

# judgment

## DISTRICT COURT OF ALKMAAR, THE NETHERLANDS

Civil-law section  
NB/HE

KG number 117231 / KG ZA 10-44  
date 18 March 2010

### **Judgment of the Preliminary Relief Judge, adjudicating in preliminary relief proceedings**

in the matter between:

the private limited liability company  
DOUWE EGBERTS COFFEE SYSTEMS NEDERLAND B.V.,  
having its registered office in Utrecht, the Netherlands,  
CLAIMANT in the main action by summons dated 12 February 2010,  
RESPONDENT in the ancillary proceedings,  
attorneys: *mr.* G.W.A. van de Meent and *mr.* T.R.M. van Helmond, in Amsterdam, the Netherlands,

and:

1. the public law legal entity the MUNICIPALITY OF DEN HELDER,  
based in Den Helder, the Netherlands,
2. the public law legal entity the MUNICIPALITY OF ALKMAAR,  
having its registered office in Alkmaar, the Netherlands,  
DEFENDANTS in the main action,  
RESPONDENTS in the ancillary proceedings,  
attorneys: *mr.* D.J.L. van Ee and *mr.* J.J. Feenstra, in Amsterdam, the Netherlands,

in which matter the following party would like to intervene or join the action with the defendants:

the MAX HAVELAAR FOUNDATION,  
having its registered office in Utrecht, the Netherlands,  
CLAIMANT in the ancillary proceedings,  
attorney *mr.* P.F.C. Heemskerk and *mr.* B. Braat in Utrecht, the Netherlands.

The parties will be referred to below as “Douwe Egberts”, “the Municipalities” and “Max Havelaar”, respectively.

### **1. THE COURSE OF THE PROCEEDINGS**

At the hearing on 2 March 2010, Douwe Egberts submitted and moved in accordance with the summons, a copy of which has been attached to this judgment.

Max Havelaar filed an ancillary motion for intervention or joinder. Douwe Egberts presented a defence in response to this.

At the hearing, the Preliminary Relief Court ruled that Max Havelaar will be admitted as an intervening party.

The Municipalities and Max Havelaar challenged Douwe Egberts' claims.

After further discussion the parties submitted the documents, including, on behalf of Douwe Egberts, the original summons and the written pleadings of all parties, and requested judgment.

The contents of all the documents are considered to have been inserted here.

## **2. PRINCIPLES**

2.1 On 20 January 2010, the Municipalities announced the tender for “Warm beverage vending machines for the Municipality of Den Helder and the Municipality of Alkmaar”. The goal was to conclude a framework agreement for the supply of hot drink vending machines and related products, and providing maintenance and full operation for six years, with the option of renewing the agreement twice by one year. It was a European public tendering procedure, which is subject to the Besluit Aanbestedingsregels voor Overheidsopdrachten (Bao) [*The Netherlands Public Procurement Decree for Government Tenders*]. According to the announcement, the application period expires on 8 March 2010.

2.2 The application brochure includes a Schedule of Requirements, which contains the following, among other things:

### "3.3 Trading conditions

The contracting authority aims to promote sustainability and to positively affect social standards. The Municipality of Den Helder sets great store by Sustainability and Corporate Social Responsibility and has agreed to comply with SenterNovem's Declaration of Participation in Sustainable Procurement. By so doing, the Municipality of Den Helder undertakes to ensure that 75% of its procurements are from sustainable sources in 2010, and 100% in 2015. This also applies to the Municipality of Alkmaar. In addition, the Municipality of Alkmaar launched a project in 2007 to earn the title “Fair trade Municipality”. The Municipalities are actively working on all the criteria for earning this title, and two of the six criteria have currently been met.

That is why the Contracting Authority requires the ordinary coffee fresh brew, the water-based chocolate drink and chocolate milk to have the Fair trade mark or a similar mark. For the Municipality of Alkmaar, the tea bags must also have the Fair trade mark or a similar mark.

