



Court of Appeal Brussels

Section Market Court

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### **1. Establishment and jurisdiction:**

The Law of 25 December 2016 "*amending the legal status of detainees and the supervision of prisons and laying down various provisions on justice (Articles 51, 56, 59, 60, 64, 75, 77, 107, 111-114, 157, 158, 160-166 Potpourri IV)*" established the Market Court.

The Market Court started its activities on 9 January 2017<sup>1</sup>.

It has exclusive jurisdiction over the entire Belgian territory in all national languages based on the following provisions:

- Law of 6 July 2005 on some of the legal provisions regarding electronic communications (Art. 2).
- Code of Economic law (Enforcement of the competition law, Art. IV.26, 32, 33, 66, 79, 80, 81).
- Law of 29 April 1999 on the organization of the electricity market (Section 1).
- Law of 12 April 1965 on the transport of gaseous and other products by pipeline (Section 1).
- Cooperation Agreement of 14 July 2017 between the Federal State, the Communities and the Regions in the framework of the transposition of Directive 2014/61/EU (Art. 9).

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<sup>1</sup> After being rectified by the law of 20 February 2017 amending the Code of Economic Law and the law of 25 December 2016 amending the legal position of detainees and the supervision of prisons and laying down various provisions relating to justice, Article 2: "In the Code of Economic Law, the words "Brussels Court of Appeal", "Brussels Court of Appeal" and "Court of Appeal" are each replaced by the word "Market Court", except in the following provisions: Article 2: "In the Code of Economic Law, the words "Brussels Court of Appeal", "Brussels Court of Appeal" and "Brussels Court of Appeal" are always replaced by the word "Market Court", except in the following provisions: 1°. Article IV.37, inserted by the law of 3 April 2013; 2°. Article IV.79, § 3°. Article IV.79, § 4, second paragraph, 6°, inserted by the law of 3 April 2013; 4°. the first sentence of Article IV.79, § 5, fourth paragraph, inserted by the law of 3 April 2013; 5°. Article XI.342, inserted by the law of 19 April 2014"

- Law of 30 August 2013 establishing the Railway Code (Art. 221/1-221/5).
- Law of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium (Art. 36/21).
- Law of 17 January 2003 on legal remedies and the dispute handling following the Law of 17 January 2003 on the status of the regulator of the Belgian postal and telecommunications sector (Art. 4).
- Law of 1 April 2007 on public takeover bids (Art. 46).
- Law of 2 August 2002 on the supervision of the financial sector and financial services (Art. 83).
- Law of 12 May 2004 regulating an appeal procedure in the scope of the protection against counterfeiting and the maintenance of the quality of the circulation of money. (Art. 2).
- Law of 9 July 2004 containing various provisions (Art. 2).
- Against the decisions of the regulator, as referred to in Article 1, 6°, of the Royal Decree of 27 May 2004 on the conversion of BIAC into a public limited company of private law and of the airport installations, taken in application of the same Decree, an appeal can be lodged with full jurisdiction before the Market Court by those who carry out the activities as referred to in Article 1 of the Royal Decree of 21 June 2004 with regard to the granting to S.A. BIAC of the operating license to operate at Brussels National Airport.
- Cooperation agreement of 14 July 2017. Appeal against decisions of the Network Infrastructure Dispute Settlement Body ("the IGB").
- Law of 3 December 2017 establishing the Data Protection Authority (Article 108).
- Law of 26 January 2018 on postal services (Art. 6 § 2).

The Service Order of the Brussels' court of appeal partially addresses a number of unresolved cases<sup>2</sup> which the legislator had omitted to designate as belonging to the exclusive competence of the Market Court. On the basis of the Service Order these cases of exclusive jurisdiction have been attributed to chamber 19A of the court of appeal (which in addition to habitually functioning as the Market Court, functions also as a part of the ordinary civil section of the court).

## **2. Composition and place of the Market Court within the judicial order:**

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## **2.1. Separate section**

The Brussels Court of Appeal has "Chambers for market cases". Together they form the separate section "Market Court".

There is currently one active market case Chamber (Chamber 19A). If required, the second Chamber for market affairs (19B) can be activated.

The Market Court has exclusive jurisdiction in both national languages, Dutch and French<sup>3</sup>.

