

# **Expanding the scope of liability - fining individuals**

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# Dutch competition law system and NMa enforcement (powers)

- ☎ **NMa established in 1998 to enforce Dutch Competition Act**
- ☎ **Administrative enforcement regime**
- ☎ **Powers to impose fines and orders with penalties, in the case of non-compliance, on undertakings**
- ☎ **Focus on serious cartel investigation**



# Developments in NMa enforcement (powers)

- ☎ Since October 2009 new fining guidelines
- ☎ Increasing fines for cartel behaviour
- ☎ Reflection of principle of high trust
- ☎ Focus on clearly harmful cartels
- ☎ But how high can we go and to what effect?



# Developments in NMa enforcement (powers)

- ☎ Initially limited powers to levy fines on individuals
- ☎ In October 2007 extended powers based on art. 51 Dutch Penal Code
- ☎ Individuals who supervised the violation or gave orders for violation could be fined
- ☎ Fines up to 450.00 euro



# Liability of individuals

- ☎ Individual could be punished for :  
(1)giving orders or carrying out plans (2)hear all, see all, say nothing
- ☎ Individual must had a certain knowledge of the conduct and a certain degree of intent
- ☎ No limitation to the category of persons



# Liability of individuals

 **NMa conditions for liability of an individual:**

- Enough proof against the individual
- Strong evidence of the infringement
- The infringement is a serious one
- The individual(s) is/are representative



# Cases of individual fines: Koninklijke Wegener NV

- ☎ **NMa imposed a fine on a media company for failing to comply with an instruction**
- ☎ **Additionally NMa levied fines on five executives (150.000 - 350.000 euro)**
- ☎ **The executives were appointed to control the compliance with the instruction**
- ☎ **The executives knew about the non-compliance, had the position to prevent/stop the conduct, but did not**



# Cases of individual fines: Janssen de Jong and WBL

- ☎ **NMa imposed fines on two road construction companies for bid-rigging**
- ☎ **The NMa additionally imposed individual fines on three executives (10.000 en 250.000 euro)**
- ☎ **Two executives were entering into the agreements by themselves and one was supervisor with knowledge of the conduct**



# Cases of individual fines: Landelijke Huisartsen Vereniging

- ☎ **NMa imposed fines on the Dutch association of general practitioners**
- ☎ **They restrained the freedom of establishment of general practitioners**
- ☎ **Additionally the NMa imposed fines on two officials from the association (25.000 and 50.000 euro)**
- ☎ **These officials were responsible for the policy of the association**



# Effectiveness individual fines

- ☎ Experience is as yet limited
- ☎ Possible less effectiveness because of:
  - payment of the fine by the company
  - possibility of insurance
- ☎ Other penalties? - disqualification order or trading prohibition, imprisonment

