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Court of The Hague

Team Trade -judge in summary proceedings

case/docket number: C/09/681480 / KG ZA 25-200

Judgment in court in summary proceedings dated 25 April 2025

in the case of

1. **ANVR**: Algemene Nederlandse Vereniging van Reisondernemingen (Dutch association of travel companies) registered in Leusden, claimant, attorneys-at-law J. Tersteeg and R. van den Dungen, both registered in 's-Hertogenbosch,

2. **TUI Nederland N.V.** registered in Rijswijk, plaintiff, attorneys-at-law T.P. ten Brink, A. Danopoulos, J.P. Schoenmaker and T. Vlug, all registered in Rotterdam,

against:

Municipality of The Hague registered in The Hague, defendant, attorneys-at-law I.M. van der Heijden and B.S. Jaasma, both registered in The Hague,

in which the following have joined the claimants' side:

1. **Prijsvrij.nl B.V.** registered in 's-Hertogenbosch,

2. **D-Reizen Online B.V.** registered in 's-Hertogenbosch,

3. **D-Reizen Retail B.V.** registered in 's-Hertogenbosch,

attorney-at-law M.F.J. van Os registered in 's-Hertogenbosch.

and in which the following joined the defendant's side:

NGO Climate Tipping Points registered in The Hague, attorneys-at-law B.M. van Werven, B. Brouwer en T.D.O. van der Vijver, all registered in Amsterdam.

The parties will hereinafter be referred to respectively as "ANVR", "TUI", "the Municipality", "Prijsvrij", "D-Reizen" (parties 2. and 3. joined on the side of ANVR and TUI jointly) and NGO Climate Tipping Points as "RFV" (Reclame Fossielvrij).

1. The Procedure

1.1. The course of the proceedings is evidenced by:

- the summons of 2 April 2025, with exhibits 1 to 13;
- the brief of claim amendment of ANVR and TUI;
- the Municipality's statement of defence, with exhibits 1 to 15;
- the statement of joinder by RFV on the side of the Municipality, with exhibits 1 to 24;
- the letter of 7 April 2025 from ANVR and TUI, in which they object to the joinder claimed by RFV;
- RFV's statement of defence, with exhibits 25 to 33;
- the statement of joinder by Prijsvrij and D-Reizen on the side of ANVR and TUI, with exhibits 1 to 4;
- RFV's letter of 10 April 2025, in which it responds to ANVR's and TUI's objection to the joinder claimed by RFV;
- ANVR's brief of legal ground amendment.

1.2. The oral hearing was held on 11 April 2025. During the oral proceedings, the attorneys of ANVR and TUI, the Municipality and Prijsvrij and D-Reizen spoke on the basis of pleading notes. These are part of the file.

1.3. During the hearing, the date to render a judgment was set for today.

Motion proceedings of joinder

2.1. Prijsvrij and D-Reizen have requested to join as parties in support of ANVR and TUI. At the hearing, ANVR, TUI, and the Municipality stated that they did not object to the requested joinder. Consequently, Prijsvrij and D-Reizen were admitted as joined parties on the side of ANVR and TUI, as they have established that they have a sufficient interest therein. Furthermore, there is no indication that their joinder would impede the expeditious resolution of these summary proceedings. As such, no conflict arises with the principles of due process in general.

2.2. RFV has claimed to join the side of the Municipality. At the hearing, the Municipality stated that it had no objection to the joinder. ANVR and TUI, however, objected to the joinder on the grounds, in summary, that they cannot enforce their claims against RFV in the event of a favourable judgment, and that it was unclear how RFV could invoke a unfavourable judgment against ANVR and TUI. This position fails to acknowledge that Article 217 of the Dutch Code of Civil Procedure stipulates that any person with an interest in proceedings pending between other parties may request to be joined therein. No further requirements are imposed on a party seeking joinder. In the opinion of The judge in summary proceedings, RFV has sufficiently demonstrated an interest in the claimed joinder, as its constituency may suffer adverse consequences from an unfavourable outcome for the Municipality in these summary proceedings. Moreover, RFV has adequately explained how it seeks to support the Municipality with additional arguments. Since it has not otherwise been shown that the joinder would impede the expeditious handling of these summary proceedings, nor that there is any conflict

with the general principles of due process, RFV is admitted as a joined party on the side of the Municipality.

