Confidential/By courier

KNLTB

[CONFIDENTIAL]

Display way 4

3821 BT AMERSFOORT

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

Contact

[CONFIDENTIAL]

070 8888 500

Subject

Decision to impose an administrative fine

Authority for Personal Data

PO Box 93374, 2509 AJ The Hague

Bezuidenhoutseweg 30, 2594 AV The Hague

T 070 8888 500 - F 070 8888 501

authoritypersonal data.nl

Dear [CONFIDENTIAL],

The Dutch Data Protection Authority (AP) has decided to contact the Royal Dutch Lawn Association Tennis Association (KNLTB) to impose an administrative fine of € 525,000 because the KNLTB in June and July 2018 for the purpose of generating income a file with personal data of its members provided to two sponsors for direct marketing activities of these sponsors. For insofar as it concerns the provision and use of personal data of members who were members before 2007 of the KNLTB, this is an irreconcilable further processing. With this, the KNLTB

Article 5, paragraph 1, opening words and under b, of the AVG. As far as the provision and use
this does not apply to personal data of members who became a member of the KNLTB after 2007
legal basis existed. With this, the KNLTB has Article 5, first paragraph, preamble and under a jo. article
6, first paragraph, of the GDPR.
The decision is explained in more detail below. Chapter 1 is an introduction and Chapter 2 describes it
legal framework. Chapter 3 lists the most important facts in this case. In chapter 4
the AP assesses the facts on the basis of the legal framework and concludes that the KNLTB has complied with the AVG
has violated. The amount of the administrative fine is explained in chapter 5. Finally contains
chapter 6 the operative part and the remedies clause.

1 Introduction

Relevant legal entity

1.1.

1. The KNLTB is an association with full legal capacity, which has its registered office at
Displayweg 4 (3821 BT) in Amersfoort. The KNLTB was founded on June 5, 1899 and is located in the
trade register of the Chamber of Commerce registered under number 40516738. According to the
statutes, last amended on March 4, 2019, the aim of the KNLTB is to promote the
tennis game in all its forms, including other forms of play in which use
is made of a racket or similar game material.

2. The KNLTB is the umbrella organization of tennis sport and tennis clubs in the Netherlands and
engages, among other things, in advising and supporting boards of directors
tennis associations in the field of club policy, accommodation and legal disputes.1

3. The KNLTB estimates that there are 1,782 tennis clubs in the Netherlands, of which 1,657 (or 97%) are affiliated with the KNLTB.2 According to the website of the KNLTB there are (via this tennis associations) almost 570,000 tennis players are affiliated with the KNLTB, with which the KNLTB size is the second largest sports association in the Netherlands.3

Process flow

1.2.

4. On October 22, 2018, the AP started an investigation into the provision by the KNLTB of personal data of its members to sponsors with the aim of approaching members with 'tennis-related and other offerings".

5. On May 7, 2019, the AP adopted its investigation report. On May 13, 2019, she has this report sent to the KNLTB. The AP has [CONFIDENTIAL] a copy of it from the KNLTB research report sent.

6. In a letter dated 29 May 2019, the AP sent the KNLTB an intention to enforce due to violation of Article 5, first paragraph, opening words and under b, of the GDPR and Article 5, first paragraph, salutation and under a jo. Article 6, first paragraph, of the GDPR. A copy of the intention is also attached [CONFIDENTIAL] sent by the KNLTB.

7. Also given the opportunity to do so by letter of 29 May 2019, the KNLTB, by letter of on July 25, 2019, expressed its view in writing on this intention and the basis for it lying research report. [CONFIDENTIAL] of the KNLTB also has an opinion

1 https://www.knltb.nl/over-knltb/wat-doet-de-knltb/.

2 File document 35 (Appendix 6: status as at 13 November 2018).

3 https://www.knltb.nl/over-knltb/wat-doet-de-knltb/historie.

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submitted by way of the document “[CONFIDENTIAL] comments on the AP-

research report”.

8. On August 1, 2019, an opinion hearing was held at the offices of the AP at which the

KNLTB has verbally explained its view.

9. On August 2, 2019, the AP asked a number of questions by e-mail during the opinion hearing.

could not yet be answered by the KNLTB. By email dated August 22, 2019 and from

The KNLTB answered these questions on 11 September 2019.

10. By e-mail of August 20, 2019, the AP sent the report of the opinion session to the KNLTB

sent. The KNLTB has its comments on the report by e-mail dated September 17, 2019

sent to the AP. The AP sent an amended report on October 2, 2019.

11. On October 18, 2019, the KNLTB responded to the amended report by e-mail.

12. By e-mail dated October 28, 2019, the KNLTB sent the Contact Protocol KNLTB member database to the AP

provided.

Reason and background for starting research

1.3.

13. Following the announcement by the KNLTB to collect personal data from its members

provide to sponsors to solicit members with tennis-related and other offers,

the AP received tips and complaints from a number of members. As a result of the announcement, a member decided

of the KNLTB to publicly ask whether this behavior of the KNLTB was in line with

the GDPR. The media have reported that the KNLTB is under pressure from summary proceedings

one of its members had suspended providing telephone numbers to a sponsor. This

reporting was reason for the AP to invite the KNLTB for a meeting. In response to

of this conversation, the complaints and tips received as well as the media coverage, the AP is one

started an investigation into the provision of member data by the KNLTB to sponsors.

2. Legal framework

2.1 Scope GDPR

14. Pursuant to Article 2, paragraph 1, of the GDPR, this Regulation applies to the whole or

partially automated processing, as well as to the processing of personal data contained in

are included or are intended to be included in a file.

15. Pursuant to Article 3(1), this Regulation applies to the processing of

personal data in the context of the activities of an establishment of a

controller or a processor in the Union, whether or not the processing already takes place in the Union

then not take place.

16. Pursuant to Article 4, insofar as relevant here, for the purposes of this Regulation

understood by:

‘1) “personal data” means any information relating to an identified or identifiable natural person

person (“the data subject” […]);

2) “processing”: an operation or set of operations relating to personal data

or a set of personal data, whether or not carried out by automated processes […];

[…]

7) “controller” means a natural or legal person who, alone or jointly

with others, determines the purposes and means of the processing of personal data; […];

[…]

9) "recipient" means a natural or legal person, a public authority, a service or a

other body, whether or not a third party, to whom/to which the personal data are provided. […];

10) “third party” means a natural or legal person, public authority, agency or other

body, not being the data subject, nor the controller, nor the processor, nor

the persons under the direct authority of the controller or processor

are authorized to process the personal data;

11) “consent” of the data subject means any freely given, specific, informed and unambiguous

expression of will expressed by the data subject by means of a statement or an unequivocal active

act accepts the relevant processing of personal data;

[…].”

2.2 Principles: lawfulness, fairness and transparency & purpose limitation

17. Article 5, first paragraph, preamble under a and under b, GDPR states:

‘Personal data must:

a) processed in a manner that is lawful, fair and fair in relation to the data subject

is transparent (‘lawfulness, fairness and transparency’);

b) are collected for specified, explicit and legitimate purposes and

not subsequently further processed in a manner incompatible with those purposes; the

further processing for archiving purposes in the public interest, scientific or

historical research or statistical purposes shall not be considered as pursuant to Article 89(1).

considered incompatible with the original purpose (“purpose limitation”);’

18. Article 6, fourth paragraph, GDPR states:

When the processing is for a purpose other than that for which the personal data was collected

is not based on the consent of the data subject or on a provision of Union law or a

member state law that is necessary and proportionate in a democratic society

constitutes a measure to ensure the objectives referred to in Article 23(1), the

controller when assessing whether the processing is for another purpose

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is compatible with the purpose for which the personal data was initially collected, among other things

take into account:

a) any connection between the purposes for which the personal data was collected and the

purposes of the intended further processing;

b) the context in which the personal data has been collected, in particular with regard to the relationship between the

data subjects and the controller;

c) the nature of the personal data, in particular or special categories of personal data

are processed, in accordance with Article 9, and whether personal data concerning criminal

convictions and criminal offenses are processed in accordance with Article 10;

d) the possible consequences of the intended further processing for the data subjects;

e) the existence of appropriate safeguards, which may include encryption or pseudonymization."

2.3 Basis for the processing of personal data

19. Article 6(1) of the GDPR, where relevant, states:

The processing is only lawful if and to the extent that it complies with at least one of the following

conditions are met:

a) the data subject has given consent to the processing of his personal data for a

or more specific purposes;

b) the processing is necessary for the performance of a contract involving the data subject

party, or to take measures at the request of the data subject prior to entering into a contract

to take;

(…)

f) the processing is necessary for the purposes of the legitimate interests of the

controller or of a third party, except where the interests or fundamental rights and

the fundamental freedoms of the data subject requiring the protection of personal data,

outweigh those interests, in particular where the data subject is a child.

(…)”

20. The previous article corresponds to article 8 of the Personal Data Protection Act (Wbp, per

May 25, 2018 withdrawn), which read:

Personal data may only be processed if:

a. the data subject has given his unambiguous consent to the processing;

b. the data processing is necessary for the performance of an agreement whereby the

concerned party, or for taking pre-contractual measures in response to a

request of the data subject and which are necessary for the conclusion of an agreement;

(…)

f. the data processing is necessary for the protection of the legitimate interest of the

responsible or of a third party to whom the data is provided, unless the interest or the

fundamental rights and freedoms of the data subject, in particular the right to protection of

privacy prevails.”

2.4 Authority to impose an administrative fine

21. The power to impose an administrative fine arises from Article 58, second paragraph,

preamble and under i, viewed in conjunction with Article 83, paragraph 5, preamble and under a, of the GDPR and

Article 14, third paragraph, of the UAVG.

22. Article 58, second paragraph, opening words and under i, of the GDPR states the following:

‘Each supervisory authority has all of the following corrective powers

measures:

(…)

i) according to the circumstances of each case, in addition to or instead of those referred to in this paragraph

measures, impose an administrative fine under Article 83 (…);”

23. Article 83, first, second and fifth paragraph, preamble and under a, of the GDPR states the following:

"1. Each supervisory authority shall ensure that the administrative fines imposed under

this Article shall be imposed for the infringements of this Regulation referred to in paragraphs 4, 5 and 6

be effective, proportionate and dissuasive in each case.

2. Administrative fines shall, depending on the circumstances of the case, be

imposed in addition to or instead of those referred to in points (a) to (h) and (j) of Article 58(2).

measures. (…)

5. Breaches of the provisions below shall be subject to, in accordance with paragraph 2

administrative fines of up to EUR 20 000 000 or, for a company, up to 4% of the total

worldwide annual turnover in the previous financial year, if this figure is higher:

a) the basic principles of processing, including the conditions for consent,

in accordance with Articles 5, 6, 7 and 9;'

24. Article 14, third paragraph, of the UAVG states the following:

In the event of a violation of the provisions of Article 83, fourth, the Dutch Data Protection Authority may

fifth or sixth paragraph of the bye-law impose an administrative fine not exceeding the amount specified in this

amounts mentioned by members.”

3. Facts

25. This chapter lists the facts relevant to the decision. The facts are important

regarding the provision of personal data by the KNLTB to two sponsors, namely

[CONFIDENTIAL] (trading as [CONFIDENTIAL]; hereinafter [CONFIDENTIAL])

and the [CONFIDENTIAL] ([CONFIDENTIAL]). This provision was intended for the KNLTB to

generate (additional) income. The personal data are by [CONFIDENTIAL] and

[CONFIDENTIAL] used for their direct marketing activities for which the KNLTB has a

received compensation. [CONFIDENTIAL] and [CONFIDENTIAL] have within the framework of the

carrying out their direct marketing activities also provide the personal data to

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[CONFIDENTIAL] respectively various [CONFIDENTIAL]. The AP has not conducted an investigation

to the lawfulness of the processing of personal data by [CONFIDENTIAL] and the

[CONFIDENTIAL], and the processing of personal data by [CONFIDENTIAL] and the

[CONFIDENTIAL]. In this decision, the lawfulness of the latter processing is then

also not rated.

