

0	STEPS:	If:	Then:	More info
1	STEP 1: IS THERE AN UNDERTAKING WITHIN THE MEANING OF THE DUTCH COMPETITION ACT (Mw)?			
	Is there an undertaking that carries out an economic activity?	<i>No</i> ►	<i>Mw does not apply</i>	Marg. 12
	Yes ▼			
2	STEP 2: IS THERE AN AGREEMENT WITHIN THE MEANING OF THE DUTCH COMPETITION ACT?			
	Is there an agreement between undertakings?	<i>No</i> ►	<i>Mw does not apply</i>	Marg. 13 - 17
	Yes ▼			
3	STEP 3: HAS THE AGREEMENT BEEN EXEMPTED?			
3.1	a) Are more than eight undertakings involved?	Yes	<i>Go to 3.2</i>	Sec. 7 Mw Marg. 18 - 25
	<i>No</i> ▼			
	b) Do the activities of the undertakings involved primarily involve the supply of goods?			
	Yes (the activities primarily involve the supply of goods) ▼			
	Does the combined turnover exceed EUR 5,500,000?	Yes	<i>Go to 3.2</i>	Sec. 7 Mw Marg. 18 - 25
	<i>No</i> ▼			
	<i>Agreement is permitted</i>			
	<i>No</i> (the activities do not primarily involve the supply of goods) ▼			
	Does the combined turnover exceed EUR 1,100,000?	Yes	<i>Go to 3.2</i>	
	<i>No</i> ▼			
	<i>Agreement is permitted</i>			
3.2	a) Does the combined market share of the undertakings involved in the agreement exceed 5% on any of the relevant markets?	Yes	<i>Go to 3.3</i>	
	<i>No</i> ▼			
	b) Does the combined turnover of the goods or services involved in the agreement EUR 40,000,000?	Yes	<i>Go to 3.3</i>	
	<i>No</i> ▼			
	<i>Agreement is permitted</i>			
3.3	Does the agreement fall under the Decision on exemption of combination agreements?	Yes	<i>Agreement is permitted</i>	15 Mw Marg. 28 www
	<i>No</i> ▼			

	Does the agreement fall under the Decision on exemption of industry protection agreements?	Yes	Agreement is permitted	15 Mw Marg. 28 www
	<i>No</i> ▼			
	Does the agreement fall under the Decision on exemption of collaborative agreements in the retail industry?	Yes	Agreement is permitted	15 Mw Marg. 28 www
	<i>No</i> ▼			
	Is the agreement a collective labor agreement?	Yes	Agreement is permitted	16 Mw Marg. 28 www
	<i>No</i> ▼			
	Is the agreement an agreement in an industry between one or more employers' organizations and one or more employees' organizations, exclusively related to pensions?	Yes	Agreement is permitted	16 Mw Marg. 28 www
	<i>No</i> ▼			
	Is the agreement an agreement or decision of an organization of free professionals regarding exclusively the participation in a professional scheme?	Yes	Agreement is permitted	16 Mw Marg. 28 www
	<i>No</i> ▼			
	Does the agreement fall under a European block exemption?	Yes	Agreement is permitted	12/13 Mw Marg. 36 - 37
	<i>No</i> ▼			
4	STEP 4: WHAT IS THE OBJECTIVE OF THE AGREEMENT?			Marg. 41-44
	Is it a price-fixing agreement?	Yes	Go to step 6	Marg. 42
	<i>No</i> ▼			
	Is it a market-sharing agreement?	Yes	Go to step 6	Marg. 43
	<i>No</i> ▼			
	Does the agreement involve production restrictions or bid-rigging?	Yes	Go to step 6	Marg. 43
	<i>No</i> ▼			
	Is the objective of the agreement to refuse supply (boycott)?	Yes	Go to step 6	Marg. 44
	<i>No</i> ▼			
5	STEP 5: WHAT IS THE ASSESSMENT OF SPECIFIC ARRANGEMENTS?			
5.1	Does it involve recommendations of a trade organization to its members?	<i>No</i>	Go to 5.2	Marg. 46 -60

	Yes ▼	Is it purely about promoting the undertakings' interests, education, acting as a point of contact, carrying out studies, or improving quality?	Yes	Agreement is permitted	Marg. 48
	No ▼	Do the arrangements concern suggested retail prices and tariffs, including discounts, minimum margins or minimum prices?	Yes	Go to step 6	Marg. 49-53
	No ▼	Do the arrangements concern calculation tools and cost projections? This depends on the objectivity of the information involved, on the question of whether a recommendation is given to pass on certain costs, on the nature of the information that is given, and on the market structure.	Yes	Agreement is permitted	Marg. 54-58
	No ▼	Do the arrangements only concern comparative models or joint research?	Yes	Agreement is permitted	Marg. 59-60
	No Ω			Go to step 6	
5.2		Do the arrangements concern the exchange of information between competitors?	No	Go to 5.3	Marg. 61 -78
	Yes ▼	Is the exchange of information used to check whether illegal anticompetitive agreements are honored?	Yes	Go to step 6	Marg. 62
	No ▼	Does the undertaking sign an individual contract with, for example, a research agency?	Yes	Agreement is permitted	Marg. 63, 65
	No ▼	Do the competitors jointly buy the information?	Yes	Go to step 5.2.1	Marg. 64
	No ▼	Do the competitors discuss or process the jointly bought information?	Yes	Go to step 6	Marg. 64, 78
5.2 .1	No ▼	Nature, frequency, and purpose of the exchanged information Does the information concern prices, production, sales, or customers?	Yes	Go to step 6	Marg. 67 -72 Marg. 68, 69
	No ▼	Can the exchanged information be traced back to individual market participants ?	No	Agreement is permitted	Marg. 70
	Yes				

