition rules. The ACM reiterated that, within the limits of the competition rules, there are possibilities for cooperation between hospitals to strengthen their negotiating position vis-à-vis IT suppliers (this statement is similar to the position the ACM has taken previously on [sustainability agreements](#)). Currently, hospitals are dependent on their current health care information system/electronic patient record (HIS/EPD) provider. Because switching to another

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HIS/EPD system is complicated and expensive, suppliers are in a strong position, which can raise health care costs and reduce innovation. Ultimately, according to ACM, patients pay the price for a “vendor lock-in” due to inefficiencies or lower quality of care.

*ACM finalizes decision to deregulate market for high-quality wholesale access (HWT).*

On Dec. 23, the ACM [finalized](#) its decision to abolish the regulation of the market for high-quality wholesale access (HWT). The European Commission assessed ACM's decision and issued no comments. On the HWT market, telecom operators extend access to their networks to other telecom operators. These types of access services are high quality and reliable, catering exclusively to business end-users. ACM's market analysis showed that the HWT market does not have any bottlenecks resulting from a single market participant's market power, and only limited use is being made of the regulated access. Therefore, the ACM concluded that the market can also function well without regulation, while the ACM will continue to closely follow developments on the business market and this access market.

*ACM announces new European rules will offer consumers better protection when making digital purchases.*

Sellers will have to ensure that consumers can use their purchases properly and safely during the normal lifespans of those products. Therefore, sellers are also required to provide product updates for an agreed, reasonable period. If the product concerns an ongoing service, it must function properly throughout the period of use. In addition, the provider must repair any defects free of charge. On Dec. 17, the ACM [announced](#) that new European rules offering consumers protection if something is wrong with their (digital) purchases will come into effect in 2022. These rules are set out in the EU Sales of Goods Directive and the EU Digital Content Directive and will come into effect as soon as their implementation into Dutch law has been completed. In addition, these rules take into account that, when shopping online, consumers increasingly make purchases outside of their own countries, and that more products and services have digital elements. The “legal guarantee” (i.e., the right of consumers to products without defects) will thus also apply to products with a digital element (such as “smart” products), to digital services (such as streaming), and to digital content (such as e-books).

*Supermarket chains Plus and Coop may merge under certain conditions.*

On Dec. 22, the ACM [decided](#) (link in Dutch) that supermarket chains Plus and Coop may merge subject to certain conditions. Together, the two supermarket chains have approximately 600 supermarkets, and additionally, Plus controls the Spar supermarket chain, raising the total number of supermarkets between Plus and Coop to approximately 1,000 stores. At the national market level, the ACM does not envisage competition problems, as strong competitors such as Albert Heijn and Jumbo remain. At the local retail level, however, the ACM requires 12 supermarkets to be divested to a competitor to leave sufficient competition from other supermarkets within the local market.

*ACM investigates possible cartel in the food processing sector.*

On Dec. 1, the ACM [announced](#) that it is investigating a possible cartel in the food processing sector. As part of that investigation, the ACM conducted unannounced inspections (so-called “dawn raids”) at several food processing companies in the Netherlands, and also at a company located outside the Netherlands, with the help of the agency in that other country.

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According to the ACM, the food processing companies allegedly conspired to fix the purchase prices of agricultural products, and the prices of their own goods. Additionally, the companies are accused of concluding anti-competitive market sharing agreements. As is standard practice in the Netherlands, the ACM did not disclose the names of any of the companies allegedly involved in the cartel and/or raided.

## Poland

### **Commitments imposed on Benefit Systems aim to increase competition in the fitness industry.**

Benefit Systems is a major operator of a benefits program offering access to sports and leisure facilities, and its own fitness club chain. The UOKiK president suspected that Benefit Systems entered into anti-competitive agreements with certain fitness club chains. The agreements aimed to ensure Benefit Systems' exclusivity in cooperating with certain fitness clubs and ensure that Benefit Systems would not cooperate with fitness clubs other than those covered by the agreement.