26. The facts relevant to this resolution occurred before the last amendment of the articles of association of

March 4, 2019. This means that for the description of the facts, where relevant, will be

reference is made to the Articles of Association, which were amended on January 19, 2005 (Articles of Association 2005) or

the Articles of Association

as amended on December 30, 2015 (Articles of Association 2015).

3.1 KNLTB

Goal KNLTB

27. According to Article 2, first paragraph, of the 2005 statutes (and also the 2015 statutes), the KNLTB is

with the aim of promoting the practice of the game of tennis and the development of the sport of tennis.

According to the second paragraph, the KNLTB tries to achieve its goal by, among other things:

a. forming a bond between, if possible, all players in the tennis game;

b. providing information about the game of tennis and promoting the game of tennis as

leisure activity;

c. spreading the rules of the game of tennis;

d. taking all measures that may lead to raising the level of play;

e. organizing, arranging and supporting tennis matches;

f. providing information about and support for the construction and improvement of tennis courts and

accommodations;

g. providing information and advice on the administrative organization of the sport of tennis;

h. promoting or taking up training courses aimed at association framework,

tennis teachers and umpires;

i. representing Dutch tennis in the organizations where KNLTB is or will be

connected;

j. looking after the interests of its members and affiliates;

k. representing its members in and out of court;

l. all permitted means, which are further at the service of the KNLTB.

Organization KNLTB

28. Pursuant to Article 3(1) of the 2015 Articles of Association, insofar as relevant here, bodies of the

KNLTB, the Council of Members and the Board of Directors. Pursuant to Article 3, second paragraph, of the Articles of

Association 2015

The Council of Members represents all members of the KNLTB. Pursuant to Article 3(3) of the

articles of association 2015, the KNLTB is led by the association board, which is accountable to the

member council.

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29. According to Article 4, paragraph 1, of the 2015 Articles of Association, the KNLTB has as a member:

a. associations […];

b. union members;

c. personal members.

30. Pursuant to Article 4(2) of the 2015 Articles of Association, union members are the members of an association as referred to in paragraph 1, under a of this article, insofar as they have not been removed from membership by the KNLTB appalled.

31. According to Article 12, paragraph 1, of the 2015 Articles of Association, the Federal Board is responsible, among other things, for:

a. making all policy decisions […]

b. the day-to-day business;

[…]

e. implementing the decisions taken by the Council of Members;

Register of members

32. Article 4, ninth paragraph, of the 2005 Articles of Association (also 2015 Articles of Association) stipulates that the Board of maintains a register of members. Only those data are kept in this register that are relevant to the realization of the goal of the KNLTB are necessary. The Board of Directors may, after a prior decision of the Council of Members to provide registered data to third parties, except for the member who objected in writing to the Board of Directors.

3.2 Decision-making and information provision provide member data to sponsors

Decision making use of member data for direct marketing purposes sponsors

33. In 2007, at the proposal of the Board of Directors, the Members' Council agreed to the use of the name, address and place of residence of members for letter post campaigns by KNLTB sponsors. From the minutes of the meeting of the Members' Council in 2007, it can be concluded that the money arising from the use of member data, among other things, is spent on Toptennis.

34. In 2017, the management of the KNLTB discussed expanding the direct marketing opportunities by providing personal data to partners (sponsors).

electronic and telephone direct marketing purposes. This policy change has subsequently been implemented in the

board meeting held in April 2017. The Board of Directors has the Council of Members

informed about the expansion of the

direct marketing opportunities. The aim of this is to 'create added value' for the members

also generating 'extra income that will make a structural and substantial contribution in the long term

supply to the KNLTB and the tennis sport. The Council of Members has been requested to grant permission for the

expanding the direct communication possibilities towards the members of the KNLTB. This

permission to provide personal data of members of the KNLTB for marketing

and commercial purposes to current and future structural and future partners with as

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purpose of approach by telephone/telemarketing. The Members' Council has in the Members' Council meeting

of 16 December 2017 approved the proposal of the Federal Board.

Information provision by KNLTB

35. From 2015, new members of the KNLTB will receive a welcome email. Since 2018 the subject

privacy part of this welcome email. In the welcome email, with regard to privacy

aspects under the heading “How does the KNLTB handle your personal data?” the following text

included: “Under strict conditions, we may and can provide your name and address details and telephone number

make it available to our partners, so that they can approach you with relevant promotional campaigns. If you not

If you want to be contacted by telephone or post with offers, you can use the right to object

(AP: the text [right of objection] is also a shortcut to the right of objection form).

Your e-mail address will therefore not be provided to our partners, unless you have given permission for this (opt-in).

The KNLTB always adheres to the applicable laws and regulations. Do you want more information about the processing

of your personal data? Then view our Privacy Statement (AP: the text [Privacy Statement] is also a

shortcut to the privacy statement of the KNLTB).”

36. In the newsletter of 7 February 2018, the KNLTB informed its members about sharing personal data with its partners. Under the heading “Data sharing: added value for members and long term investment for tennis” the following text is stated: “The KNLTB would like added value for you Create KNLTB membership by being able to make tennis-related and other great offers. In addition the KNLTB wants to generate extra income with which we can make tennis affordable for you and your club hold in the long term. That is why permission was obtained at the Council of Members meeting in December 2017 providing your data to our partners. Naturally, the KNLTB adheres to all applicable regulations in this context laws and regulations, and the KNLTB also closely monitors the use of your data by its partners. Do you have questions or do you want to know more?”

Via the button [Read more] you can click through to a web page with the title 'Fan marketing & Data' in which members are informed as follows: "The KNLTB sets your name and address details and telephone number (if you have given an opt-in) available to our partners under strict conditions, so that they can approach you with relevant promotional campaigns. Your email address and phone number will not be provided to our partners without your consent.”

Members are also informed of the possibility to invoke their right of objection: “If you don't wishes to be approached by post with offers from KNLTB and/or its structural or incidental partners, then you can use the right to object. You can pass this on to the KNLTB Member Service via an online form.”

37. On 23 February 2018, a news item with a similar purport was sent to all association boards and volunteers.

38. In the newsletter of 7 March 2018, the KNLTB informed its members about the change in the way in which the KNLTB handles the personal data of its members. Underneath the head “Change in the way KNLTB handles your personal data” is stated in the following text: “De KNLTB is constantly looking for ways to create added value for your KNLTB membership. For that

it is necessary to have relevant data and to be allowed to use this data, so that we can inform you and others approach tennis fans with tennis-related and other relevant offers. The Council of Members has December 2017 agreed to provide your data to our partners."

Via the button [Read more] you can click through to a news item of 12 February 2018 on the website of the KNLTB with the title 'Change in the way the KNLTB with your handles personal data' in which members are informed as follows: "The KNLTB sets your name and address data and telephone number available to our partners under strict conditions, so that they can contact you approach with relevant promotional campaigns. Your e-mail address will not be provided without your permission to our partners. We always monitor the actions of our partners and make strict agreements per action about how they can handle your data. The KNLTB must and wants to adhere to the applicable regulations at all times laws and regulations." Members are also informed of the possibility to exercise their rights on this web page to invoke an objection: "If you do not wish to be contacted by telephone or mail with offers from KNLTB and/or its structural or incidental partners, you can use the right to object. You can pass this on to the KNLTB Member Service via an online form."

39. Furthermore, the short message "How does the KNLTB handle personal data of members?" from April 23 2018 was on the homepage of the KNLTB for over a month.

40. In response to media attention about the provision of members' personal data to her partners, on April 23, 2018 and June 13, 2018, the KNLTB posted various news items on its websites www.knltb.nl and www.centrecourt.nl4, in which members are briefly summarized informed how the KNLTB handles personal data of members and the KNLTB data of its members under strict conditions and in the interest of tennis.

41. The KNLTB has posted a privacy statement on its website.5 In this, members are informed, among other things

informed about the nature of the personal data processed by the KNLTB, the bases and purposes of the processing. Personal data are processed according to the privacy statement processed for, among other things, offering products, services, events of the KNLTB, the partners of the KNLTB or other parties with whom the KNLTB cooperates. With regard to the provision of personal data to partners of the KNLTB, the privacy statement states:

“When it comes to providing name and address details to our partners6 (making an offer especially for our members), you are of course entitled at all times to make your objection known via the appropriate form7 (right of objection in direct marketing). Your data will then no longer be provided to our partners, so that they can make an offer to you as a member of the KNLTB. The legal one the basis for this provision is the legitimate interest (and therefore not permission). Phone numbers are only provided to our partners if a member has given explicit prior consent.”

4 The KNLTB uses the website www.knltb.nl for communication with tennis players and tennis fans and the website www.centrecourt.nl for communication towards tennis clubs and tennis teachers.

5 Privacy statement, December 2018 version.

6 By clicking on the underlined text, you will be forwarded to an overview of the partners who sponsor the KNLTB.

7 By clicking on the underlined text, you will be redirected to the right of objection form, which you can use to can object electronically to the sharing of personal data with partners of the KNLTB.

3.3 Agreements KNLTB with [CONFIDENTIAL] and [CONFIDENTIAL]

42. From March 2018 up to and including October 2018, the KNLTB has used [CONFIDENTIAL] and [CONFIDENTIAL] started actions involving personal data such as name, address and place of residence (NAW) and telephone numbers of members of the KNLTB have been used. [CONFIDENTIAL] has two

discount flyers sent by post to a selection of KNLTB members and [CONFIDENTIAL] has in
a telemarketing campaign called a selection of KNLTB members to [CONFIDENTIAL].
to sell. For the purpose of the direct marketing activities of [CONFIDENTIAL] and
[CONFIDENTIAL] has provided the KNLTB with personal data of its members. To the
provision and use of this personal data are subject to the following agreements
basis.

Agreement KNLTB - [CONFIDENTIAL]

43. On May 15, 2018, the KNLTB and [CONFIDENTIAL] signed an Official Supplier Agreement
Closed.

44. Article 1.2 of the Official Supplier Agreement stipulates that the KNLTB
[CONFIDENTIAL] during the term of the agreement sponsorship rights and/or
communication options of the KNLTB (hereinafter: the “Communication Options”) such as
laid down in the annexes attached to the agreement.

45. Paragraph 3 of the Official Supplier Agreement specifies how [CONFIDENTIAL]
makes a sponsor contribution to the KNLTB. This sponsor contribution consists of a fixed amount per year
(article 3.1), making vouchers available to the KNLTB (article 3.2) and offering
discount on items available in [CONFIDENTIAL] webshop.

46. Article 3 of Annex 1C (database rights) of the Official Supplier Agreement reads as follows:
“For (promotional) actions towards the individual KNLTB members, the KNLTB proposes a selection of the
up-to-date address file (name and address details) at the request of [CONFIDENTIAL] two (2) times
available to [CONFIDENTIAL] per year. Actions should be in consultation with and after written
approval of the KNLTB […] and to comply with the guidelines of the KNLTB.”

47. Appendix 4 of the Official Supplier Agreement concerns the processing agreement in which further
agreements have been made about, among other things, the security of personal data (article 4), the
possibility of control and audit by the KNLTB (article 5), a duty of confidentiality for
[CONFIDENTIAL] (Article 6) and the consequences of termination or dissolution of the

processing agreement (article 12), namely that, in short, the personal data

be destroyed by [CONFIDENTIAL] as soon as possible or be passed on to the KNLTB

returned.

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48. In Annex 6 (Description of processing of Personal Data) under the heading “Subject, nature and

estimated period of processing” states the following: “Personal data of members of the

KNLTB, being in any case name and address details for promotions by post.”

49. On 1 May 2018, the KNLTB and [CONFIDENTIAL] made additional agreements with

with regard to the provision of KNLTB member data for a direct mail/post mailing

of [CONFIDENTIAL]. The following agreements have been made about the selection of:

member data: [CONFIDENTIAL] delivers a file to the KNLTB, after which the KNLTB on the basis

of the agreed selection criteria an address file (with the following data: first name,

prefix, surname, street, house number, postal code and place of residence) compiles that to

[CONFIDENTIAL] is sent. [CONFIDENTIAL] deduplicates this address file

consultation of the legal registers (such as the Postfilter).