## **2.2. Composition**

The Market Court is always composed of three justices<sup>4</sup> for two reasons: the Market Court always pronounces in first and last instance and the cases are often very technical and usually of a multiple nature<sup>5</sup>.

The Market Court has at least six justices, but there could be more. A maximum of six justices are specialized justices, which implies that they have at least 15 years of relevant professional experience, demonstrating their specialized knowledge of economic, financial or market law. Any other justices are 'ordinary' justices, without having to provide proof of this specialization. There must be an equal number of Dutch-speaking and French-speaking justices.

All justices who participate in the Market Court must be at least *functionally* bilingual<sup>6</sup>.

## **3. Divergent rules of procedure:**

The various legislations that give the Market Court exclusive jurisdiction state that the Market Court rules '*as in interim proceedings*'.

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<sup>3</sup> There are no dispositions for the German cases.

<sup>4</sup> Art. 109bis § 2 of the Judicial Code: "§ 2: *The Market Court always has a seats with three counselors*"

<sup>5</sup> Explanatory memorandum DOC54 1986/001, Article 43

<sup>6</sup> Law of 15 June 1935 on the use of languages in judicial matters, art. 43bis § 3 in fine "*The justices in the Court of Appeal of Brussels who primarily seat in the Market Court must provide proof of at least a functional knowledge of the language other than the one in which they hold their diploma, in accordance with Article 43quinquies, § 1, third paragraph.*"

Several legislations impose strict requirements on the validity of the preliminary application (such as the time limit for lodging an appeal, the information that must appear in the application, the possibilities of intervention, etc.).

In several legislations, the Market Court is given the capacity to rule *with full jurisdiction*, whereby the Court can substitute its decision for the contested decision.

As opposed to the Council of State, the jurisdiction of the Market Court is not limited to the possibility of an annulment on the grounds of violation of substantial formal requirements, exceeding of power or diversion of power. The legislator has not exhaustively defined the grounds on which the Market Court reviews the contested decisions.

Under certain circumstances (e.g. Article IV.79 § 2 Code of Economic Law), the Market Court can, at the request of the interested party and by way of preliminary decision, suspend in whole or in part the execution of the decision (of the Competition Authority) until the day of the judgement.

The suspension of enforcement may only be ordered where there are serious grounds for setting aside the contested decision and provided that immediate enforcement of the decision is likely to have serious consequences for the relevant party.

This is a type of interim proceedings in which the Market Court may - on the basis of a *prima facie* assessment - suspend enforcement before deciding on the annulment request.

The appeal (in Dutch usually "*beroep*" or "*hoger beroep*", in French "*un recours*") is a judicial recourse against an economic-administrative decision<sup>7</sup>.

The Market Court always pronounces "*in first and last instance*"<sup>8</sup>.

#### **4. "Soft law":**

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<sup>7</sup> Given that the Council of State has a residual competence (article 14 § 1 laws Council of State "*If the dispute is not assigned by the law to another court,...*"), the competence of the Market Court is restrictive.

<sup>8</sup> Double instance is not a general principle of law. It is partly for this reason that there is only one instance, that the legislator - contrary to Article 109bis, § 3 of the Judicial Code - has not yet adopted a decision on this matter. W. - has prescribed that the Market Court must always sit with 'three justices.

Due to divergencies or even hiatuses in the different *lex specialis* that it is required to apply and/or to interpret vis-à-vis *common law rules*, certain Market court's decisions become a source of soft law.

The existence of such soft law in combination with the fact that the Market court has been granted exclusive jurisdiction (for the entire Belgian territory) over a wide range of economic, financial and competition law matters by the legislator, is enough to generate compliance from regulatory authorities and other parties appearing before the Market court.

Compliance is beneficial in a sense that it creates legal certainty for individuals, companies and authorities.

## **5. Practical arrangements:**

Introductions take place every Wednesday (NL + FR) at 9.00 a.m. before Chamber 19A (room 1.32).

More specifically, on the date of the introduction, the Court determines a calendar for exchanging the submissions with a hearing within a brief delay from the introduction (the date of the oral pleadings is set in accordance with the level of urgency presented by the case).

After the initial application the parties receive a notification from the Court with a suggested date for the oral hearing so that the calendar for the submissions can be determined accordingly.