In its Dec. 7 [decision](#), the UOKiK president accepted Benefit Systems' commitments to implement certain measures to increase competition, including:

- to offer at least one other benefits program operator access to certain large fitness clubs on fair, reasonable, and non-discriminatory terms,
- to publish on the Benefit Systems website a list of all criteria required for inclusion of fitness clubs in the benefits programs operated by Benefit Systems, and
- to cooperate on non-discriminatory terms with all the clubs that meet the criteria.

The decision is not final, as it can be appealed before the Court of Competition and Consumer Protection. If finalized, the decision would determine timeframes for implementing the commitments and enable Benefit Systems to avoid a fine of up to 10% of the company's turnover in the preceding year.

### **PLN 76-million fine imposed on Eurocash for unfair use of contractual advantage.**

On Nov. 30, 2021 the UOKiK president issued decision no. RBG-3/2021, imposing a fine exceeding PLN 76 million (approx. EUR 16.5 million, USD 20.2 million) on Eurocash for unfair use of contractual advantage in its relationships with entities supplying food and agricultural products to retail stores. Eurocash is a major fast-moving consumer goods wholesaler in Poland. It is also active in retail through various retail store chains.

Eurocash was accused of charging suppliers of agricultural and food products with numerous unjustified fees. The suppliers not only received no information on the cost and results of certain services for which they were charged but also paid for services never rendered or that should have been provided without additional charges.

According to the UOKiK president, none of the questioned fees constituted remuneration for the diligent provision of services to suppliers; rather, they simply served as a means to reduce the consideration paid by Eurocash to its suppliers. The decision of the UOKiK president is not final, as it

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can be appealed before the Court of Competition and Consumer Protection.

## Italy

### **Italian Competition Authority (ICA) fines Unieuro, Mediaworld, Leroy Merlin and Monclick for a total of over 10 million euros for unfair commercial practices.**

On Dec. 23, 2021, the Italian Competition Authority (ICA) concluded three proceedings for unfair commercial practices against Unieuro S.p.A. and its subsidiary Monclick, Leroy Merlin Italia S.r.l. and Mediamarket S.p.A. (Mediaworld). The companies were fined a total of EUR 10.9 million.

The investigations established that the four companies—conducting e-commerce activity on their own corporate websites for consumer electronics products and other home products—acted in a manner the ICA considered unfair against consumers. First, the ICA found the companies disseminated inaccurate and misleading information on the availability and prices of products sold online, as well as on delivery times. In other cases, the companies charged payment before the conclusion of the contract or unilaterally cancelled consumer orders. Second, the ICA found the companies delayed or failed to deliver products purchased and paid for by consumers, provided misleading information about the status of shipments, or even delayed and created obstacles in relation to the exercise of consumer rights of withdrawal and refund. In addition, the companies had suspended numerous activities of customer care during the pandemic.

The ICA qualified such conduct as misleading and aggressive towards consumers, given that consumers were deceived and forced to agree to unduly limit their contractual rights. The ICA also stressed that e-commerce must be developed in a balanced manner so that consumer rights, particularly during the pandemic when reliance on online channels is heightened, are fully and clearly articulated.

### **Italian Competition Authority updates state of consumer and retail spending in meeting with consumer associations.**

On Dec. 15, 2021, ICA President Rustichelli met with consumer and user associations to present highlights of 2021 ICA activity and results. President Rustichelli focused on ICA's strong commitment to consumers, particularly during the pandemic. According to Mr. Rustichelli, consumers were particularly affected by the negative economic effects of the pandemic.

He noted that between January 2019 and July 2021, ICA activity led to economic relief for more than 580,000 consumers, with more than EUR 34 million returned. In addition, Mr. Rustichelli stressed the crucial role of consumer associations in reporting to the ICA possible misconduct, ensuring the continuity of the Authority's efforts to protect the most vulnerable categories in the market.

In addition, through proposed legislation the government has followed several ICA suggestions to strengthen the merger control system. First, the government has proposed that ICA be given the power to request notification of certain transactions that do not exceed the turnover thresholds set forth in Law no. 287/90. Moreover, the government has proposed to amend Article 9, of Law no. 192/1998 by establishing a presumption of economic dependence upon operators with a commercial relationship with providers of intermediation services via digital platforms which "play a decisive role in reaching end users and/or providers, also in terms of network effects and/or data availability." The bill then indicates certain conduct that may constitute an abuse of economic dependence.

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