Agreement KNLTB - [CONFIDENTIAL]

50. On 28 June 2018, the KNLTB and the [CONFIDENTIAL] concluded an agreement.

51. According to Article 1.1, the purpose of the agreement is:

“The KNLTB will [CONFIDENTIAL] make its 'adults' membership file available to

for the purpose of (telephone) approach by [CONFIDENTIAL] and/or [CONFIDENTIAL] on behalf

of the KNLTB with the offer to become a [CONFIDENTIAL] subscriber, in accordance with the conditions

in this agreement.”

52. Article 1.2 of the agreement provides, insofar as relevant here:

“The file that [CONFIDENTIAL] receives from the KNLTB meets at least the following

conditions:

- The records are complete and correct in accordance with the mandatory fields from the supplied format (see

attachment 3);

[…]

- The persons in the file as mentioned above are at least 18 years old, members of the KNLTB and are with the

registration of their personal data by the KNLTB about the provision to third parties

(including [CONFIDENTIAL], [CONFIDENTIAL], [CONFIDENTIAL]) of their

personal data;

- The persons in the file have not objected to the provision of their

personal data to third parties. The text of the privacy statement of the KNLTB has been used for this,

as can be found on the website of the KNLTB. In addition, all KNLTB members were last February

informed via the member newsletter about the use of their data for

[CONFIDENTIAL] with the possibility to object to this;”

53. Article 1.6 of the agreement provides, insofar as relevant here:

“During the term of this agreement, it is [CONFIDENTIAL] permitted once per

calendar year to approach the remaining 8 KNLTB members (by telephone) with an offer to

become a [CONFIDENTIAL] subscriber or [CONFIDENTIAL] subscriber, […].”

54. Article 3.1 of the agreement stipulates, insofar as relevant at present, that the parties will both

be regarded as responsible as referred to in Article 26 GDPR.

55. Article 8.1, insofar as relevant at present, stipulates that in the event of termination of the assignment and/or the agreement or if requested by a party, the data (including all copies) are returned to the KNLTB or are destroyed at its request, in which case is declared in writing by [CONFIDENTIAL] that this has happened.

56. In appendix 1 (Appendix [CONFIDENTIAL]-KNLTB agreement – Telemarketing pilot campaign) the fees for the KNLTB are stated. [CONFIDENTIAL]

57. Annex 3 (Format data exchange) shows that the mandatory records consist of: gender, initials, first and last name, date of birth, address, zip code, place of residence, (mobile) telephone number, e-mail address, registration date, registration time and tennis association.

58. In appendix 5 to the agreement, further agreements are made about, among other things, the security of personal data (article 4) and a duty of confidentiality for the parties.

3.4 Disclosure to and use of personal data by [CONFIDENTIAL] and [CONFIDENTIAL]

[CONFIDENTIAL]

59. The KNLTB, together with [CONFIDENTIAL], based on selection criteria (and after deduplication) composed of a membership file of 50,000 members (hereinafter: membership file). Of these members are the following data in the file:

- Campaign ID (digit code);
- Sex;
- First name;
- Initials;
- Last name;
- Street;

8 The file supplied by the KNLTB has been deduplicated by the KNLTB with the right of objection and the right of objection file of the KNTB. Subsequently, the file was deduplicated by [CONFIDENTIAL] for non-Dutch residents, the subscriber base of

[CONFIDENTIAL] and on the file with former subscribers of [CONFIDENTIAL], consumers who have been [CONFIDENTIAL], its own right of objection file and other usual registers, such as the Do-not-call Register and the Death Register (article 1.5 of the agreement). The portion of the original file that remains after deduplication is ultimately used for marketing purposes, which is implied by the word “remaining”.

- House number;
- House number addition;
- Postal Code;
- Place.

60. On June 11, 2018, the KNLTB placed the membership file on the sFTP server (a secure environment) for the benefit of [CONFIDENTIAL].

61. On June 11, 2018, [CONFIDENTIAL] deleted the sFTP server's membership file and member file sent via an sFTP connection to [CONFIDENTIAL]. [CONFIDENTIAL] has processed the personal data on discount flyers and sent these flyers on 5, 6, 7 and 8 July 2018 to the selected members of the KNLTB.

[CONFIDENTIAL]

62. The KNLTB has provided the following information to [CONFIDENTIAL]:

- Campaign ID (digit code);
- Sex;
- First name;
- Initials;
- Last name;

- Street;

- Place;

- Date of birth;

- Postal Code;

- House number;

- House number addition;

- Phone number;

- Mobile number;

- E-mail;

- Association.

63. On 29 June 2018, the KNLTB provided a file containing 314,846 unique records to [CONFIDENTIAL]. By this, the KNLTB means that the data stated in marginal 622 of 314,846 unique households have been provided. This file has been cleaned up by [CONFIDENTIAL] on based on ten selections, as included in the Do-Not-Call-Me Registry and persons who have a have an active subscription to [CONFIDENTIAL] and [CONFIDENTIAL]. The file that was eventually used by [CONFIDENTIAL] counted 39,478 records after the selection. There are for [CONFIDENTIAL] 19,595 and for [CONFIDENTIAL]19,883 records deployed. These data are then provided via a secure sFTP server to various [CONFIDENTIAL] for the benefit of telemarketing.9

9 Initially, the KNLTB placed a file on the sFTP server of [CONFIDENTIAL] on 26 June 2018, but pending this file has been removed after signing the agreement between [CONFIDENTIAL] and the KNLTB. On June 29, 2018 it is again

[CONFIDENTIAL]

64. The telemarketing campaign started on Monday 16 July 2018 and at the request of the KNLTB terminated early.

3.5 Complaint KNLTB regarding statements made by AP chairman

65. On 17 December 2018, the television program Nieuwsuur (NOS/NTR) broadcast an item about the resale of personal data of tennis players and football players. The chairman of the AP is in favour interviewed this item. In response to statements made by the chairman in this interview, the KNLTB submitted a complaint to the AP on 21 December 2018, which the AP upheld on 19 March 2019 declared.

4. Assessment

66. This chapter successively establishes that the KNLTB is the controller processed personal data by providing member data to [CONFIDENTIAL] and [CONFIDENTIAL] (Sections 4.1 and 4.2); that the AP by conducting research does not conflict acted with its own prioritization policy (section 4.3) and that the AP was not negligent acted towards [CONFIDENTIAL] (section 4.4). In paragraphs 4.5 and 4.6 concluded that the AP has not acted contrary to the principle of equality or the prohibition of bias. In paragraphs 4.7 – 4.11, the DPA concludes that the provisions to and use of personal data by [CONFIDENTIAL] and [CONFIDENTIAL]. are compatible with the original collection purpose of the personal data or for the provision and use had no lawful basis.

4.1 Processing of personal data

67. The KNLTB collects data from its members, among other things to keep a register of affiliates.10 This includes the name, address, place of residence and telephone number of members.11 These data qualify as personal data as referred to in Article 4, under 1, of the GDPR because it allows members of the KNLTB to be identified directly.

68. The KNLTB has provided personal data of its members in file form to [CONFIDENTIAL]

and [CONFIDENTIAL] for use in their direct marketing activities. With that

the KNLTB has processed personal data as referred to in Article 4, under 2, of the AVG.

placed a file on the sFTP server of [CONFIDENTIAL]. This file was obtained from this server by [CONFIDENTIAL] on the same

day

deleted. It is striking that [CONFIDENTIAL] and KNLTB give a different picture of the number of records used for the

marketing action. According to [CONFIDENTIAL], the number is 39,478; according to the KNLTB, this is 21,591 (whereby the

KNLTB

refers to the number of members and not the number of records). See File document 73.

10 Articles of Association 2005, article 5, fourth paragraph.

11 Privacy statement KNLTB, version December 2018.

4.2 Controller

69. In the context of the question whether Article 5(1)(a) and (b) jo. Article 6, first paragraph, of the AVG

complied with, it is important to determine who can be regarded as a controller

referred to in Article 4, preamble and under 7, of the GDPR. For this, it is decisive who the goal of and the

means for the processing of personal data.

70. The members' council has determined the purpose of the processing on the proposal of the board, that is

say the use of personal data collected by the KNLTB to generate (additional)

income from providing personal data to partners (sponsors) of the KNLTB ten

for their direct marketing activities. The Council of Members and the Board of Directors are organs of the

KNLTB. In view of the foregoing, the KNLTB has (partly) determined the purpose of the processing.

71. The means of processing, i.e. how the data processing takes place, is

also (partly) determined by the KNLTB. The KNLTB has attached conditions to the method
on which the personal data are delivered to [CONFIDENTIAL] and [CONFIDENTIAL] and
the use by [CONFIDENTIAL] and [CONFIDENTIAL] for their direct marketing activities.
In view of this, the KNLTB has (partly) determined the means for processing.

72. Since the KNLTB (partly) determines the purpose of and means for the processing of personal data
has determined, he qualifies as a controller as referred to in Article 4(7) of
the GDPR.

4.3 AP's actions do not conflict with its own policy

KNLTB position

73. The KNLTB wonders why the AP has not made a risk analysis or an investigation
was actually necessary, since the benefits to the sponsors had already stopped.
The KNLTB also believes that the necessity and basis for the investigation are lacking, in view of the
small number of complaints submitted to the AP about the call by [CONFIDENTIAL].

74. In addition, the KNLTB wonders why the AP, after receiving tips about the policy of
the KNLTB, an investigation has been launched. According to the Policy Rules for Prioritizing Complaints Investigations of the
AP12 (prioritization policy) should a norm-transferring conversation have taken place or should the AP have had a
must send a standard-conveying letter, according to the KNLTB. In this context, the KNLTB points to a
passage in the explanatory notes to the prioritization policy, which states that the AP is involved in the treatment
of complaints primarily focuses on achieving norm-compliant behaviour. In doing so, the AP controls a
pragmatic approach, in which effectiveness and efficiency play an important role. A
example of a pragmatic approach is according to the prioritization policy that the AP, when they

12 Policy rules prioritizing complaints investigation, published in the Government Gazette on 1 October 2018. The KNLTB
refers to a paragraph
from the introduction in section 2.1 of the explanatory notes to the policy.

Date

can realize norm-compliant behavior in a specific case by contacting by telephone
the (alleged) offender, the AP will do so and a complaint can be settled with this.

Reply AP

75. The AP and the supervisors working for it have various (investigative)
powers that they can always and spontaneously exercise in order to ensure adequate supervision
exercise compliance with the GDPR. There is no prior and reasoning fact for this,
signal, ground or suspicion required.13 In view of this, the AP was not obliged to carry out a risk analysis
determine whether the investigation was actually necessary. For the exercise of the (research)
powers is also irrelevant whether and, if so, how many complaints have been received and is irrelevant
that the provision of personal data by the KNLTB and its use by
[CONFIDENTIAL] and [CONFIDENTIAL] have ended. That dispensations and use are
terminated does not alter the fact that they did take place. The research was correct
intended to answer the question whether the provision and use of personal data of
members of the KNLTB have been lawful.

76. Insofar as the KNLTB argues that the AP is acting contrary to its prioritization policy, the
AP as follows. Apart from the fact that the reason for the investigation consisted not only of complaints but
also from the coverage of the KNLTB and the media attention about it and the conversation that the AP to
in response to this on October 11, 2018 with the KNLTB, the AP has reviewed the content of the
complaints investigated to the extent appropriate. After an initial assessment of the complaints,
the AP considered it plausible that it concerned the processing of personal data and that it was possible
there was one or more violations of the GDPR. In view of this and taken into account
that it may have involved many people (the KNLTB has almost 570,000 members), the provision
could have serious consequences for the data subjects and the provision for

has caused social commotion, the AP has decided to set up a further

research. This is entirely in line with Article 2 of the prioritization policy.