The Fair trade mark refers to the Max Havelaar mark. For the purposes of this tender, “similar marks” refer to a mark that is issued because at least the following conditions have been met:

- The supplier guarantees that the coffee, tea and cocoa are purchased directly from small farmer cooperatives.

- A cost-effective minimum price for the producer. The supplier guarantees a fixed minimum price to ensure that the costs for socially and environmentally friendly production are covered.
- A mark-up on the world market price. If the world market price exceeds the guaranteed price, the world market price will be paid to the producer.
- Pre-financing: Coffee farmers may, if desired, receive a percentage of the selling price of their product before shipping, so that they can make the necessary investments.
- Long-term trade relations. The partnership is for the long term.”

2.3 The award criterion is the most economically advantageous tender, given the criteria price (350 points), tasting (350 points) and quality (250 points). A subcriterion of the criterion quality is Corporate Social Responsibility (100 points). Paragraph 5.2.2 of the application brochure states the following, among other things, in that respect:

“no. 2 The tendering party is expected to play an active role in the development of the Fair trade market and optimising the availability and quality of Fair trade produces or similar products.

Please explain on no more than half an A4 how you achieve this.

(...)”

2.4 Fair trade Labelling Organisations International (hereinafter FLO) is an (umbrella) organisation that issues Fair trade mark certification to suppliers who promote fair trade by complying with the principles applied by the FLO. The only party affiliated with FLO in the Netherlands is Max Havelaar.

2.5 Douwe Egberts’ range includes coffee and tea that is Utz Certified. Some of the conditions applied by this certifying organisation to be eligible for a sustainability mark are different. Unlike the FLO, Utz Certified does not guarantee the suppliers a minimum price. It applies the concept ‘adequate wage / adequate income’, which is aimed at achieving a better (viable) income through a greater return per kilo, improving quality and reducing costs.

2.6 In a letter to the Municipalities dated 28 January 2010, Douwe Egberts objected to the sustainability criteria applied by the Municipalities in paragraph 3.3 of the application brochure, and asked that these be amended in such a way that the Utz principles and Douwe Egberts’ Utz certificate are considered suitable.

2.7 In an e-mail dated 10 February 2010, the Municipalities informed Douwe Egberts that they saw no reason to amend the criteria.

2.8 On 24 February 2010, the Municipalities published a summary of additional information, which reports the present Preliminary Relief proceedings and announces that the deadline for submitting a tender is being postponed, and that a second summary of additional information would be published following the decision in the preliminary relief proceedings.

2.9 The summary of additional information states the following in paragraph 3.3 in response to Douwe Egberts’ objection:

“The question: Request for the amendment of the sustainability requirements such that DECS’ principles and Utz certificate are considered suitable.

Answer:

The text of paragraph 3.3 of the application brochure for warm beverage vending machines is cancelled and replaced by the following text:

### **3.3 Trade conditions / Sustainability**

The ingredients offered for coffee fresh brew, water-based chocolate drink, chocolate milk and tea must comply with the sustainability principles detailed below.

Principles of sustainability:

- A cost-effective minimum price (guarantee price) for the producer. The supplier guarantees a fixed minimum price to ensure that the costs for socially and environmentally friendly production are covered.
- Producers receive an additional premium for the further development of their business and for investments in the producer’s community.
- Pre-financing: Coffee farmers may, if desired, receive a percentage of the selling price of their product before shipping, so that they can make the necessary investments.
- Long-term trade relations. The cooperation between producers and buyers of the products is as long-term as possible.

#### Explanation

The contracting authority aims to promote sustainability and to positively affect social standards. The Municipality of Den Helder sets great store by Sustainability and Corporate Sustainability and has agreed to comply with SenterNovem’s Declaration of Participation in Sustainable Procurement. By so doing, the Municipality of Den Helder undertakes to ensure that 75% of its procurements are from sustainable sources in 2010, and 100% in 2015. This also applies to the Municipality of Alkmaar. In addition, the Municipality of Alkmaar launched a project in 2007 to earn the title “Fair trade Municipality”. The Municipalities are actively working on all the criteria for earning this title, and two of the six criteria have currently been met.