	▼ Is the information older than 12 months?	Yes	Agreement is permitted	Marg. 71
	No ▼ Is the information openly public?	Yes	Agreement is permitted	Marg. 72
	No ▼			
5.2 .2	Market structure			Marg. 73, 74
	Are there few market players, is the product in question a homogenous product, and are barriers to entry high?	No	Agreement is permitted	Marg. 73-77
	Yes Ω		Go to step 6	
5.3	Do the arrangements concern membership requirements of trade organizations?	No	Go to 5.4	Marg. 95– 97
	Yes ▼ Do they contain any quality requirements, which makes them a de facto qualification system?	No	Agreement is permitted	Marg. 96
	Yes (assessment as qualification system) ▼			
5.4	Do they concern a qualification system?	No	Go to 5.5	Marg. 79-94
	Yes ▼ Do the undertakings only represent a small share of the market (less than 20% market share), and there are no provisions that have the objective to restrict competition? If the qualification system, for example, has an exclusionary effect (real or potential), it can be considered an anticompetitive effect.	Yes	Agreement is permitted	Marg. 85
	No ▼ Is participation in or membership of a qualification system highly valued in the market in question?	No	Agreement is permitted	Marg. 81,87
	Yes ▼ Are there any anticompetitive effects, for example, as a result of exclusionary effects (real or potential)?	No	Agreement is permitted	Marg. 81,84, 86
	Yes ▼ Does the qualification system meet the following cumulative conditions: - an open nature - the requirements are objective, non-discriminatory, and known in advance - the admission process is transparent - the admission process provides for an independent decision about admission after a first assessment, or, if turned down, on appeal.	Yes	Agreement is permitted	Marg. 88-94

	No Ω		Go to step 6	
5.5	Do the arrangements concern general conditions?	No	Go to 5.6	Marg. 98-100
	Yes ▼			
	Do these concern important competitive parameters, such as prices and tariffs, including discounts, surcharges, and payment terms?	No	Agreement is permitted	Marg. 99-100
	Yes Ω		Go to step 6	
5.6	Do the arrangements concern collaboration in an administrative context?	Yes	Agreement is permitted	Marg. 101
	No ▼			
5.7	Do the arrangements contain or constitute a code of conduct?	No	Go to 5.8	Marg. 102-105
	Yes ▼			
	Does this code of conduct (actual or de facto) curb the use of prices, production, sales, or clients, and/or restrict entrepreneurial freedom of businesses?	Yes	Go to step 6	Marg. 105
	No ▼			
	Is this code of conduct (actual or de facto) necessary to enforce certain rules of etiquette, professional dignity, or the qualifications or qualities that are vital to the execution of one's professional duties, in other words the deontological requirements?	No	Go to 5.8	Marg. 104
	Yes ▼	Yes	Agreement is permitted	
	Is this code of conduct (actual or de facto) enforced objectively, and in a transparent and non-discriminatory way?			
	No Ω		Go to step 6	
5.8	Do the arrangements concern joint purchasing?	No	Go to 5.9	Marg. 106
	Yes ▼			
	Does this joint purchasing lead to buying power on markets where the purchasing takes place?	No	Agreement is permitted	Marg. 106
	Yes ▼			
	Does this joint purchasing lead to a considerable degree of joint costs?	No	Agreement is permitted	Marg. 106
	Yes ▼			
	Are the trade association's members forced or compelled to buy through the trade association?	No	Agreement is permitted	Marg. 106
	Yes Ω		Go to step 6	

5.9	Do the arrangements concern joint advertising?	No	Go to 5.10	Marg. 107
	Yes ▼			
	Are additional requirements imposed which, for example, result in undertakings being hindered, partially or completely, to advertise themselves?	No	Agreement is permitted	Marg. 107
	Yes Ω		Go to step 6	
5.10	Do the arrangements have any other anticompetitive effect?	No	Agreement is permitted	
	Yes ▼			
6 STEP 6: IS THE AGREEMENT PERMITTED?				
	If the agreement concerns a price-fixing agreement, or an agreement concerning tariffs, market-sharing, production quota, establishment, market-sharing (geographical), client-sharing, or joint refusal to supply (boycott), the restriction to competition will almost always be appreciable, which means the exception of Section 6, paragraph 3, Dutch Competition Act (see below) is almost never applicable. Such agreements are therefore never permitted.			Marg. 41-44
	If the agreement concerns other topics, go to 6.1.			
6.1	Is the restriction to competition appreciable?	No	Agreement is permitted	Marg. 20-25.
	Determine the answer to this question taking into consideration the following aspects:			
	<ul style="list-style-type: none"> - Competitive position of market participants (market share, position of competitors, barriers to entry, negotiating power of customers, technological advantage, capacity, access to raw materials, brand awareness, and financial resources). Agreements are particularly anticompetitive if market participants have 'market power'. - Nature of the agreement (area and objective of collaboration, mutual competitive positions, and degree of joining forces). Particularly agreements on price and volumes can appreciably impede competition. 			
	Yes ▼			
6.2	Do the agreements contribute to improvements to the production/distribution processes or to the stimulation of technological or economic advancements?	No	Not permitted	6.3 Mw Marg. 26-27
	Yes ▼			
6.3	Will the users reap a fair share of the resulting benefits?	No	Not permitted	Marg. 26-27
	Yes ▼			
6.4	Are restrictions imposed on the undertakings, which are not vital to the realization of these objectives?	Yes	Not permitted	Marg. 26-27
	No ▼			
6.5	Are the undertakings involved given the opportunity to eliminate competition with regard to a substantial share of the goods and	Yes	Not permitted	Marg. 26-27

services involved?

No ▶

***Agreement is
permitted***