77. The statement of the KNLTB that, according to its prioritization policy, the AP after receiving complaints from

its members should have opted for a norm-conveying conversation and should have refrained from it

research doesn't make sense. There is no such obligation in these policies, which refer to

prioritizing investigations following complaints. The policies are already in place for this

no binding framework for the AP when making a choice for an enforcement instrument. There is rest

therefore no obligation on the AP to realize norm-compliant behavior in the event of a violation

telephone contact with the (alleged) offender. The AP points to the resting on her

duty of principle to take enforcement action against violations, given the public interest that

this is served. To this end, the AP has the means referred to in Article 58, second paragraph, of the GDPR and Article 16

of the UAVG mentioned corrective measures. The AP is entitled to freedom in the choice of the

enforcement instrument, provided that the chosen instrument is sufficiently effective. The AP has in this case

13 ABRvS 21 August 2019, ECLI:NL:RVS:2019:2832, l.r. 4.1; Rb. Rotterdam, 23 May 2019, ECLI:NL:RBROT:2019:4155, r.o.

15.2; Rb.

Rotterdam (VRZnr.) 28 September 2018, ECLI:NL:RBROT:2018:8283, r.o. 6.1.; CBb 12 October 2017,

ECLI:NL:CBB:2017:327, r.o. 6.4; CBb12

October 2017, ECLI:NL:CBB:2017:326, r.o. 4.4; Court of Appeal of The Hague 13 June 2013, ECLI:NL:GHDHA:2013:CA3041,

legal ground. 2.3.

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Our reference

[CONFIDENTIAL]

not opted for a norm-transferring conversation because of the large number of people involved, the seriousness of

the violation and the social commotion that the provision of member data to

[CONFIDENTIAL] and [CONFIDENTIAL].

4.4 AP has not acted negligently towards FG

KNLTB position

78. The KNLTB takes the position that the DPA wrongly did not involve the DPO in the investigation, partly in view of his willingness to cooperate and provide information.

Reply AP

79. The AP considers in the first place that a copy of the information requests to the KNLTB have also been sent to the DPO. In addition, the FG has all receive relevant correspondence exchanged by e-mail between the AP and the KNLTB. In to that extent, the DPA has involved the DPO in the investigation. Needless to say, the AP still considers the following.

80. The DPO is an internal supervisor who must advise the controller on the GDPR compliance. In this capacity as internal supervisor, the DPO is in contact with the AP. The AP sees an DPO as an essential part of an organization's quality system regarding the processing of personal data. In the context of the exercise of her In accordance with the Awb, the AP is authorized to request anyone to perform supervisory tasks provide information or allow access to documents. These powers are described in chapter 5 of the Awb. The AP is aware of the delicate balance between the DPO on the one hand and on the other hand, the organization or organizational unit that is the controller in the sense of the GDPR. Although the AP works together with the DPO, its supervisory activities should be directed to the controller who is the standard addressee of the GDPR.

81. Although the DPA can request information from anyone, including the FG, by virtue of its duties, At the same time, the DPO is not part of the unit that can be regarded as the controller. The DPO cannot give binding instructions to the company management either about setting up data processing. The AP is therefore authorized to request the controller. It states first and foremost that in the context of a (possible) concrete ex officio investigation, to be able to establish a violation and

possibly for enforcement, information (also) always with the relevant person
controller itself must be requested. In addition, the AP notes that the
KNLTB itself had the opportunity to involve the DPO in the investigation (if desired).
82. The AP considers it important to note that in an organization in which a healthy
understanding has been built up between the controller and the DPO, the DPO to
expects to be able to provide valid information on behalf of the controller
information about GDPR compliance. However, the AP can never depend on this route
to obtain the necessary information. When the contact between a

controller and a DPO would not be optimal, or as soon as important
If the preconditions for internal supervision were to be lacking, this would pose a risk to the
reliability of the information obtained.
83. Based on the foregoing, the AP concludes that it was not negligent, nor on other grounds
acted improperly towards [CONFIDENTIAL] or the KNLTB by her
to focus research activities on the controller, the KNLTB.
4.5 AP's actions do not conflict with the principle of equality
KNLTB view
84. The KNLTB takes the position that the investigation and possible enforcement action
against the provision of personal data by the KNLTB to [CONFIDENTIAL] and
[CONFIDENTIAL] violates the principle of equality. To this end, he argues that the AP direction
the [CONFIDENTIAL]14 ([CONFIDENTIAL]) and [CONFIDENTIAL]15 ([CONFIDENTIAL]) for
a similar situation has opted for a norm-correcting letter and not for enforcement.

The AP is also aware of the provision of personal data by other, comparable

sports associations to third parties for direct marketing purposes, but only the KNLTB is used

the AP highlighted to set a standard.

Reply AP

85. The principle of equality extends in the context of conducting an investigation and imposing a

sanction not to the extent that the power to do so has been exercised unlawfully just because a

any other offender will not be subject to investigation and enforcement

is passed. This may be different if there is an unequal treatment of

similar cases, which indicates arbitrariness in the supervisory and enforcement practice of the AP.16 Of this is

no way.

86. The explanatory notes to the prioritization policy state, among other things, the following: “Because the AP does a lot

receives signals, complaints and requests for enforcement and its field of supervision is comprehensive, will

given its limited resources, it is not always possible to carry out a further investigation. Therefore

the AP assesses situations in which there may be a violation, but for which further details

investigation is necessary to determine the violation, first meet its prioritization criteria.”

87. The prioritization policy is (partly) intended to prevent arbitrariness in the choice of cases to be investigated

to prevent complaints. Apart from the fact that the investigation into the KNLTB is not alone

started as a result of complaints, but also as a result of a conversation with the KNLTB

14 The KNLTB refers to the letters published on the website of the AP:

https://authority personal data.nl/nl/news/banks-mogen-payment-data-not-just-using-for-advertising.

15 The KNLTB refers to the letter published on the website of the AP:

https://autoriteitpersoonsgegevens.nl/sites/default/files/atoms/files/brf.-kvk-20dec18-handelsregisterinfoproducten.pdf.

16 CBb 14 August 2018, ECLI:NL:CBB:2018:401, r.o. 7.2.

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due to media coverage, the AP has accepted the complaints it has received about the KNLTB tested against its prioritization policy and has concluded that on the basis of the prioritization criteria further investigation into the KNLTB was indicated (see marginal 76). To that extent, the statement is that the AP was guilty of arbitrariness incorrectly when conducting the investigation.

88. In addition, the AP denies that the situations referred to by the KNLTB are the same as the present one situation. The letter that the AP sent to [CONFIDENTIAL] was prompted by the intention of a bank to further process customer data for direct marketing purposes likely to violate provisions of the GDPR. This in contrast to the provisions by the KNLTB that actually took place.

89. The letter to [CONFIDENTIAL] was the result of complaints about the (possible) unlawful use of personal data by customers of [CONFIDENTIAL]for immediate marketing purposes. The complaints were not so much related to the provision of personal data by [CONFIDENTIAL] itself but on the (possibly unlawful) use of these personal data by parties to whom [CONFIDENTIAL] have been provided. Considering it existing field of tension between the public character of the commercial register, as a result of which [CONFIDENTIAL] is obliged to provide certain personal data, and the (further) possible unlawful use of personal data from [CONFIDENTIAL], the AP has a letter sent to [CONFIDENTIAL] with a request to review [CONFIDENTIAL]. Also has the AP sent a letter to [CONFIDENTIAL]and summoned it to deliver the [CONFIDENTIAL] for privacy aspects and to consider measures to to prevent unauthorized use as much as possible. Therefore, there are no equal cases.

90. Insofar as the KNLTB argues that other sports associations also applied a similar policy to with regard to providing third parties for direct marketing purposes, the AP considers that they in accordance with its prioritization policy, has given priority to research into the provision of

personal data by the KNLTB to [CONFIDENTIAL] and [CONFIDENTIAL] and against this

to take enforcement action. Needless to say, the AP notes that complaints about other sports associations

be checked against its prioritization policy, which may lead to this as well

sports associations will be further investigated. As far as research shows that other

sports associations have committed a similar violation, enforcement action will also be taken.

91. In view of the foregoing, the AP concludes that it is not in conflict with the principle of equality

acted.

4.6 AP has acted without bias

KNLTB view

92. In its opinion, the KNLTB takes the position that the AP has violated the prohibition on bias

has violated. According to the KNLTB, this is apparent from the performance of the chairman of the AP in a

broadcast of Nieuwsuur on December 17, 2018. The KNLTB finds it remarkable that the AP has

acknowledged that it acted improperly towards the KNLTB and nevertheless intends to enforce it

has sent.

Reply AP

By decision of March 19, the AP has accepted the complaint that the KNLTB submitted to the AP on December 21, 2018.

submitted about statements by the chairman of the AP in television program Nieuwsuur are well founded

declared. The AP acknowledged, among other things, that in its statements during this program

could and should have been more nuanced and careful on a number of points. Without it

wanting to dismiss the importance of this observed carelessness, the AP believes that its

statements at that time were not such that there was a violation of the prohibition of

bias and for that reason she should not have started an enforcement procedure. The
The (outcome of) the complaints procedure does not provide any leads for this. In addition, the AP of
considers that the investigation and the subsequent decision-making phase have been carried out in accordance with the
legal requirements has taken place.

4.7 Distinction between processing for collection purposes and further processing

93. The KNLTB processes personal data for several purposes. These goals are over time
changed. This has significance for the applicable legal framework to which the provision of
member data by the KNLTB to [CONFIDENTIAL] and [CONFIDENTIAL].
tested. If the purpose of these provisions qualifies as a collection purpose, a legal
basis as referred to in Article 6, paragraph 1, of the AVG are present for these processing operations.
If the provisions serve a purpose other than the purpose for which the personal data
originally collected, it must be assessed whether this other purpose is compatible with the purpose
for which the personal data has been collected. This is the compatibility test of Article 6, fourth
member, of the AVG. This test should be viewed in conjunction with the principle of purpose limitation
and compatibility included in Article 5(1)(b) of the GDPR. In this article
that personal data only for specific, explicit and justified purposes
purposes may be collected and not further processed in any way other than those
purposes incompatible manner.17

94. Does the purpose of the further processing differ from the purpose for which the personal data
originally collected (the collection purpose), then such further processing is lawful
if:

(i) data subjects have given consent to the processing, or

(ii) the processing is based on a provision of Union law or a provision of Member State law contained in a
democratic society constitutes a necessary and proportionate measure to ensure
the purposes referred to in Article 23(1) of the GDPR, or

17 The principle of purpose limitation also applied under the Personal Data Protection Act (Wbp). In Article 9, first paragraph,

(iii) the purpose of disclosure is compatible with the (specific, expressly described and

legitimate) purpose of collecting the personal data.18

95. If the purpose of further processing is compatible with the purpose of collection, is

the further processing does not require any separate legal basis other than that of ground

of which the collection of personal data has been authorized.19

96. If the further processing takes place for a purpose other than the collection purpose, but

no permission has been given for this, it is not based on a legal provision or is not compatible

with the collection purpose, the processing is unlawful due to the lack of a

basis. A controller cannot therefore regard the further processing as

a new processing that is separate from the original processing and Article 6, fourth paragraph, of the

GDPR 'bypass' by using one of the legal bases in Article 6, paragraph 1, of the GDPR

use to still legitimize the further processing.20

97. For the assessment of whether the KNLTB has lawfully provided personal data of its members to

[CONFIDENTIAL] and [CONFIDENTIAL], it will have to be determined for what purposes the

KNLTB has collected personal data and whether it has been further processed for another purpose.

4.8 Collection purposes of personal data members of KNLTB

98. The purpose limitation principle of Article 5(1)(b) of the GDPR is an important starting point

of data protection. Pursuant to the purpose limitation principle, purposes must be well-defined and

are expressly described, which means that a purpose of processing must be such

formulated so that it can provide a clear framework for the question to what extent the processing in a

specific case is necessary for the specified purpose. In addition, the purpose

are justified, that is to say that the purpose is in accordance with the law, in the

broadest sense of the word. This means in any case (but not exclusively) that the processing

for the purpose, it must be possible to base it on the provisions of Article 6(1) of the GDPR

mentioned legal bases.21

99. To determine the purposes for which the KNLTB collects and has personal data

collected, various documents are important. For the period before 2007, the Articles of Association 2005 of

interest. Admittedly, the collection purposes are not explicitly described herein, but they are from here

to deduce.