3. The Facts

On the basis of the documents submitted and the proceedings at the hearing, the following facts are established for the purposes of these proceedings:

3.1 Following a (revised) initiative proposal by the Party for the Animals, the municipal council of the Municipality decided, on 12 September 2024, to implement a ban on advertising for the products and services “fossil fuels, air travel holidays, airline tickets, contracts for fossil-fuel-based electricity, gas supply contracts, cruises, or cars powered by fossil-fueled or hybrid engines” in public spaces, hereinafter referred to as the "Advertising Ban."

The aim of the Advertising Ban is to protect the health of the Municipality’s residents, to mitigate the negative effects of climate change, and to improve the environment.

3.2. In connection with the implementation of the Advertising Ban, the Municipality’s Algemene Plaatselijke Verordening (a general local ordinance, hereinafter referred to as the "APV") was amended. In Article 1:1, subsection x of the APV, "Fossil Advertising" is defined as follows: *"advertising concerning the products and services fossil fuels, air travel holidays, airline tickets, fossil-fuel-based electricity, gas supply contracts, cruises, or cars powered by fossil-fueled or hybrid engines."*

The Advertising Ban has been incorporated into Article 2:97, paragraph 7 of the APV, and reads as follows:

“7. Fossil Advertising, that is visible from a place accessible to the public is prohibited, unless it concerns:

a. *Company names, company logos, and advertisements located on or in the immediate vicinity of the premises where the activities to which the advertisement relates are carried out;*
b. *Directional signs on industrial estates.”*

3.3 The Advertising Ban entered into force on 1 January 2025, with the understanding that initially (until 1 May 2025) only a warning will be issued in the event of a breach.
The Municipality will begin actual enforcement of the Advertising Ban after 1 May 2025.

4. The Dispute

4.1 ANVR and TUI claim – in essence and following an amendment of their claim – primarily, that the Advertising Ban be suspended; and, subsidiarily, that the Municipality be prohibited from implementing the Advertising Ban, in whole or in part, under penalty of a coercive fine, with an order for the Municipality to pay the legal costs of the proceedings, increased by statutory interest, as well as post-judgment costs.

4.2 In support of their claim – summarised and following an amendment to the legal grounds by ANVR, which is supported therein by Prijsvrij and D-Reizen – ANVR and TUI submit the following. The Municipality adopted the decision to impose the Advertising Ban without proper authority, and

furthermore, the Advertising Ban is non-binding, as it contravenes the Dutch Constitution and European law and regulations. Additionally, the general principles of good administrative governance were not observed in the adoption of the Advertising Ban. Enforcement of the Advertising Ban is therefore unlawful vis-à-vis ANVR and TUI. The members of ANVR, including TUI, wish to (continue to) advertise the travel services they offer, including air travel and cruises. They therefore have a direct interest in the suspension of the Advertising Ban or, at the very least, in the Municipality being prohibited from enforcing it.

4.3 The Municipality contests the claim, supported in its defence by RFV. This defence will be addressed below, to the extent necessary.

5. Assessment of the Dispute

Admissibility

5.1. In its brief of ground amendment, ANVR indicated that it no longer bases its claims on a collective interest on behalf of its members, but now relies solely on its own interest. Therefore, the defences raised by the Municipality in its statement of defence regarding the nullity of the writ of summons and the admissibility of ANVR in the context of a collective action no longer require discussion.

5.2. The Municipality has argued that it is unclear what personal interest ANVR has in these summary proceedings, since it does not advertise itself. However, The judge in summary proceedings is of the opinion that ANVR has sufficiently substantiated its interest in obtaining clarity concerning the Advertising Ban, particularly in light of its role as a spokesperson and point of contact for the travel industry in the Netherlands. Accordingly, ANVR is admissible in its claims.