To specify this policy and the sustainability concept within the scope of this tender, the contracting authority sought alignment with the premises drawn up by the Fair trade Labelling Organizations International (FLO). The contracting authority chose the principles of sustainability drawn up by the FLO because these are widely supported by the market, both nationally and abroad. This is evidenced, for example, by the Communication from the European Commission dated 5 May 2009, COM (2009) 215, final, page 6, where the European Commission states: “[...] The criteria and standards applied by Fair Trade are among the most comprehensive and ambitious in terms of addressing a broad set of issues and conditions that impact the producers in developing countries, including in particular a minimum price for the producer and a premium paid to the community of the producer”. In addition, the contracting authority refers to the letter dated 16 October 2009 from Ministers Cramer, Donner and Koenders to the Lower House, with reference PDI 2009037807

(Uitwerking internationale sociale criteria Duurzaam Inkopen) [*Specification of international social criteria for sustainable procurement*], page 5, which also refers to the fair trade standard “minimum price”.

For further information related to the principles of sustainability and the terminology used, please see the FLO’s version at <http://www.fairtrade.net/standards.html>.

The contracting authority explicitly emphasises that it does not require a specific sustainability label or mark. The contracting authority has examined the subcriteria on which the Fair Trade label is based and prescribes those criteria that are relevant to the present tender and are adequately related to same. The tenderer may demonstrate using official and other documents that the principles of sustainability have been complied with.”

- 2.10 The summary of additional information states as follows regarding paragraph 5.2.2 of the application brochure:

“The question:

“The tendering parties are expected to play an active role in the development of the Fair Trade market and optimising the availability and quality of Fair Trade products or similar products.”

This criterion pertains to the suitability of the tenderer (its role in the development of the Fair trade market) and can therefore be considered a selection criterion. In the specifications, however, this criterion was included for the assessment of the offer (award criteria). Award criteria serve to establish which tender is the most advantageous economically (Article 54 Bao). This criterion is not suitable for this purpose. Please set aside or amend this criterion.

Answer:

Point 2 of paragraph 5.2.2 is cancelled. (...)"

- 2.11 On 5 May 2009, the Commission of the European Communities issued a Communication regarding contributing to sustainable development, which includes the following on page 10:

“If a contracting authority intends to purchase Fair Trade products, it can define in the technical specifications of the goods the relevant sustainable criteria, that must be linked to the subject-matter of the contract and comply with the other relevant EU public procurement rules, including the basic principles of equal treatment and transparency. These criteria must relate to the characteristics or performance of the products (e.g. glasses made out of recycled material) or to the process of the products (e.g. organically grown).

Contracting authorities that intend to purchase sustainability assurance goods should not simply take the concept of a particular label and include it in the technical specifications of their purchases. They ought instead look at the sub-criteria underlying, for example, the Fair Trade label and use only those which are relevant to the subject matter of their purchase. Contracting authorities must always allow bidders to prove compliance with these standards by using Fair Trade labels or by other means of proof.

Environmental and social criteria may also be incorporated in the execution clauses, provided these criteria are linked to the execution of the contract in question (e.g. minimum

salary for the workers involved in the performance of the contract) and comply *mutatis mutandis* with the other requirements mentioned above in relation to the technical specifications.”

- 2.12 By letter dated 16 October 2009, then Ministers Cramer, Donner and Koenders informed the President of the Lower House of the following, among other things, related to sustainable development and policy:

“For *some* product groups, *supplemental standards* apply.

These are the product groups containing a limited number of products for which there is a multi-stakeholder chain initiative that offers the guarantee that suppliers can effectively and reliably investigate and apply these standards. Examples of these products are the following: coffee, tea, cocoa, textiles, flowers, natural stone. The government will be deciding in the near future for which products the following supplemental standards will be included through to 2012.