18 This is stated in Article 6(4) of the GDPR.

19 See also recital (50) of the GDPR.

20 This follows from the wording of Article 5, paragraph 1, under b, of the GDPR ('(…) may not subsequently continue with that

purposes are processed incompatible ways (…)" and from WP29 Opinion 03/2013 On purpose limitation, p. 40.

20 WP29, Opinion 03/2013 on purpose limitation, p. 19-20.

21 WP29, Opinion 03/2013 on purpose limitation, p. 19-20.

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Our reference

[CONFIDENTIAL]

100. Persons who join a tennis club as a member thereby become members of the KNLTB.22 In the

Articles of Association 2005 state the following: 'The Board of the Association keeps a register of members. In this registry

only those data are kept which are necessary for the realization of the purpose of the KNLTB. It

The Board of the Federation may, after a prior decision of the Council of Members, provide registered data to third parties,

except for the member who has lodged a written objection to the provision to the Federal Board.”23 The statutory

The purpose of the KNLTB is to promote the practice of tennis and the development of the tennis sport

in the Netherlands.24 The KNLTB tries to achieve this goal, among other things, by promoting the

tennis game as a leisure activity, taking all measures that may lead to increase

of the level of play and representing the interests of its members and affiliates and deploying

of all permitted resources that are further at the service of the KNLTB.

101. Although this does not follow explicitly from the 2005 articles of association, the AP draws from the factual context25 of

this

statutes that the KNLTB has in any case collected personal data of members for implementation

of the membership agreement.26 This is also not in dispute. That is not up for debate

the processing for this legitimate purpose takes place on the basis of the basis

'necessary for the performance of an agreement' as referred to in Article 6, paragraph 1, under b,

of the GDPR (and until 25 May 2018, when the GDPR became applicable, based on

Article 8, under b, of the Wbp).

102. Two other collection purposes can be derived from the 2005 statutes. First of all it

collection (and further use) of personal data insofar as this is necessary for the

realization of the goal of the KNLTB, namely to promote the practice of the game of tennis

and the development of tennis in the Netherlands. Second, collecting

registered data (personal data) with the aim of providing it to third parties. The

articles of association do not contain any information about the (category of) third parties to whom personal data can be

disclosed

are provided and also no information for which the personal data is used by them

third parties. The AP takes the position that these goals are in any case not well-defined and

are explicitly described because members of the KNLTB could not deduce from this that their

personal data would also be used for monetization by it

providing it to sponsors for their direct marketing activities. The KNLTB had

therefore not allowed to collect personal data for that purpose.

103. In 2007, the KNLTB formulated a new (collection) purpose. Members Council of the KNLTB agreed with the Board's proposal to extend the communication options of KNLTB sponsors, i.e. the use of names, addresses

22 Article 6, second paragraph, of the Articles of Association 2005 and 2015.

23 Article 4, ninth paragraph, of the statutes of the KNLTB of 19 January 2005 and article 4, ninth paragraph, of the statutes of the KNLTB of December 30, 2015.

24 Article 2, first paragraph, of the Articles of Association 2015.

25 WP29, Opinion 03/2013 on purpose limitation (p. 23-24) states that it is necessary to take into account the actual context: ‘As previously highlighted in the context of purpose specification, it is always necessary to take account of the factual context and the way in which a certain purpose is commonly understood by relevant stakeholders in the various situations under analysis.’

26 Article 2, first paragraph, of the 2005 Articles of Association.

and places of residence (name and address details) of members for letter post campaigns. From the accompanying minutes of the Members' Council meeting in 2007, the AP concluded that these were advertising messages from KNLTB-sponsors with which the KNLTB generates extra income. Pursuant to the statutes of 19 January 2005 (valid at the time of the members' council meeting in 2007) are members of the KNLTB obliged to comply with decisions of bodies of the KNLTB.27 It may therefore be assumed that new members from 2007 have taken note of this new when registering with the KNLTB

collection purpose, which can be more broadly described as monetization by the

providing member data to sponsors for their direct marketing activities.

104. In December 2017, the Council of Members again gave permission for the provision of

personal data of members of the KNLTB for marketing and commercial purposes to current

and future structural and future partners with the aim of approach per

telephone/telemarketing. According to the AP, this goal can be classified under the goal of generating

of income from providing member data to sponsors and qualifies as such

not as a new (collective) goal.

105. Insofar as the KNLTB argues in its view that the purposes stated in the statutes of the

KNLTB of March 4, 2019 (statutes 2019) and the privacy statement of December 2018, including

the provision of personal data to partners, specifically, explicitly described and

are justified and 'have always been central to the KNLTB, both in the present and before

2007, and (…) [have] always been communicated that way", the AP considers that the 2019 statutes and the

privacy statement are not relevant, because these documents only after the provision of

member data to [CONFIDENTIAL] and [CONFIDENTIAL] in June 2018 became valid. For

insofar as the KNLTB refers to the newsletters about the provision of personal data to sponsors,

also applies that these were sent to the members after 2007. For the question of whether before 2007 that was known

member data would be provided to partners, it is therefore not these documents but the

Articles of Association 2005 are determinative and, as already established, this purpose is not specified and express herein

described.

106. Based on the foregoing, the AP establishes that the KNLTB has informed its members since 2007

about its purpose of providing member data to sponsors, namely to generate

(additional) income.

107. On the basis of the foregoing, the AP concludes that the KNLTB processes personal data of members who entered

before

2007 have become a member of the KNLTB has gathered to perform the

membership agreement.28 From 2007, the KNLTB started collecting

personal data of its members for generating revenue by providing it

data to sponsors. The provision of member information to sponsors qualifies members who

27 On the basis of Article 6, paragraph 1, under a, viewed in conjunction with Article 3, paragraph 1, of the Articles of Association of 19 January 2005 (which

applicable at the time of the provision), members are obliged, among other things, to comply with decisions of bodies of the KNLTB (including the

member council).

28 Article 2, first paragraph, of the Articles of Association 2005.

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Our reference

[CONFIDENTIAL]

have become a member of the KNLTB before 2007 thus as a further (italics AP) processing of

personal data. For members who joined the KNLTB after 2007, this goal qualifies as

a collection goal.

108. In the following, the AP prepares for the assessment of whether the personal data by the KNLTB

lawfully processed distinction in two situations. The first situation relates

on the processing of personal data of members who joined before 2007. Hereby

does the AP qualify the provision of member data to sponsors for the generation of (additional)

income as a processing for a purpose other than that for which the personal data

originally collected (i.e. further processing). For members who have been a member since 2007

have become, the provision of their personal data to sponsors is the purpose

was known and qualifies as a collection target.

4.9 Compatibility purposes in case of membership before 2007

109. For members who became a member of the KNLTB before 2007, the provision of member data applies to sponsors for their direct marketing activities to generate (additional) income for the KNLTB as a further processing. This is legal if (1) members have consented to the processing, or (2) the provision is based on a Union law or a Member State law that is applicable in a democratic society constitutes a necessary and proportionate measure to ensure the protection referred to in Article 23(1) of the GDPR purposes, or (3) the purpose of the provision is compatible with the purpose for which the personal data was originally collected. In the following will assess whether one of these situations occurs.

No permission

110. It is not in dispute that there is no permission for the provision of personal data to sponsors obtained from the members of the KNLTB. The Council of Members has, however, approved the provision. For insofar as the KNLTB argues that this consent qualifies as consent within the meaning of the GDPR, the AP considers that this is not the case. After all, consent must be given by the data subject given by means of a clear active act showing that the data subject is free, specific, informed and unambiguous consent to the processing of his personal data.29 The approval of the Members' Council in 2007 does not meet these requirements, so none now consent of the individual data subjects has been obtained.

111. The AP concludes that the KNLTB does not provide membership data to sponsors consent of its members.

Provision is not based on a legal provision

112. It is also not in dispute that the provision of personal data to sponsors is not based on a Union law or a Member State law that is applicable in a democratic society

29 Recital (32) of the GDPR.

Date

constitutes a necessary and proportionate measure to ensure the protection referred to in Article 23(1) of the GDPR intended purposes.

Further processing is not compatible

113. The principle of purpose limitation (Article 5(1)(b) of the GDPR) entails that personal data for specific, explicit and legitimate purposes collected and subsequently prohibited from further processing in a manner incompatible with those purposes are processed. In view of the principle of purpose limitation, it will have to be checked whether the processing of the personal data for the purpose of generating additional income is compatible with the purpose for which the personal data was initially collected. This serves among other things, to be taken into account (Article 6, fourth paragraph, of the GDPR):

(a) any connection between the purposes for which the personal data was collected and the purposes of the intended further processing;

(b) the context in which the personal data has been collected, in particular as to the relationship between the data subjects and the controller;

(c) the nature of the personal data, in particular or special categories of personal data are processed, in accordance with Article 9, and whether personal data concerning criminal convictions and criminal offenses are processed in accordance with Article 10;

(d) the possible consequences of the intended further processing for the data subjects;

(e) the existence of appropriate safeguards, which may include encryption or pseudonymization.

bandage purposes

114. The KNLTB has taken a position in its view with regard to the investigation report provided that the purpose of collection and the purpose of further processing are closely related and lie in line with each other. According to the KNLTB, the provision of personal data has as

The aim is to provide the best possible interpretation/added value to the membership of the members.
Both the discounts that are given to members with the promotions, and the financial benefits that
resulting therefrom, benefit these members, which in any case gives them the added value and
will experience the benefits of this. After all, even when there is no participation, the members experience the
benefits from the proceeds of the actions, which are invested in the members and the sport of tennis.
The KNLTB also states that the AP wrongly did not address the by
the KNLTB communicated goals, referring to its statutes and privacy statement.
115. The AP considers as follows. The KNLTB has personal data (of members who were members before 2007
become) originally collected for the purpose of implementing the
membership agreement and not for the purpose of generating (additional) income by
provision to sponsors. According to the AP, there is no connection whatsoever between the two purposes.
Framework in which personal data is collected
116. The KNLTB states that its members could expect that their personal data would also be provided
to sponsors for their direct marketing activities in order to generate revenue
to generate. To this end, the KNLTB argues in the first place that the members are frequent about this

informed. Furthermore, without the direct marketing campaigns of sponsors/partners, members would not be able to
enjoy extra benefits as a result of which the added value of the association membership is not (directly)
would be seen by the members, according to the KNLTB. The members also benefit from tennis
accessible and affordable. In addition, it would be contrary to the expectations of the members
take effect if a different method of generating extra income is chosen, such as
increasing membership fees or abolishing free tennis lessons for children under

age of six years. The KNLTB also emphasizes that membership is a free choice, because the
there is a possibility to become a member of an association that is not a member of the KNLTB or one yourself
(tennis) club. In addition, members can invoke their right of objection to provision
by the KNLTB to its partners. The KNLTB also adds that the members' council has a
plays an important role, represents all members, is in close contact with the associations and a
translates between the strategic policy of the KNLTB and its importance/consequences
the tennis associations and its members. According to the KNLTB, the members' council is therefore not too
underestimated link that estimates the reasonable expectations of the other members, communicates,
represents, listens to, and thereby (co-)influences.
117. The personal data of the members of the KNLTB (insofar as they became members before 2007) are
collected in the context of the implementation of the membership agreement. Reviewed submits
in any case, or the provision by the KNLTB to sponsors to generate (additional) income
generate in line with members' reasonable expectations, based on their relationship with
the KNLTB (as controller). According to the AP, this is not the case. aspiring members
joining a tennis club that is a member of the KNLTB automatically becomes a member of the KNLTB.
Someone who wants to join a tennis club that is a member of the KNLTB does not have the choice to
not to provide his personal data to the KNLTB; after all, these are necessary for the
performance of the membership agreement. Given the compulsory membership, the members had
should expect that their personal data would only be used for the collection purpose,
the performance of the membership agreement. The AP takes into account that the KNLTB
is a non-profit organization and therefore members could not expect their
personal data would be provided to sponsors with commercial motives. This applies
all the more for the provision of personal data to and its use by
[CONFIDENTIAL], who did not make any tennis-related offers (such as [CONFIDENTIAL])
but [CONFIDENTIAL] offered. The incident that members of the KNLTB when purchasing
had a [CONFIDENTIAL] chance to win a trip to a tennis match in London, it doesn't matter

otherwise. That the KNLTB has its members in various ways prior to the provision
informed about the further processing of their personal data, no circumstance is that of
importance for the context in which the personal data has been collected. After all, informing the
members only took place after (italics AP) the collection of their personal data. In addition
the facts from the investigation indicate that the members of the KNLTB called the call of
[CONFIDENTIAL] didn't expect. Although the KNLTB has informed its members about it
providing personal data to sponsors, the call has caused many complaints and commotion in the
led by the media, which was also the reason to end the call prematurely.

