

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

Article By:

Greenberg Traurig's International Trade & Investment Practice

---

## The Netherlands

### A. Dutch NCA decisions, policies, and market studies.

#### ***1. ACM fines locksmith service provider and one of its executives for misleading and aggressive practices.***

On Jan. 14, 2022, the Dutch Competition Authority (ACM) [fined](#) KeyService Nederland/Plumberservice, and one of its executives for misleading consumers into believing they would be dealing with a qualified local locksmith. The company's website gave the false impression that it checked the quality of the locksmiths it dispatched. In addition, the company listed fake positive reviews on its website, did not provide cost information in advance, and sometimes pressured consumers into immediately paying hefty bills, which could amount to € 2,200 for just a few minutes of work. The ACM found that, in reality, KeyService dispatched random locksmiths from its network, and its intent was to make as much money as possible in the shortest amount of time. The ACM fined the company € 200,000 and the executive € 50,000.

#### ***2. ACM continues campaign against misleading sustainability claims in the energy sector.***

In May 2021, the ACM asked more than 60 consumer-supplying energy providers to critically examine their sustainability claims using the so-called five rules of thumb for honest sustainability claims. The ACM subsequently checked the sustainability-related claims made by 10 major energy suppliers for accuracy, clarity, and verifiability. Based on its findings, the ACM [announced](#) Jan. 25, 2022, a follow-up investigation into two energy suppliers where the ACM found the highest number of misleading sustainability claims, which the ACM claims lead to a distortion of competition.

#### ***3. Dutch Ministry of Economic Affairs and Climate Policy gives preferential treatment to state-controlled investment fund.***

On Jan. 24, 2022, the ACM [announced](#) its conclusion that the Dutch Ministry of Economic Affairs and Climate Policy (EZK) gave investment fund Dutch Venture Initiative (DVI) preferential treatment over other investment funds by providing DVI assistance with fundraising activities. DVI is a Dutch state-controlled entity, as EZK can determine DVI's strategy. Since 2012, EZK has granted DVI subsidies

---

totaling € 230 million. The ACM concluded EZK has sought to raise investor interest in DVI. As such, EZK provided DVI a service that it did not offer to other competing businesses. According to the ACM, this has impeded fair competition between DVI and other private investment funds, which is prohibited under the Dutch Market & Government Act.

#### ***4. ACM indicates travel industry must present prices that include all costs.***

On Jan. 20, 2022, the ACM [stated](#) its view that tour operators often use unclear prices. Tour operators that offer accommodations or trips must include in their prices all costs, including any supplemental costs. Over the past few months, the ACM has checked the websites of various tour operators, revealing the advertised price often does not mention or include the additional costs. In addition, the ACM found the websites do not clearly present such costs. It is common to present additional costs behind the “information” symbol, which practice, according to studies the ACM cited, is not sufficiently clear to consumers, meaning that in practice consumer do not read the information. The ACM therefore sees the use of this symbol as non-transparent.

#### ***5. ACM indicates in-depth review of proposed merger between RTL and Talpa is necessary.***

On Jan. 28, 2022, the ACM [announced](#) a further and extensive investigation in relation to the proposed merger between RTL and Talpa, two major media companies. According to the ACM, the proposed merger may have negative effects on price, quality, and innovation. RTL and Talpa compete for television show procurement and production, television channel selection and distribution, and television channel ad sales. ACM further notes that, combined, the two companies would have many commercial television channels, as well as various production companies that produce and sell television shows, and together, they would be by far the largest provider of airtime for television ads in the Netherlands.

RTL and Talpa are now applying for a merger license—the equivalent to a Phase II review—and the ACM will supplement its investigation of the proposed merger with a focus on price effects, show quality effects, and television channel transmission.

### **B. Dutch Courts**

#### ***1. Court of Appeal rules on quantification of damages due to competition law violation.***

The Court of Appeal issued its [opinion](#) in a damage-quantification procedure for the Chamber of Commerce’s (KvK) violation of a competition prohibition. From 2000 until 2006, Easystart B.V., in a joint venture with Visionplanner B.V. (together, Easystart), had an agreement with the KvK to offer a software program to the KvK with which business plans could be drawn up. This software was available as a sales channel, and Easystart advertised on its own website stating its product was recommended by the KvK. In addition, the KvK referred to Easystart’s products on its website.