- (...)
- Adequate income (...)
- The combination with the following fair trade standards:
  - minimum price to be paid to the producer, regardless of the market price
  - pre-financing at the producer’s request up to a maximum of 60% of the contract value.

Where relevant, the contracting authorities will be allowed to decide whether to include in the contract conditions the fair trade standards or adequate wage/adequate income. The main difference between the two standards is the greater protection offered to a producer by a minimum price when global market prices are low. The buyers will receive qualitative information in order to make an informed choice for fair trade over adequate wage in the event of low global trading prices. The practical specification of this has yet to be examined.”

### **3. THE CLAIM AND THE PARTIES’ POSITIONS**

#### in the main action

- 3.1 In summary, Douwe Egberts is seeking a judgment, insofar as possible immediately enforceable at any time:
- principally: ordering the Municipalities to delete minimum requirement 3.3 and award criterion 5.2 from the application brochure, or to amend them such that no specific conditions are imposed on the manner in which the sustainability is achieved in the form of minimum requirements or award criteria, this insofar as the Municipalities still intend to award the contract;
  - alternatively: ordering the Municipalities to cease the tender process insofar as they still intend to award the contract to any party, to reopen the tendering procedure but not include any specific conditions on the manner in which the sustainability is achieved in the form of minimum requirements or award criteria;
  - in the further alternative: to take every other preliminary measure which the Preliminary Relief Court deems appropriate in the proper administration of justice and which does justice to Douwe Egberts’ interests;
  - to order that the Municipalities will forfeit a penalty of € 10,000 per violation of the foregoing, and € 5,000 for each day or part of a day that said violation continues;

- ordering the Municipalities to pay the costs of these proceedings, plus the statutory interest, calculated as from the 14<sup>th</sup> day after the date of this judgment.

- 3.2 In abridged form and succinctly put, Douwe Egberts based its claim on the following. Although the Municipalities are free to pursue sustainability and positively influence societal and environmental standards, they are doing so in a wrongful manner. In fact, the Municipalities prescribe only one manner for achieving sustainability, which is in violation of procurement law. Only FLO, with which Max Havelaar is affiliated in the Netherlands, applies the sustainability conditions imposed by the Municipalities when issuing a certificate. Douwe Egberts sells products bearing a Utz Certified label. Douwe Egberts takes the position that the effect of the Utz Certified label is at least equal to the FLO label.

Insofar as the trade conditions in paragraph 3.3 of the application brochure can be considered performance conditions, these conflict with procurement law because the conditions “cost-effective minimum price”, “additional premium” and “pre-financing” pertain to the supplier’s operations and are therefore not related to the subject of the contract. In addition, the conditions imposed are contrary to the EU Treaty. It has not been demonstrated through scientific research or otherwise that the conditions lead to additional sustainability. According to Douwe Egberts, the prescribed sustainability conditions are therefore disproportionate.

In addition, imposing the sustainability conditions is contrary to the principle of equal treatment, because products produced using sustainable means are excluded on the basis of sustainability initiatives other than the Fair Trade mark without any justification. In addition, according to Douwe Egberts, this impedes the free movement of goods.

To the extent the trade conditions can be considered technical specifications, they are contrary to procurement law because (i) they do not pertain to the subject of the contract, (ii) eliminate other organically grown coffee, tea and cocoa, (iii) unjustifiably impede competition and (iv) do not refer to national standards in which European standards have been converted, to European technical certifications, community technical specifications, international standards or other technical reference systems drawn up by European standardisation institutions.

In view of the foregoing, the minimum requirements included in paragraph 3.3 of the application brochure, as amended in the summary of additional information, should be set aside or amended in such a way that no specific conditions are imposed on the manner in which the sustainability is achieved in the form of minimum requirements, according to Douwe Egberts.