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

Nature of the personal data provided

118. In its opinion, the KNLTB points out that data has only been provided to third parties that is necessary
to be able to contact the members, namely name and address details and telephone number. There are
does not provide special categories of personal data. Also no personal data of
does not provide underage members nor e-mail addresses of members as this entails a greater risk
exists on spam.

119. The AP has established that the KNLTB does indeed have no special categories of personal data
provided to [CONFIDENTIAL] and [CONFIDENTIAL]. Assuming that the KNLTB complies
has acted in its contact protocol, no personal data of persons younger have been provided either
over the age of 16.30 The KNLTB did provide e-mail addresses to [CONFIDENTIAL], while this was not
was necessary for the telemarketing campaign, making the risk of e.g. spam and phishing unnecessary
has been enlarged.

Possible consequences of further processing

120. The KNLTB emphasizes in its opinion that the actions of [CONFIDENTIAL] and [CONFIDENTIAL] were received positively by most members and had a high conversion rate. In addition, the actions also have positive consequences for members who have not used them, according to the KNLTB. After all, the proceeds of the campaigns are invested in the members and in tennis. The KNLTB points out that when selecting the members who have been approached in the context of the actions Every effort has been made to prevent members from being approached undesirably, because they already have one had a subscription or are included in the do-not-call-me register. The KNLTB also argues that the disclosures do not imply a loss of control over personal data. He argues for this that members are sufficient about this prior to the provision of their personal data informed and could have objected to this. Furthermore, the provision according to the KNLTB does not create any additional risks for the rights and freedoms of those involved, because there various measures have been taken to ensure the security of personal data, such as the use of a secure sFTP server, the partner agreement, the contact protocol, the belscript, the immediate removal of data after use and monitoring whether the agreement is fulfilled complied. Finally, the KNLTB states that the negative consequences of the provision are limited: a discount flyer in the mailbox and/or be called once. These consequences can, according to the KNLTB cannot be called far-reaching.31 In this context, the KNLTB also argues that the telemarketing campaign has ended prematurely due to complaints about its implementation.

121. The AP considers that the provisions give the members of the KNLTB control over their have lost personal data and their privacy has thus been infringed. That, as the KNLTB states, the generated income will benefit the members and the

30 The agreement with [CONFIDENTIAL] states – unlike the contact protocol of the KNLTB – that the persons in the file must be at least 18 years old.

31 The KNLTB refers to the judgment of the District Court of Amsterdam on 12 February 2004, ECLI:NL:RBAMS:2004:AO3649 and to a document from 2002 of the then College Bescherming Persoonsgegevens:

tennis sport, this makes no difference. The members could have trusted that the KNLTB would give them their would only use personal data for the implementation of the membership agreement and would not provide to sponsors. The seriousness of the infringement is partly determined by the following circumstances. In the first place, the KNLTB has left the selection of the members to be called to [CONFIDENTIAL], which has resulted in the personal data of 314,846 members being while [CONFIDENTIAL] has only 39,478 members (less than 13%) selected to access. Secondly, to [CONFIDENTIAL] personal data provided that are not necessary for a call, including the e-mail address. This sticks even more now that the KNLTB has explicitly pointed out in its news reports that the e-mail address cannot be used without consent will be provided to [CONFIDENTIAL] and this violates rule of thumb 2 ('only provide necessary information') from the Sport & Privacy Handbook. To that extent, the KNLTB unnecessarily provides a lot of personal data of an unnecessarily many members to [CONFIDENTIAL]. In third, both [CONFIDENTIAL] and [CONFIDENTIAL] have personal data provided to [CONFIDENTIAL] respectively various [CONFIDENTIAL] for the implementation of their direct marketing activities. This also means that for these members the risk of an infringement on their personal data may have been increased.

122. In addition, the KNLTB ignores the circumstance that the (unintentional) receipt of a discount flyer and telephone sales can be experienced as a nuisance. This applies in particular for the call of [CONFIDENTIAL], which was terminated prematurely for that reason. The stated high conversion of the promotions of both sponsors and the income for KNLTB do not detract from the fact

that the many members whose personal data have been provided, but not used for the promotions, none have only benefited from the provision of their own personal data.

Appropriate guarantees

123. In its opinion, the KNLTB refers to the safeguards it has taken with regard to security of personal data. The KNLTB also cites some older decisions of predecessors of the AP (the Registration Chamber and the Dutch Data Protection Authority (CBP)) which stated that safeguards could have a positive or sometimes decisive effect on the compatibility assessment.32

124. The AP considers that appropriate measures as referred to in Article 6, paragraph 4, of the GDPR are possible serve as “compensation” for the fact that data is further processed for a purpose other than the purpose of collection processed.33 The measures taken by the KNLTB, such as the possibility of objection, in this case, according to the AP, offer insufficient compensation for the infringement that the KNLTB has committed with the has made provisions on the privacy of data subjects. It concerns in the measures that the KNLTB was obliged to take. Secondly, these have

32 The KNLTB refers to: https://autoriteitpersoonsgegevens.nl/sites/default/files/downloads/uit/z2005-0703.pdf (from 2005); https://autoriteitpersoonsgegevens.nl/sites/default/files/downloads/uit/z2005-1447.pdf (from 2005); https://autoriteitpersoonsgegevens.nl/sites/default/files/downloads/uit/z2002-0881.pdf (from 2002) and https://autoriteitpersoonsgegevens.nl/sites/default/files/downloads/rapporten/rap_2003_onderzoek_kpn.pdf with a quote from Registratiekamer, The Hague, July 1999, Background Studies & Explorations 14, p. 19.

33 WP29 Opinion 03/2013 On purpose limitation, p. 26.

measures cannot prevent an unnecessary amount of personal data from being provided to in particular

[CONFIDENTIAL] and personal data ended up with third parties, namely various

[CONFIDENTIAL] and [CONFIDENTIAL]. The members of the KNLTB are not or not at all about this

case insufficiently informed.34 It would have been the KNLTB's job to fully inform its members

to inform about which personal data would be provided to which sponsors as well

inform its members that this is in the context of the implementation of the direct marketing activities

would also be provided to third parties. Considering the original collection purpose, the performance

of the membership agreement, and its members' reasonable expectations that their

personal data would not be used for sponsors' commercial purposes, it had

also located on the road of the KNLTB to request permission from its members. This is

however, did not happen.

Conclusion AP

125. Given the circumstances that any connection between the purpose of the collection and the purpose of the further

processing is missing, the provisions to [CONFIDENTIAL] and [CONFIDENTIAL] are not included in the

line with the reasonable expectations of the members, the consequences of the benefits for the

members of the KNLTB and that the measures taken by the KNLTB are insufficient for this

offer compensation, the AP concludes that the further processing for the purpose of generating

income is not compatible with the collection purpose, performance of the membership agreement.

4.10 Basis for processing personal data in case of membership after 2007

126. For members who joined the KNLTB after 2007, it is assumed that the purpose of

generate income by providing personal data to sponsors, among the members

was known. The processing of this personal data must be based on a lawful basis

basis. According to the KNLTB, the processing of personal data is for the purpose of generating

of additional income necessary for the protection of his legitimate interests, are now

The number of members (and thus the income of the KNLTB) has fallen sharply over the past ten years. Out

own research has shown that the cause lies in the fact that members have little

see added value in membership of the KNLTB.

AP misinterprets the concept of legitimate interest

127. The KNLTB takes the position that the AP gives an incorrect explanation in its investigation report to the concept of 'legitimate interest' by concluding that an interest only qualifies if justified if this interest can be traced back to a fundamental right or legal principle. This explanation is not traceable to:

- the legal text itself;
- information provided by European privacy regulators (including the AP);
- case law;
- guidelines of the European Data Protection Board (EDPB).

According to the KNLTB, the interest must be 'lawful', which follows from the guidelines of the EDPB and the 34 WP29 Opinion 03/2013 On purpose limitation.

website of the ICO (Information Commissioner's Office, the supervisory authority in the United Kingdom).

Considerations AP

128. The AP considers that its conclusion that a legitimate interest must be traced back to a fundamental right or legal principle follows from the system of the GDPR. After all, a processing of personal data is always an interference with the fundamental right to protection personal data. As a result, any processing is in principle unlawful. This also follows from Article 6, first paragraph, of the GDPR, which states that processing is only lawful if and for insofar as it meets at least one of the conditions referred to under a to f (principles of the processing) is fulfilled.

129. The GDPR thus offers a legal basis for still being allowed to process personal data. This base consists (in addition to consent) of five other bases. Of importance here is the basis mentioned under f of the AVG: the processing is necessary for the protection of the legitimate interests of the controller or of a third party, except where the interests or fundamental rights and fundamental freedoms of the data subject to be protected of personal data, outweigh those interests, in particular when the data subject being a child.

130. For a successful appeal on the basis of legitimate interests, three cumulative conditions are met for the processing of personal data to be lawful. In the first place: the representation of a legitimate interest of the controller or from a third party. Secondly: the necessity of processing the personal data for the representation of the legitimate interest. And thirdly, the condition that the fundamental rights and freedoms of the data subject concerned prevail.

131. The first condition is that the interests of the controller or a third party qualify as justified. This means that those interests are included in (general) legislation or elsewhere the right are designated as a legal interest. It must concern an interest that is also legal protected, which is considered worthy of protection and which must in principle be respected be and can be enforced.

132. The controller or third party must therefore rely on a (written or unwritten) rule of law or legal principle. Is that rule of law or principle of law with regard to of the processing of personal data is (sufficiently) clear and accurate for the data subject and/or its application is (sufficiently) predictable, then the processing based on the under Article 6, first paragraph, under c and e, of the AVG (legal obligation or fulfillment of a task of general interest) take place. But there have also been cases where the rule of law or principle of law regarding the processing of personal data

not (sufficiently) clear and accurate for the data subject and/or its application

(insufficiently) predictable.

133. In these cases, the controller or third party may nevertheless be involved

legitimate interests. These interests themselves must always be real, concrete and direct.

And therefore not speculative, future or derived. In principle, it can be any tangible or intangible

be importance.

134. The sole interest in being able to monetize personal data or to make a profit from it

does not in itself qualify as a legitimate interest. Not just because such

interest will generally not be sufficiently specific - in a sense, everyone everywhere always has an interest

when having more money – but also more fundamentally because it is then assumed that there will be

then a decision can be made. And a trade-off between:

- the single interest that is not legally/legally protected that a party has in the best possible

monetization of other people's personal data on the one hand,

- the fundamentally anchored interest that the person concerned has in protecting his/her life

personal data on the other.

135. There are few restrictions on the commercial possibilities when applying the principles

consent and agreement. It concerns processing that is necessary for the representation

of the legitimate interests of the controller, however, are essentially correct

processing beyond the will of the data subject. This is the domain where the rights belong to

controllers clash with the fundamental rights of data subjects. The thought that it

principle would be allowed to make money by infringing on one's own authority

other people's fundamental rights is at odds with the starting point that the person concerned - the actions of the legislator aside - should have a grip on its data. Such a wide possibility to consideration cannot therefore be what the GDPR intends and is also not mentioned, allowed or advocated by the Article 29 Data Protection Working Party (WP29).35

136. The justification of the interest – also according to WP29 – determines whether the 'threshold' is reached in order to be able to make an assessment. The consideration (necessity and After all, a weighing of interests) does not apply if the threshold does not become 'justice' reaches. In other words: If the controller is not on a can invoke a legally/legally protected interest – after all, the data subject can – then there is a possibility there is no question of necessity and even less of the weighing of both legal interests. Other way around this means that the protection emanating from the closed system of bases would be easy can be eroded if the mere interest in making money is already a legitimate interest would be. After all, under certain circumstances it can simply be said that the relevant revenues are urgently needed, given the importance of raising as much money as possible to deserve. And then in fact only a material consideration remains - to be made by the person with it financial interest itself - between earning money yourself and giving up other people's basic rights. In the extreme

35 WP29 Opinion 06/2014 on the “Notion of legitimate interests of the data controller under Article 7 of Directive 95/46EC”.

case, one could argue that if a lot of money is involved, the infringement of fundamental rights should be proportionately larger. That is clearly not the intention. The fundamental right to protection of personal data would then become largely illusory.