Framework for Assessment

5.3. The following approach applies when assessing the claims. The Advertising Ban forms part of the APV (local ordinance) of the Municipality. The Municipality has considerable (policy) discretion in adopting measures for the benefit of its residents. The democratic decisions made by the Municipality in this context are subject to debate within the municipal council, and it is primarily the council's role to weigh all relevant arguments and interests. For this reason, the civil court — and even more so The judge in summary proceedings — must adopt a highly restrained approach when assessing the lawfulness of the Municipality's actions, and a full, substantive review by the civil court is not appropriate. Judicial intervention is only warranted where it is evident that the Municipality has made unmistakably incorrect or unlawful choices and could not reasonably have reached its policy.

5.4. Furthermore, the claim sought is primarily to declare part of a statutory regulation (the APV) inapplicable. The civil court can only declare a statutory regulation inapplicable in summary proceedings if and to the extent that it is *unmistakably non-binding* due to conflict with higher legislation or fundamental principles of good governance. This follows from Article 94 of the Dutch Constitution and established case law (cf. Dutch Supreme Court, 1 July 1983, ECLI:NL:HR:1983:AD5666). This also underscores the need for judicial restraint in assessing the claims of ANVR and TUI.

5.5. ANVR and TUI have advanced various arguments in support of their view that the Advertising Ban cannot be upheld or, at the very least, that the Municipality should be prohibited from enforcing it. These will be addressed below.

Municipality's Competence

5.6. ANVR and TUI argue that the Municipality has failed to demonstrate that the Advertising Ban will lead to a concrete and effective improvement in the public health of the residents and visitors of The Hague, and therefore it is unlikely to serve a legitimate public interest within the municipal boundary. Additionally, ANVR and TUI contend that there is no connection between the Advertising Ban and the intended objective of mitigating the negative effects of climate change within The Hague. They argue that the Ban therefore exceeds the municipal interest as referred to in Article 149 of the Municipalities Act, and that the municipal council lacked the authority to enact it.

5.7. The judge in summary proceedings does not follow ANVR and TUI in this regard. Pursuant to Article 149 of the Municipalities Act, the municipal council has the authority to enact regulations it deems necessary in the interest of the Municipality. This means it can legislate on all matters that sufficiently relate to the public interest and may consider any interests that affect the public sphere. The Municipality has explained that the purpose of the Advertising Ban is to remove fossil advertising from the public domain in The Hague, aiming to reduce the use of fossil-based products by residents and visitors. The judge considers the Municipality to have sufficiently substantiated that the Ban *may* contribute to protecting health and mitigating the negative consequences of climate change for residents and visitors, including by improving the city's liveability. These concerns are sufficiently related to the public interest, which means the Municipality is entitled to regulate in these areas, including imposing the Advertising Ban. Against this background, there is no reason to consider the Ban as exceeding the Municipality's powers. The judge also dismisses the argument by ANVR and TUI that less air travel does not directly improve local air quality and that the Ban is thus untenable. It is clear that a reduction in CO_2 emissions from fewer flights, in conjunction with other environmental measures, can contribute to improving the urban living environment, benefiting residents. The fact that the Municipality's contribution may be small on a national or global scale does not negate its legitimacy. The Municipality rightly points out that every contribution helps and that it wishes to do its part.

Is the Advertising Ban Contrary to the Constitution?

5.8. ANVR and TUI also argue that the Advertising Ban violates Article 7(1) and (3) of the Dutch Constitution, which stipulate (in summary) that no prior permission is required for the publication of thoughts or feelings based on their content, save for one's legal accountability. Referring to case law, ANVR and TUI argue that the freedom to disseminate ideas can only be restricted by a municipal ordinance if the restriction does not target the content and is not a complete ban. Since the Advertising Ban *is* a general ban, they argue there is no basis for such a restriction. They contend that Article 7(4) of the Dutch Constitution — which excludes 'commercial advertising' from the protection laid down in subsections (1) and (3) — does not change this, as the term 'commercial advertising' should be interpreted narrowly to avoid that subsection (4) undermines the protection offered by Article 7. Moreover, according to ANVR and TUI the Ban makes no distinction between commercial

and ideological advertising, meaning that the term "fossil advertising" includes more than what is linguistically understood as “commercial advertising” (as defined in Article 1:1(i) APV as “any public recommendation of goods or services that is clearly intended to serve a commercial interest”). Therefore, they argue that the Ban conflicts with Article 7 of the Dutch Constitution and is unmistakably non-binding.