With regard to the section Corporate Social Responsibility, which is part of the “quality” sub-award criterion, the Municipalities attach importance to the role played by the tenderer in the development of the Fair Trade market and optimising the availability and quality of Fair Trade products or similar products. Douwe Egberts takes the position that this is contrary to the principle that criteria that pertain to the quality of the tenderer cannot be applied as award criteria, so that this section should also be cancelled.

In addition, insofar as the Preliminary Relief Court believes that the defects cannot be rectified, Douwe Egberts is asking the Court to order the Municipalities to reopen the tender process.

- 3.3 The Municipalities and Max Havelaar conducted a defence against Douwe Egberts' claims. To the extent relevant, these will be discussed in the grounds for the decision.

#### **4. THE GROUNDS FOR THE DECISION**

##### in the ancillary proceedings

- 4.1 Max Havelaar petitioned the Preliminary Relief Court, requesting that it be allowed principally as intervening party and alternatively as joining party with the Municipalities. Max Havelaar argued that its interest lies in its position that it is lawfully admissible and socially desirable, also in the event of purchases made by European procurement, to ask the market to offer products which meet the basic principles of fair trade. Max Havelaar endeavours in the broadest sense of the word to support fair trade. Max Havelaar's objectives include stimulating and facilitating users of the quality mark for fair trade that it manages. If Douwe Egberts's claims are awarded, the (ideological) objective of Max Havelaar will be frustrated, according to Max Havelaar.
- 4.2 Douwe Egberts moved that the ancillary claims be denied. Briefly summarised, it argued that its complaints in the main action are not against (the ideological objectives of) Max Havelaar, that Max Havelaar is not a party in the procurement procedure and the Max Havelaar cannot force the municipalities in a separate procedure to apply criteria related to fair trade.
- 4.3 First and foremost, the Preliminary Relief Court finds that Max Havelaar is not required to submit a separate claim in order to allow intervention; the relevant standard requires that Max Havelaar's interest in preventing prejudice to or loss of a right to which it is entitled must be demonstrated. The term 'right' is understood to mean every claim awarded or protected by law. It must therefore be broadly interpreted. Considering the arguments submitted by Max Havelaar in support of its request to be admitted as intervening party, in the preliminary judgment of the Preliminary Relief Court it has sufficient interest in preventing prejudice to or loss of a right to which it is entitled. Max Havelaar is therefore admitted as intervening party.
- 4.4 The costs of the proceedings are to be compensated in that each party shall bear its own costs.

##### in the main action

- 4.5 At issue is the question of whether the Municipalities are allowed to apply in the procurement procedure the trading conditions amended as formulated in the summary of information of 24 February 2010.
- 4.6 In answering that question, the matter of first relevance is to determine how those trading conditions are to be qualified. Douwe Egberts did not voice an unambiguous opinion in that respect. It presented arguments in the event that those conditions are technical specifications as referred to in Article 23 of the Public Procurement Decree for Government Tender, and in the event that they are special performance conditions as referred to in Article 26 of that Decree. According to the Municipalities and Max Havelaar, the trading conditions are performance conditions, not technical specifications.