The Market Court also proposes the use of the written proceeding to the parties (article 755 of the Judicial Code).

If there is a need for communication in relation to the preparation of the case, this can be done via email or via videoconference (the Court uses the Webex system).

The Market Court hears oral pleadings - depending on the needs of the parties - on Wednesdays at 9.15 a.m. and at 2 p.m. If required, additional hearings will be added on other weekdays in order to ensure that the pleadings run smoothly and consecutively.

The Market Court insists on the strict application of article 744, 3° of the Judicial Code, which provides that the submissions of the parties “*must set out the grounds on which the claim or defense is based, which may include a number of different grounds and an indication of their main arguments or of their subordinate arguments*”.

In order to allow the justices of the Market Court to prepare the files properly and to allow for an interactive debate at the hearing, the Market Court (without prejudice to the provisions of the Judicial Code) requests the following:

1. if an amicable settlement is still reached, to inform the Registry immediately in order to release the time allotted for the hearing;
2. to mail the final submissions containing all arguments and a correct inventory of the exhibits in *word.format* one week before the hearing to the e-mail address: [marketcourt@just.fgov.be](mailto:marketcourt@just.fgov.be) ;
3. to send a file in digital form to the same address or to deposit three identical USB sticks at the Registry at the attention of the Market Court a week before the hearing;
4. to make a presentation at the hearing, preferably by means of a PowerPoint presentation. If applicable, this presentation will also be transmitted, at the latest on the day of the hearing to the above-mentioned e-mail address.

The Market Court in fact functions in an electronic manner.

The Market Court will exert its best efforts to pronounce a decision which is duly reasoned within a reasonable timeframe. At the latest one day after the pronouncement, each party (through its designated lawyer) will receive a copy of the decision in pdf format via email.

In order not to interfere with the progress of case load (determination of a calendar for exchanging submissions and a hearing and, if applicable, urgent and provisional measures), the Market Court holds an introductory hearing every two weeks during the judicial leave.

Urgent cases can be handled during the judicial leave.

## **6. Overview in figures of the functioning of the Market Court:**

Calendar year 2017: 29 cases were handled by the Market Court (the first year of operation, previously initiated cases were transferred to the Market Court for handling).

The allocation is as follows:

- 6 BIPT (5 FR and 1 NL);
- 2 BMA (NL);

2 CREG (FR);  
19 CRC (5 NL and 14 FR)

Calendar year 2018: 22 new cases were handled by the Market Court.

The allocation is as follows:

1 FSMA (bank and financial authority) (NL)  
3 BIPT (regulator telecommunications) (1 NL and 2 FR);  
4 BMA (Belgian Competition Authority) (1 NL and 3 FR);  
2 CREG (gas and electricity) (FR);  
9 CRC (Electronic Communications Sector) (3 NL and 6 FR);  
3 « *Service de rég. du transport ferro. et de l'exploit. de l'Aéroport BN* » (1 NL and 2 FR).

Calendar year 2019: 28 new cases were handled by the Market Court.

The allocation is as follows:

2 FSMA (bank and financial authority) (FR)  
8 BIPT (regulator telecommunications) (NL and FR);  
6 BMA (Belgian Competition Authority) (NL and FR);  
1 CREG (gas and electricity) (FR);  
4 CWAP (FR);  
5 Data Protection Authority (NL and FR);  
1 « *Service de rég. du transport ferro.* » (NL) and 1 company law (NL).

## **7. International collaboration:**

The members of the Market Court participate in various international training courses and activities, including those of "*the Association of European Competition Law Judges*"<sup>9</sup>, a group of judges who are proficient in competition law at national and European level. The permanent members of the Market Court are a member of the AECLJ and are speakers at numerous national and international conferences.

All the permanent members of the Market Court regularly take part (as a speaker or as a participant) in various international conferences (cooperation with the Institute for Training, the EJTN, ERA, EUI, FRICoRE etc.

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<sup>9</sup> In cooperation and under the auspices of the European Commission.

The Market Court is the national point of contact for European competition law.

The Market Court closely cooperates with the European Commission in the areas of competition law and of all laws pertaining to regulatory bodies.

The cooperation goes further than institutionalized contacts and leads to an interaction of 'good practices'.