5.9. The Municipality, however, in the opinion of The judge in summary proceedings, rightly argued that the term "commercial advertising" in Article 7(4) should be interpreted broadly, to include advertising for commercial purposes in the broad sense. It referred, among other things, to the parliamentary explanatory memorandum to the 1983 constitutional revision, which (in summary) states that only propaganda for ideological purposes is excluded from the concept of commercial advertising. The fossil advertising that (the members of the) ANVR and TUI wish to place — for package holidays, airline tickets, and cruises — is clearly intended to sell travel for profit and therefore serves a commercial rather than an ideological aim. Such advertising thus falls under the exception in Article 7(4). The fact that the Ban does not explicitly distinguish between commercial and ideological advertising does not change this. Not to mention that the definition of fossil advertising in Article 1:1(x) APV refers to advertising for products and services, which clearly implies commercial advertising. The absence of an explicit distinction does not automatically place the Ban outside the scope of Article 7(4). The judge in summary proceedings agrees with the Municipality that in case of doubt, it is up to the court to determine whether a specific advertisement qualifies as commercial advertising under Article 7(4).

5.10. Since the exception in Article 7(4) applies to advertisements for holidays and cruises (as these are clearly commercial), the Advertising Ban is not unmistakably non-binding. Therefore, there is no breach of Article 7(1) or (3). The so-called ‘dissemination doctrine’, invoked by ANVR and TUI — whereby lower legislators may only regulate the *manner* of dissemination — also does not apply. The Municipality correctly pointed out that this doctrine is only relevant to expressions protected by Article 7(1) and (3), which does not include commercial advertising.

Is the Advertising Ban Contrary to the UCPD Directive?

5.11. ANVR and TUI further contend that the Advertising Ban breaches the principle of maximum harmonisation under Directive 2005/29/EC of the European Parliament and Council (the Unfair Commercial Practices Directive, UCPD), which prohibits Member States from imposing additional restrictions on the free provision of services or free movement of goods within harmonised areas. They argue that consumers may not be granted a higher level of protection than the Directive provides, except in specific, expressly stated areas such as specific financial services or the protection of public health (e.g. alcohol, tobacco, pharmaceuticals). Since the Ban does not fall within any of these exceptions and imposes a higher level of consumer protection, they argue it is unmistakably non-binding.

5.12. The judge in summary proceedings does not follow this argument either. The UCPD protects consumers' economic interests against unfair practices by businesses. The Municipality referred to the EU Commission’s guidance on implementing the UCPD, which states that the Directive does not apply to national rules protecting non-economic interests and does not affect Member States' ability to regulate in relation to commercial practices for health, safety or environmental reasons. The Municipality has sufficiently shown that the Ban is not aimed at protecting consumers’ economic

interests but seeks to mitigate the negative effects of climate change as much as possible and protect public health of the residents and visitors of The Hague. In this light, ANVR and TUI have failed to show that the Ban falls within the scope of the Directive. Contrary to their claim, the Advertising Ban is therefore not unmistakably non-binding due to conflict with the UCPD.

Is the Advertising Ban contrary to Article 34 TFEU?