- 4.7 In the event of a Government Tender, a technical specification is a specification included in a document describing the required properties of a product or service.  
The Preliminary Relief Court finds that the trading conditions – cost-effective minimum price, payment of an additional premium, pre-financing and long-term trade relations – are not specifications of the products and services to be provided in this case, but are performance conditions related to the order. They should therefore be considered special performance conditions as referred to in Article 26 of the Public Procurement Decree for Government Tender.  
Douwe Egberts’ assertions based on the premise that the trading conditions should be considered technical specifications therefore require no further discussion.
- 4.8 Pursuant to Article 26 of the Public Procurement Decree for Government Tender, a contracting authority may attach special performance conditions to the order, providing such conditions are consistent with the Treaty Establishing the European Community [hereinafter: the EC Treaty] and are included in the announcement or the descriptive document. It can also be derived from the European Commission’s Communication of 5 May 2009 that any performance conditions must also be related to the subject of the order.
- 4.9 Douwe Egberts argued that the conditions ‘cost-effective minimum price’, ‘additional premium’ and ‘pre-financing’ are not related to the subject of the order, but are related to the business operations of the potential tenderer. This argument is rejected. These criteria must relate to the characteristics or performance of the products or the production process of the products. In the opinion of the Preliminary Relief Court, the (social) criteria involved are sufficiently related to the production process of the coffee, tea and cocoa to be supplied. After all, guaranteeing a minimum price ensures that the costs of production are covered and paying an additional premium and offering pre-financing creates the possibility of investing in the production process. The Preliminary Relief Court finds support for its opinion in the Communication from the European Commission of 5 May 2009, in which the criterion of minimum salary for the workers involved in the performance of the contract is considered to be sufficiently related to execution of the order.
- 4.10 According to Douwe Egberts, the trading conditions as now formulated are not consistent with the EC Treaty. In support of that opinion, Douwe Egberts argued that the prescribed sustainability conditions are disproportionate and contrary to the principle of equality and the principle of transparency, and that they obstruct free movement of goods. That defence fails, based on the following legal findings of the Preliminary Relief Court.
- 4.11 The Municipalities argued that in their choice for the trading conditions as currently formulated, they sought alignment with the fair trade principles of the FLO as supported by the European Parliament, the European Commission and the government of the Netherlands. In particular the Municipalities referred to the Communication of the European Commission of 5 May 2009, in which the European Commission states that the criteria and standards applied by Fair Trade are among the most comprehensive and ambitious in terms of addressing a broad set of issues and conditions that impact the producers in developing countries, including in particular a minimum price for the producer and a premium paid to the community of the producer. In the opinion of the Preliminary Relief Court, the Municipalities are free to endeavour to achieve that same level of ambition.

- 4.12 The above leads to the opinion that the conditions applied by the Municipalities cannot be considered disproportionate.
- 4.13 As rightly argued by the Municipalities and Max Havelaar, the principle of equal treatment of tenderers does not prohibit applying criteria that strongly restrict the circle of eligible parties. Such criteria must be objectively justified and therefore may not be intended to tailor to a certain tenderer. Considering the findings above, the choice made by the Municipalities to procure on the basis of fair trade standards is acceptable. The Municipalities and Max Havelaar argued that in the Netherlands alone, there are at least twenty suppliers registered that can supply in accordance with the principles as formulated. Douwe Egberts contested this by arguing that there are only fifteen Dutch suppliers that use the Max Havelaar mark and that only four of these are capable of satisfying the conditions as formulated. This was contested by the Municipalities and Max Havelaar, and Douwe Egberts was unable to make the correctness of its assertions plausible in response to this opposition, so that they will be ignored. Also relevant in that respect is the uncontested assertion by the Municipalities and Max Havelaar that Douwe Egberts – either through Sara Lee, of which Douwe Egberts is a part and which is FLO certified, or otherwise – can satisfy the conditions as formulated but for reasons of its own opts to endeavour to achieve sustainability via a different mark that applies different principles. Therefore there is no unequal treatment and/or obstruction of the free movement of goods and competition.
- 4.14 Douwe Egberts pointed out that reference is made to the FLO website for the details of the trading conditions, but that this website contains a large quantity of information that makes it unclear to tenderers exactly what the (new) minimum requirements mean. This assertion also cannot benefit Douwe Egberts. The Municipalities and Max Havelaar correctly pointed out that if anything is unclear to Douwe Egberts in that respect, it should contact the Municipalities. The Preliminary Relief Court therefore finds insufficient grounds for contrariety with the principle of transparency as argued.
- 4.15 Douwe Egberts explained extensively that the effect of the Utz Certified mark, which does not apply a cost-efficient minimum price, payment of additional premiums or pre-financing, is at least equivalent to the fair trade mark based on the principles it applies. Instead of a minimum price, Utz Certified applies the concept of adequate wage/ adequate income that aims to provide the farmer with improved income by achieving a higher crop yield in terms of kilos, improved quality and reduced costs. A premium is also paid for the farmers' sustainability efforts that is determined by negotiation between the coffee producers and the buyers. Instead of the option of pre-financing, Utz Certified assesses each project for any need of pre-financing and the shape in which it should be provided. Utz Certified also stimulates (local) banks to reward the certified farmer's improved creditworthiness with a favourable financing agreement. In support of its allegation that Utz Certified is at least equivalent to FLO, Douwe Egberts referred to a number of scientific studies and the letter of 16 October 2009 from the Dutch Government embracing the concept of adequate wage/adequate income.
- 4.16 It can be established as fact that the mark used by Douwe Egberts does not guarantee a minimum price, does not pay an additional premium and does not offer the option of pre-financing. The Municipalities and Max Havelaar contested that the effect of the principles applied by Utz Certified is at least equal to the fair trade mark. In that respect, they pointed out that the scientific studies submitted by Douwe Egberts are not all studies of the Utz