However, the KvK also offered its own competitive software program from 1996 until 2006. In November 2006, Easystart ordered the KvK to stop offering its own software due to a violation of Article 30 of the KvK Act (the competition prohibition), stating Easystart violated the agreement. By its judgement of 16 September 2009, the District Court of the Hague ruled in favor of Easystart and ordered the KvK to pay compensation to Easystart for the damage incurred as a result of this unlawful act.

On Dec. 28, 2021, the Court of Appeal ruled on the amount of damages KvK had to pay for the tort.

---

The Court stated that Easystart's loss should be calculated on the total price of business plans sold by KvK, multiplied by the market share of Easystart. This resulted in damages of almost € 500,000.

## **2. Court rules on scope of joint hearing.**

Vestel's legal entities based in Turkey and Germany have requested that the District Court of the Hague, inter alia, declare as a matter of law that the proposals of Philips, Advance, GEVC and IP Bridge (collectively, Philips c.s.) to license standard essential patents (SEPs) notified for the High Efficiency Video Coding (HEVC) standard from the Access Advance Patent Pool are not fair, reasonable, and non-discriminatory (FRAND). Given a landmark decision by Court of Justice the European Union (CJEU), the FRAND defense is treated as part of abuse of dominant market position claim.

For the moment, the SEPs and FRAND licensing dispute before the District Court of the Hague focuses on the competence of the Court. Philips c.s. has contested the Dutch courts' international jurisdiction against co-defendants Advance, GEVC, and IP Bridge, which are established in the United States and Japan respectively. According to Philips c.s., it follows from Article 6 of Regulation (EU) 1215/2021 that the jurisdiction vis-à-vis these defendants—who are not domiciled in the territory of an EU Member State—is governed by the Dutch common rules on international jurisdiction.

On Jan. 18, 2022, the District Court of the Hague published its decision that Article 8(1) of Regulation (EU) 1215/2021 can be interpreted broadly, and that to have jurisdiction over the non-EU defendants, the District Court must look at the true relationships between the parties in the dispute at hand. As the claims and the grounds for the claims against the defendants are identical and cover the same territory, the District Court of the Hague deems itself internationally competent to deal with the dispute.

## **Poland**

### **A. Dawn raids on radio advertising market.**

In January 2022, the Polish Office for Competition and Consumer Protection (UOKiK President) inspected the premises of the main radio broadcasters in Poland. The regulator launched proceedings to investigate the activities of radio groups that are members of the Radio Research Committee (so-called "KBR"). The inspections are the result of signals the UOKiK President received from various sources, including under the whistleblower program.

KBR brings together competing radio groups, the largest commercial radio broadcasters. The members of KBR jointly commission and finance the Radio Track survey, carried out by an external entity, that is a basis for preparing lists of radio station listenership, which any interested party (not only KBR members) may purchase. Interested parties may use the Radio Track survey to evaluate radio station advertising time which, according to the UOKiK President, can be used as a "settlement currency" on the radio advertising market for negotiations with media houses.

According to the President, the proceedings aim to verify whether there may be an unlawful exchange of information or anti-competitive practices within KBR in terms of audience research, the joint planning of advertising by radio stations, and advertising bundling. At this stage, the regulator is not conducting proceedings against specific entities.

### **B. Fines for truck dealer companies and their managers.**

---

On Jan. 12, 2022, the UOKiK President issued two decisions imposing fines on six dealer cartels and eight of their managers for a total of approximately EUR 26.5 million. DAF truck-dealer collusion meant vehicle purchasers had no free choice of dealer and were overcharged for years.

### **1. *Conspiracy to allocate geographic markets.***

In the first decision, the UOKiK President concluded that five companies had made a market-sharing agreement restricting competition by jointly agreeing that each would sell DAF vehicles in a specific area and would not compete for customers in other parts of Poland. The truck dealers exchanged information about prices and, in some instances, also about tenders. As a result, a potential buyer could only buy DAF vehicles at a certain price from a particular seller and could not find a less expensive option in another part of the country. According to the UOKiK President's decision, the collusion lasted for at least seven years and the truck dealers had acted with full knowledge and the unambiguous intention not to compete with each other.

