



ECN+ and the Dutch practice

A NCA perspective on ECN+

Introduction

- The ACM is already well equipped.
- Challenge in the negotiations:

To keep our powers and to avoid extra administrative burdens.

Recital 28 – EP amendments

Where in the course of proceedings which may lead to an agreement or a practice being prohibited, undertakings or associations of undertakings offer NCAs commitments which meet their concerns, these authorities should be able to adopt decisions which make these commitments binding on, and enforceable against, the undertakings concerned. **In principle**, such commitment decisions are not appropriate in the case of secret cartels, in respect of which NCAs should impose a fine.

Article 29 (1) – original proposal

Limitations on the use of information

1. Information collected on the basis of the provisions referred to in this Directive should only be used for the purpose for which it was acquired. It should not be used in evidence for the imposition of sanctions on natural persons.

Leniency

- Transposition of the Model Leniency Programme into law to:

boost the submission of whistle-blower applications.

- The ACM already complies with the Directive.
- Eliminating differences between national systems will make leniency more attractive.

Article 22 – Original proposal

Interplay between leniency programmes and sanctions on natural persons

Member States shall ensure that current and former employees and directors of applicants for immunity from fines to competition authorities **are protected from any criminal and administrative sanctions** and from sanctions imposed in non-criminal judicial proceedings for their involvement in the secret cartel covered by the application, if these employees and directors actively cooperate with the competition authorities concerned and the immunity application predates the start of the criminal proceedings.

Investigative powers

- Effective competition law enforcement requires a basic set of powers that are ensured by the Directive.
- Challenge for the ACM: *how to process large amount of data?*
- Important that investigative powers are supported by the possibility to punish for not cooperating.

Recital 21 – Original proposal

The investigative powers of national administrative competition authorities need to be adequate **to meet the enforcement challenges of the digital environment and should enable national competition authorities to obtain all information in digital form**, including data obtained forensically, related to the undertaking or association of undertakings which is subject to the investigative measure, **irrespective of the medium on which it is stored**, such as on laptops, mobile phones and other mobile devices.



Article 2.1,
2.4, 2.6 Par. 4

Secured data set

Selection using search queries

Article 2.2,
2.4, 2.6 Par. 4

Within-scope data set

Removal of non-business and privileged data

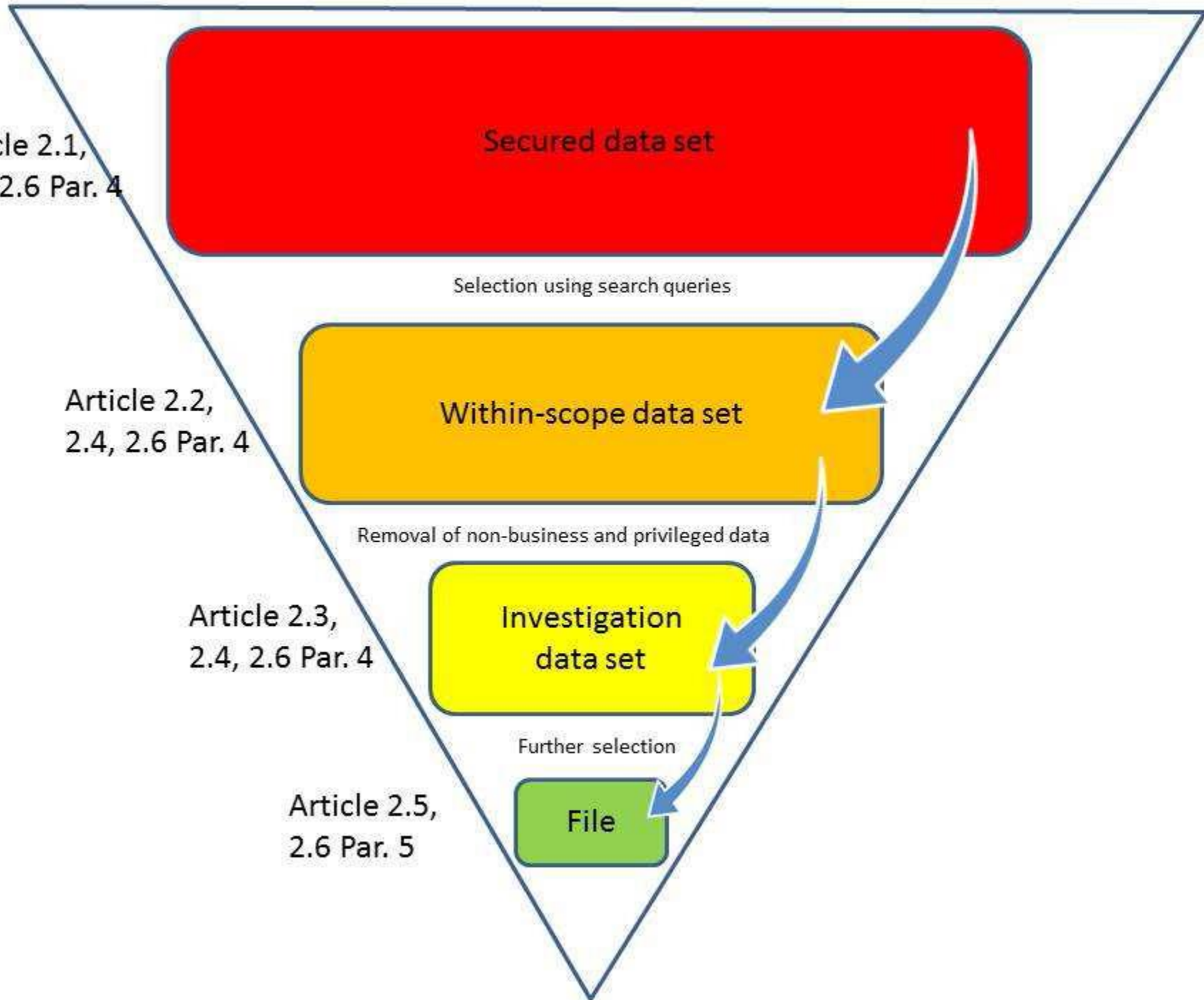
Article 2.3,
2.4, 2.6 Par. 4

Investigation
data set

Further selection

Article 2.5,
2.6 Par. 5

File



Cooperation with other NCAs

- More and more investigations have a cross-border aspect.
- Cooperation on the basis of Article 22 of Directive 1/2003 becomes easier and more effective.
- Possibility to request another NCA for assistance for the collection of fines.

Conclusion

The ECN+ Directive contributes to effective enforcement of competition law by NCAs and makes it more difficult for undertakings to resort to anti-competitive behaviour.