5.13 According to ANVR and TUI, the Advertising Ban also violates Article 34 of the Treaty on the Functioning of the European Union (TFEU), which prohibits quantitative restrictions on imports and all measures having equivalent effect between Member States. They argue that the Advertising Ban has a cross-border effect, as it also applies to foreign providers, and constitutes a selling arrangement which, under the applicable case law (CJEU, 24 November 1993, ECLI:EU:C:1993:905 *Keck and Mithouard* and CJEU, 8 March 2001, ECLI:EU:C:2001:135 *Gourmet*), must be regarded as a measure having equivalent effect. ANVR and TUI further assert that the Advertising Ban is selective in nature, as it does not apply equally to all market participants and puts Dutch operators at an advantage over foreign ones by making market entry more difficult for the latter. According to ANVR and TUI, Article 36 TFEU, which permits quantitative restrictions justified on grounds of protection of health and life of humans, does not justify the Advertising Ban either, as the Municipality has failed to provide adequate justification for the claimed contribution of the Advertising Ban to such protection.

5.14 In response, the Municipality has argued that the Advertising Ban applies without distinction to all market participants wishing to advertise fossil products in The Hague and who fall within the scope of the ban. Furthermore, the Municipality has asserted that there is no unequal playing field because, contrary to the claims of ANVR and TUI, foreign parties are not more severely affected by the Advertising Ban than companies based in the Netherlands.

5.15 The judge in summary proceedings agrees with the Municipality. There is no evident reason to assume the existence of an unlawful distinction between domestic and foreign market participants, as the Advertising Ban applies equally to all. ANVR and TUI have not sufficiently demonstrated that foreign providers would be more adversely affected than their domestic counterparts. Even if the Advertising Ban were considered a restriction on the free movement of goods, such a restriction could be justified under Article 36 TFEU on the grounds of protection of health and the environment. The Municipality has explained that the aim of the Advertising Ban is to reduce the use of fossil fuels in order to contribute to climate goals and to protect health and the environment. The Municipality has pointed out that the Advertising Ban may encourage residents and visitors of The Hague to make more sustainable choices, thereby making the measure suitable and necessary for achieving the intended purpose. Lastly, the Municipality rightly argued that the Advertising Ban is proportionate, as advertising through other channels, such as radio, television, and newspapers, remains permitted. Given the above, The judge in summary proceedings finds that the Municipality has sufficiently demonstrated that the Advertising Ban may positively contribute to reducing the use of fossil fuels and that it is justified in light of the interests mentioned in Article 36 TFEU. Therefore, the Advertising Ban is not unmistakably non-binding due to a conflict with Article 34 TFEU.

Is the Advertising Ban in breach of Article 10 ECHR and Article 11 of the Charter?

5.16. ANVR and TUI have further argued that the Advertising Ban infringes the right to freedom of expression as enshrined in Article 10 of the European Convention on Human Rights (ECHR) and Article 11 of the Charter of Fundamental Rights of the European Union (the Charter). According to ANVR and TUI, the restriction imposed by the Advertising Ban on freedom of expression is not necessary in a democratic society, as it lacks proportionality, particularly because the Municipality has not substantiated that the Ban can achieve its intended aim. This applies all the more because the Advertising Ban, given its broad wording, is excessively far-reaching in light of the Municipality's stated objectives, ANVR and TUI argue. Therefore, they claim the Advertising Ban is unmistakably non-binding due to its infringement with the right to freedom of expression.

5.17. ANVR and TUI on one side and the Municipality on the other disagree on whether the restriction of freedom of expression in the Advertising Ban is necessary in a democratic society. According to settled case law of the European Court of Justice, the test of necessity in a democratic society involves assessing whether there is a *pressing social need* to restrict freedom of expression, whether the restriction is proportionate, and whether the justifications are *relevant and sufficient*. As noted in paragraph 5.15 above, the Municipality has sufficiently demonstrated that the Advertising Ban serves a legitimate aim, namely, the protection of public health and the reduction of the negative effects of climate change, and that the Ban is proportionate. The judge in summary proceedings is of the opinion that the Municipality has thus adequately substantiated that the requirements for restricting freedom of expression under Article 10 ECHR have been met. The Municipality has clearly set out that the Advertising Ban, within the capabilities of the Municipality, can contribute to mitigating the effects of climate change and improving the health of residents and visitors in The Hague. The Municipality further clarified that the Ban solely targets advertising for fossil-related products and services. This means that (the members of the) ANVR and TUI remain entirely free to advertise other types of travel or promote brand awareness in public spaces in The Hague using their name or logo. Moreover, ANVR and TUI are still able to run fossil-related advertisements via other channels, such as radio, TV, and the internet. In this way, the Municipality has sufficiently shown that, in the present circumstances, the Advertising Ban meets the requirements of proportionality and subsidiarity.