137. The freedom to conduct a business is a recognition in the Charter of the freedom to conduct a business

to exercise an economic or commercial activity and a recognition of contractual freedom and
free competition. All this is of course not unlimited, but only "in accordance with the law."
of the Union and national laws and practices'. It follows, among other things, that entrepreneurs in
are in principle allowed to determine for themselves who they do business with and who they do not, set their own prices
determine, etc. But it is not the case that the general fundamental right of freedom of enterprise
It follows that the law also protects the interest of earning (as much as possible) money in itself. Or that
it follows that 'being able to make less profit' conflicts with the fundamental right to privacy or
data protection of others. Just as this does not mean, for example, that the
fundamental right of others/customers to property with reference to freedom of enterprise under
circumstances should be violated. Entrepreneurs, on the other hand, have what it takes
duties of care towards their employees and/or their customers. These are laid down in concrete or general terms
legal norms. Being able to give substance to this is a legitimate interest.

138. The foregoing entails that legitimate interests are more or less urgent and specific
have a character that results from a (written or unwritten) rule of law or legal principle;
it must to some extent be unavoidable that these legitimate interests are served.36
Purely commercial interests and the interest of profit maximization lack sufficient specificity
and lack an urgent "legal" character so that they cannot qualify as justified
interests.

139. This also follows, albeit in slightly different terms, from the Working Party's Opinion 06/2014
Data protection Article 29 on the concept of “legitimate interest of the
data controller” in Article 7 of Directive 95/46/EC. In this advice is under
more states the following: “An interest can therefore be regarded as legitimate as long as
the controller can represent this interest in a manner that is appropriate
with data protection and other laws. In other words, one must be justified
importance “be acceptable under the law””.37
According to KNLTB, his interest qualifies as legitimate

140. The KNLTB then argues that, if the AP's explanation is correct, it ignores the fact that it

The interest that the KNLTB has in the processing of personal data can be traced back to the GDPR.

After all, recital 47 of the preamble to the GDPR states that the processing of

36 See, for example, the judgment of the European Court of Justice of 4 May 2017, ECLI:EU:C:2017:336, para. 29: '[…] that the importance of a

third party when obtaining personal data from the person who has caused damage to his property, in order to recover the damage

to redress this person in court is a legitimate interest'. See in this sense the judgment of the European Court of Justice of 29 January 2008, ECLI:EU:C:2008:54, l.r. 53).

37 WP29 Opinion 06/2014 on the "Notion of legitimate interests of the data controller under Article 7 of Directive 95/46EC", p. 25.

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

personal data for the purpose of direct marketing can be considered carried out with it

for a legitimate interest. The KNLTB also refers to Article 16 of the Charter of the

fundamental rights of the European Union, the freedom to conduct a business. According to the KNLTB, the

AP has previously based this legal standard on assessments of legitimate interest.

Considerations AP

The AP notes in the first place that the provision of member data to [CONFIDENTIAL] and

[CONFIDENTIAL] serves two interests of the KNLTB: (1) the interest of giving

added value to the membership and (2) the importance of reducing the diminished

income from declining membership numbers.

141. The interests put forward by the KNLTB lack a more or less urgent nature that can be derived from a

(written or unwritten) legal rule or legal principle. As far as the KNLTB
refers to Article 16 of the Charter of Fundamental Rights of the European Union, the freedom of
entrepreneurship, the same applies. This fundamental right regulates, in addition to contractual freedom, the
freedom to pursue an economic or commercial activity. The importance of these freedoms is
however, insufficiently specific and direct to qualify as a legitimate interest.
In this context, the AP considers that the KNLTB does not give substance to the provisions
concrete or general legal standards relating to his duties of care as an 'entrepreneur'. The
AP therefore concludes that neither the interests stated by the KNLTB nor those appointed by the AP
interests do not qualify as legitimate.
142. The conclusion is that the interest of the KNLTB in the provision of personal data of members to
[CONFIDENTIAL] and [CONFIDENTIAL] does not qualify as a legitimate interest. Now the
benefits in kind could also not be based on another legal basis than the one mentioned
in Article 6, first paragraph, of the AVG, the AP concludes that the relevant provisions
have taken place unlawfully.
4.11 Secondary position assessment framework for third-party provision
143. As Article 6, paragraph 4, GDPR describes, the test of further processing is relevant if,
summarized, the processing takes place for a purpose other than that for which the
personal data has been collected. The AP is of the opinion that this test is in principle limited to a
further processing of personal data by the controller itself
own business operations. For the provision of personal data to a third party, the
controller has a separate basis as referred to in Article 6, first paragraph, GDPR
to have. There is no evidence of the presence of a separate basis.

[CONFIDENTIAL]

5. Fine

5.1 Introduction

144. The KNLTB has no legal basis – and therefore unlawful – of his personal data
members provided to [CONFIDENTIAL] and [CONFIDENTIAL]. With this, the KNLTB has vis-à-vis its
members acted contrary to article 5, first paragraph, preamble and under a jo. Article 6, first paragraph, of the GDPR
and violated the right to respect for privacy and the right to the
protection of personal data of its members. As a result, members of the KNLTB have the
lost control of their personal data. The AP is of the opinion that this is a serious violation
Re. The AP sees this as a reason to make use of its power to impose a fine
pursuant to Article 58, second paragraph, opening lines and under i and Article 83, fourth paragraph, of the AVG, read in
in conjunction with Article 14, third paragraph, of the UAVG, to be imposed on the KNLTB.

Trust principle

145. The KNLTB takes the position that by imposing an administrative sanction the AP
violates the principle of trust. To this end, he argues that the KNLTB has justified
may rely on written statements from the legal predecessor of the AP, the Dutch DPA. The KNLTB
refers to the information sheet 'Providing data from member administration' from September 2010
(information sheet), which states, among other things, the following: “Provision of personal data to
persons and companies outside the association, such as a sponsor, may as the association to its members
has requested permission. […] When it comes to activities that are or are customary for the association
approved by the members' meeting, no explicit permission needs to be requested from the members. Further
an association can provide data to companies for direct marketing purposes. The association may
only if the members have been given the opportunity to object to this during a reasonable period of time.

146. According to the KNLTB, the content of the information sheet is still fully relevant because the content
not considered obsolete. In addition, there has been no (material) change in the meantime
been in the rule of law to which the information sheet referred. The AVG does indeed apply

and the Wbp no longer applies, but the possible bases and the

conditions for providing data from a member database remained unchanged.

147. In what the KNLTB argues, the AP sees no leads for the conclusion that the imposition

of an administrative fine would be contrary to the principle of legitimate expectations. The information sheet where the

KNLTB refers to, has already been removed from the AP website in 2014. This already indicates that

the content was no longer relevant from that moment on. When in June 2018 the benefits in kind by the

KNLTB to sponsors took place, given the long time that had passed since 2014 -

all the more obvious that the aforementioned information was no longer relevant and had it on its way

of KNLTB located with the entry into force of the AVG on May 24, 2016 and the

entry into force on 25 May 2018 (again) from the applicable laws and regulations in

make sure. It is also important that the provision of personal data by the KNLTB

members to sponsors has taken place on the basis of legitimate interest. Already in April

2014 is the advice of the WP29 on the concept of “legitimate interest of the

data controller” in Article 7 of Directive 95/46/EC. This advice

provides guidance on the application of Article 7(f) of Directive 95/46/EC (now Article 6,

first paragraph, preamble and under f, of the GDPR). In view of this, the KNLTB should no longer have trusted

on the contents of the information sheet.

Design

148. Insofar as the KNLTB argues that it has not intentionally violated any statutory provision

acted, the AP considers that the violated prohibition of Article 6 of the GDPR is not intentional

as a component. Now that this is a violation, it is for the imposition of an administrative

penalty in accordance with established case law38 does not require proof of intent. The AP may assume culpability if the perpetrator is established.39

5.2 Fining Policy Rules of the Dutch Data Protection Authority 2019 (Fining Policy Rules 2019)

149. Pursuant to Article 58, paragraph 2, opening lines and under i and Article 83, paragraph 5, of the GDPR, read in connection with Article 14, third paragraph, of the UAVG, the AP is authorized to the KNLTB in the event of a violation of article 5, paragraph 1, preamble and under a jo. Article 6, first paragraph, of the GDPR a impose an administrative fine of up to € 20,000,000 or, for a company, up to 4% of the total worldwide annual turnover in the previous financial year, if this figure is higher.

150. The AP has established Fining Policy Rules 2019 regarding the interpretation of the aforementioned power to imposing an administrative fine, including determining the amount thereof.

151. Pursuant to Article 2, under 2.2, of the Fining Policy Rules 2019, the provisions relating to violations for which the AP can impose an administrative fine not exceeding the amount of € 20,000,000 or, for a company, up to 4% of the total worldwide annual turnover in the previous financial year, if this figure is higher, classified in Annex 2 in category I, category II, category III or category IV.

152. In Appendix 2, the violation of Article 5, paragraph 1, opening words and under a, of the GDPR has been classified into category I, II, III or IV, depending on the classification of the underlying provision. This underlying provision is Article 6 of the GDPR. This article is classified in category III.

153. Pursuant to Article 2.3 of the Fining Policy Rules 2019, the AP sets the basic fine for violations subject to a statutory maximum fine of […] € 20,000,000 or, for a company, up to 4% of the total worldwide annual turnover in the previous financial year, whichever is higher, fixed within

38 Cf. CBb 29 October 2014, ECLI:NL:CBB:2014:395, r.o. 3.5.4, CBb 2 September 2015, ECLI:NL:CBB:2015:312, r.o. 3.7 and CBb 7 March 2016, ECLI:NL:CBB:2016:54, r.o. 8.3, ABRvS 29 August 2018, ECLI:NL:RVS:2018:2879, r.o. 3.2 and ABRvS December 5, 2018, ECLI:NL:RVS:2018:3969, r.o. 5.1.

39 Parliamentary Papers II 2003/04, 29702, no. 3, p. 134.

the penalty ranges specified in that article. For violations in Category III of Annex 2 of the Fining Policy Rules 2019, a fine band between € 300,000 and € 750,000 applies and a basic fine of €525,000.

154. Pursuant to Article 6 of the Fining Policy Rules 2019, the DPA determines the amount of the fine by amount of the basic fine upwards (up to the maximum of the bandwidth of the to an offense linked penalty category) or down (to at least the minimum of that bandwidth). The basic fine is increased or decreased depending on the extent the factors referred to in Article 7 of the Fining Policy Rules 2019 give cause to do so.

155. Pursuant to Article 7 of the Fining Policy Rules 2019, the AP, without prejudice to Articles 3:4 and 5:46 of the General Administrative Law Act (Awb) into account the following factors derived from Article 83, second paragraph, of the AVG, in the Policy Rules referred to under a to k:

a. the nature, gravity and duration of the breach, taking into account its nature, scope or purpose of the processing in question as well as the number of data subjects affected and the extent of the damage suffered to them;

b. the intentional or negligent nature of the breach;

c. the measures taken by the controller […] to protect the data subjects limit damage suffered;

d. the extent to which the controller […] is responsible in view of the technical and organizational measures that he has implemented in accordance with Articles 25 and 32 of the GDPR;

e. previous relevant breaches by the controller […];

f. the degree of cooperation with the supervisory authority to remedy the breach

and limit the possible negative consequences thereof;

g. the categories of personal data affected by the breach;

h. the manner in which the supervisory authority became aware of the breach, in particular

whether, and if so to what extent, the controller […] has notified the breach;

i. compliance with the measures referred to in Article 58, paragraph 2, of the GDPR, insofar as they are

rather in respect of the controller […] in question in relation to the same

matter have been taken;

j. adherence to approved codes of conduct in accordance with Article 40 of the GDPR or of

approved certification mechanisms in accordance with Article 42 of the GDPR; and

k. any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial gains made, or losses avoided, which may or may not result directly from the breach

result.