Certified mark and that Utz Certified was involved in the preparation of the reports that are. Moreover, according to Max Havelaar a large number of study reports are available that indicate the opposite. At this stage of events, it cannot be sufficiently determined within the context of these preliminary relief proceedings, which are not appropriate for an extensive assessment of the facts, whether the effects of the two marks are (at least) equivalent. Although the Preliminary Relief Court finds that the concept of adequate wage/adequate income, upon which the principles of Utz Certified are based, appears to be increasingly accepted in the political arena, the Municipalities are not required to anticipate possible future political policy. Moreover, the Dutch Government's letter of 16 October 2009 states that the contracting authority may determine at its discretion whether to apply fair trading conditions or the concept of adequate wage/adequate income.

- 4.17 The above leads to the opinion that there are no grounds for awarding the relief sought with the purport of setting aside or amending (the amended) paragraph 3.3 of the tender brochure.
- 4.18 Douwe Egberts also sought to have the award criterion included in paragraph 5.2 of the tender procedure deleted or amended. In the summons, Douwe Egberts limits its arguments to question 2 of paragraph 5.2.2. This question has since been declared by the Municipality to no longer apply. Thus, this part of the claim will also be denied.
- 4.19 As the party ruled against, Douwe Egberts will be ordered to pay the costs of these proceedings. Max Havelaar also sought payment of the statutory interest over the costs of the proceedings and subsequent costs. These claims are also allowable.

## **5. THE DECISION**

The Preliminary Relief Judge:

### in the ancillary proceedings

- admits Max Havelaar as intervening party;
- orders that each of the parties will have to pay its own legal costs;

### in the main action

- denies the requested relief;
- orders Douwe Egberts to pay the costs of the proceedings, estimated to date on the part of the Municipalities at € 263 for fees and € 816 for attorney's salary;
- orders Douwe Egberts to pay the costs of the proceedings, estimated to date on the part of Max Havelaar at € 263 for fees and € 816 for attorney's salary, to be increased by the statutory interest over these sums if Douwe Egberts fails to pay these costs within fourteen days after the date of this judgment;
- orders Douwe Egberts to pay the costs subsequent to this judgment on the part of Max Havelaar, estimated at:
  - € 131 for attorney's salary,

- to be increased by a sum of € 68 for attorney's salary if this judgment has been served and the party ruled against has not satisfied the order within fourteen days after service;
- to be increased by the statutory interest over the above sums if Douwe Egberts has not paid the sums in full within fourteen days after these are owed;
  
- declares this judgment immediately enforceable with regard to the order to pay costs.

Rendered by *mr. drs.* J.H.A.C. Everaerts, Preliminary Relief Judge at the Alkmaar District Court and pronounced in public in the presence of the court clerk, *mr.* N. Boots, on 18 March 2010.