5.18. ANVR and TUI have not argued that Article 11 of the Charter provides more extensive protection than Article 10 ECHR. In light of the reasoning set out in paragraph 5.17, ANVR and TUI have therefore failed to establish that the Advertising Ban violates Article 11 of the Charter, all the more so because the Municipality has rightly pointed out, without being challenged, that ANVR and TUI cannot invoke the Charter in this case, as the Advertising Ban does not fall within the scope of EU law.

5.19. The foregoing means that the Advertising Ban is not unmistakably non-binding due to an infringement with Article 10 ECHR and/or Article 11 of the Charter.

Is the Advertising Ban in breach of Article 16 of the Charter?

5.20. ANVR and TUI further argue that the Advertising Ban restricts the right to conduct a business, as protected under Article 16 of the Charter, making the Ban unmistakably non-binding. According to them, the Advertising Ban infringes the freedom of travel companies to carry out commercial activities and the principle of free competition, without being appropriate or necessary to achieve the objective pursued by the Municipality. They further submit that the Advertising Ban will not lead

to the sustainable consumer behaviour desired by the Municipality, and may even have a counterproductive effect: travel companies that aim to operate more sustainably will sell fewer trips as a result of the Advertising Ban, which in turn hampers their ability to finance sustainability initiatives and removes their incentive to distinguish themselves from competitors.

5.21. This argument does not succeed. The Municipality has rightly contended that ANVR and TUI cannot rely on the Charter in this case as the Advertising Ban does not concern the implementation of EU legislation. Moreover, the Advertising Ban falls outside the scope of the UCPD Directive, and ANVR and TUI also cannot invoke the free movement of goods in this context, since there is no unlawful restriction thereof. Insofar as the Advertising Ban were to fall within the scope of Article 34 of the TFEU, the Municipality rightly argued that the question of whether Article 16 of the Charter has been infringed must be assessed using the same criteria applied to determine a breach of Article 34 TFEU. As such, a separate assessment under the right to conduct a business, as laid down in Article 16 of the Charter, is not necessary. As previously considered under section 5.15, it has been sufficiently established that the Advertising Ban is clearly justified in light of the interests referred to in Article 36 TFEU, and is therefore not in breach of Article 34 TFEU. Consequently, that conclusion also leads to the finding that the Advertising Ban is not unmistakably non-binding on the grounds of incompatibility with Article 16 of the Charter.

Does the Advertising Ban violate principles of good administration?

5.22. ANVR and TUI also argue that the Advertising Ban breaches several general principles of good administration. Their contentions and the Municipality's defences to them will be discussed and assessed for each principle hereinafter.

<u>The lex certa principle</u>

5.23. According to ANVR and TUI, the Advertising Ban violates the lex certa principle (principle of legal certainty) because it is based entirely on general and undefined terms, so that there is no sufficiently clear, definite and discernible description of the ban. The broad wording means that the distinction between authorised and unauthorised advertising is unclear, effectively imposing a complete advertising ban on the travel industry, according to ANVR and TUI.

5.24 The judge in summary proceedings finds that this argument by ANVR and TUI cannot be upheld. The Municipality has sufficiently substantiated that the definition of ‘fossil advertising’ provided in Article 1:1 (x) of the APV (see section 3.2 above) offers sufficient clarity for market participants wishing to advertise in publicly accessible spaces as to which forms of advertising are or are not permitted. The fact that some clarification may occasionally be required does not mean that the Advertising Ban violates the principle of legal certainty (*lex certa*). The Municipality rightly argued that this is all the more valid given that the Advertising Ban is directed at professional parties, from whom it may reasonably be expected that they seek expert advice when in doubt about a proposed advertisement. Furthermore, the Municipality has sufficiently explained that, contrary to what ANVR and TUI have claimed, the Advertising Ban does not constitute a complete ban on advertising by the travel sector, as it applies specifically to the goods and services listed in the definition of “fossil advertising” and does not prevent market participants from engaging in other forms of public advertising.