The highest fine imposed in these proceedings was approximately EUR 9.8 million. Two of the parties involved benefited from the leniency program and had their fines reduced by 50% (their fines were only approximately EUR 0.4 to 1 million). In addition, UOKiK established that managers of the fined companies were active in the agreement restricting competition by, inter alia, disciplining their salespeople to adhere to the arrangements, even under the threat of dismissal or withholding of remuneration. Consequently, the UOKiK President imposed fines on eight managers in the joint amount of approximately EUR 370,000.

### **2. *Bid-rigging for public purchases.***

The second decision concerned bid-rigging practices between DAF dealers (two of whom were also fined in the decision summarized above). The UOKiK President determined that three truck dealers divided the market for DAF vehicles between themselves. They had jointly agreed that each would compete in public tenders only in a certain territory and would not bid in the areas assigned to the other parties to the agreement. The highest fine in this decision was approximately EUR 280,000.

### **C. Initiation of antitrust proceedings against Kärcher.**

In January 2022, the UOKiK President initiated antitrust proceedings against Kärcher due to suspicions that Kärcher may have been fixing for many years the retail prices of its products with distributors. Kärcher is a global German company that mainly manufactures cleaning equipment such as pressure washers, vacuum cleaners, and steam cleaners. UOKiK suspects the company set retail prices for its products in consultation with its dealers since the beginning of its operations in Poland in the late 1990s—at first in both brick-and-mortar shops and online, and later (after 2005) mainly online.

According to the UOKiK President, evidence shows Kärcher's cooperation agreements with its distributors contained provisions according to which distributors could sell products only on terms Kärcher set; thus their clients could not buy them cheaper. Distributors who sold at lower prices could be subject to penalties such as shortening of payment terms or, ultimately, termination of cooperation agreements. Vertical price-fixing arrangements (resale price maintenance) are considered among the most serious restrictions of competition. If UOKiK confirmed the evidence, Kärcher may face a financial penalty up to 10% of its turnover. UOKiK may fine the managers responsible for collusion up to approximately EUR 435,000.

## Italy

### **A. ICA fines operators for entering anti-competitive agreement in maritime transport market.**

On Dec. 21, 2021, the Italian Antitrust Authority (ICA) fined several companies operating in the marine transport of flammable products and waste in the Gulf of Naples for entering into an anti-competitive agreement, in violation of Article 2 of Law no. 287/1990 (corresponding to Article 101 TFEU). Following the complaints from several municipalities, consumers associations, and oil companies, and after several inspections, ICA found the shipping companies had colluded in order to allocate services and routes, to increase fees charged and establish the conditions for their operation, dividing revenues based on the historical shares of shipowners.

The Authority did not deem suitable the commitments the entities under investigation offered, including the commitment to refrain from any form of concerted action and the voluntary application of price caps to transport services. The ICA established the conduct at issue constituted a single “overall infringement of competition,” resulting from the intentional collaboration of all companies involved; therefore, the ICA found the conduct amounted to a single, complex, and continuous agreement restricting competition.

ICA imposed a fine of more than 1.25 million EUR. The companies have now six months to appeal to the Lazio Regional Administrative Tribunal.

### **B. ICA imposes approximately 5 million EUR in fines on nine companies for aggressive and misleading commercial practices.**

On Jan. 26, 2022, the ICA fined nine companies a total of about five million EUR for aggressive and misleading commercial practices. ICA issued the measures between July and October 2021, but published them in the January 2022 official bulletin. The ICA examined conduct consisting of unsolicited inclusion (and subsequent requests for payment) of micro-enterprises in the investigated companies’ databases. The different types of conduct were, in fact, all based on the micro-enterprises’ fear of being disadvantaged by failure to comply with advertising requirements, falsely described as mandatory.

In particular, the misleading practices ranged from covert subscription to expensive advertising services to the request to fulfill fictitious legal obligations or sanctions (e.g., from the Chamber of Commerce or WIPO) or the request for money that appeared to originate with the organizing body of trade fairs in which the company had participated. In most cases, these requests were followed by numerous attempts to collect the sums unjustifiably demanded through reminders, warnings, and threats to initiate costly international legal actions.

©2025 Greenberg Traurig, LLP. All rights reserved.

---

National Law Review, Volume XII, Number 45

Source URL: <https://natlawreview.com/article/greenberg-traurig-competition-currents-february-2022-netherlands-poland-and-italy>