156. Pursuant to Article 9 of the Fining Policy Rules 2019, the DPA, when setting the fine,

take into account the financial circumstances in which the offender finds himself. In case of

reduced or insufficient capacity of the offender, the AP can impose the fine

further mitigation, if, after application of Article 8.1 of the policy rules, determination of a

fine within the fine range of the next lower category, in its opinion, nevertheless

would result in a disproportionate fine.

5.3 System

157. With regard to violations for which the DPA can impose an administrative fine not exceeding the

amount of € 20,000,000 or up to 4% of the total worldwide annual turnover in the previous financial year,
if this figure is higher, the AP has classified the violations in four categories in the 2019 Fining Policy Rules
categories, which are subject to increasing administrative fines. The
Fine categories are classified according to the seriousness of the violation of the articles mentioned,
where category I contains the least serious offenses and category IV the most serious offences.
158. Violation of Article 6 of the GDPR is classified in category III, for which a fine range
between €300,000 and €750,000 and a basic fine of €525,000 has been set. The AP uses the
basic fine as a neutral starting point. The amount of the fine is agreed by the AP in accordance with Article 6 of the
Fining Policy Rules 2019 then based on the factors referred to in Article 7 of the
Fining Policy Rules 2019, by reducing or increasing the amount of the basic fine. It's going down
more about an assessment of (1) the nature, seriousness and duration of the violation in the specific
case, (2) the intentional or negligent nature of the infringement, (3) the measures taken to prevent the by
limit the damage suffered by data subjects and (4) the categories of personal data to which the
infringement. In principle, this will be done within the bandwidth of the violation
linked penalty category. The AP can, if necessary and depending on the extent
the aforementioned factors give rise to this, the penalty bandwidth of the next higher
respectively apply the next lower category.

5.4 Fine amount

159. Pursuant to Article 6 of the Fining Policy Rules 2019, the AP determines the amount of the fine by
amount of the basic fine upwards (up to the maximum of the bandwidth of the to
an offense linked penalty category) or down (to at least the minimum of that
bandwidth). The basic fine is increased or decreased depending on the extent
the factors referred to in Article 7 give rise to this.
160. According to the AP, the following factors mentioned in Article 7 are relevant for the determination in this case
of the fine amount:

- the nature, seriousness and duration of the infringement;

- the intentional or negligent nature of the infringement (culpability);

- the measures taken by the controller or processor to

mitigate the damage suffered by those involved.

161. Pursuant to Article 8.1 of the Fining Policy Rules 2019, the AP may, if the

certain fine category does not allow appropriate punishment in the concrete case, when determining

the amount of the fine the fine bandwidth of the next higher category or the

Apply penalty bandwidth of the next lower category.

Relevant factors for determining the fine amount

Nature, seriousness and duration of the infringement

162. Pursuant to Article 7, preamble and under a, of the Fining Policy Rules 2019, the AP takes into account the

nature, gravity and duration of the infringement. In its assessment, the AP involves, among other things, the

nature, scope or purpose of the processing as well as the number of data subjects affected and the

extent of the damage suffered by them.

163. The protection of natural persons with regard to the processing of personal data is a fundamental right.

Pursuant to Article 8(1) of the Charter of Fundamental Rights of the European Union and Article

16, first paragraph, of the Treaty on the Functioning of the European Union (TFEU) everyone has

right to protection of his personal data. The principles and rules regarding protection

of natural persons when processing their personal data must comply

with their fundamental rights and freedoms, in particular their right to protection

personal data. The GDPR aims to contribute to the creation of an area of freedom,

security and justice and of an economic union, as well as to economic and social progress, the

strengthening and convergence of economies within the internal market and the well-being of
natural persons. The processing of personal data must serve people. It
right to the protection of personal data is not absolute, but must be
considered in relation to its function in society and must conform to it
principle of proportionality against other fundamental rights. Any processing of
personal data must be done properly and lawfully. It serves for natural persons
to be transparent about the collection, use and consultation of personal data concerning them
or otherwise processed and to what extent the personal data are or will be processed
incorporated.

164. Pursuant to Article 5, paragraph 1, preamble and under a jo. Article 6, paragraph 1, of the GDPR
personal data must be processed in a manner that applies to the data subject (among other things)
is lawful, in the sense that there is a legal basis for it. These are, in light of it
above, fundamental provisions in the GDPR. If you act contrary to this, you will be affected
this is the core of the right that data subjects have to respect for their privacy
and the protection of their personal data.

165. KNLTB has a more or less fixed working method in order to generate extra income
personal data of (a large part of) its members on June 11, 2018 provided to
[CONFIDENTIAL] and at least on 29 June 2018 to [CONFIDENTIAL]. The benefits
could not be based on a legal basis as referred to in Article 6, first paragraph, of the
AVG. The relevant provisions therefore took place unlawfully.

These are two provisions that have affected a great many people involved. At

[CONFIDENTIAL] a file with personal data of 50,000 data subjects has been provided. At
[CONFIDENTIAL], the KNLTB has also provided an unnecessary amount of personal data by a
file with personal data of 314,846 data subjects from which [CONFIDENTIAL]
would eventually select 39,478 individuals (less than 13%) to approach under her
telemarketing action. The AP takes the position that (at least part of) the selection
could have taken place by the KNLTB itself, so that the
personal data would have been provided.

166. In the further assessment of the seriousness of the violation, the DPA takes into account the large number on the one hand
data subjects and the amount of personal data provided. On the other hand, the AP is involved in this
case, the categories of personal data to which the breach relates. It was under
more name and address details, gender, (mobile) telephone number and e-mail address, but none
personal data that fall within the special categories of personal data as referred to in
Article 9 of the GDPR. The AP has also not shown that the KNLTB has personal data from
minors has provided to [CONFIDENTIAL] and [CONFIDENTIAL].

167. In view of the above, the AP is of the opinion that there has been a serious violation, but there is
no reason to increase or decrease the basic fine.

Intentional or negligent nature of the infringement (culpability)

168. Pursuant to Section 5:46(2) of the Awb, when imposing an administrative fine, the AP
take into account the extent to which this can be attributed to the offender. Pursuant to Article 7, under
b, of the Fining Policy Rules 2019, the AP takes into account the intentional or negligent nature of the
infringement.

169. As the AP has already considered above, it may assume culpability if the
perpetrator is established. KNLTB has provided personal data without the provision being possible
be based on a legal basis. The personal data has also been deliberately provided.

In light of the above, the AP therefore considers the violation to be culpable. To those

culpability does not detract from the fact that the KNLTB has sought advice from a law firm
review policies regarding sharing of personal data with sponsors. The Handbook
Sport & Privacy that has been drawn up by a law firm on behalf of [CONFIDENTIAL],
dates from 2017. The handbook deals with the basic principles of the privacy
law and only relates to the Wbp and not to the GDPR.
170. If and insofar as KNLTB has other, additional, advice from a law firm
obtained specifically with regard to (the policy regarding) the provisions, it does not have this to the
AP submitted. While an appeal to the absence of all blame lies with the KNLTB

to make this absence plausible by making it known what exactly the advice is about
asked and what the content of the advice was.40 KNLTB failed to do so.
Measures taken to limit the damage suffered by those involved
171. The AP considers that the KNLTB has taken various measures to mitigate the suffering suffered by those involved
limit damage. The KNLTB has not previously provided the personal data
than after approval of the Council of Members has been obtained. The members of the KNLTB,
prior to the provision, in various ways (including via newsletters and the
website of the KNLTB) about the intended provisions. Furthermore, in the
agreements between the KNLTB and the relevant sponsors contain a confidentiality clause
included, which obliges [CONFIDENTIAL] and [CONFIDENTIAL] to maintain the confidentiality of the
personal data, which stipulates that personal data cannot be processed without permission from the KNLTB
third parties may be provided and which determines that the personal data after termination or dissolution
of the agreement are cancelled. Also [CONFIDENTIAL], at the request of the KNLTB

terminated the telemarketing campaign early.

172. In view of the foregoing, although the extent of the damage suffered by those concerned is limited,
but not to such an extent that the AP sees this as a reason to reduce the basic fine in this case. With the
taking into account the foregoing factors, the basic amount remains at € 525,000.

proportionality

173. Finally, the AP assesses on the basis of Articles 3:4 and 5:46 of the Awb (principle of proportionality) whether
the application of its policy for determining the amount of the fine given the circumstances
of the specific case, does not lead to a disproportionate outcome. This is taken into account
with the extent to which the violation can be attributed to the offender (Article 5:46, second paragraph,
of the AB). According to the Fining Policy Rules 2019, application of the proportionality principle brings
It also entails that the AP, if necessary, takes the financial into account when determining the fine
circumstances in which the offender finds himself.

174. The KNLTB takes the position that a fine is at the expense of all associations and
individual members of the KNLTB. The KNLTB has been struggling for years with declining membership numbers and
declining income. In view of this and in view of the necessary substantial investments in
ICT facilities, for example, the liquidity position of the KNLTB has come under pressure.
It is true that the KNLTB has a positive general reserve, but according to
the KNLTB as the minimum necessary resistance to be able to stay
comply with the obligations with regard to the staff and the rental agreement.

40 Parliamentary Papers II 2003/04, 29702, no. 3, p. 134; CBb 7 March 2016, ECLI:NL:CBB:2016:54, r.o. 9.3. and CBb
December 1, 2016,
ECLI:NL:CBB:2016:352, r.o. 5.2.

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

175. The AP considers that, according to its annual accounts for 2018, the KNLTB has a healthy liquidity and solvency.41 The general reserve (equity) amounted to 31 December 2018 €6,356,139. At the same time, KNLTB had € 6,057,018 in liquid assets and € 974,982 in receivables (still to be received). The AP sees no reason to assume this that the KNLTB could not bear a fine of € 525,000 given its financial position. Yet regardless of whether the general reserve serves as the minimum necessary resistance the general reserve falls within the bandwidth of 5 and 8 even after payment of the fine million euros.42

Conclusion

176. The AP sets the total fine amount at € 525,000.43

6. Operative part

fine

The AP will inform the KNLTB, due to violation of Article 5, first paragraph, preamble and under b, of the AVG and Article 5, paragraph 1, opening lines and under a jo. Article 6, first paragraph, of the AVG, an administrative fine ten amount of € 525,000 (in words: five hundred and twenty-five thousand euros).

Yours faithfully,

Authority for Personal Data,

e.g.

Mr. A. Wolfsen

Chair

41 Annual accounts for 2018 of the KNLTB, consulted via https://www.knltb.nl/siteassets/1.-knltb.nl/downloads/over-knltb/publicaties/annual accounts/6965-knltb-annual-report-2018-v11-annualaccounts.pdf.

42 According to the 2018 annual accounts, the Board of Directors and the Council of Members have agreed that the general reserve will be kept within the bandwidth of 5 and 8 million euros.

43 The AP will hand over the aforementioned claim to the Central Judicial Collection Agency (CJIB).

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

Remedies Clause

If you do not agree with this decision, you can within six weeks from the date of sending it
decides to submit a notice of objection digitally or on paper to the Dutch Data Protection Authority. For the
submitting a digital objection, see www.autoriteitpersoonsgegevens.nl, under the heading Objection
against a decision, at the bottom of the page under the heading Contact with the Dutch Data Protection Authority. It
address for submission on paper is: Dutch Data Protection Authority, PO Box 93374, 2509 AJ The Hague.
Mention 'Awb objection' on the envelope and put 'bezwaarschrift' in the title of your letter.
Write in your notice of objection at least:

- your name and address;
- the date of your objection;
- the reference referred to in this letter (case number); or enclose a copy of this decision;
- the reason(s) why you disagree with this decision;
- your signature.