<u>The Principle of Proportionality</u>

5.25. ANVR and TUI submitted that no proper balancing of interests has taken place between their interests and those the Municipality seeks to protect. According to ANVR and TUI, the Advertising Ban is in breach of the principle of proportionality, as the Municipality has failed to demonstrate that the measure is suitable and necessary to achieve its intended policy objective. They argue there is no evidence that the Ban offers concrete or relevant protection or improvement to public health within the Municipality. In this context, they contend that the Advertising Ban cannot be deemed suitable without a coherent policy package and that its necessity has not been demonstrated, as the Municipality failed to explore less intrusive alternatives. ANVR and TUI further emphasised that the decision imposes an unreasonable burden on them and disproportionately impacts their business operations.

5.26. As stated previously, The judge in summary proceedings considers that the Municipality has sufficiently substantiated that the Advertising Ban is suitable and necessary to contribute to the objectives it seeks to achieve. The Municipality has explained that the Ban may help counteract the negative effects of climate change for the benefit of residents and visitors to The Hague and to protect their health. The Municipality also emphasised that the Advertising Ban does not stand in isolation and that it is taking a variety of additional measures to improve public health and the environment, such as implementing a zero-emission zone and measures for climate-resilient urban planning. In contrast, ANVR and TUI have not presented specific facts or circumstances justifying the conclusion that the Municipality failed to properly balance the relevant interests or failed to justify the Advertising Ban. After all, the only thing standing against the public health interest are the commercial interests of advertisers. It is therefore not surprising that the balancing of interests was not resolved in the advertisers' favour. Furthermore, ANVR and TUI have not demonstrated that they are disproportionately affected by the Ban, since they retain various other options for promoting their products and services. Their claim that the Ban impedes the travel industry's efforts to become more sustainable does not alter this assessment. The Municipality is under no obligation to refrain from measures that promote public health in order to support the future (financial) position of travel operators.

5.27. ANVR and TUI further argued that after introducing the Advertising Ban, the Municipality undertook research into attracting more international visitors from North America and Asia, who would necessarily travel by air. According to ANVR and TUI, this contradicts the objectives of the Advertising Ban and indicates arbitrariness. However, during the hearing, the Municipality clarified that it does not seek to entice people from North America and Asia to visit The Hague, but rather focuses on individuals from those regions who are already in the Netherlands. The assertion of arbitrariness on this point is therefore unsubstantiated.

5.28. Based on the foregoing, The judge in summary proceedings finds that ANVR and TUI have failed to sufficiently substantiate their claim that the Advertising Ban breaches the principle of proportionality, and this argument is therefore rejected.

<u>The Principle of Equality</u>

5.29. ANVR and TUI also argued that the Advertising Ban breaches the principle of equality. They claim that the original initiative proposal also included a ban on advertisements for meat consumption and on all advertising by the coal, oil and gas, and aviation sectors. According to them, these types of advertising were removed from the final version of the Ban without proper

justification from the Municipality. ANVR and TUI assert that meat production and the aforementioned sectors also negatively affect the health of The Hague's residents and visitors, and therefore it is not clear why the Advertising Ban should apply only to the travel industry.

