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# Bird & Bird & The New Belgian Competition Act: Tougher Enforcement Ahead?



*A new Belgian Competition Act is due to come into force in September of this year. The main practical features of the act are a simplification of the structure of the Competition Authority; a streamlining of the procedure including interim measures; and the introduction of settlements and of sanctions on individuals. No significant changes have been made to the merger control procedure.*

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On 21 March 2013, the Belgian Senate approved the new Belgian Competition Act, paving the way for its entry into force in September. The key aim of the Act is to enable a more efficient enforcement of competition law in Belgium, through a simplified Authority and shorter procedures.

## What changed?

### A new structure

The Belgian Competition Authority used to be composed of three distinct parts, with a tribunal adopting the decision. It will now be simplified to form a single administrative authority, with an investigative and a decision-making arm, resembling the French *Autorité de la Concurrence*.

As before, the investigative phase will be in the hands of competition prosecutors (*Auditoraat/ Auditorat*), while final decisions are taken by the Competition College (*Mededingingscollege/ Collège de la concurrence*). A management committee, composed of the president, the competition prosecutor-general, the chief economist and the head of legal, will be in charge of setting enforcement priorities.

### Streamlined procedures

The procedure for restrictive practices was widely seen as slow and burdensome, with procedural disputes often taking a more prominent role over substantive ones. The new procedure aims to streamline it, amongst others, with the introduction of stricter time limits for each procedural step.

Key moments in the procedure will be the statement of objections, followed by a draft decision and a hearing, before the final decision is taken. Overall, the investigation is expected to take about 24 months.

## Personal liability, settlements and interim measures

The deterrent effect of ever-increasing fines on companies is regularly questioned. Indeed, it is often individuals who organise a cartel, keeping it secret even inside their own organisation. The new Act tackles this issue by introducing administrative fines of up to €10,000 on individuals. It stayed clear of introducing criminal sanctions or director disqualifications. However, the reputational damage of a sanction is expected to be more deterrent to the individual than the actual fine.

The new Act also introduces a settlement procedure, following the example of the European Commission. This procedure is open to all kinds of antitrust cases, including dominance investigations, while it is limited to cartels at EU level. Parties to an investigation will be able to settle cases, admitting the infringement and receiving a reduction of the fine of 10%. Interestingly, a further reduction of the fine may be awarded where companies voluntarily compensate the victims. With this innovative tool, the new Act encourages companies to compensate victims early on, instead of waiting for follow-on damage actions.

A faster procedure has also been created for interim measures. Such decisions can now be taken within two to four months and will take place directly before the Competition College.

## Price Regulation

New rules regarding the role of the "Price Observatory" are more controversial. While this price-monitoring body already exists today, it can now refer cases to the Competition Authority when it detects 'problems' regarding prices and/or margins. The Competition College may then impose measures, including the freezing of prices in the sector for up to six months.

# What does it mean?

Companies active in Belgium should expect more competition investigations, and fines, in the coming years. While this increases regulatory risks, it also creates opportunities for victims of anticompetitive behaviour, as competition complaints should be dealt with more efficiently.

The new Act, and in particular the introduction of personal sanctions, provides an excellent opportunity to remind employees of the importance of competition law compliance in their daily business. It is an ideal time to verify the company's competition law compliance procedures and to ensure that all relevant personnel have received tailored training.

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