5.30. The Municipality responded that the fact that the Advertising Ban does not target all products and services potentially harmful to health or the environment does not mean fossil advertising must therefore be permitted. The Municipality maintains that it is not necessary to offer a comprehensive environmental solution all at once; the only question is whether the specific measure taken is suitable and necessary — which it is in the case of the Advertising Ban. Moreover, the Municipality noted that the current Ban is much narrower in scope than the one originally proposed, which would have banned all their advertising. It explained that, under the current Ban, travel companies and businesses in the oil and gas sectors may still advertise "green" products and services, ensuring equal treatment in comparable situations. The Municipality also stated that it has the policy discretion to determine which products fall under the Ban. The municipal council has concluded that advertising meat products has a less direct impact on the Ban's environmental objectives than advertising fossil-based goods and services, justifying the distinctions made.

5.31.
The judge in summary proceedings is of the opinion that the Municipality has sufficiently demonstrated that any distinctions made between different forms of advertising under the Ban are justified. The judge agrees with the Municipality that it is not necessary for a measure to provide a comprehensive solution to a problem; it is sufficient that the measure — in this case, the Advertising Ban — can contribute to the intended goal, namely, improving air quality and reducing environmental damage. There is therefore no breach of the principle of equality.

<u>The Principles of Due Care and Proper Motivation</u>

5.32. Finally, ANVR and TUI argued that the Advertising Ban was enacted without due care and is inadequately motivated. They claimed that the Municipality failed to conduct any scientific research into the effects of the Ban, did not sufficiently balance the relevant interests, and did not address possible legal violations in the justification of the Advertising Ban.

5.33. In response, the Municipality has sufficiently substantiated that it was under no obligation to commission its own scientific research into the consequences of the Advertising Ban and that it was free to rely on scientific studies conducted by other authorities. In this regard, the Municipality referred to the Eiffel report. The Municipality further explained that the proposal explicitly addressed the impact of the Advertising Ban on market participants, including how it relates to freedom of expression, and argued that the proposal made clear that legal uncertainty would not preclude adoption of the Ban, that market participants would still be able to advertise through other means, and that any limitation on freedom of expression was therefore limited.

5.34. The judge in summary proceedings finds that the Municipality has adequately demonstrated that the Advertising Ban was adopted with due care and is sufficiently motivated. The fact that the justification of the Advertising Ban does not explicitly refer to all relevant laws and regulations does not alter this conclusion. Accordingly, it has not been established that the Advertising Ban was adopted in violation of the principles of due care or proper motivation, and this objection by ANVR and TUI is therefore dismissed.

Conclusion and Legal Costs

5.35. The conclusion of the foregoing is that the Advertising Ban is not unmistakably non-binding. There is therefore no basis for suspending the Advertising Ban or for prohibiting the Municipality from enforcing it. This means that the claims of ANVR and TUI are dismissed.

5.36. As ANVR and TUI have not been successful, they must pay the legal costs (including post-judgment costs) of the Municipality and RFV. Prijsvrij and D-Reizen, who joined the proceedings on the side of ANVR and TUI, have also not succeeded. However, as their joinder did not result in (notable) additional costs for either the Municipality or RFV, the judge in summary proceedings will not order Prijsvrij and D-Reizen to pay the legal costs of the Municipality and RFV.

5.37.
The legal costs of both the Municipality and RFV are set at:

- Court registry fee: €714.00
- Solicitor's fee: €1,107.00
- Post-judgment costs: €178.00 (plus the increment as specified in the decision)
- **Total: €1,999.00**

5.38. The statutory interest on the legal costs claimed by the Municipality is awarded as specified in the decision.

6. The Decision

The judge in summary proceedings:

6.1. dismisses the claims;

6.2. orders ANVR and TUI to pay the legal costs, which are set at €1,999.00 on behalf of both the Municipality and RFV, payable within fourteen days of notification. If ANVR and TUI fail to comply on time and the judgment is then served, ANVR and TUI must pay an additional €92.00 to the relevant party, plus the service costs;

6.3. Orders ANVR and TUI to pay statutory interest, as defined in Article 6:119 of the Dutch Civil Code, on behalf of the Municipality over the legal costs, if these are not paid within fourteen days of notification;

6.4. Declares these cost orders provisionally enforceable.

This judgment was delivered by S.J. Hoekstra-van Vliet and pronounced publicly on 25 April 2025.